Amherst Town Board

Regular Meeting of the Town Board

Minutes

5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Monday, July 24, 2023 | **7:00 PM** | **Amherst Municipal Building**

I. IN MEMORY

Christopher Wertmen

II. INVOCATION

Deputy Supervisor Bucki

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL:

7:00 PM Meeting called to order on July 24, 2023 at Amherst Municipal Building, 5583 Main Street, Williamsville, NY.

Attendee Name	Organization	Title	Status	Arrived
Brian J. Kulpa	Town of Amherst	Supervisor	Present	
Deborah Bruch Bucki	Town of Amherst	Deputy Supervisor	Present	
Jacqualine Berger	Town of Amherst	Councilmember	Present	
Shawn Lavin	Town of Amherst	Councilmember	Present	
Michael Szukala	Town of Amherst	Councilmember	Present	
Francina J. Spoth	Town of Amherst	Town Clerk	Present	
Timothy Koller	Town of Amherst	Deputy Town Clerk	Present	
Martin A. Polowy	Town of Amherst	Town Attorney	Present	
Dan Howard	Town of Amherst	Planning Director	Present	
Daryl Bramer	Town of Amherst	Comptroller	Present	
Lynda Juul	Town of Amherst	Director of Finance	Present	
Patrick G. Lucey	Town of Amherst	Highway Superintendent	Present	
Jeffrey S. Burroughs	Town of Amherst	Town Engineer	Present	
Anne Dafchik	Town of Amherst	Architect	Present	

V. MINUTES APPROVAL

1. Monday, July 10, 2023

RESULT:	**ACCEPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Councilmember
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

VI. PROCLAMATIONS AND ANNOUNCEMENTS

Amherst Town Board Winter Storm Recognition Event.

VII. PUBLIC HEARINGS

Speakers will be limited to 3 minutes.

1. Resolution 2023-529

2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of Restrictions

Request to rezone 2350 Sweet Home Road from OB to MFR-5 and to amend declaration of restrictions at 2360-2372 & 2350 Sweet Home Road.

6/20/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was opened at 7:12 PM.

Sean Hopkins, Esq. presented. Mr. Hopkins stated that the rezoning request is being withdrawn.

The following speakers spoke in opposition:
Chris & Joan Stone, 550 N Ellicott Creek Rd
James Bartley, 574 N Ellicott Creek Rd
Anthony Chungbin, 645 N Ellicott Creek Rd

There were no further speakers, therefore Supervisor Kulpa moved to adjourn the hearing until the July 24th Town Board meeting, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:51 PM.

7/24/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was opened at 7:32 PM.

Sean Hopkins, Esq. presented updated plans.

The following speakers spoke in opposition:
Joan Stone, 550 N Ellicott Creek Rd
James Bartley, 574 N Ellicott Creek Rd
Anthony Chungbin, 645 N Ellicott Creek Rd

There were no further speakers, therefore Supervisor Kulpa moved to close the hearing,

seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was closed at 8:01 PM.

RESULT:	**HEARING CLOSED**

2. Resolution 2023-621

2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution - $185,000)

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 19, 2023**

RE: **2023 Engineering Department Sewer Building Improvements and Demolition**
2023 CIP Project No. F-6
Bond Resolution - $185,000

The above-referenced matter is scheduled for a Public Hearing on July 24, 2023 at 7:00 p.m. In this regard, kindly adopt a resolution (1) Adopting the attached SEQR determination for the above project as determined by the Town of Amherst Planning Department **prior to the Public Hearing being deemed closed**; and (2) Adopting the attached bond documents **once the Public Hearing has been deemed closed**.

For ease of reference and to provide detailed information regarding the bond action, also attached is the Map Plan and Report for the project.

Thank you.

MAP:nmb
Attachments
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item - July 24, 2023**)
Daryl C. Bramer, Comptroller *(w/attachment)*
Lynda Juul, Director of Finance *(w/attachment)*
Dan Howard, Director of Planning *(w/attachment)*
Dan Ulatowski, AICP, Assistant Planning Director/ZEO (*w/attachments*)
Jeffrey S. Burroughs, PE, Town Engineer (*w/attachment*)
Vaishali Reberholt, PE, Assistant Town Engineer (*w/attachment*)
Anne Dafchik, AIA, NCARB, Architect (*w/attachment*)
Daniel Rizzo, Director of Facilities (*w/attachments*)

7/24/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by

Councilmember Berger and unanimously approved 5-0. The public hearing was opened at 8:02 PM.

Anne Dafchik, Architect, presented.

A motion to approve the SEQR determination was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 8:06 PM.

A motion to adopt the Bond Resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved via Roll Call vote 5-0.

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Resolution 2023-622

WPCF Multi-Project Bond (Bond Resolution - $1.325M)

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 18, 2023**

RE: **Cryogenic Oxygen Plant Replacement Design**
2023-2028 CIP Project E-10 ($350,000)

Building Equipment and Infrastructure - Phase 4
2023-2028 CIP Project E-12 ($800,000)

HVAC Facility Improvements - Phase 5
2023-2028 CIP Project E-13 ($175,000)

Bond Resolution - $1.325M

The above-referenced matter is scheduled for a Public Hearing on July 24, 2023 at 7:00 p.m. In this regard, kindly adopt a resolution (1) Adopting the attached SEQR determination for the above project as determined by the Town of Amherst Planning Department **prior to the Public Hearing being deemed closed**; and (2) Adopting the attached bond documents **once the Public Hearing has been deemed closed**.

For ease of reference and to provide detailed information regarding the bond action,

also attached is the Map Plan and Report for the project.

Thank you.

MAP:nmb
Attachment
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item - July 24, 2023**)
Daryl C. Bramer, Comptroller *(w/attachment)*
Lynda Juul, Director of Finance *(w/attachment)*
Dan Howard, Director of Planning *(w/attachment)*
Dan Ulatowski, AICP, Assistant Planning Director/ZEO (*w/attachments*)
Jeffrey S. Burroughs, PE, Town Engineer (*w/attachment*)
Michael Poslinski, Senior Engineer Assistant (*w/attachment*)

7/24/2023

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was opened at 8:07 PM.

Jeff Burroughs, Town Engineer, presented.

A motion to approve the SEQR determination for the Cryogenic Oxygen Plant Replacement Design was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0.

A motion to approve the SEQR determination for the Building Equipment and Infrastructure - Phase 4 was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

A motion to approve the SEQR determination for the HVAC Facility Improvements - Phase 5 was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was closed at 8:13 PM.

A motion to adopt the Bond Resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved via Roll Call vote 5-0.

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

4. Resolution 2023-623

1350 Eggert Road Rezoning

Request to rezone 1350 Eggert Road from OB-TNB-1 to TI-2.5.

7/24/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was opened at 8:14 PM.

Sean Hopkins, Esq. presented.

The following speakers spoke in opposition:
Ray Volpe, 302 Crosby Blvd
Dan Dolloff, 278 Crosby Blvd
Susan Aureli, 312 Crosby Blvd
Pamela & John Sander, 34 Olney Dr
Kristen Lane, 37 Olney Dr
Janice Colvin, 49 Olney Dr
Jessica Kerr, 22 Olney Dr

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the hearing until August 21st, seconded by Councilmember Lavin and unanimously approved 5-0.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 8/21/2023 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Shawn Lavin, Councilmember	
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala	

VIII. DEVELOPMENT REVIEW ACTIONS

1. Resolution 2023-624

SEQR Determination 2350 Sweet Home Road, Z-2016-16_D & Z-2017-11_B

DRAFT RESOLUTION
2350 Sweet Home Road, Z-2016-16_D & Z-2017-11_B

RESOLVED, that pursuant to 6NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Town Code Chapter 104, as amended, the Town Board is deemed the Lead Agency for those actions which it has sole discretionary power, including but not limited to rezoning decisions and adoptions of local laws, and be it further

RESOLVED, that this Town Board as SEQR Lead Agency has reviewed a request to amend declaration of restrictions required as part of a rezoning decision at 2350 Sweet Home Road and has identified the areas of environmental concern, thoroughly analyzed them for significant adverse impact, including any concerns and/or recommendations from

other agencies, and be it further

RESOLVED, that the requirements of SEQR are now complete therefore this Town Board issues the attached Negative Declaration as its determination of environmental significance, for the subject action.

RESULT:	**WITHDRAWN**

2. Resolution 2023-625

Adoption to Amend Declaration of Restrictions Required as Part of a Rezoning Decision (2350 Sweet Home Road, Z-2016-16_D & Z-2017-11_B)

DRAFT RESOLUTION

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR are complete, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of April 20, 2023 that the proposed request to amend declaration of restrictions required as part of a rezoning decision at 2350 Sweet Home Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts an amendment to condition number 4 of the declaration of restrictions required as part of a rezoning decision made on October 1, 2018 to:

4. That the residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear side of second story loft space in Buildings Nos. 1, 2, 4, 5, 6, 7, 8 and 14 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022.

BE IT FURTHER RESOLVED, the filed Amended declaration of restrictions be amended and filed in the Erie County Clerk's office for the subject properties and that copies of the filed amended declaration of restriction be provided to the Town of Amherst.

RESULT:	**WITHDRAWN**

3. Resolution 2023-626

SEQR Determination (3945 Rensch Road, Z-2023-02)

RESOLVED, that pursuant to 6NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Town Code Chapter 104, as amended, the Town Board is deemed the Lead Agency for those actions which it has sole discretionary power, including but not limited to rezoning decisions and adoptions of local laws, and be it further

RESOLVED, that this Town Board as SEQR Lead Agency has reviewed a request for a rezoning at 3945 Rensch Road from Residential District 4 (R-4) to Center-5 (CTR-5) and has identified the areas of environmental concern, thoroughly analyzed them for significant adverse impact, including any concerns and/or recommendations from other agencies, and be it further

RESOLVED, that the requirements of SEQR are now complete therefore this Town Board issues the attached Negative Declaration as its determination of environmental significance, for the subject action.

7/24/2023
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Councilmember
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

4. Resolution 2023-528

Adoption of Local Law to Amend the Zoning Map (3945 Rensch Road – Z-2023-02)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR are complete, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of April 20, 2023 that the proposed Center-5 zoning at 3945 Rensch Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#_____) to amend the Town Zoning map subject to the following conditions as recommended by the Planning Board:

1. That the comments and supporting documentation requested by the Engineering Department (Downstream sewer capacity analysis is required) and Traffic Safety Board (correct curb cut on site plan) be addressed to their satisfaction during the site plan review process.

2. Cultural Resource clearance be obtained from NYSOPRHP prior to approval of site plan by the Planning Board.

6/20/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was opened at 7:03 PM.

Sean Hopkins, Esq. presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the July 24th Town Board meeting, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:10 PM.

7/24/2023
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Councilmember
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

IX. PERSONAL APPOINTMENTS TO BOARDS & COMMITTEES

Board Appointments - Amherst Conservation Advisory Council, Board of Ethics, Historic Preservation, IDA, Planning, Recreation, Recycling & Waste, Traffic Safety and the Zoning Board of Appeals.

NOTE - The number of vacancies is listed after the Committee name.

1. **9/11 Commemoration Committee**

   Membership is unlimited.

2. **Amherst Committee on Disabilities (6)**

3. **Amherst Community Diversity Commission (4)**

4. **Amherst Conservation Advisory Council (5)**

5. **Amherst Government Financial Advisory Board**

   Membership is full.

6. **Amherst Industrial Development Agency**

   Membership is full.

7. **Amherst Veterans Committee (4)**

8. **Arts & Culture in Public Places Board**

9. **Board of Assessment Review**
   Membership is full.

10. **Board of Electrician Examiners**
    Membership is full.

11. **Board of Ethics (1)**

12. **Board of Plumbing and Drainage Examiners**
    Membership is full.

13. **Design Advisory Board**

14. **Employee Suggestion Program Merit Award Board**
    Membership is full.

15. **Employee Suggestion Review Committee**

16. **Energy Conservation Citizens Advisory Committee (3)**

17. **Freedom of Information Law (FOIL) Board**

18. **Glen Park Joint Board**

19. **Historic Preservation Commission**
    Membership is full.

20. **Information Technology Advisory Committee (1)**

21. **Library Board of Trustees**
    Membership is full.

22. **Minority / Woman Owned Business (4)**

23. **Open Government Advisory Board (7)**

24. **Planning Board**
    Membership is full.

25. **Recreation Commission (1)**

26. **Recycling and Waste Committee (3)**

27. Senior Services Advisory Board (7)

28. Traffic Safety Board

Membership is full.

29. Youth Board

Adult vacancies (6), Youth vacancies (0)

30. Zoning Board of Appeals

X. PUBLIC EXPRESSION

This is an opportunity for residents to comment on matters involving Amherst other than those pertinent to Public Hearings that day. Speakers will be limited to 3 minutes.

A motion to open Public Expression was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. Public Expression was opened at 8:59 PM.

The following speakers addressed the Town Board:
Geri DiCosmo, 378 Meyer Rd - no parking signs on Meyer Road & wrong information in an Amherst Bee article
Elizabeth Astridge, 159 Wood Acres Dr - crosswalk in front of Williamsville East High School

There were no further speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. Public Expression was closed at 9:06 PM.

XI. CONSENT AGENDA

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

XII. COUNCILMEMBER RESOLUTIONS

A. SUPERVISOR KULPA:

B. DEPUTY SUPERVISOR BUCKI:

C. COUNCILMEMBER BERGER:

D. COUNCILMEMBER LAVIN:

E. COUNCILMEMBER SZUKALA:

XIII. DEPARTMENT HEAD RESOLUTIONS AND REPORTS

A. TOWN ATTORNEY:

1. Resolution 2023-627

Senior Center Cafe/Gift Shop (Bond Resolution - $200,000)

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 18, 2023**

RE: **Senior Center Renovations**
2023-2028 C.I.P. - Project F-17
Bond Resolution - $200,000

Kindly take the following action with respect to the above bond request:

(1) Adopt the attached SEQR determination for the above project as determined by the Town of Amherst Planning Department; and

(2) Adopt the attached bond resolution authorizing the issuance of $200,000.00 in serial bonds for the above-referenced Town improvement.

The adoption of the bond resolution does not require a public hearing to be held because the improvement is a Town improvement not involving a special district.

Also attached is the Map Plan and Report which provides further detail on the scope of the project.

Thank you.

MAP:nmb
Attachments
c: Tim Koller, Deputy Town Clerk (*w/attachments*, **Agenda Item - July 24, 2023**)
Daryl C. Bramer, Comptroller (*w/attachments*)
Lynda Juul, Director of Finance (*w/attachments*)
Dan Ulatowski, AICP, Assistant Planning Director/ZEO (*w/attachments*)
Dan Howard, Director of Planning (*w/attachments*)
Daniel J. Rizzo, Expansion Coordinator, Special Projects (*w/attachments*)
Anne Dafchik, AIA, NCARB, Architect (*w/attachments*)

7/24/2023
A motion to adopt the SEQR determination was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. A motion to approve the Bond resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved via Roll Call vote 5-0.

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Resolution 2023-628

Memorandum of Understanding (BNHV/TOA) (CRS #4172)

AGENDA ITEM - JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 14, 2023**

RE: **Memorandum of Understanding Between:**
Buffalo Niagara Heritage Village ("BNHV") and
Town of Amherst (CRS# 4172)

Kindly adopt the following resolution with respect to the above matter:

RESOLVED, that the Town Board authorizes the Supervisor to execute the attached Memorandum of Understanding.

Thank you for your consideration.

MAP:EAB:hs
Attachment
c: Tim Koller, Deputy Town Clerk
(w/attachment, **Agenda Item: July 24, 2023**)

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Resolution 2023-629

License Agreement - 132 Boxelder Lane (Owners Patel/Murphy) (CRS #4208)

AGENDA ITEM : JULY 24th, 2023

TO: **Town Board**

FROM: **Nicole M. Burroughs, Senior Paralegal**

DATE: **July 18, 2023**

RE: **Request for License Agreement (CRS #4208)**
Placement of Shed and Concrete Pad
Property Located At:
132 Boxelder Lane, Amherst, New York 14228

Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement pending successful completion of the CRS.

The owners of the above-referenced property are seeking permission to place a shed and concrete pad that would encroach into an existing Town-owned easement, the details and stipulations of which are more fully described in the License Agreement.

This request was reviewed and approved by the Highway Department.

Thus, kindly adopt the following resolution:

RESOLVED, the Town Board authorizes the Supervisor to execute the attached License Agreement, pending successful completion of the Contract Routing System (CRS).

Thank you.

NMB:hs
Attachment
c: Tim Koller, Deputy Town Clerk
(w/attachment, **Agenda Item : July 24, 2023**)

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

4. Resolution 2023-630

License Agreement - 170 Londonderry Lane (Feuerstein) (CRS #4209)

AGENDA ITEM : JULY 24th, 2023

TO: **Town Board**

FROM: **Nicole M. Burroughs, Senior Paralegal**

DATE: **July 18, 2023**

RE: **Request for License Agreement (CRS #4209)**
Installation of Fence
Property Located At:
170 Londonderry Lane, Getzville, New York 14068

Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement pending successful completion of the CRS.

The owners of the above-referenced property are seeking permission to construct and install a fence that would encroach into an existing Town-owned easement, the details and stipulations of which are more fully described in the License Agreement.

This request was reviewed and approved by the Highway Department.

Thus, kindly adopt the following resolution:

RESOLVED, the Town Board authorizes the Supervisor to execute the attached License Agreement, pending successful completion of the Contract Routing System (CRS).

Thank you.

NMB:hs
Attachment
c: Tim Koller, Deputy Town Clerk
(w/attachment, **Agenda Item : July 24, 2023**)

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

5. Resolution 2023-631

Settlement of Article 7 Matter - Reist Street Holdings, LP V. Town of Amherst

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Samuel A. Alba, Esq., Senior Deputy Town Attorney**

DATE: **July 18, 2023**

RE: **Settlement of Article 7 Matter**
Reist Street Holdings, LP v. Town of Amherst

Kindly adopt a resolution authorizing the following:

(1) Settlement of the above matter as detailed in the attached Consent Order; and

(2) Authorizing Senior Deputy Town Attorney Samuel A. Alba, Esq. to sign the attached Consent Order as the Attorney for the Respondent, Town of Amherst.

Thank you.

SAA:rms
Attachment
c: Tim Koller, Deputy Town Clerk
(*w/attachment,* **Agenda Item : July 24, 2023**)
Emily Murphy, Town Assessor

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

B. TOWN CLERK:

1. Resolution 2023-632

GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077

Please authorize the Supervisor to sign the Annual Service Agreement Renewal with Granicus, LLC for the Meeting Management Software for MinuteTraq.

The agreement is valid from 4/17/2023 to 4/16/2024. CRS#4077. The funds will be paid from Trust Account 4011 4002.

Approval is pending successful completion of the Contract Routing System.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

C. ASSESSOR:

D. BUILDING/BUILDING MAINTENANCE:

1. Resolution 2023-466

Demolition of 88 Smallwood Drive

WHEREAS, the property at 88 Smallwood Drive has been deteriorating for a significant period of time; and

WHEREAS, the Commissioner of Building has determined that in accordance with Section

151-56A of the Property Maintenance Code of the Town of Amherst, the dwelling has become so out of repair as to be dangerous, unsafe, insanitary, or otherwise unfit for human habitation or occupancy; and

WHEREAS, the Commissioner of Building has determined that in accordance with Section 151-56A of the Property Maintenance Code of the Town of Amherst that it is unreasonable to repair the structure and that the dwelling should be demolished; and

WHEREAS, by Resolution 2023-235 approved by the Amherst Town Board at its March 6, 2023 meeting, the Commissioner of Building further recommended that in accordance with Section 151-53 of the Property Maintenance Code, the appropriate persons and entities should be put on notice that the dwelling and accessory structures must be either demolished or brought into compliance with all applicable codes by the Town Board meeting held on May 22. 2023, otherwise the Town of Amherst will proceed with demolition and that the cost of demolition and related activities, but not limited to asbestos abatement and monitoring, rodent control, and appropriate restoration of the property, shall be placed on the tax bill for the owner of 88 Smallwood Drive, Amherst, New York 14226.

5/22/2023

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:04 PM.

Mark Berke, Commissioner of Building and Bill Prenevau, Asst. Code Enforcement Officer presented.

Jessica Black, 79 Fruehauf Ave spoke in support of rehabbing the house.

Supervisor Kulpa stated three conditions that the purchaser prepare in advance and present:

1. A mold remediation plan
2. An active rodent control plan
3. A structural shoring plan

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the July 24th Town Board meeting, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was closed at 7:22 PM.

RESULT: WITHDRAWN

2. Resolution 2023-633

Intermunicipal Agreement with Vow for CEO's CRS #4145

Please authorize the Supervisor to sign the agreement between the Village of Williamsville and the Town of Amherst for the Code Enforcement Officers to inspect permits pending a successful completion of the CRS ID #4145.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Resolution 2023-634

Emergency Purchase of HVAC Parts for Williamsville Library CRS #4210

Upon successful completion of CRS routing, please authorize the Supervisor to approve emergency purchase of HVAC parts for Williamsville Library. Library was without air conditioning and needed to be fixed.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

E. CENTRAL ALARM:

F. COMPTROLLER:

1. Resolution 2023-635

Budget Transfers and Amendments

For July 24, 2023 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 7/19/2023
Re: Various Department Budget Transfers / Amendments

I have received the following request(s) requiring budget transfers and / or amendments. Based on my review, I ask that the Town Board approve the following list;

BUDGET TRANSFERS - 2023

FROM:	***TO:***
A1410.4020 Town Clerk - Postage $5,500.00	A1620.1200 OT $3,500.00
A1410.4010 Town Clerk - Office Supplies $3,000.00	A1620.8030 FICA $267.75
A1410.4026 Town Clerk - Microfilm $2,000.00	A1620.4220 Buildings & grounds $6,732.25

To transfer funds from Town Clerk to Building Maintenance to cover constructions costs for work being done for Archives / Records Center at BNHV.

A7450.4220 Museum - Building & Grounds $4,000.00	A7450.2150 Buildings Improvements $4,000.00

To transfer funds back to buildings improvements and equipment for tree removal that came in under budget.

G9000.2600 Sewer Maint. - Other Equipment $2,286.03	G9000.9000 Interfund Transfers $2,286.03

To transfer funds into KP2218 Engineering Vehicles for Sewer Maintenance.

BUDGET AMENDMENTS - 2023

INCREASE:	***INCREASE:***
N2223.02785 CDBG & Vg. - PI $170.00	N2223.4000 Contractual $170.00

To recognize Community Development program income from 169 Hillcrest, Amherst.

N2250.02785 Tonawanda Rehab- PI $19,909.80	N2250.4000 Contractual $19,909.80
N2253.02785 Tonawanda Admin- PI $2,212.20	N2253.4000 10% Admin $2,212.20

To recognize Community Development program income from 226 Coventry, Kenmore.

N2244.02785 Cheektowaga Housing Rehab - PI $4,500.00	N2244.4000 Contractual $4,500.00
N2249.02785 Cheektowaga Home Admin - PI $500.00	N2249.4003 10% Admin $500.00

To recognize Community Development program income from 20 Crisfield, Cheektowaga.

KP2218.05031 Interfund Transfers - $2,286.03	KP2218.2250 Trucks, Tractors, Trailers $2,286.03

To setup budget for transfer from G9000 for Engineering Vehicles for Sewer Maintenance.

N2223.02401 CDBG & Vg. - Interest Income $495.78	N2223.4000 Contractual $495.78
N2240.02401 Amh HOME- Interest Income $7,830.76	N2240.4000 Contractual $7,830.76

To recognize Community Development interest income through June 2023.

A3122.02410 Bailey Ave- Rentals $12,900.00	A3122.4220 Buildings & Grounds 12,900.00
A3120.02680 Police- Insurance Reimb $7,895.69	A3120.4230 Passenger Vehicles $7,895.69
A3120.05001 Police- Refund of CY Exp $337.09	A3120.4430 Miscellaneous $337.09
A3120.02720 Police- Copies, Donations, Reimb $250.00	A3120.4430 Miscellaneous $250.00

To recognize revenue received by the police department in the 2nd quarter.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

G. CONTRACT COMPLIANCE:

1. Resolution 2023-636

Award Bid #2023025 Sewer Jet Water Tank Coatings - CRS #4187

WHEREAS, the Contract Compliance and Administration Department received bids on June 22, 2023 for Sewer Jet Water Tank Coatings; and

WHEREAS, the bid process resulted in responses from two (2) vendors as per the attached bid tabulation form;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award this bid to Eastern Tank Services Division of Cyril and Sons Contractors, Inc.; and

BE IT FURTHER RESOLVED, The Town Board authorizes the Supervisor to sign the contract with Eastern Tank Services Division of Cyril and Sons Contractors, Inc.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Resolution 2023-637

Approve Piggyback Contract for Office Supplies - CRS #4212

WHEREAS, the Contract Compliance and Administration Department is requesting approval to piggyback on OMNIA Contract #R190301 EPIC Business Essentials, with Eaton Office Supply as the local dealer, for office supply products; and

WHEREAS, the contract term will be from date of Town Board approval through May 31, 2024;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Supervisor to sign the contract with Eaton Office Supply; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System, due to the fact that the Town is currently without an office supply contract.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

H. COURT:

I. ECONOMIC DEVELOPMENT:

J. EMERGENCY SERVICES:

K. ENGINEERING SERVICES:

1. Resolution 2023-638

Award of Special Inspections & Testing – Whitestone Associates Engineering & Geology NY, PLLC Rebid of Mathewson McCarthy Little League Fieldhouse Improvments CRS No. 4189

Subsequent to receiving four (4) proposals for the above referenced professional services and upon review, we recommend that Whitestone Associates Engineering & Geology NY, PLLC, 500 Canal View Boulevard Rochester, NY 14623, be awarded the attached unit prices as per the proposal summary and cost estimate in an amount not to exceed $7,670.50. New York State Building Code requires that an approved inspection and testing program be carried out throughout construction and documented by qualified "special inspectors".

Funds are available for this contract from KP2207.4971. Thank you for considering this request.

This request is pending successful completion of the contract review process.

Thank you.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Resolution 2023-639

Canalway Trail & Hopkins Road Trail Safety Enhancements - Change Order No. 1 McLaughlin Construction Corp CRS No. 4205

We are requesting the Town Board to approve the above referenced Change Order No. 1, which calls for a $12,937.87 increase in the contract amount. This Change Order is necessary to properly dispose material at a Part 360 recycling facility as required by a Canal Corporation permit. Additionally, the change order includes a tree removal and fence location intended to improve pathway user safety along the Canalway Trail.

May we please have approval for Change Order No. 1 for an increase in the contract price? This change order increase of $12,937.87 is available from account KP2235-4972. This request is pending successful completion of the contract routing system.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Resolution 2023-640

Emergency Purchase Authorization for Streetlighting Utility Mark-Out Services USIC Locating Services, LLC CRS No. 4214

Since the Town's acquisition of the street lighting system, it is now necessary for the Town to respond to UDIG one call ticket requests to locate and mark the underground wiring associated with the newly acquired street lighting asset. The Engineering Department obtained the Deputy Supervisor's authorization of an emergency contract on July 18, 2023, to enter into an agreement with a 3rd party utility locating company to perform services related to underground mark-out of the Town's street lighting wiring.

We are in receipt of a proposal from USIC Locating Services, LLC to begin mark-out as soon as possible. The Town is responsible for damages of unmarked street light wiring once a UDIG ticket is requested. Failure to mark out underground electric may also lead to live wiring being accidently encountered or severed during digs near or at the Town's underground street lighting wiring system. As such, an emergency purchase is necessary to begin mark-outs according to the following rate pricing:

$ 17.00	Per Ticket Received from the One Call
$ 40.50	Per Normal Business Hour Emergency Call Out Ticket
$ 58.00	Per After Hour Emergency Call Out Ticket
$ 17.00	Project Price Per Quarter Hour for Tickets that Exceed 30 Minutes
$ 348.00	Damage Investigation Fee

This contract will be effective from July 31, 2023 through July 30, 2024.

This request is pending successful completion of the contract review process specific to emergency purchases. Funding is available from account A5182-4070. Thank you for considering this request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

L. FINANCE:

1. Resolution 2023-641

Authorize Pre-Payments to NYPA for Street Lighting Purchase & Upgrade Project

Please authorize pre-payments to the NY Power Authority (NYPA) for the duration of the Street Lighting Purchase & Upgrade project (CRS #3199 & 3606). Interest charges from NYPA are a part of the approved budget, but pre-payments will allow the Town to avoid/minimize those charges. Prepayment amounts and timing will be determined by the Director of Finance and Comptroller.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

M. HIGHWAY

1. Resolution 2023-642

Extension of Garbage/Recycling Totes/Parts Contract - CRS #4188

WHEREAS, Rehrig Pacific Company, has agreed to extend their contract for Garbage and Recycling Totes and Parts (BID # 2018043); and

WHEREAS, the Contract allows for a three (3) year additional extension;

NOW, THEREFORE, BE IT RESOLVED, the Town Board approves the extension of the contract with Rehrig Pacific Company for the period March 27, 2022 through March 26, 2025.

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the 3 (three) year contract extension with Rehrig Pacific Company; and

BE IT FURTHER RESOLVED, approval is subject to successful completion of the Contract Routing System CRS #4188 and approval of the Town Attorney.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Resolution 2023-643

Authorize Emergency Repair - 167 Wyeth-Highway Department

WHEREAS, Funding/Emergency purchase will be needed for required piping and welded 22.5 degree elbows. Required elbows are not on contract Resolution 2023-357, Section 2 and Section 6.

WHEREAS, NIAGARA PRECAST INC, 367 Fillmore Avenue, Tonawanda, NY 14150, is the primary vendor for Section 2 projects and one of several vendors for Section 6 projects,

THEREFORE BE IT RESOLVED that the Town Board authorizes the emergency repair of 167 Wyeth and purchase of all parts needed at the Highway Department by Niagara Precast Inc.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Resolution 2023-644

Contract Extension - Valley Tire Company - CRS #4198

WHEREAS, Bid #2022020A, Highway Department, Tire Road Service, Retreading and Wheel finishing allows for the contract to be extended for a period of one (1) year at the same terms and conditions and;

WHEREAS, the Highway Department is requesting approval for the extension of the contract under Resolution 2022-819 and;

NOW THEREFORE BE IT RESOLVED, the contract extension term will be dated from 8/22/23 through 8/21/24 and;

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the one year contract extension with Valley Tire Company Inc, 300 French Road, Cheektowaga, NY 14227, subject to the Contract Routing System, CRS# 4198 and the approval of the Town Attorney.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

N. HUMAN RESOURCES:

1. Resolution 2023-645

Accountant/Comptroller's Office

Please appoint an Accountant to the Comptroller's Office. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023 at an annual salary of $57,713, Grade 14, Step C for Elizabeth Moon.

This is a Permanent appointment for an employee currently serving Provisionally.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Resolution 2023-646

Assistant Accountant/Youth & Recreation

Please appoint an Assistant Accountant to the Youth & Recreation Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023 at an annual salary of $62,427, Grade 11, Step J for Patrice Fischer.

This is a Permanent appointment for an employee currently serving Provisionally.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Resolution 2023-647

Assistant Food Service Manager/Senior Services

Please appoint an Assistant Food Service Manager to the Senior Services Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023 at an annual salary of $46,326, Grade 9, Step C for Jamie Sullivan.

This is a Permanent appointment for an employee currently serving Provisionally.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

4. Resolution 2023-648

Assistant Plumber/Engineering/Plant #16

Please appoint an Assistant Plumber to the Engineering Department/Plant #16. Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023, at an annual salary of $55,288, Grade 12, Step D.

Contingent upon completing all pre-employment requirements.

Please authorize a six (6) month residency waiver.

Replacing an employee who was separated from service.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

O. INFORMATION TECHNOLOGY:

P. PLANNING:

Q. POLICE:

1. Resolution 2023-649

Grant Agreement Emergency Operations Center: Bathroom/Kitchen Renovations & Communications Systems Upgrades (CRS#3928) New York State Department of Homeland Security and Emergency Services

TOWN BOARD AGENDA ITEM: JULY 24, 2023

TO: **Town Board**

FROM: **Scott P. Chamberlin, Chief of Police**

RE: **Grant Agreement**
Emergency Operations Center: Bathroom/Kitchen Renovations & Communications Systems Upgrades (CRS#3928)
New York State Department of Homeland Security and Emergency Services

Kindly adopt a resolution authorizing the Supervisor to adopt and execute the attached grant agreement between the Town of Amherst (Police) and the New York State Department of Homeland Security and Emergency Services with regard to the above-entitled matter. This grant agreement has successfully completed the Contract Routing Process.

Thank you.

SPC: msl
Attachment
C: Tim Koller, Deputy Town Clerk **(Agenda Item: July 24, 2023)**

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Resolution 2023-650

Digital Surveillance Solutions (DSS) (CRS#4203) Highway Department Camera Replacement & Upgrades

TOWN BOARD AGENDA ITEM: JULY 24, 2023

TO: **Town Board**

FROM: **Scott P. Chamberlin, Chief of Police**

RE: **Digital Surveillance Solutions (DSS) (CRS#4203)**
Highway Department Camera Replacement & Upgrades

Kindly adopt a resolution authorizing the Supervisor to adopt and execute the attached contract between the Town of Amherst (Police) and Digital Surveillance Solutions, Inc. (DSS), 485 Cayuga Road, Buffalo New York, 14225 with regard to the above-entitled matter. Approval of this contract is contingent upon the successful completion of the

Contract Routing System.

Thank you.

SPC:msl
Attachment
C: Tim Koller, Deputy Town Clerk **(Agenda Item: July 24, 2023)**

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

R. SENIOR SERVICES:

S. SEWER/PLANT 16:

1. Resolution 2023-651

Travel Request Operator Training Courses

The Engineering Department is requesting approval to send one (1) employee to attend Basic Laboratory Procedures and Grade 3 Technical Module training courses at the Environmental Training Center at SUNY Morrisville in Morrisville, NY in October and December 2023.

The total cost for the employee to attend each course is estimated to be $1,948.38 and $825.65 respectively, and includes registration, tolls/mileage reimbursement, lodging and per diem. These classes are also known to fill quickly, so we are also requesting the approval to register the employee for the next available course date, if needed.

The Engineering Department is also requesting approval to change the approved dates for another employee to attend the Grade 3 Technical Module and Grade 4 Management training courses. Resolution 2023-319 originally approved the employee to attend in November 2023, so there won't be any additional cost, but the school changed the course dates to October and November 2023.

Funding for this request will be available in accounts G9916-4040 and G9916-4850.

Thank you for considering this request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Resolution 2023-652

Moyno Stator & Rotor Procurement Shrier Martin Process Equipment, Inc. CRS No. 4195

The Engineering Department-WPCF Division is requesting the Town Board to authorize the Supervisor to sign an agreement with Shrier-Martin Process Equipment. This agreement is for Moyno™ progressive cavity pump parts. Shrier-Martin Process Equipment is the "sole source" supplier of Moyno™ parts for our territory. The total cost of this procurement as listed on the attached Shrier Martin quote 9793 would be $14,726.26 plus freight. The term of this contract will be from date of execution by the Town of Amherst through October 01, 2023.

Funds will be available in G9916-4921

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Resolution 2023-653

Payment Authorization for Emergency Oxygen Plant Repairs Mollenberg-Betz, Inc. CRS No. 4199

The Engineering Department, WPCF division is requesting the Town Board authorize the Comptroller's Office to pay Mollenberg-Betz, Inc. a mechanical contractor hired to make an emergency repair to the WPCF O2 plant transfer line. These repairs, as stated on the attached Mollenberg-Betz proposal SD2023-49, have a not to exceed amount of $4,000.00.

Funding for this request is available in G9916-4960.

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

4. Resolution 2023-654

TOA Bid 2022023 Sodium Bisulfite, Contract Extension PVS Chemical Solutions, Inc. CRS No. 4193

The Engineering Department, WPCF division is requesting the Town Board authorize the Supervisor to sign the attached contract extension agreement with PVS Chemical Solutions, Inc. The terms and conditions within Town of Amherst Bid 2022023 Sodium Bisulfite shall remain the same. This extension would run from September 6, 2023 through March 05, 2024.

Funds for this request are available in G9916-4820.

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

5. Resolution 2023-655

WPCF Fixed Gas Detection Systems Dival Safety Equipment, Inc. CRS No. 4194

The Engineering Department-WPCF Division is looking to update some of our fixed gas detection systems. The components listed in the attached quotes would be through the NYSOGS Hires Contract, PC69018, Award 23173, and Group 38232 totaling $14,307.00. The new system commissioning is not part of the NYSOGS contract and quoted by Dival Safety at the total cost of $1,500.00. At this time, the WPCF is asking the Town Board to authorize the Supervisor to sign this agreement with Dival Safety Equipment, Inc. for a total cost of $15,807.00. The term of this contract will be from date of Town Board Approval by the Town of Amherst through September 1, 2023.

Funds are available in G9916-4870 and G9916-4922

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

6. Resolution 2023-656

Purchase of One (1) Ford F-150 Super Cab 4X4 Delacy Ford

The Town of Amherst Engineering - Sewer Maintenance Division is seeking approval to purchase one (1) Ford F-150 Super Cab 4x4 from Delacy Ford in the amount of $48,876.30. They are the low bidder per the attached NYS Mini-Bid solicitation.

Funding for this purchase is available from bond account KP2325-2250.

Thank you for considering our request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

7. Resolution 2023-657

Purchase of One (1) 2023 Dodge Ram 2500 Tradesman Crew Cab 4X4 Falls Dodge Inc.

The Town of Amherst Engineering - Sewer Maintenance Division is seeking approval to purchase one (1) 2023 Dodge Ram 2500 Tradesman 4x4 from Falls Dodge, Inc. in the amount of $52,923.58. They are the low bidder per the attached NYS Mini-Bid solicitation.

Funding for this purchase is available from bond account KP2325-2250.

Thank you for considering our request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

8. Resolution 2023-658

Purchase of One (1) Ford Bronco Sport AWD Delacy Ford

The Town of Amherst Engineering - Sewer Maintenance Division is seeking approval to purchase one (1) Ford Bronco Sport AWD from Delacy Ford in the amount of $33,912.45. They are the low bidder per the attached NYS Mini-Bid solicitation.

Funding for this purchase is available from bond account KP2218-2250.

Thank you for considering our request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

9. Resolution 2023-659

WNY Stormwater Coalition Cooperating Letter of Support

The Town of Amherst is a voting member of the Western New York Stormwater Coalition. The Engineering Department recommends authorizing the Town Supervisor to sign the attached Cooperating Letter of Support (LOS). The LOS is to support a grant application submission to New York State Department of Environmental Conservation's Non-Agricultural Nonpoint Source Planning and Municipal Separate Storm Sewer System (MS4) Mapping Grant Program. Should the WNY Stormwater Coalition receive funding, the Town would be committing to assist Erie County DEP with identifying the location of all stormwater management practices in their municipality and assist with data collection in the field as needed.

There is no financial impact for this request.

Thank you for considering this request.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

T. YOUTH AND RECREATION:

XIV. UNFINISHED BUSINESS

XV. COMMUNICATIONS

1. Communication 2023-87

Correspondence from Sean Hopkins

Letter submitted by Sean Hopkins, Esq. regarding the request to amend declaration of restrictions for 2350 & 2360-2372 Sweet Home Road.

7/24/2023
Referred to Town Clerk to include in Resolution 2023-529

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

2. Communication 2023-88

Historic Preservation Commission - Permission for Sign Placement & Fee Waiver

Request from the Historic Preservation Commission to have fees waived and to place eight signs to promote "Preservation Day" on Saturday, August 5th at the Buffalo Niagara Heritage Village.

Please see the response from the Building Commissioner.

7/24/2023
Consent

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

3. Communication 2023-89

Congregation Brith Hadoshah Fee Waiver

Request from Congregation Brith Hadoshah seeking a fee waiver of the fire prevention permit for their picnic on August 13.

Response from the Building Commissioner is attached.

7/24/2023
Consent

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

4. Communication 2023-90

Correspondence from Samantha Smith

Pictures from Samantha Smith of the buildings at 4548 & 4564 Main Street.

7/24/2023
Referred to Town Attorney

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

5. Communication 2023-91

Notice of Claim: the Uniland Partnership of Delaware L.P. Vs. Town of Amherst Et Al.

7/24/2023
Referred to Town Attorney

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

6. Communication 2023-92

Notice of Claim: NYSIR A/S/O Sweet Home CSD Vs. Town of Amherst

7/24/2023
Referred to Town Attorney

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

XVI. PUBLIC IMPROVEMENT PERMITS

XVII. SUSPENSION OF RULES

Supervisor Kulpa moved to open Suspension of Rules to bring forth 1 unlisted item. The motion was seconded by Councilmember Berger and unanimously approved 5-0. Suspension of Rules was opened at 9:08 PM.

There being no further business requiring Suspension of Rules, Supervisor Kulpa moved to close, seconded by Councilmember Berger and unanimously approved 5-0. Suspension of Rules was closed at 9:09 PM.

1. Resolution 2023-660

Authorization to Utilize Amrex Chemical Corporation, Inc. for Pool Chemicals for Summer 2023

Suspension to Town Board Agenda Item July 24, 2023

TO: **Amherst Town Board**

FROM: **Shawn Lavin, Councilmember liaison to Youth & Recreation Department**

DATE: **July 24, 2023**

RE: **Authorization to Utilize Amrex Chemical Corporation, Inc. for Pool Chemicals for Summer 2023**

Please consider adoption of the following resolution as a suspension item to the July 24, 2023 Town Board agenda.

WHEREAS, the Town of Amherst had a valid contract for pool chemicals with Amrex Chemical Corporation, Inc. as a result of Bid #2022021, and

WHEREAS, the bid included a provision for two (2) six-month extensions, and

WHEREAS, due to inflation, Amrex did not agree to extend the contract and did not notify the Town in time to issue a new bid for the 2023 swim season, and

WHEREAS, chemicals had to be ordered to ensure the safe opening and continued use of town pools, and

WHEREAS, Amrex does have appropriate insurances in place, and

WHEREAS, by the time a new bid is issued and reviewed, the pools will be closed,

NOW THEREFORE, BE IT RESOLVED, that the Amherst Town Board authorizes the payment of invoices to Amrex Chemical Corporation, Inc. until such time as a new bid is issued and a new contract is awarded.

7/24/2023
A motion to approve was made by Deputy Supervisor Bucki, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Deborah Bruch Bucki, Deputy Supervisor
SECONDER:	Jacqualine Berger, Councilmember
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

XVIII. PUBLIC EXPRESSION #2

This is an opportunity for residents to comment on matters involving Amherst other than those pertinent to Public Hearings that day. Speakers will be limited to 3 minutes.

A motion to open Public Expression was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. Public Expression was opened at 9:10 PM.

There were no speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. Public Expression was closed at 9:10 PM.

XIX. ADJOURNMENT

There being no further business to come before the Town Board, Supervisor Kulpa moved to adjourn, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The Town Board meeting of July 24, 2023 was adjourned at 9:10 PM.

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 27664 **RESOLUTION 2023-529** **HEARING CLOSED**

2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of Restrictions

Request to rezone 2350 Sweet Home Road from OB to MFR-5 and to amend declaration of restrictions at 2360-2372 & 2350 Sweet Home Road.

6/20/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was opened at 7:12 PM.

Sean Hopkins, Esq. presented. Mr. Hopkins stated that the rezoning request is being withdrawn.

The following speakers spoke in opposition:
Chris & Joan Stone, 550 N Ellicott Creek Rd
James Bartley, 574 N Ellicott Creek Rd
Anthony Chungbin, 645 N Ellicott Creek Rd

There were no further speakers, therefore Supervisor Kulpa moved to adjourn the hearing until the July 24th Town Board meeting, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:51 PM.

7/24/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was opened at 7:32 PM.

Sean Hopkins, Esq. presented updated plans.

The following speakers spoke in opposition:
Joan Stone, 550 N Ellicott Creek Rd
James Bartley, 574 N Ellicott Creek Rd
Anthony Chungbin, 645 N Ellicott Creek Rd

There were no further speakers, therefore Supervisor Kulpa moved to close the hearing, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was closed at 8:01 PM.

RESULT: HEARING CLOSED

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard,
Planning Direct

Daniel J. Ulatowski,
Assistant Planning D r

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Town Board Agenda of June 20, 2023

June 13, 2023

The Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: Request to Amend Declaration of Restrictions Required as part of a Rezoning Decision Limiting the Minimum Setback to the West and South Property Lines (#7) and to have Windows on the Rear Elevations of the Buildings (#4), property located at 2360-2372 & 2350 Sweet Home Road, Essex Homes of WNY, Inc., Petitioner. (Z-2016-16_D & Z-2017-11_B).

Honorable Members:

The subject request is to allow the petitioner to construct sunrooms or enclosed/covered porches on 20 of the units which abut the west and south sides of the development and to allow for second story windows on the rear of buildings interior to the development in the "Villas at Essex Woods" townhome development at the northwest corner of Sweet Home and North Ellicott Creek Roads. The subject site is currently occupied by several townhomes with the remainder of the site's townhomes currently under construction. The total number of townhomes upon completion of construction will be 48–3 bedroom residences with attached garages in 2, 3 and 4 unit buildings.

Sweet Home and North Ellicott Creek Roads are Erie County highways classified in the Town of Amherst Bicentennial Comprehensive Plan as a collector and minor arterial respectively.

The petitioner is proposing the following changes to the previously required and filed restrictions: *The proposed changes are underlined for additions and struck through for deletions.*

1. That the ~~5.2~~ 5.25 ± acres of Permanent Open Space as depicted on the ~~Concept~~ Site Plan prepared by Carmina Wood Morris DPC dated ~~November 16, 2017~~ December 16, 2022 and described in the attached Schedule "C" shall not be developed as any buildings or other above ground structures and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear side of second story loft space in Building Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 14 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022. ~~in the front portion of the buildings so there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.~~

5. That exclusive of sunrooms or enclosed porches, the maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft. The maximum height of any sunroom or enclosed porch shall not exceed 17 feet to the peak from finished grade.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the portions of the residential buildings that include second story loft space shall have a minimum setback of 35 feet from the southern boundary and the western boundary of the Project Site. Notwithstanding the minimum setback language in the preceding sentence, a first floor only sunroom or enclosed porch shall be permitted on the rear side of the residential buildings along the southern side of the Project Site, so long as the minimum setback of the first floor sunroom or enclosed porch is 23 ft. from the southern boundary of the Project Site and a first floor only sunroom shall be permitted on the rear side of the residential buildings along the western side of the Project Site, providing the minimum setback of the first floor sunroom is 26.97 ft. from the western boundary of the Project Site. Additionally, patios on the rear side of the residential buildings on the southern side of the Project Site shall have a minimum setback of 23 ft. from the southern boundary of the Project Site and patios on the rear side of the residential buildings on the western side of the Project Site shall have a minimum setback of 26.97 ft. from the western boundary of the Project Site. ~~That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.~~

8. That the minimum setback of Building No. 6 as depicted on the ~~Concept~~ Site Plan prepared by Carmina Wood Morris DPC dated ~~November 16, 2017~~ December 16, 2022 from the northern boundary of 574 North Ellicott Creek Road shall be ~~109~~ 95 feet.

9. That the minimum setback of Building No. 7 as depicted on the ~~Concept~~ Site Plan prepared by Carmina Wood Morris DPC dated ~~November 16, 2017~~ December 16, 2022 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

portions of the eastern, western and the southern boundary of the project site as depicted on the ~~Concept~~ Site Plan prepared by Carmina Wood Morris DPC dated ~~November 16, 2017~~ December 16, 2022.

11. That ~~extensive~~ landscaping as required by the High Impact Screening standard as defined in the Town of Amherst ~~Zoning~~ Code §203-7-2-4 B shall be provided along the southern side and the portion of the western side of 2350 (~~2360~~ formerly 2360) Sweet Home Road to be developed for residential purposes ~~in accordance~~ as shown on the Landscape Plan ~~previously~~ issued and approved on July 16, 2019 by the Town of Amherst Planning ~~Board~~ Department. ~~The Landscape Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from owners of the parcels directly south of the project site as 566, 574, 598 and 620 North Ellicott Creek Road.~~

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel formerly consisting of 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 14 on the ~~Concept~~ Site Plan prepared by Carmina Wood Morris DPC ~~November 16, 2017~~ December 16, 2022 and a gated emergency access only driveway connection to North Ellicott Creek Road, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

15. The gated emergency access connection to North Ellicott Creek Road will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

16. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

For information on the surrounding zoning and land use, please refer to the attached sketch.

History of previous rezoning requests:

The subject site was zoned Suburban Agriculture (SA) district with the adoption of the Town wide Zoning Map & Ordinance on January 19, 1976.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Honorable Town Board

Request to Amend Declaration of Restrictions;
property located at 2350 & 2360 Sweet Home Road
Agenda of June 20, 2023

2350 Sweet Home Road

Z-1982-13 Request to rezone from SA to Neighborhood Business (NB) district was approved by the Town Board on December 20, 1982.

Z-2011-05 Request to rezone from SA & NB to General Business (GB) district was approved by the Town Board on August 1, 2011.

Z-2017-11 Request to rezone from GB to Multi-Family Residential District Five (MFR-5) was approved by the Town Board on March 19, 2018 with the following conditions:

1. 5.2 acres of permanent open space as shown on the concept plan dated November 16, 2017 shall not be developed as any buildings or other above ground structures, & shall remain permanently undeveloped.
2. The residential development of the project site shall not consist of rental units but shall consist of residential units for sale.
3. The maximum allowable density of the residential development shall be 48 units.
4. The residential buildings to be constructed on the project site shall be limited to 1-story residential units w/ 2nd story loft space in the front portion of the building so there shall not be any 2nd story windows provided for the 2nd story loft space on the rear portion of the buildings.
5. Maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.
6. There shall be a maximum of 4 attached residential units in any residential building on the project site.
7. The min. setback of the residential buildings on the project site from the south boundary & west boundary of the project site shall be 35 ft.
8. The min. setback of building #5 as depicted on the concept plan dated 11/16/2017 from the north boundary of 574 N. Ellicott Creek Road shall be 109 ft.
9. The min. setback of Building #6 as depicted on the concept plan dated 11/16/2017 from the south boundary of the project site shall be 137 ft.
10. A solid vinyl fence with a natural color (not white) and a minimum height of 6 feet as measured from finished grade shall be installed along portions of the east, west & the south boundary of the project site as depicted on the concept plan dated November 16, 2017.
11. Landscaping as required in the TOA Zoning Code shall be provided along the south side and the portion of the west side of 2360 Sweet Home Rd to be developed for residential purposes. The Landscaping Plan for 2360 Sweet Home Road shall be prepared based on consideration of input received by the petitioner and the owners of the parcels directly south of the project site at 566, 574, 598 & 620 N Ellicott Creek Rd and owner of the parcel west of the project site at 550 N Ellicott Creek Rd.
12. The lighting plan prepared for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site at 550, 566, 574, 598 & 620

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

North Ellicott Creek Rd. No any light poles installed on the project site with a height that exceeds 15 feet.

13. There shall not be an internal driveway that connects the existing offices at 2360 Sweet Home Rd with the northern side of the parcel at 2350 Sweet Home Rd.
14. That with the exception of a driveway that will only service a 2-unit building to be located along the N Ellicott Creek Rd frontage that is depicted as building #13 on the concept plan dated November 16, 2017, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Rd.
15. If the design of the rear yard drainage along the south side of 2360 Sweet Home Rd is such that it would provide the opportunity for the owners of the parcels at 550, 566, 574, 598 & 620 North Ellicott Creek Rd to connect into the drainage system, the petitioner will provide the owner of these parcels the ability to connect into the drainage system. The drainage system will be prepared based on consideration of input received by the petitioner from the owners of 550, 566, 574, 598 & 620 N Ellicott Creek Rd.
16. The approval of the rezoning of 2350 Sweet Home Rd from GB to MFR-5 is subject to a condition requiring that the petitioner or its assignee close on the purchase of the project site to be developed for residential use.
17. The approval of the rezoning of 2360 Sweet Home Rd from OB to MFR-5 is subject to a condition requiring that the petitioner or its assignee close on the purchase of the project site to be developed for residential use.
18. Conditions 1 to 14 shall be memorialized by recording of a Declaration of Restrictions in Erie County Clerk's Office.

Z-2017-11A On October 1, 2018 the Town Board Approved a Relief of Zoning Conditions for the rezoning from GB to MFR- 5 with the following revisions:

1. The gated emergency access connection will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.
2. Pursuant to the Town Zoning Code, all property owners within 600 ft. of the project site will receive notice from the Town of any future proposed amendment of any of the zoning conditions.
3. The amended Zoning Condition No. 14 will be incorporated into the Declaration of Restrictions to be recorded at the Erie County Clerk's Office.
4. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.
5. That the gated emergency access driveway to North Ellicott Creek Road be straightened as much as possible
6. That the final site plan be fully compliant with fire code.

<u>2360 Sweet Home Road (former western portion of site, now part of subject site):</u>

Z-2002-19 Request to rezone 574, 598 & 620 North Ellicott Creek Road (former addresses of this site) from SA to Multi-Family Residential District Four A (MFR-4A) for 72 townhouses was recommended for denial by the Planning Board on September 9, 2002.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Z-2001-19A The rezoning application was modified to request a rezoning from SA to (Residential District Three (R3) for 51 single-family lots on a public looped road. Planning Board recommended denial on October 17, 2002. The petition was never presented to the Town Board.

Z-2003-02 Application to rezone from SA to MFR-4A for 40 townhouses. Planning Board recommended denial; Town Board denied on June 7, 2004.

Z-2005-06 On December 15, 2005 the Town Board rezoned the site from SA to OB with the condition that there be no vehicular connection between the OB zoned portion and North Ellicott Creek Road; this condition was recorded as a deed restriction.

Z-2016-16B On March 19, 2018 the Town Board rezoned from OB to MFR-5 with the following conditions:
See those listed above for Z-2017-11

Z-2016-16C On October 1, 2018 the Town Board Approved a Relief of Zoning Conditions for the rezoning from OB to MFR- 5 with the following revisions:
See those listed above for Z-2017-11_A

History of previous Site Plan approvals:

SP-1983-07 The Planning Board on April 21, 1983 approved a site plan for the relocation of the Sweet Home Café to the site necessitated by the construction of the Lockport Expressway (I-990).

SP-1983-07_A The Planning Director on April 27, 1987 approved a site plan for a cooler addition to the restaurant/tavern.

SP-1983-07_B The Planning Board on August 11, 2005 approved a site plan for 51 space parking expansion and addition of a 1,070 sq. ft. patio to the south side of the existing restaurant/tavern.

SP-1983-07_C The Planning Director on April 28, 2016 approved a site plan a 749 sq. ft. patio addition and refuse enclosure.

SP-2005-06 The Planning Board on March 17, 2005 approved a site plan for a two building (6,000 sq. ft. ea.) office development with parking for 60 vehicles.

SP-2006-07 The Planning Board on March 17, 2005 approved a site plan for a five building, 71,238 sq. ft. office development with parking for 398 vehicles.

SP-2018-08 The Planning Board on March 18, 2019 approved a site plan for a forty eight unit townhouse development the "Villas at Essex Woods" on land addressed 2350 and 2360 Sweet Home Road

SP-2018-08_A The Planning Director on July 16, 2019 approved a site plan for the addition of 12 ft. x 14 ft. sunrooms or covered patios to specific units internal to the site.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Honorable Town Board

Request to Amend Declaration of Restrictions;
property located at 2350 & 2360 Sweet Home Road
Agenda of June 20, 2023

The Planning Board offers the following findings consistent with Section 8-3 of the Zoning Ordinance.

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

With a total site size of lot 9.95± acres, the development of 48 townhouse units would create a density of 4.9± units/acre. This places it within the Mixed Residential category as described in the Comprehensive Plan. The Plan recommends locations for this type of residential development as "attractive for infill development along high access suburban and commercial corridors" and "areas of transition between commercial uses and lower density single-family neighborhoods, as well as along collector or arterial highways or other areas that are generally unattractive for large lot, single-family development." The proposal is therefore consistent with the Comprehensive Plan.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The proposal to amend the declaration of restrictions required as part of a rezoning decision is consistent with Section 1-2-2K of the Zoning Ordinance which seeks to guide future development of the Town to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The mixed nature of the surrounding development indicates that the proposed townhouse development would be a compatible use at this location. The development site is situated adjacent to offices on the north side that are zoned OB and the existing MFR-5 zoned approved Townhome development. Across Sweet Home Road are single-family homes zoned NCD-SA. To the south and southwest are properties that face North Ellicott Creek Road and are zoned SA. The proposed buildings will be single-story, minimizing any negative visual impacts from single-family residential properties. The proposed MFR-5 zoning would downzone the site and provide a transition area to the nearby residences on North Ellicott Creek Road.

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is an Unlisted action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal.

RECOMMENDATION

The Planning Board at their meeting of April 20, 2023 held a public hearing on the subject request to amend the declaration of restrictions required as part of a rezoning decision and recommended that the Town Board find that pursuant to Local Law #3-82, as amended, the requirements of SEQR have been completed and that the subject request will not have a significant adverse effect on the environment. The Planning Board also recommended that the subject request to amend the declaration of restrictions required as part of a rezoning decision be **denied** as rezoning was based on negotiations with the neighbors, which facilitated the creation of the declaration of restrictions which are sought to be amended.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Honorable Town Board

Request to Amend Declaration of Restrictions;
property located at 2350 & 2360 Sweet Home Road
Agenda of June 20, 2023

The Planning Department requests that if the Town Board desires to act on the request to amend the declaration of restrictions, that a decision date be established after the public hearing so that the Planning Department can prepare a determination of environmental significance pursuant to SEQR, and prepare a resolution for the Town Board's consideration.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/SM/ac
Att.
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D_(2360-2372_&_2350_Sweet_Home)_2023\Z-2016-16_D_&_Z-2017-11_B_TB_Ltr_06142023.docx
cc: Martin Polowy, Town Attorney

Planning Board Denial – April 20, 2023
Ayes – 4; Noes – 3 (Gilmour, Giuliani, Kahn)

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION – RELIEF OF CONDITIONS
Z-2016-16D & Z-2017-11B

PETITIONER

Essex Homes of WNY
c/o Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy
5500 Main Street, Suite 343
Williamsville, NY 14221

PROPERTY LOCATION

2350 & 2360 Sweet Home Road

WHEREAS the Town of Amherst Planning Board on Thursday, April 20, 2023 held a public hearing on the proposed amendments to previously impose conditions of a rezoning request to amend conditions relating to building setbacks and the provisions against second story windows, and

WHEREAS the Planning Board has reviewed plans and other materials regarding the rezoning proposal, and

WHEREAS the materials and plans have been referred to the Town's various review agencies, and

WHEREAS in accordance with Section 8-3-5 of the Zoning Ordinance the Planning Board finds that:

A. The proposed zoning and development plan is generally consistent with the policies of the Comprehensive Plan and the Zoning Ordinance. The proposal is consistent with the Conceptual Land Use Plan which shows commercial office/mixed residential use in this area of the Town.

B. There are adequate services and utilities available or proposed to be made available in the construction of the development.

C. The proposal is not compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

D. The subject property is suitable for uses permitted by the current district.

E. The proposed changes do not tend to improve the balance of uses, or meet a specific demand in the Town.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived as the parcel is developed and the proposed changes to previously imposed conditions of rezoning will not impact any potential federally jurisdictional wetland area.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

'23 APR 26 PM12:59

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION – RELIEF OF CONDITIONS
Z-2016-16D & Z-2017-11B

PETITIONER	PROPERTY LOCATION
Essex Homes of WNY	2350 & 2360 Sweet Home Road

WHEREAS pursuant to Local Law #3-82, as amended, the Planning Board recommends that the Town Board determine that the requirements of SEQR are complete and that the subject proposal is not expected to have a significant adverse effect on the environment.

NOW THEREFORE BE IT RESOLVED that the Planning Board recommends to the Town Board in accordance with Section 8-3-4 of the Zoning Ordinance, that the request to amend conditions of a rezoning request be denied.

The foregoing resolution was adopted by the Town of Amherst Planning Board, April 20, 2023; moved by Chmiel; seconded by Penberthy; ayes 4, noes 3 (Gilmour, Giuliani, Kahn).

Robert J. Gilmour, Planning Board Chair

4-25-23.
Date

TV/ac
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D_(2360-2372_&_2350_Sweet_Home)_2023\Z-2016-16D_&_Z-2017-11B_Resolution_042023.doc
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main St., Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Application to Modify a Declaration of Restrictions Containing Zoning Conditions Imposed in Connection with a Rezoning - 2350 Sweet Home
Applicant: Essex Homes of WNY, Inc.
Date: January 23, 2023

Prepared By: Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 510-4338
E-mail: shopkins@hsmlegal.com

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: _____ Acreage .17 Acres Fee $ _____

Address Verified by Assessor's Office _____
VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____
AC CEP TB BY DATE

Materials Checked by Building Dept._____
RECEIVED BY DATE

Materials Received by Planning Dept. _____
RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	$1,250	1,250.00
2 – 20 ACRES $1,250 + $250/acres or fraction thereof over 2 acres		_____
20 – 30 ACRES $5,700 + $150/acre or fraction thereof over 20 acres		_____
OVER 30 ACRES $6,900 +$75/acre or fraction thereof over 30 acres		_____
Request for Relief of/Change to Conditions of Zoning Approval	$ 1,200	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	$ 15.00	$ 15.00
TOTAL FEE:	$1,265.00	

[Note: A completed Short Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is provided at Exhibit "5".]

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Essex Homes of WNY, Inc.

Address: c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code

Phone: 716.510-4338 Fax:

E Mail shopkins@hsmlegal.com

2. **The undersigned hereby petitions the Honorable Town Board to rezone the following described property**

From: OB District

To: MFR-5 District

3. **Street address of land to be rezoned:** (must be verified by Town Assessor's Office)

Portion of 2350 Sweet Home Road

SBL #: 40.12-1-14

4. **Area of land to be rezoned** (in acres): .17 Acres [Rezoning Application dated January 23, 2023 filed at same time as this Application.

5. **Owner of Land**:

Name: Essex of WNY, Inc. c/o Sean Hopkins, Esq.

Address: 5500 Main Street, Suite 343 - Williamsville, NY 14221

Telephone: 716.510-4338 [E-mail: shopkins@hsmlegal.com]

6. **Representative** (Architect, Engineer, Landscape Architect, Surveyor or Attorney):

Name: Sean W. Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

7. Petitioner's interest in property

_____Option to purchase

__X__Owner

_____Other (explain) _____

8. The following are all others having an interest in this application and join herein with the petitioner named above: (describe extent of interest; attach sheets as needed)

Not Applicable.

9. Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor. Legal description of property to be rezoned from OB to MFR-5 attached as Exhibit "1" ar a copy of the survey prepared by GPI Engineering & Surveying is provided at Exhibit "2" Full-size copy of the survey is also attached to this Applicatic

10. Said property has the following deed restrictions or Covenants: (attach copy)

Liber 11341 Page 2501

Copy of Declaration of Restrictions as recorded on February 21, 2019 attached as Exhibit "3". A copy of draft of the Amended Declaration of Restrictions is provided at Exhibit "8".

11. Information on proposed project:

A. Description of the character of the proposed development:

See Exhibit "4". A reduced-size copy the Site Plan prepared by Carmina Wood Design is provided at Exhibit "6" and a full-size copy is also attached to this Application.

B. Rationale for rezoning request:

1. Why was this site chosen?

See Exhibit "4"

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

2. Why cannot land be used with the existing zoning?

See Exhibit "4".

3. How will this rezoning impact surrounding properties?

See Exhibit "4".

4. How will this rezoning impact the school system?

See Exhibit "4".

12. Quantitative Data:

A. Total # of dwelling units: 48 Attached Residential Units

B. Distribution of dwelling units by type: Attached Townhomes

C. Gross Residential Density per acre: 4.04 units per acre

D. Total amount of Open Space: Approximately 5.2 acres

E. Proposed Non-Residential Floor Area: Not Applicable

13. Development Schedule:

Start: Project under construction.

Finish: To be based on demand for the attached residential units.

Stages (# of): Based on market demand

14. If any portion of the proposed development is planned to be sold or leased, please describe:

The upscale residential units are for sale.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

15. Open Space ownership and maintenance provisions (if applicable):

Greenspace and landscaping will be privately owned and maintained.

16. Basis for Findings (Sec. 8-3-5 of the Town Zoning Code) (Attach sheets a supplemental materials as necessary.)

A. The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the To Zoning Ordinance.

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite speci sections, maps, and/or figures in the plan that support the proposed zoning at this location (The Comprehensive Plan document is available the Planning Department, Town Clerk's Office, Amherst libraries, or at www.amherst.ny.us). Add sheets as needed.

See Exhibit "7".

2. Pursuant to NYS Town Law Section 272a(11), "all Town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this Section." The Town Board adopted the Comprehensive Plan pursuant to NYS Town Law 272 on January 2, 2007. If the rezonin is approved, the Town Board may require the Plan to be amended, as applicable.

Cite all text, map, and / or figures that must be amended to support the proposed zoning at this location (attach pages as necessary) and provid detailed suggested amendments.

See Exhibit "7".

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

3. State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

See Exhibit "7".

B. Adequate Services and Utilities are available or are proposed to be made available with the construction of the development:

1. Sanitary Sewer
   Yes.
2. Storm Sewer/Drainage
   Yes.
3. Water
   Yes.
4. Other Yes.

C. Compatibility with the present zoning and conforming uses of nearb property and with the character of the neighborhood:

See Exhibit "7".

D. Suitability of the subject property for uses permitted by the current versus the proposed district:

See Exhibit "7".

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

E. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

See Exhibit "7".

17. The petitioner encloses herewith the sum of $ 1,265.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.

18. The undersigned certifies that all information required to be disclosed pursuant to Section 809 of the General Municipal Law (see below) is as follows:

The undersigned swears or affirms that all statements made herein are true, that all drawings submitted correctly show the situation involved in this petition.

[Authorization of Owner of the Project Site is attached.]

Signature of Petitioner

Subscribed and sworn to before me this 23rd day of January, 20 23

Notary Public, Erie County, New York

MARIANNE BRAUTLACH
Notary Public, State of New
Qualified in Erie County
My Commission Expires 01/14

N.Y.S. General Municipal Law - Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state office or any office or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them

   (a) is the applicant, or
   (b) is an officer, director, partner or employee of the applicant, or
   (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
   (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such applicant, petition or request.

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party Officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four or section two of the election law.

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

P/Curr/Plan/Applications2007/Rezoning & Comp Plan Amend App.
10/08

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Exhibit 1 – Legal Description of Portion of 2350 Sweet Homes Road to be Rezoned from OB to MFR-5

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED FROM OFFICE BUILDING DISTRICT ("OB") TO MULTIFAMILY RESIDENTIAL DISTRICT FIVE ("MFR-5")

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 209.37 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: through the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a line parallel and distant 22.00 feet northerly of a southerly line of said North Forest Properties #5 LLC lands as measured at right angles, a distance of 608.37 feet to a point being distant 25.33 feet easterly from the west line of said North Forest Properties #5 LLC lands;
2) N-00°-12'-48"-W, a distance of 361.56 feet to a point;
3) N-88°-54'-31"-E, a distance of 4.13 feet to a point;
4) S-01°-05'-29"-E, along a line parallel and distant 35.00 feet easterly of the west line of said North Forest Properties #5 LLC lands as measured at right angles, a distance of 353.67 feet to a point;
5) N-89°-47'-10"-E, along a line parallel and distant 30.00 feet northerly of a southerly line of said North Forest Properties #5 LLC lands as measured at right angles, a distance of 598.82 feet to the said west line of Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the said west line of Liber 6673 of Deeds at page 573, a distance of 8.00 feet to the POINT OF BEGINNING, containing 7,285 square feet or 0.17 acre more or less.

Exhibit 2 – Reduced-Size Copy of Survey of Property to be Rezoned from OB to MFR-5 as Prepared by Mark Andrews of GPI Engineering & Surveying [Note: Full-size copy also attached

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

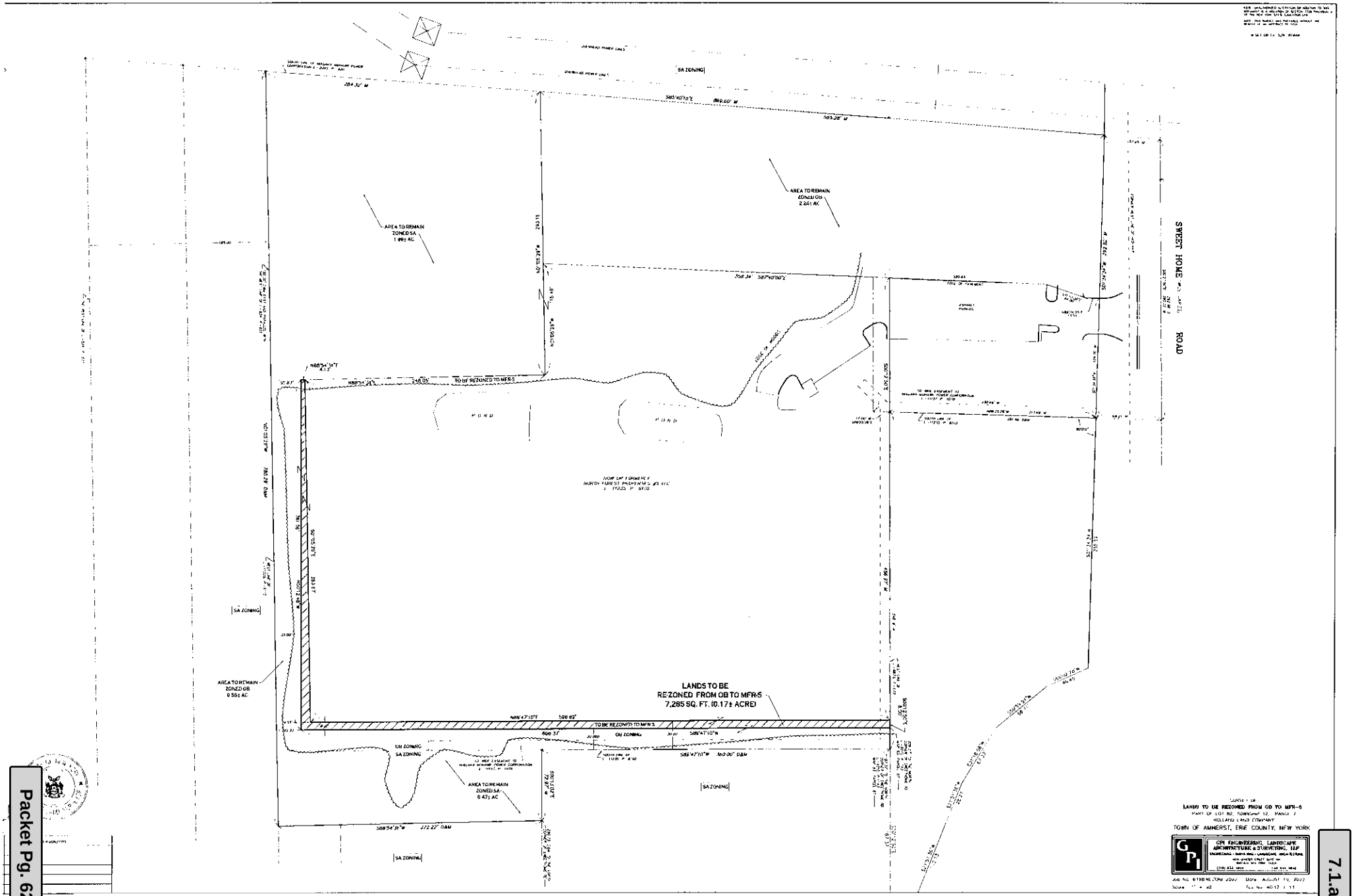

SWEET HOME ROAD
AREA TO REMAIN
ZONED SA
1.99± AC
AREA TO REMAIN
ZONED OB
2.241 AC
TO BE REZONED TO MFR-S
LANDS TO BE
REZONED FROM OB TO MFR-S
7,285 SQ. FT. (0.17± ACRE)
AREA TO REMAIN
ZONED OB
0.551 AC
AREA TO REMAIN
ZONED SA
0.47± AC
OB ZONING
SA ZONING
LANDS TO BE REZONED FROM OB TO MFR-S
PART OF LOT NO. 12 TOWNSHIP 12 RANGE 7
HOLLAND LAND COMPANY
TOWN OF AMHERST, ERIE COUNTY, NEW YORK
GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP

Exhibit 3 – Copy of Declaration of Restrictions Recorded at the Erie County Clerk's Office on February 21, 2019

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

FILED

FEB 21 2019

ERIE COUNTY
CLERK'S OFFICE

Return Original to Box 460
Hopkins Sorgi & Romanowski PLLC
Attn: Sean W. Hopkins, Esq.

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS ("***Declaration***") is made as of the 20th day of February, 2019 by **ESSEX HOMES OF WNY, INC.** (hereinafter "***Declarant***") under facts and circumstances summarized by the following recitals:

WHEREAS, the Declarant is the owner of real property consisting of 2350 Sweet Home Road as more particularly described in the metes and bounds legal description of 2350 Sweet Home Road attached hereto as **Schedule "A";**

WHEREAS, the Declarant is the owner of real property consisting of a portion of 2360 Sweet Home Road comprised of approximately 10.22 acres as more particularly described in the metes and bounds legal description of a portion of 2360 Sweet Home Road attached hereto as **Schedule "B"**;

WHEREAS, in December of 2016, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst ("***Town Board***") amend the zoning classification of approximately 7.14 acres of a portion of 2360 Sweet Home Road from Office Building District ("***OB***") to Multifamily Residential District Five ("***MFR-5***");

WHEREAS, in September of 2017, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst ("***Town Board***") amend the zoning classification of 2350 Sweet Home Road from General Business District ("***GB***") to Multifamily Residential District Five ("***MFR-5***");

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-241 for the purpose of approving an amendment of the zoning classification of 2350 Sweet Home Road from GB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-241;

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-242 for the purpose of approving an amendment of the zoning classification of a portion of 2360 Sweet Home Road from OB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-242;

WHEREAS, the conditions contained in Resolutions 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 are identical;

WHEREAS, pursuant to Condition No. 18 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 are to be subject to a Declaration of Restrictions recorded at the Erie County Clerk's Office;

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

WHEREAS, Conditions No. 1 to 14 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 are as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 shall not be developed as any buildings or other above ground structures, and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at 566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel at 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

WHEREAS, a metes and bounds legal description of the 5.2 acres of Permanent Open Space referenced above in Condition No. 1, as contained in Resolutions 2018-241 and 2018-242 adopted by the Town Board on March 19, 2018, consisting of a portion of 2360 Sweet Home Road, is attached as **Schedule "C"** (hereinafter "***Permanent Open Space***");

WHEREAS, in July of 2018, RAS Development 1 LLC filed an Application for relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 for the purpose of seeking to allow a gated emergency access driveway to be installed connecting 2350 Sweet Home Road and a portion of 2360 Sweet Home to North Ellicott Creek Road;

WHEREAS, during its meeting held on October 1, 2018, the Town Board adopted Resolution No. 2018-1046 for the purpose of approving the requested Relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 to allow a gated emergency access driveway to be installed connecting to North Ellicott Creek Road subject to six (6) conditions as follows:

1. The gated emergency access connection will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

2. Pursuant to the Town Code, all property owners within 600 ft. of the project site will receive written notice from the Town of any future proposed amendment of any of the zoning conditions.

3. The amended Zoning Condition No. 14 will be incorporated into the Declaration of Restrictions to be recorded at the Erie County Clerk's Office.

4. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

5. That the gated emergency access driveway to North Ellicott Creek Road be straightened as much as possible.

6. That the final site plan be fully compliant with fire code.

NOW, THEREFORE, in exchange for good and valuable consideration the sufficiency of which is acknowledged, the Declarant agrees to restrict the future use of 2350 Sweet Home Road as described in **Schedule "A"**, a portion of 2360 Sweet Home Road as described in **Schedule "B"** including the Permanent Open Space consisting of a portion of 2360 Sweet Home Road as described in **Schedule "C"**, in accordance with the conditions as set forth in Resolutions No. 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 and the conditions set forth in Resolution 2018-1046 as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and described in the attached **Schedule "C"** shall not be developed as any buildings or other above ground structures and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at 566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel at 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and a gated emergency access only driveway connection to North Ellicott Creek Road, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

15. The gated emergency access connection to North Ellicott Creek Road will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

16. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

The restrictions being established herein pursuant to the conditions contained in Resolutions No. 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 and Resolution No. 2018-1046 as adopted by the Town Board on October 1, 2018 shall be binding on all parties claiming thereunder and shall run and touch the land except that the recorded restriction can be changed, modified or eliminated by a majority vote of the Town Board.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURE ON FOLLOWIG PAGE]

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

IN WITNESS WHEREOF, the party hereto has the full legal authority to execute this Declaration of Restrictions.

ESSEX HOMES OF WNY, INC.

By: Philip J. Nanula
Name: Philip J. Nanula
Title: President

STATE OF NEW YORK)
ss.:
COUNTY OF ERIE)

On this 12th day of January, 2019, before me, the undersigned, a notary public in and for said state, personally appeared Philip J. Nanula, personally known to me or proved to me on the basis of satisfactory evidence to the be the individual whose name is subscribed to within this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Michelle Lynn Ward
Notary Public

MICHELLE LYNN WARD
Notary Public - State of New York
NO. 01WA6275111
Qualified in Niagara County
My Commission Expires 1/14/2021

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

SCHEDULE A

METES AND BOUNDS LEGAL DESCRIPTION OF 2350 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot 82, Township 12 and Range 7 of the Holland Land Company's Survey, being more particularly described as follows:

BEGINNING at the intersection of the northerly line of North Ellicott Creek Road with the westerly line of Sweet Home Road; Thence N 01°58'37 E, along the westerly line of Sweet Home Road, a distance of 258.52 feet; Thence 88°01'23" W, a distance of 213.69 feet; Thence S 00°11'13" W, a distance of 535.55 feet to a point in the northerly line of North Ellicott Creek Road; Thence N 45°33'50" E, along the northerly line of North Ellicott Creek Road, a distance of 30.24 feet; Thence N 22°15'39" E, along the northerly line of North Ellicott Creek Road, a distance of 140.40 feet; Thence N 31°42'11" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 67.33 feet; Thence N 51°23'54" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 68.71 feet; Thence N 66°26'31" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 46.40 feet to the point of beginning, containing 1.742 acres.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

SCHEDULE B

METES AND BOUNDS LEGAL DESCRIPTION OF PORTION OF 2360 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-13'-02"-E, along a easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to a point;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

THENCE: S-00-12'-50"-E, through said North Forest Properties #5 LLC lands, a distance of 304.96 feet to a point;

THENCE: S-88-25'-26"-E, through said North Forest Properties #5 LLC lands, a distance of 26.18 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 348.18 feet to the POINT OF BEGINNING, containing 10.22 acres more or less.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

SCHEDULE C

METES AND BOUNDS LEGAL DESCRIPTION
PERMANENT OPEN SPACE CONSISTING OF A PORTION OF
2360 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-12'-50"-E, along an easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to the southwest corner thereof;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

THENCE: Through said North Forest Properties #5 LLC lands, the following fifteen (15) courses and distances:

6) S-00-12'-50"-E a distance of 166.47 feet to a point;
7) N-87-51'-46"-W a distance of 16.24 feet to a point;
8) S-12-26'-56"-W a distance of 27.13 feet to a point;
9) S-58-06'-54"-W a distance of 97.91 feet to a point;
10) S-46-53'-26"-W a distance of 15.19 feet to a point;
11) S-32-16'-28"-W a distance of 17.19 feet to a point;
12) S-25-41'-59"-W a distance of 28.12 feet to a point;
13) N-80-56'-26"-W a distance of 50.68 feet to a point;
14) N-67-33'-18"-W a distance of 62.20 feet to a point;
15) S-82-26'-00"-W a distance of 63.13 feet to a point;
16) N-71-38'-03"-W a distance of 27.07 feet to a point;
17) S-00-12'-50"-E a distance of 5.50 feet to a point;

18) S-88-54'-31"-W a distance of 244.27 feet to a point;
19) S-01-05'-29"-E a distance of 353.63 feet to a point;
20) N-89-47'-10"-E a distance of 598.82 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 30.00 feet to the POINT OF BEGINNING, containing 5.21 acres more or less.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE:2/21/2019
TIME:2:22:37 PM
RECEIPT: 19024620

HOPKINS SORGI & ROMANOWSKI PLLC- BOX 460
ACCOUNT #: 9074

ITEM - 01 781
RECD: 2/21/2019 2:24:28 PM
FILE: 2019035107 BK/PG D 11341/2501
ESSEX HOMES OF WNY INC
Recording Fees 100.00
Subtotal 100.00

TOTAL DUE	$100.00
PAID TOTAL	$100.00
PAID CHECK	$100.00
Check #1264:	100.00

REC BY: Megan
COUNTY RECORDER

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Exhibit 4 – Responses to Question No. 11 of the Application

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

EXHIBIT 4

RESPONSES TO QUESTION 11 OF APPLICATION TO MODIFY A DECLARATION OF RESTRICTIONS CONTAINING ZONING CONDITIONS IMPOSED IN CONNECTION WITH A REZONING

Question 11(A): Description of the character of the proposed development:

Response to Question 11(A): The residential project as previously approved by the Planning Board consists of 48 upscale attached residential units with attached garages for sale as depicted on the Site Plan prepared by Carmina Wood Design. The Project Sponsor is seeking the necessary approvals consisting of the rezoning of a small portion of the Project Site from OB to MFR-5 and relief of the Declaration of Restrictions recorded on February 21, 2019 to accommodate proposed minor modifications to the approved project layout consisting primarily of first floor sunrooms to be constructed on the rear side of the attached townhome buildings on the southern and western boundaries of the Project Site as depicted on the Site Plan [Drawing C-100 – Date: 12/16/22] prepared by Carmina Wood Morris DPC. A reduced-size copy of the Site Plan is provided at **Exhibit "6"** and a full-size copy is also attached to this Application. A draft of the Amended Declaration of Restrictions is provided at **Exhibit "8"**.[1]

Question 11(B)(1): Rationale for rezoning request: 1. What was this site chosen?

Response to Question 11(B)(1): The majority of the Project Site is currently zoned MFR-5 in accordance with decisions issued by the Town Board on March 19, 2018. The Project Sponsor is seeking to amend a small portion of the Project Site from OB to MFR-5 to accommodate minor modifications to the approved project layout. It is important to mention that a large portion of the Project Site

[1] A copy of the Declaration of Restrictions recorded at the Erie County Clerk's Office on February 21, 2019 is provided at **Exhibit "3"**.

will consist of Permanent Open Space to ensure the residential project is consistent with the character of the surrounding vicinity.[2]

Question 11(B)(2): Why cannot land be used with the existing zoning?

Response to Question 11(B)(2): The Project Site is currently being developed in the accordance with the existing MFR-5 zoning of a majority of the Project Site that was approved by the Town Board on March 19, 2018.

Question 11(B)(3): How will this rezoning impact surrounding properties?

Response to Question 11(B)(3): The proposed rezoning of a small portion of the Project Site from OB to MFR-5 and the requested relief of the Declaration of Restriction in order to accommodate minor modifications to the approved project layout will have any adverse impacts on surrounding properties.

Question 11(B)(4): How will this rezoning impact the school system?

Response to Question 11(B)(4): The project will continue to have positive impacts on the school district. The approved residential project consisting of attached townhomes for sale will not result in any significant increased demand for educational services since the target market for the residential units is empty nesters, seniors and young professionals.

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[2] The approximately 5.2 acres of Permanent Open Space shall remain undeveloped in accordance with the Declarations of Restrictions recorded on at the Erie County Clerk's Office on February 21, 2019.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Exhibit 5 – Short Environmental Assessment Form with Attached Page 5[a]

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Short Environmental Assessment Form
Part 1 - Project Information

Prepared By: Sean Hopkins,
Hopkins Sorgi & McCarthy
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 510-4338
E-mail: shopkins@hsmlegal.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information

Name of Action or Project:
Villas at Essex Woods Project

Project Location (describe, and attach a location map):
2350 Sweet Home Road - Town of Amherst - Erie County

Brief Description of Proposed Action:
The action involves the rezoning of approximately 0.17 acres of the Project Site from Office Building District ("OB") to Multifamily Residential District Five ("MFR-5") and a request to modify a Declaration of Restrictions containing zoning conditions imposed by the Town of Amherst Town Board to accommodate minor modifications to the previously approved residential project consisting of 48 attached residential units for sale including the addition of single-story sun rooms on the rear sides of the approved buildings. The project layout is depicted on the Site Plan [Drawing C-100] prepared by Carmina Wood Design dated December 16, 2022. The project is an Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") since the impact do not cross any of the thresholds for a Type I action per 6 NYCRR Part 617.4. It is important to mention that the Town Board, Planning Board and Zoning Board of Appeals have all previously issued negative declarations pursuant to the SEQRA with respect to the approved residential project that is currently under construction.

Name of Applicant or Sponsor:	Telephone: 716.510-4338
Essex Homes of WNY, Inc. c/o Sean W. Hopkins, Esq.	E-Mail: shopkins@hsmlegal.com

Address:
Hopkins Sorgi & McCarthy PLLC - 5500 Main Street, Suite 343

City/PO:	State:	Zip Code:
Williamsville	NY	14221

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☑	☐
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Town Board - Rezoning, Zoning Board of Appeals - Area Variances; Planning Department - Minor Site Plan Amendment	☐	☑

3.a. Total acreage of the site of the proposed action? 11.89 acres
b. Total acreage to be physically disturbed? .12 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 11.89 acres

4. Check all land uses that occur on, adjoining and near the proposed action.
☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☑ Commercial ☑ Residential (suburban)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _ _
☐ Parkland

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? [Project Sponsor is seeking to amend the zoning classification of .17 acres of the Project Site from OB to MFR-5 to accomodate single-story sun rooms on the rear side of attached townhome buildings.]	☐	☑	☐
b. Consistent with the adopted comprehensive plan?	☐	☑	☐

	NO	YES
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	☐	☑

	NO	YES
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify:	☑	☐

	NO	YES
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	☑	☐
b. Are public transportation service(s) available at or near the site of the proposed action?	☑	☐
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☐	☑

	NO	YES
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies:	☐	☑

	NO	YES
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water:	☐	☑

	NO	YES
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment:	☐	☑

	NO	YES
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	☑	☐
b. Is the proposed action located in an archeological sensitive area? [SHPO issued a No Impact determination for the Project Site on April 21, 2005.]	☐	☑

	NO	YES
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☐	☑
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☑	☐
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:		
There are not any wetlands located on the portion of the Project Site to be developed. A wetland permit was issued by the USACE on April 20, 2006 and the 0.49 acres of impacts authorized by the permit have previously occurred.		

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:

☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional
☐ Wetland ☐ Urban ☑ Suburban

	NO	YES
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	☑	☐

	NO	YES
16. Is the project site located in the 100 year flood plain?	☑	☐

	NO	YES
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☑ NO ☐ YES	☐	☑
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: ☐ NO ☑ YES Existing on-site stormwater management system will be utilized as previously approved.		

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size:	☑	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	☑	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	☑	☐

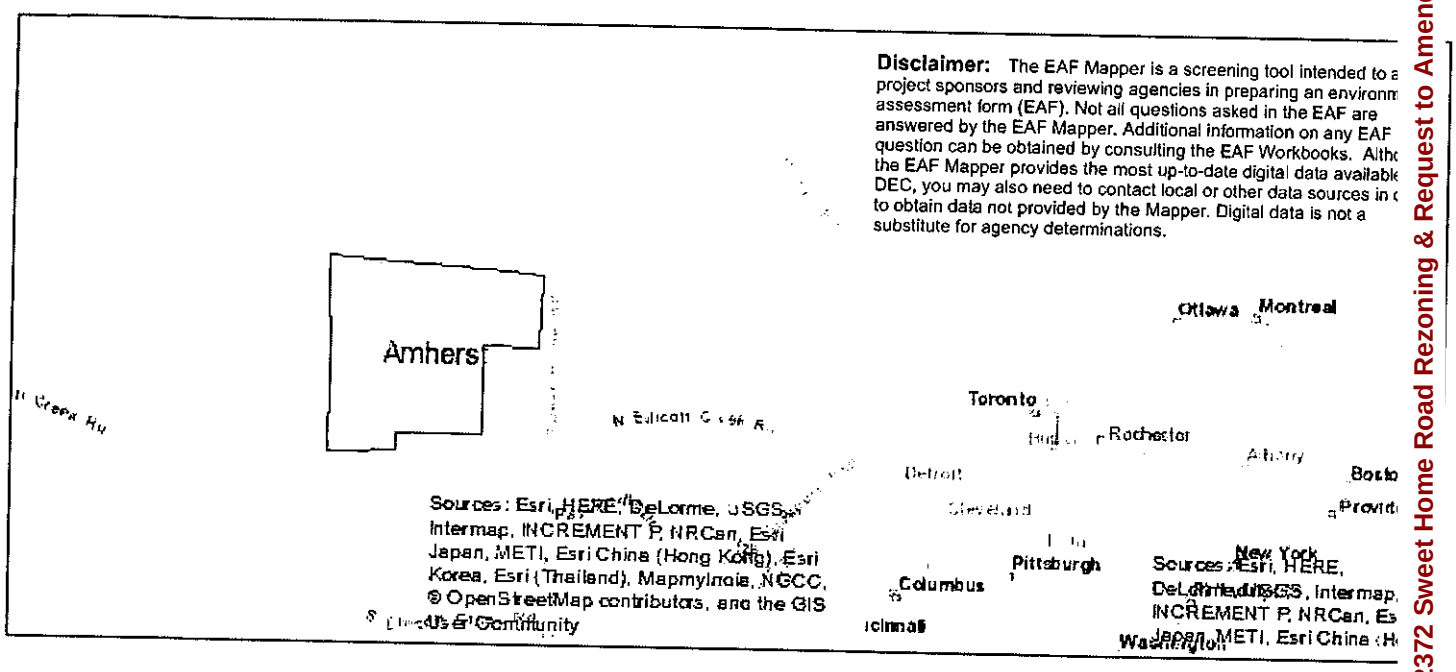
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Essex Homes of WNY, Inc. Date: January 23, 2023

Signature: Sean W. Hopkins, Esq., Counsel for Applicant

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

EAF Mapper Summary Report



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National Register of Historic Places]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

2350 Sweet Home Road

1. For each applicable category of proposed new structures, including additions to existing structures, provide the following information for all soil types on the project site (*according to Soil Survey of Erie County, NY; Table 11, Building Site Development, pp 294-305):*

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Cosad [Cv]	Severe	Severe	Severe	Severe	Moderate
Swormville [Sw]	Severe	Severe	Severe	Severe	Severe

2. If the Soil survey indicates either "severe" or "moderate" suitability for the proposed types of construction, a geotechnical and hydrological analysis based on one test per 3.5 acres of project area must be provided (per Town Board resolution, 3/17/03, amended 6/16/03).

   _x_ Geotechnical report attached _____ Not applicable

   [Note: Three copies of the Geotechnical Report prepared by Barron & Associates dated October 11, 2017 have been submitted with the land use applications dated January 23, 2023.]

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ● No

   On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ● No

   If so, the property may be within an area of the Town that is affected by a moratorium on connections to the sanitary sewer system.

4. Are there alternative locations on the site for this project? ☐ Yes ● No

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal: **Not Applicable.**

6. Are you aware of current or future plans or intentions by others in the Town of Amherst to develop property within 1000± ft. of the present project request: ☐ Yes ● No

   Describe: **Not Applicable.**

   (Potential environmental impacts from adjacent or nearby projects undergoing the approval process will receive a coordinated environmental review to determine cumulative effects on common receivers (e.g. traffic and drainage corridors) and other relevant environmental concerns.)

7. Maximum number of vehicular trips to be generated per hour upon completion of project: **Not Applicable.**

8. Will blasting occur during construction? ☐ Yes ● No

9. Does the project propose to connect and be tributary to the public sanitary sewer system? ● Yes ☐ No

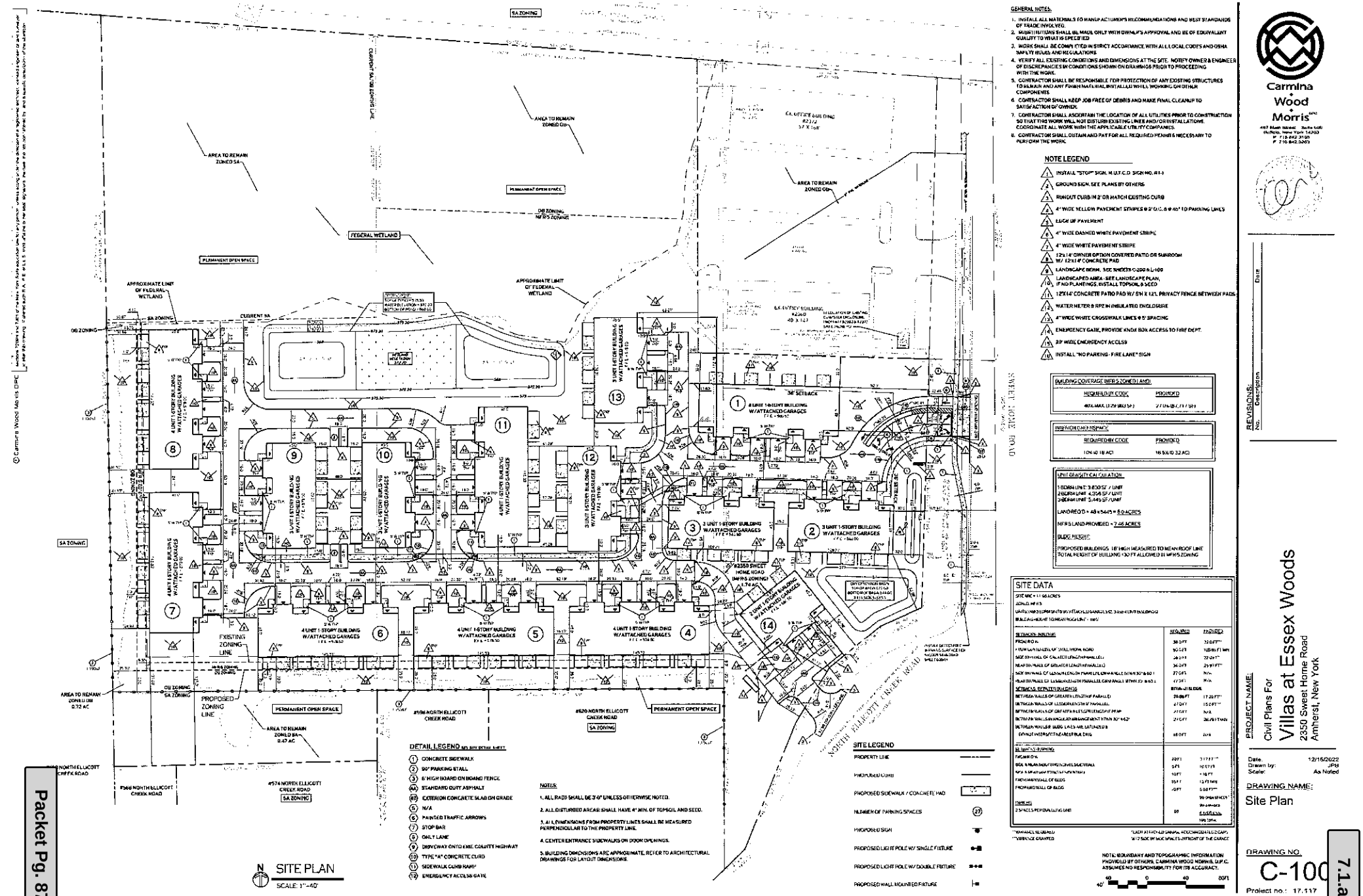
10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project: **Not applicable. The Project Sponsor is not proposing any modifications to approved number of upscale townhome units per the Site Plan approved by the Planning Board for the 48-unit project.**

(Please note that average flows of 2,500 gpd or greater will require an Engineer's Report that includes a detailed downstream sewer capacity analysis and the identification of and commitment to required I/I offset work during peak wastewater flow conditions.)

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Exhibit 6 – Reduced-Size Copy of Site Plan [Drawing C-100] as Prepared by Carmina Wood Morris DPC [Note: Full-size copy also attached

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend



GENERAL NOTES:

1. INSTALL ALL MATERIALS TO MANUFACTURER'S RECOMMENDATIONS AND BEST STANDARDS OF TRADE INVOLVED.
2. SUBSTITUTIONS SHALL BE MADE ONLY WITH OWNER'S APPROVAL AND BE OF EQUIVALENT QUALITY TO WHAT IS SPECIFIED
3. WORK SHALL BE COMPLETED IN STRICT ACCORDANCE WITH ALL LOCAL CODES AND OSHA SAFETY RULES AND REGULATIONS.
4. VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS AT THE SITE. NOTIFY OWNER & ENGINEER OF DISCREPANCIES IN CONDITIONS SHOWN ON DRAWINGS PRIOR TO PROCEEDING WITH THE WORK.
5. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF ANY EXISTING STRUCTURES TO REMAIN AND ANY FINISH MATERIAL INSTALLED WHILE WORKING ON OTHER COMPONENTS.
6. CONTRACTOR SHALL KEEP JOB FREE OF DEBRIS AND MAKE FINAL CLEANUP TO SATISFACTION OF OWNER.
7. CONTRACTOR SHALL ASCERTAIN THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION SO THAT THIS WORK WILL NOT DISTURB EXISTING LINES AND/OR INSTALLATIONS. COORDINATE ALL WORK WITH THE APPLICABLE UTILITY COMPANIES.
8. CONTRACTOR SHALL OBTAIN AND PAY FOR ALL REQUIRED PERMITS NECESSARY TO PERFORM THE WORK.

NOTE LEGEND

1. INSTALL "STOP" SIGN, M.U.T.C.D. SIGN NO. R1-1
2. GROUND SIGN, SEE PLANS BY OTHERS
3. RINGUT CURB IN 2' OR MATCH EXISTING CURB
4. 4" WIDE YELLOW PAVEMENT STRIPES @ 2' O.C. @ 45° TO PARKING LINES
5. EDGE OF PAVEMENT
6. 4" WIDE DASHED WHITE PAVEMENT STRIPE
7. 4" WIDE WHITE PAVEMENT STRIPE
8. 12'x 14' OWNER OPTION COVERED PATIO OR SUNROOM W/ 12'x14' CONCRETE PAD
9. LANDSCAPE BERM, SEE SHEETS C-200 & L-100
10. LANDSCAPED AREA - SEE LANDSCAPE PLAN, IF NO PLANTINGS, INSTALL TOPSOIL & SEED
11. 12'X14' CONCRETE PATIO PAD W/ 6'H X 12'L PRIVACY FENCE BETWEEN PADS
12. WATER METER & RPZ IN INSULATED ENCLOSURE
13. 4" WIDE WHITE CROSSWALK LINES @ 5' SPACING
14. EMERGENCY GATE, PROVIDE KNOX BOX ACCESS TO FIRE DEPT.
15. 20' WIDE EMERGENCY ACCESS
16. INSTALL "NO PARKING - FIRE LANE" SIGN

BUILDING COVERAGE (MFR'S ZONED) AND)

REQUIRED BY CODE	PROVIDED
40% MAX. (1.29 AC)	27.0% (1.17 AC)

IMPERVIOUS SURFACE

REQUIRED BY CODE	PROVIDED
10% (0.18 AC)	16.5% (0.32 AC)

UNIT DENSITY CALCULATION

1 BDRM UNIT: 3,800 SF / UNIT
2 BDRM UNIT: 4,356 SF / UNIT
3 BDRM UNIT: 5,445 SF / UNIT

LAND REQ'D = 48 x 5445 = 6.0 ACRES

MFR'S LAND PROVIDED = 7.46 ACRES

BLDG. HEIGHT

PROPOSED BUILDINGS: 18' HIGH MEASURED TO MEAN ROOF LINE
TOTAL HEIGHT OF BUILDING +30 FT ALLOWED IN MFR'S ZONING

SITE DATA

SITE AREA = 11.56 ACRES
ZONED: MFR'S
UNITS AND DEPARTMENTS W/ ATTACHED GARAGES IN 3 AND 4 UNIT BUILDINGS
BUILDING HEIGHT TO MEAN ROOF LINE = 18'-0"

SETBACKS - MULTIPLE	REQUIRED	PROVIDED
FRONT (N.)	30 FT	30 FT**
FRONT (NORTH) WALL OF SMALL FRONT ROAD	30 FT	105.86 FT MIN
SIDE (S.) WALL OF GREATER LENGTH PARALLEL	30 FT	30'-0"
REAR (W.) WALL OF GREATER LENGTH PARALLEL	30 FT	25.99 FT*
SIDE (N.) WALL OF LESSER LENGTH PARALLEL OR ANGLE WITHIN 30° TO 60°	27 FT	N/A
REAR (W.) WALL OF LESSER LENGTH PARALLEL OR ANGLE WITHIN 30° TO 60°	27 FT	N/A
SETBACKS BETWEEN BUILDINGS	BTWN 2 BLDGS	
BETWEEN WALLS OF GREATER LENGTH OF PARALLEL	35 FT	17.29 FT*
BETWEEN WALLS OF LESSER LENGTH OF PARALLEL	27 FT	15 FT*
BETWEEN WALLS OF GREATER & LESSER LENGTH OF PARALLEL	27 FT	N/A
BETWEEN WALLS IN ANGLED ARRANGEMENT WITHIN 30° TO 60°	27 FT	26.99 FT MIN
BETWEEN WALLS OF BLDG. LINES ARE STAGGERED & EXTENDED INTERSECTING AREAS IN A DRIVE	18 FT	N/A

PARKING		
PARKING (N.)	20 FT	21.7 FT**
BOX & MAIN ENTRY DOOR (S.) LEVEL SIDEWALK	5 FT	10.67 FT
REAR (W.) GREATER LENGTH OF PERIMETER	10 FT	11.0 FT
FROM MAIN WALL OF BLDG	15 FT	13.75 MIN
FROM SIDEWALL OF BLDG	10 FT	5.83 FT**
PARKING: 2 SPACES PER DWELLING UNIT	88	96 SPACES** 96 SPACES 4 GARAGE 192 TOTAL

*VARIANCE REQUIRED
**VARIANCE GRANTED

*EACH ATTACHED GARAGE ACCOMMODATES 2 CARS, W/ 2 SIDE BY SIDE SPACES IN FRONT OF THE GARAGE

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS. CARMINA WOOD MORRIS, D.P.C. ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.

40' 0 40 80FT

Carmina Wood Morris DPC
487 Main Street, Suite 600
Buffalo, New York 14203
P 716 842 2100
F 716 842 2063

REVISIONS:

No.	Description	Date

PROJECT NAME:
Civil Plans For
Villas at Essex Woods
2350 Sweet Home Road
Amherst, New York

Date: 12/15/2022
Drawn by: JPB
Scale: As Noted

DRAWING NAME:
Site Plan

DRAWING NO.
C-100

Project no.: 17.117

© Carmina Wood Morris DPC

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Exhibit 7 – Responses to Question No. 16 of the Application

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

EXHIBIT 7

RESPONSES TO QUESTION 16 OF APPLICATION TO MODIFY A DECLARATION OF RESTRICTIONS CONTAINING ZONING CONDITIONS IMPOSED IN CONNECTION WITH A REZONING

Question 16(A)(1): **State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps and/or figures in the plan that support the proposed zoning at this location.**

Response to Question 16(A)(1): The request for relief of the Declaration of Restrictions recorded at the Erie County Clerk's Office per the zoning conditions imposed by the Town Board on February 21, 2019 is being requested by the Project Sponsor primarily to allow first floor sunrooms to be constructed on the rear side of the attached townhome buildings on the southern and western boundaries of the Project Site as depicted on the Site Plan [Drawing C-100 – Date: 12/16/22] prepared by Carmina Wood Morris DPC.[1] A reduced-size copy of the Site Plan is provided at **Exhibit "6"** and a full-size copy is also attached to this Application. A draft of the Amended Declaration of Restrictions is provided at **Exhibit "8"**. The Project Sponsor is simultaneously seeking to rezone a small portion of 2350 Sweet Home Road from OB to MFR-5.

The request for relief of the Declaration of Restrictions to accommodate minor modifications to the project layout as depicted on the Site Plan approved by the Planning Board for the residential project at 2350 Sweet Home Road (the "***Project Site***") is consistent with the adopted Bicentennial Comprehensive Plan. The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included

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[1] A copy of the Declaration of Restrictions recorded at the Erie County Clerk's Office on February 21, 2019 is provided at **Exhibit "3"**.

numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[2] In December of 2020, the Town Board most recently adopted amendments to the Bicentennial Comprehensive Plan. The Comprehensive Plan is intended to guide future growth and redevelopment in the Town.

Figure 6 of the Bicentennial Comprehensive Plan is the Conceptual Land Use Plan and the areas in the vicinity of the Project Site is designated as being appropriate for Mixed Residential uses. The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development in the Town of Amherst. "Mixed Residential" is described on Page 3-30 of the Comprehensive Plan as 4 to 12 units per acre. The Comprehensive Plan indicates that typical locations for the Mixed Residential category include "Areas of transition between commercial uses and lower density single-family neighborhoods, as well as along collector or arterial highways or other areas that are generally unattractive for large lot, single-family development. Other areas of the Town designated for concentrations of Mixed Residential use include underutilized areas near designated activity centers and commercial areas. Examples include areas adjacent to mixed-use centers at UB, near the I-290/I-990 interchange..." It is also important to mention that the Comprehensive Plan recognizes the need for diverse housing options including housing multifamily units.

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[2] A copy of the resolution adopted by the Town Board on January 2, 2007 for the purpose of adopting the Bicentennial Comprehensive Plan pursuant to Town Law Section 272-a is included at the beginning of the Comprehensive Plan. This resolution recites the lengthy planning history that incorporated numerous opportunities for public input as well as a coordinated environmental review pursuant to SEQRA that involved the preparation a Generic EIS and the issuance of a Findings Statement.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Question 16(A)(2): Cite all text, map, and/or figures that must be amended to support the proposed zoning at this location and provide detailed suggested amendments.

Response to Question 16(A)(2): The minor modifications to the approved Site Plan for the residential project does not require an amendment to the Bicentennial Comprehensive Plan.

Question 16(A)(3): State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

Response to Question 16(A)(3): Section 1-2-1 of the Zoning Code is titled "Purpose" and it states as follows:

> *"The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of the town and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space, public facilities, business, services, industry or other purposes; by regulating and restricting the bulk, height, design, building coverage and location of structures; by regulating and limiting population density; and for the aforesaid purposes, to divide the land within the limits of the town into districts of such number and dimensions generally consistent with the policies of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Ordinance."*

The requested rezoning of a small portion of the Project Site from OB to MFR-5 and the requested modification of the Declaration of Restrictions to accommodate the minor modifications to the approved project layout are consistent with the "Purpose" of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen objectives that are discussed below as follows:

A. To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development;

Response: The residential project is consistent with the objective of protecting the character and value of existing land uses. The proposed rezoning of a small portion of the

Project Site from OB to MFR-5 and the request to modify the Declaration of Restrictions in order to accommodate minor modifications to the approved project layout represents orderly and beneficial development.

B. To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas;

Response: The proposed minor modification to the layout of the residential project are not inconsistent with this objective.

C. To prevent overcrowding of land;

Response: The Project Sponsor is not proposing any increase to the density of the approved residential project.

D. To prevent excessive concentration of population and to prevent spare and uncoordinated development;

Response: The Project Sponsor is not proposing any increase to the density of the approved residential project and the minor modifications to the approved project layout represents coordinated development. The minor modifications to the previously approved project layout will require an amendment of the Site Plan previously approved by the Planning Board.

E. To regulate and control the location and spacing of buildings on the lot and in relation to the surrounding property generally consistent with the policies of the Comprehensive Plan.

Response: The requested rezoning of a small portion of the Project Site from OB to MFR-5 and the requested modification of the Declaration of Restrictions to accommodate the minor modifications to the approved project layout are consistent with the policies of the Comprehensive Plan.

F. To protect persons and property from damage and injury due to fire or flood;

Response: The minor modifications to the approved project layout will not increase the likelihood of damage and injury due to fire and flood. The residential buildings will

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

continue to be constructed in accordance with building permits issued by the Town of Amherst Building Department.

G. To preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only.

Response: There are not significant natural features located on the previously disturbed portion of the Project Site currently being developed.

H. To assure that structure and land use arrangements are aesthetically harmonious with nearby areas and structures.

Response: The development of the Project Site in a manner generally consistent with the updated Site Plan [Drawing C-100] prepared by Carmina Wood Design will be aesthetically harmonious with nearby areas and structures.

I. To regulate the location of buildings and intensity of uses in relation to streets according to plans so as to cause the least interference with and be damaged least by traffic movements and hence result in lessened street congestion and improved public safety.

Response: The minor modifications to the approved project layout do not involve changes to the access from the Project Site from public roadways.

J. To establish zoning patterns that insure economical extensions for sewers, water supply waste disposal and other public utilities, as well as development of recreation, schools and other public facilities;

Response: The Project Site has access to sanitary sewer and water lines as well as necessary public utilities to service the project.

K. To guide the future development of the town so as to being the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan.

Response: The minor modifications to the approved project layout are consistent with this objective since the residential project that is currently under construction is consistent with the policies contained in the Comprehensive Plan.

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L. To accomplish the specific intents and goals set forth in the introduction to the respective sections.

Response: The minor modifications to the approved project layout are consistent with this objective.

M. To protect the community from visual pollution resulting from the unregulated use of signs and other advertising devices.

Response: The minor modifications to the approved project layout are not inconsistent with this objective.

Question 16(C): Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

Response to Question 16(C): The Project Sponsor is seeking to amend the zoning classification of a small portion of the Project Site from OB to MFR-5, which is the zoning classification of the portion of the Project Site currently being developed as a residential project pursuant to the Site Plan approved by the Planning Board.[3]

Question 16(D): Suitability of the subject property for uses permitted by the current versus the proposed district:

Response to Question 16(D): The small portion of the Project Site the Project Sponsor seeks to rezone from OB to MFR-5 is more suitable for uses permitted by the proposed MFR-5 zoning classification than the existing OB zoning classification.[4]

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[3] A separate Rezoning Application has been filed simultaneously with this Application seeking relief of a Declaration of Restrictions.

[4] A separate Rezoning Application has been filed simultaneously with this Application seeking relief of a Declaration of Restrictions.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Question 16(E): **Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:**

Response to Question 16(D): The project has and will continue to improve the balance of uses and to satisfy a specific demand for upscale attached townhome style units for sale in the Town.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Exhibit 8 – Draft of Amended Declaration of Restrictions

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Return Original to Box 460
Hopkins Sorgi & McCarthy PLLC
Attn: Sean W. Hopkins, Esq.

AMENDED DECLARATION OF RESTRICTIONS

THIS AMENDED DECLARATION OF RESTRICTIONS ("***Declaration***") is made as of the ___ day of _____, 2023 by **ESSEX HOMES OF WNY, INC.** (hereinafter "***Declarant***") under facts and circumstances summarized by the following recitals:

WHEREAS, the Declarant is the owner of real property consisting of 2350 Sweet Home Road (hereinafter "***2350 Sweet Home Road***" or the "***Project Site***") as more particularly described in the metes and bounds legal description of 2350 Sweet Home Road attached hereto as **Schedule "A"**;

WHEREAS, in December of 2016, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst ("***Town Board***") amend the zoning classification of approximately 7.14 acres of a portion of 2360 Sweet Home Road from Office Building District ("***OB***") to Multifamily Residential District Five ("***MFR-5***");

WHEREAS, in September of 2017, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst ("***Town Board***") amend the zoning classification of 2350 Sweet Home Road from General Business District ("***GB***") to Multifamily Residential District Five ("***MFR-5***");

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-241 for the purpose of approving an amendment of the zoning classification of 2350 Sweet Home Road from GB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-241;

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-242 for the purpose of approving an amendment of the zoning classification of a portion of 2360 Sweet Home Road from OB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-242;

WHEREAS, the conditions contained in Resolutions 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 are identical;

WHEREAS, pursuant to Condition No. 18 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 are to be subject to a Declaration of Restrictions recorded at the Erie County Clerk's Office;

WHEREAS, Conditions No. 1 to 14 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 were as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 shall not be

developed as any buildings or other above ground structures, and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel at 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

WHEREAS, a metes and bounds legal description of the 5.2 acres of Permanent Open Space referenced above in Condition No. 1, as contained in Resolutions 2018-241 and 2018-242 adopted by the Town Board on March 19, 2018, consisting of a portion of 2360 Sweet Home Road, is attached as **Schedule "B"** (hereinafter "***Permanent Open Space***");

WHEREAS, in July of 2018, RAS Development I LLC filed an Application for relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 for the purpose of seeking to allow a gated emergency access driveway to be installed connecting 2350 Sweet Home Road and a portion of 2360 Sweet Home to North Ellicott Creek Road;

WHEREAS, during its meeting held on October 1, 2018, the Town Board adopted Resolution No. 2018-1046 for the purpose of approving the requested Relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 to allow a gated emergency access driveway to be installed connecting to North Ellicott Creek Road subject to six (6) conditions as follows:

1. The gated emergency access connection will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

2. Pursuant to the Town Code, all property owners within 600 ft. of the project site will receive written notice from the Town of any future proposed amendment of any of the zoning conditions.

3. The amended Zoning Condition No. 14 will be incorporated into the Declaration of Restrictions to be recorded at the Erie County Clerk's Office.

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Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

4. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

5. That the gated emergency access driveway to North Ellicott Creek Road be straightened as much as possible.

6. That the final site plan be fully compliant with fire code.

WHEREAS, on February 21, 2019, a Declaration of Restrictions recorded at the Erie County Clerk's Office at Liber 11341 of Deeds at Page 2501 containing the following sixteen (16) restrictions:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and described in the attached Schedule "C" shall not be developed as any buildings or other above ground structures and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

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10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at 566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel formerly consisting of 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and a gated emergency access only driveway connection to North Ellicott Creek Road, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

15. The gated emergency access connection to North Ellicott Creek Road will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

16. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

WHEREAS, in January of 2023, the Declarant filed an Application seeking to amend the zoning classification of a portion of 2350 Sweet Home Road consisting of 0.17 acres from Office Building District ("GB") to Multifamily Residential District Five ("MFR-5");

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WHEREAS, in January of 2023, the Declarant filed Application for Relief of Zoning Condition imposed by the Town Board on October 18, 2018 as contained in Resolution No. 2018-1046;

WHEREAS, during its meeting held on _____ __, 2023, the Town Board adopted Resolution No. 2023-__ for the purpose of approving an amendment of the zoning classification of a portion of 2350 Sweet Home Road from OB to MFR-5 and Resolution No. 2023-__ for the purpose of approving the requested Relief of Zoning Conditions contained in Resolution No. 2018-1046; subject to sixteen (16) conditions as follows:

NOW, THEREFORE, in exchange for good and valuable consideration the sufficiency of which is acknowledged, the Declarant agrees to restrict the future use of 2350 Sweet Home Road as described in **Schedule "A"** including the Permanent Open Space consisting of a portion of 2360 Sweet Home Road as described in **Schedule "B"**, in accordance with the conditions as set forth in Resolutions No. 2023-___ and 2023-____as adopted by the Town Board on _____ __, 2023 as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022 shall not be developed as any buildings or other above ground structures, and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear side of second story loft space in Buildings Building Nos. 4, 5, 6, 7 and 8 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the portions of the residential buildings that include second story loft space shall have a minimum setback of 35 feet from the southern boundary and the western boundary of the Project Site. Notwithstanding the minimum setback language in the preceding sentence, a first floor only sunroom shall be permitted on the rear side of the residential buildings along the southern side of the Project Site

so long as the minimum setback of the first floor sunroom is 22 ft. from the southern boundary of the Project Site and a first floor only sunroom shall be permitted on the rear side of the residential buildings along the western side of the Project Site so long as the minimum setback of the first floor sunroom is 25.97 ft. from the western boundary of the Project Site. Additionally, patios on the rear side of the residential buildings on the southern side of the Project Site shall have a minimum setback of 22 ft. from the southern boundary of the Project Site and patios on the rear side of the residential buildings on the western side of the Project Site shall have a minimum setback of 25.97 ft. from the western boundary of the Project Site.

8. That the minimum setback of Building No. 6 as depicted on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022 from the northern boundary of 574 North Ellicott Creek Road shall be 94 feet.

9. That the minimum setback of Building No. 7 as depicted on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side of the project site and the portion of the western side of the portion of the project site formerly consisting of 2360 Sweet Home Road to be developed for residential purposes in accordance with the Landscape Plan previously approved by the Planning Board.

12. That the lighting to be installed in connection with the residential project shall comply with the Lighting Plan previously approved by the Planning Board demonstrating that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel formerly consisting of 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022 and a gated emergency access only driveway connection to North Ellicott

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Creek Road, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

15. The gated emergency access connection to North Ellicott Creek Road will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

16. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

The restrictions being established herein pursuant to the conditions contained in Resolutions No. 2023-___1 and 2023-___ as adopted by the Town Board on _____ __, 2023 shall be binding on all parties claiming thereunder and shall run and touch the land except that the recorded restriction can be changed, modified or eliminated by a majority vote of the Town Board.

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SIGNATURE ON FOLLOWING PAGE]

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

IN WITNESS WHEREOF, the party hereto has the full legal authority to execute this Amended Declaration of Restrictions.

ESSEX HOMES OF WNY, INC.

By: _____
Name: Philip J. Nanula
Title: President

STATE OF NEW YORK)
ss.:
COUNTY OF ERIE)

On this ___ day of _____, 2023, before me, the undersigned, a notary public in and for said state, personally appeared Philip J. Nanula, personally known to me or proved to me on the basis of satisfactory evidence to the be the individual whose name is subscribed to within this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

SCHEDULE A

Parcel 1:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot 82, Township 12 and Range 7 of the Holland Land Company's Survey, being more particularly described as follows:

BEGINNING at the intersection of the northerly line of North Ellicott Creek Road with the westerly line of Sweet Home Road; Thence N 01°58'37 E, along the westerly line of Sweet Home Road, a distance of 258.52 feet; Thence 88°01'23" W, a distance of 213.69 feet; Thence S 00°11'13" W, a distance of 535.55 feet to a point in the northerly line of North Ellicott Creek Road; Thence N 45°33'50" E, along the northerly line of North Ellicott Creek Road, a distance of 30.24 feet; Thence N 22°15'39" E, along the northerly line of North Ellicott Creek Road, a distance of 140.40 feet; Thence N 31°42'11" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 67.33 feet; Thence N 51°23'54" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 68.71 feet; Thence N 66°26'31" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 46.40 feet to the point of beginning, containing 1.742 acres.

Parcel 2 [Formerly 2360 Sweet Home Road]:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-13'-02"-E, along a easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to a point;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

THENCE: S-00-12'-50"-E, through said North Forest Properties #5 LLC lands, a distance of 304.96 feet to a point;

THENCE: S-88-25'-26"-E, through said North Forest Properties #5 LLC lands, a distance of 26.18 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 348.18 feet to the POINT OF BEGINNING, containing 10.22 acres more or less.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

SCHEDULE B

METES AND BOUNDS LEGAL DESCRIPTION
PERMANENT OPEN SPACE CONSISTING OF A PORTION OF
2350 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-12'-50"-E, along an easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to the southwest corner thereof;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

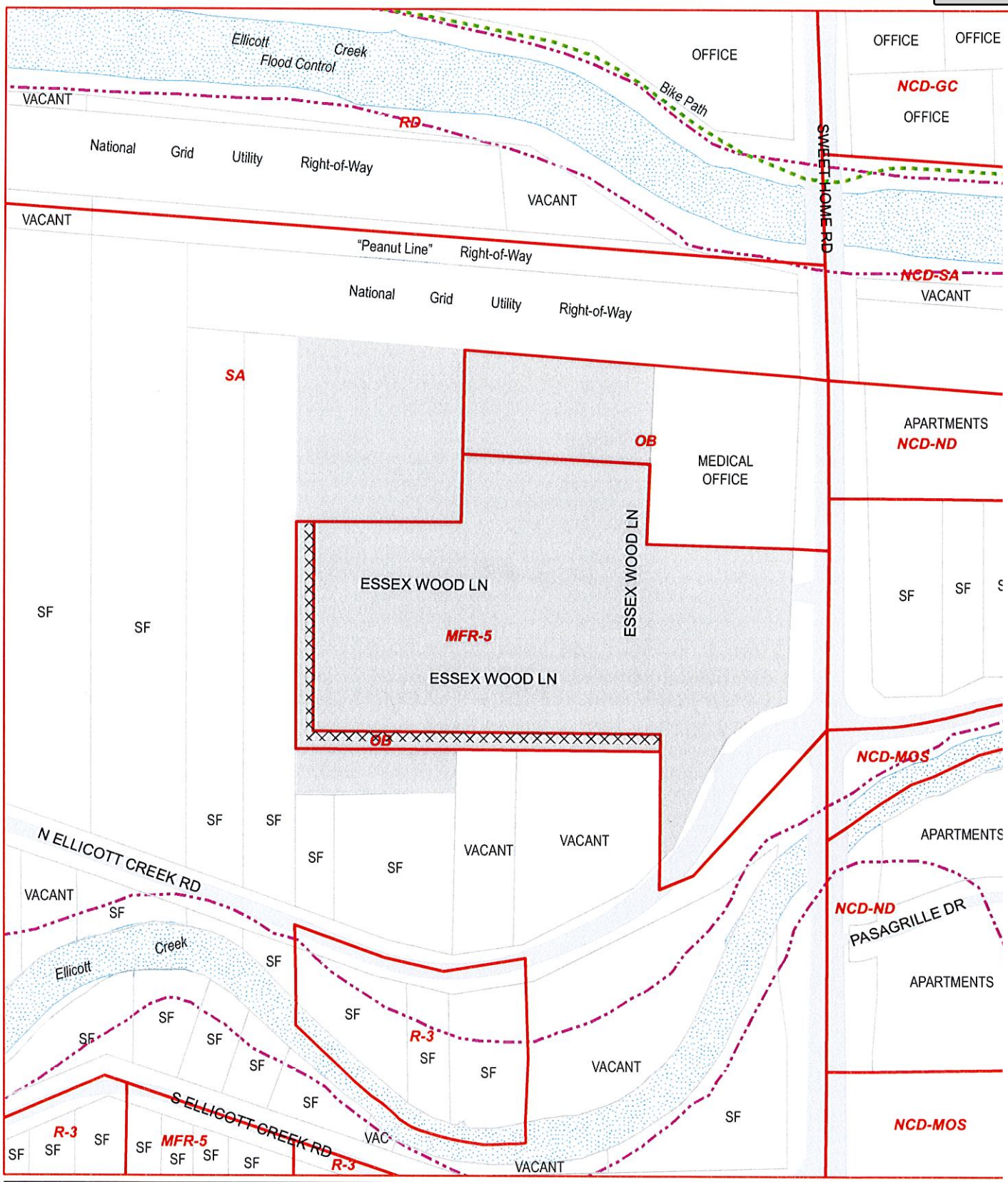
THENCE: Through said North Forest Properties #5 LLC lands, the following fifteen (15) courses and distances:

6) S-00-12'-50"-E a distance of 166.47 feet to a point;
7) N-87-51'-46"-W a distance of 16.24 feet to a point;
8) S-12-26'-56"-W a distance of 27.13 feet to a point;
9) S-58-06'-54"-W a distance of 97.91 feet to a point;
10) S-46-53'-26"-W a distance of 15.19 feet to a point;
11) S-32-16'-28"-W a distance of 17.19 feet to a point;
12) S-25-41'-59"-W a distance of 28.12 feet to a point;
13) N-80-56'-26"-W a distance of 50.68 feet to a point;
14) N-67-33'-18"-W a distance of 62.20 feet to a point;
15) S-82-26'-00"-W a distance of 63.13 feet to a point;
16) N-71-38'-03"-W a distance of 27.07 feet to a point;
17) S-00-12'-50"-E a distance of 5.50 feet to a point;

18) S-88-54'-31"-W a distance of 244.27 feet to a point;
19) S-01-05'-29"-E a distance of 353.63 feet to a point;
20) N-89-47'-10"-E a distance of 598.82 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 30.00 feet to the POINT OF BEGINNING, containing 5.21 acres more or less.

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend



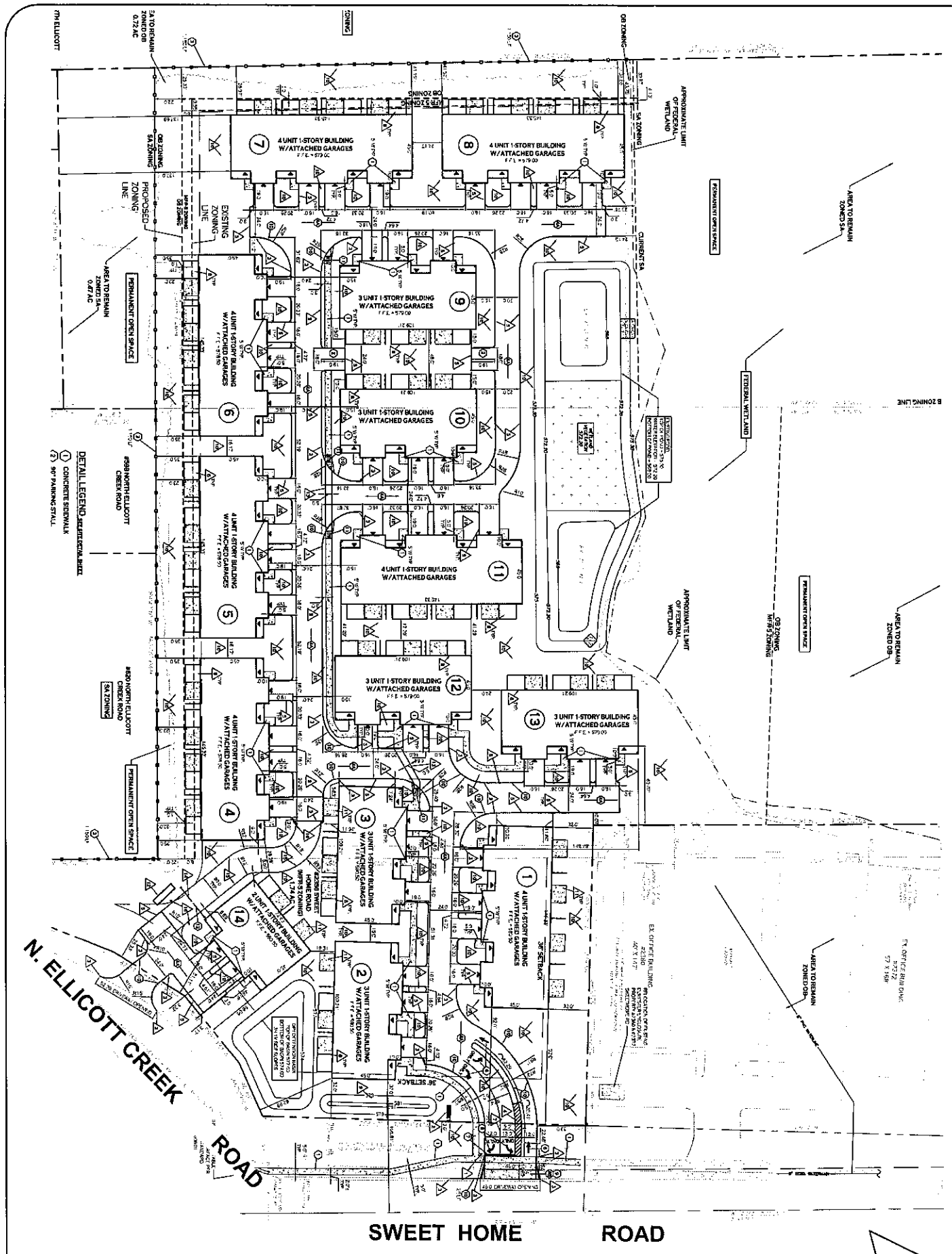
Z-2016-16 & Z-2017-11B
Request to Amend a Declaration of Restrictions as Part of a Rezoning Decision that Restricts Windows from being Constructed on the Rear Buildings and Limitng the Minimum Setbacks
Property Located at 2350 & 2360 Sweet Home Road
Essex Home of WNY, Petitioner
April 20, 2023

2350 Sweet Home Road

Floodway Boundary

Prepared by the Town of Amherst Planning Depart

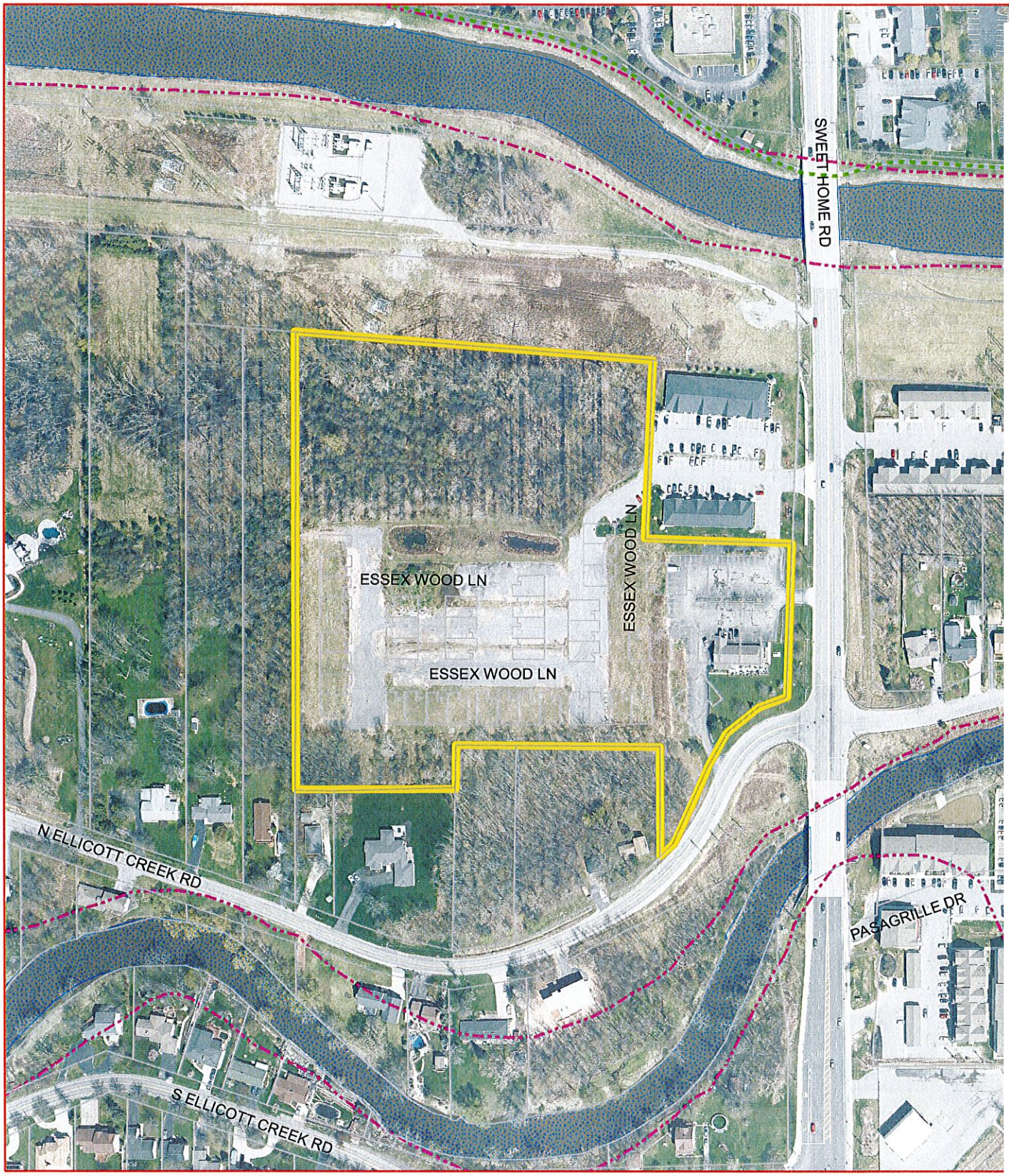
Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend



SITE PLAN

Z-2023-01
2350 Sweet Home Road

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend



Z-2016-16 & Z-2017-11B
Request to Amend a Declaration of Restrictions as Part of a Rezoning Decision that Restricts Windows from being Constructed on the Rear Buildings and Limitng the Minimum Setbacks
Property Located at 2350 & 2360 Sweet Home Road
Essex Home of WNY, Petitioner
April 20, 2023

2350 Sweet Home Road

Floodway Boundary

Prepared by the Town of Amherst Planning Depart

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Amherst

Town of Amherst Planning Department

2018.029

Erie County, New York

TOWN OF AMHERST
PLANNING
DEPARTMENT
2023 MAR 27 A 11:54

Brian J. Kul
Supervisor
Daniel C. Howard
Planning Dire
Daniel J. Ulatowsk
Assistant Planning

MEMORANDUM

March 24, 2023

TO: Daniel Ulatowski, Principal Planner
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberhold, Assistant Town Engineer

FROM: Scott Marshall, Principal Planner

SUBJECTS: REQUEST TO REZONE 0.17± ACRES OF LAND FROM **OB** TO **MFR-5, Z-2023-01**; PROPERT LOCATED AT **2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 235 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

TOWN OF AMHERST EAF ADDEDUM & GEOTECHNICAL REPORT:
Received March 23, 2023

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

RECEIVE
MAR 31 2023
TOWN OF AMHERST
PLANNING DEPT.

General comments relative to your agency interests: None

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/30/31

SM/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01_(2350_Sweet_Home)_2023\Z-2023-01_Z-2016-16D_Z-2017-11B_EAF_Geotech_transmittal_042423.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, N.Y.
AND REPLY TO MUNICIPALITY

Submit this form with full statement of proposed action (as described in GML 239-m(c)) at www.Erie.gov/IRonline, OR mail a hard copy (retain a copy for your files) to: Erie County Division of Planning, 95 Franklin Street, Room 1053, Buffalo, N.Y., 14202

DO NOT WRITE IN THIS SPACE
Case No.: ZR-23-113
Postmark/Delivery Date: 1/26/2023

The proposed action described herein is referred in accordance with the provisions of NYS General Municipal Law §239 l - nn
A Municipal Referral Map is available to help determine whether an applicable action is subject to referral.

Description of Proposed Action

1. Name of Municipality: Town of Amherst, New York

§239-m(4)(b) provides that the county shall have 30 days after receipt of a full statement of the proposed action to reply.
If the county fails to reply within such period, the referring body may take final action.
However, any county reply received after 30 days but 2 or more days prior to final action by the referring body shall be subject to §239-m(5)
The referring body shall file a report of its final action with the county within 30 days per §239-m(6).

2. Hearing Schedule: Date 3/16/23 Time 6:30pm Location 5583 Main Street, Williamsville, New York 142

3. Action is before: ☐ Legislative Body ☐ Board of Appeals ☑ Planning Board

4. Action consists of: ☐ New Ordinance ☐ Rezone/Map Change ☐ Ordinance Amendment
☐ Site Plan ☐ Variance ☐ Special Use Permit ☑ Other: Amendment to Dec of Restrictions

5. Location of Property: ☐ Entire Municipality ☑ Address: 2360 - 2372 Sweet Home Road

5a. S.B.L. of Property: 40.12-1-13.1
40.12-1-14
2350 Sweet Home Road

6. Referral required as site is within 500' of: ☐ State or County Property/Institution ☐ Municipal Boundary ☐ Farm Operation located in an Agricultural District
☐ Expressway ☐ County Road ☑ State Highway ☐ Proposed State or County Road, Property, Building/Institution, Drainageway

7. Proposed change or use: *(specify the action, such as the scope of variances or site plans)* Request to Amend a Declaration of Restrictions

8. Other remarks: Z-2016-16D and Z-2017-11B

9. Submitted by: Thomas Voigt, Assistant Planner **Email:** tvoigt@amherst.ny.us

10. Return Address: Town of Amherst Planning Department, 5583 Main Street, Williamsville, New York 142

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 1/26/2023. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ **The proposed action is not subject to review under the law.**
2. ☐ **Comment on proposed action is attached hereto.**
3. ☐ **The proposed action is subject to review; Recommendation on Proposed Action is attached hereto.**
4. ☒ **No Recommendation; proposed action has been reviewed and determined to be of local concern.**

By the Division of Planning: Dan M. Hall **Date:** 3/17/2023

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Daniel J. Ulatowski, AI
Assistant Planning Direc

March 14, 2023

Essex Homes of WNY
c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221

SUBJECT: Relief of Rezoning Conditions Review

	Z-2016-16_D
Proposed:	Amend Declaration of Restrictions imposed as part of a Rezoning Action (building setback & rear facing 2nd story windows)
Property located at:	**2350 & 2360-2372 Sweet Home Road (portion)**
Application received:	January 25, 2023
Representative:	Sean Hopkins, Esq.

Dear Mr. Hopkins,

Please consider the following comments:

1. Complete the attached revised Town of Amherst Addendum to the EAF.

2. Note that any other SEQR-related issues raised during the review process for this rezoning must be addressed prior to action by the Planning Board.

3. Provide an 8½ " x 11" reduction of any revised concept plan **and an electronic version** of any revised plans or information submitted for review.

This is a review only and does not constitute approval of the Rezoning Request. Should you have questions regarding this correspondence, please contact Scott A. Marshall, Principal Planner at smarshall@amherst.ny.us.

Very truly yours,

for Daniel C. Howard, AICP
Planning Director

DH/SM/ac
X:\Current_Plannig\Files\Rezonings\2016\Z-2016-16_D_(2360-2372_&_2350_Sweet_Home)_2023\Z-2016-16_D_Pln_Dpt_Rvw_03142023.doccc:
cc: Carmina Wood Design, 487 Main St., Suite 500, Buffalo, NY 14203

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AI
Planning Director
Daniel J. Ulatowski, A
Assistant Planning Dire

MEMORANDUM January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/ Eric Blocher, General Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

_____.

General comments relative to your agency interests: if rezone is for construction of single fam homes with condo status then Assessors offices is opposed.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

_____

_____

_____.

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 2/9/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D\Z-2016-16D_&_Z-2017-11B_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
FEB 08 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulp
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

MEMORANDUM

January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/ Eric Blocher, General Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

RECEIVED
JAN 30 2023
TOWN OF AMHERST
BUILDING DEPT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DJU

SUBJECT: REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 235(**
SWEET HOME ROAD. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? No objections

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 2/7/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D\Z-2016-16D_&_Z-2017-11B_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D r

MEMORANDUM January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/ Eric Blocher, General Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
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Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

RECEIVED
JAN 27 2023
TOWN ATTORNEY

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DJU

SUBJECT: REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 2/3/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D\Z-2016-16D_&_Z-2017-11B_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

5583 Main Street • Williamsville • New York • 14221 • (716) 631-7051 • Fax (716) 631-7153

2018.029

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

RECEIVED
FEB 02 2023
TOWN OF AMHERST
PLANNING DEPT.

2023 JAN 31 A 8:42

MEMORANDUM January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/ Eric Blocher, General Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DJU

SUBJECT: REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: None at This Time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: C. Schregel **Date:** 2/1/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D\Z-2016-16D_&_Z-2017-11B_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

2018.029

Amherst

Town of Amherst Planning Department *Erie County, New York*

2023 JAN 31 A 8:42

Brian J. Kulpa
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

MEMORANDUM

January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
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Douglas Gesel, Supervising Code Enforcement Officer, Building Department
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Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

RECEIVED
JAN 31 2023
TOWN OF AMHERST
PLANNING DEPT.

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DJV

SUBJECT: REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? YES

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 1/31/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D\Z-2016-16D_&_Z-2017-11B_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

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Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

RECEIVED
JAN 31 2023
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM

January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
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Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

RECEIVED
JAN 27 2023
TOWN ATTORNEY

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DJU

SUBJECT: REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? Agree with all statements made.

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 1/30/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D\Z-2016-16D_&_Z-2017-11B_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
FEB 01 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulp
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

MEMORANDUM January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/ Eric Blocher, General Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

RECEIVED
JAN 30 2023
TOWN OF AMHERST
BUILDING DEPT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DJU

SUBJECT: REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 235(**
SWEET HOME ROAD. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: none at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: Doug Gesel **Date:** 1/31/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D\Z-2016-16D_&_Z-2017-11B_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Carrato, Amy

From: Joan Stone <enots40@gmail.com>
Sent: Tuesday, April 11, 2023 7:33 PM
To: Planning Department email; Marshall, Scott; Palumbo, Gary; Voigt, Thomas J.; Ulatowski, Daniel; Carrato, Amy
Cc: Chris Stone
Subject: 2350 & 2360 Sweet Home Rd

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

To Planning Board Members,
My name is Chris Stone and I reside at 550 North Ellicott Creek Road in Amherst with my wife and daughter. Our property is located along the entire Western side of the Essex Homes development.
We recently received a letter stating that the developer wants to change more the zoning from OB to MFR-5, and to amend a declaration of restrictions which restricts windows on the rear of the buildings on the 2nd floor. There is a Planning Board meeting scheduled on 4/20/23 for comments on the project. Unfortunately due to an unavoidable conflict, we cannot attend this meeting, therefore we are contacting you in writing prior to the meeting.
We will first comment on the zoning change. The developer is looking to get some zoning changed in order to get the foundations of "sunrooms" closer to the property line minimizing the setback to 22'-25' from the original 35'. Our opinion on that is if the rezoning is allowed, there would not be anything to stop them from moving the entire buildings closer to the property lines. Because of the size of these buildings, this would not be desirable for the neighbors. We would like a "NO" vote to this change.
The next change request is allowing windows on the back side of the buildings on the 2nd floor. This was one of the most important declarations that we fought for. Again, because of the size of these buildings, this would be an invasion of privacy. We would like a "NO" vote to this also.
Now to explain a little back story to this project. Back in 2016 through 2018 there were extensive negotiations between the neighbors and the developer regarding the entire project. The developer made many changes in order to satisfy our concerns. The neighbors made many concessions during the negotiating period also. We all came to a decision and on 3/19/2018 the Town Board unanimously adopted the resolutions with the full support of the neighbors. There are 14 declarations filed at the Erie County Clerks Office as a result of our negotiations. As we see the project moving forward, we appreciate what we fought for. We started experiencing severe flooding in our yards so we went to the Town and it was addressed because we have the declaration in place to address the drainage. We then recognized that buildings were being built with windows on the back side of the 2nd story. We again contacted the town and the windows were removed because we have the declaration in place to restrict them. We also see these units are being leased rather than sold, which is against one of the declarations. We are not sure how this is being allowed to happen, so we plan to address this issue with the town next.
In closing we want to state that we are NOT in favor of any changes being brought to the Planning Board at this time.

Thank You for your attention,

Chris and Joan Stone
550 North Ellicott Creek Road
Amherst 14228
email: enots40@gmail.com

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Attachment: Z-2016-16D & Z-2017-11B TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

Amherst
Town of Amherst Planning Department
Erie County, New York

Brian J. Kulpa
Supervisor

Daniel C. Howard,
Planning Direct

Daniel J. Ulatowski,
Assistant Planning D r

Town Board Agenda of June 20, 2023

June 13, 2023

The Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: Request to rezone 0.17± acres of land from OB to MFR-5; property located at 2350 Sweet Home Road (portion), Essex Homes of WNY, Inc., Petitioner. (Z-2023-01).

Honorable Members:

The subject request is a 0.17± acre L-shaped portion of a parcel of land addressed 2350 Sweet Home Road located at the northwest corner of Sweet Home and North Ellicott Creek Roads. The area proposed to be rezoned on the west side of the site ranges in width from 4.13 feet on the north to 9.55 feet on the south and a consistent width of 8 feet along the south of the existing MFR-5 zoning and is proposed to be used as the rear yard and sun rooms or covered patio areas for the 20 of the 48 Townhomes on the west and south sides of the site as approved by the Planning Board at site plan review. Sweet Home and North Ellicott Creek Roads are Erie County highways classified in the Town of Amherst Bicentennial Comprehensive Plan as a collector and minor arterial respectively.

For information on the surrounding zoning and land use, please refer to the attached sketch.

The purpose of this request is to rezone strips of land on the south and west sides of the site adjacent to the existing MFR-5 zoning to allow for the construction of future sunrooms on the back sides of the existing/proposed residential buildings. The rezoning area on the west side of the site ranges in width from 4.13 feet on the north to 9.55 feet on the south and a consistent width of 8 feet along the south of the existing MFR-5 zoning.

History of previous rezoning requests:
The subject site was zoned Suburban Agriculture (SA) district with the adoption of the Town wide Zoning Map & Ordinance on January 19, 1976.

2350 Sweet Home Road
Z-1982-13 Request to rezone from SA to Neighborhood Business (NB) district was approved by the Town Board on December 20, 1982.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Z-2011-05 Request to rezone from SA & NB to General Business (GB) district was approved by the Town Board on August 1, 2011.

Z-2017-11 Request to rezone from GB to Multi-Family Residential District Five (MFR-5) was approved by the Town Board on March 19, 2018 with the following conditions:

1. 5.2 acres of permanent open space as shown on the concept plan dated November 16, 2017 shall not be developed as any buildings or other above ground structures, & shall remain permanently undeveloped.
2. The residential development of the project site shall not consist of rental units but shall consist of residential units for sale.
3. The maximum allowable density of the residential development shall be 48 units.
4. The residential buildings to be constructed on the project site shall be limited to 1-story residential units w/ 2nd story loft space in the front portion of the building so there shall not be any 2nd story windows provided for the 2nd story loft space on the rear portion of the buildings.
5. Maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.
6. There shall be a maximum of 4 attached residential units in any residential building on the project site.
7. The min. setback of the residential buildings on the project site from the south boundary & west boundary of the project site shall be 35 ft.
8. The min. setback of building #5 as depicted on the concept plan dated 11/16/2017 from the north boundary of 574 N. Ellicott Creek Road shall be 109 ft.
9. The min. setback of Building #6 as depicted on the concept plan dated 11/16/2017 from the south boundary of the project site shall be 137 ft.
10. A solid vinyl fence with a natural color (not white) and a minimum height of 6 feet as measured from finished grade shall be installed along portions of the east, west & the south boundary of the project site as depicted on the concept plan dated November 16, 2017.
11. Landscaping as required in the TOA Zoning Code shall be provided along the south side and the portion of the west side of 2360 Sweet Home Rd to be developed for residential purposes. The Landscaping Plan for 2360 Sweet Home Road shall be prepared based on consideration of input received by the petitioner and the owners of the parcels directly south of the project site at 566, 574, 598 & 620 N Ellicott Creek Rd and owner of the parcel west of the project site at 550 N Ellicott Creek Rd.
12. The lighting plan prepared for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site at 550, 566, 574, 598 & 620 North Ellicott Creek Rd. No light poles shall be installed on the project site with a height that exceeds 15 feet.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

13. There shall not be an internal driveway that connects the existing offices at 2360 Sweet Home Rd with the northern side of the parcel at 2350 Sweet Home Rd.
14. That with the exception of a driveway that will only service a 2-unit building to be located along the N Ellicott Creek Rd frontage that is depicted as building #13 on the concept plan dated November 16, 2017, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Rd.
15. If the design of the rear yard drainage along the south side of 2360 Sweet Home Rd is such that it would provide the opportunity for the owners of the parcels at 550, 566, 574, 598 & 620 North Ellicott Creek Rd to connect into the drainage system, the petitioner will provide the owner of these parcels the ability to connect into the drainage system. The drainage system will be prepared based on consideration of input received by the petitioner from the owners of 550, 566, 574, 598 & 620 N Ellicott Creek Rd.
16. The approval of the rezoning of 2350 Sweet Home Rd from GB to MFR-5 is subject to a condition requiring that the petitioner or its assignee close on the purchase of the project site to be developed for residential use.
17. The approval of the rezoning of 2360 Sweet Home Rd from OB to MFR-5 is subject to a condition requiring that the petitioner or its assignee close on the purchase of the project site to be developed for residential use.
18. Conditions 1 to 14 shall be memorialized by recording of a Declaration of Restrictions in Erie County Clerk's Office.

Z-2017-11A On October 1, 2018 the Town Board Approved a Relief of Zoning Conditions for the rezoning from GB to MFR- 5 with the following revisions:

1. The gated emergency access connection will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.
2. Pursuant to the Town Zoning Code, all property owners within 600 ft. of the project site will receive notice from the Town of any future proposed amendment of any of the zoning conditions.
3. The amended Zoning Condition No. 14 will be incorporated into the Declaration of Restrictions to be recorded at the Erie County Clerk's Office.
4. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.
5. That the gated emergency access driveway to North Ellicott Creek Road be straightened as much as possible
6. That the final site plan be fully compliant with the fire code.

<u>2360 Sweet Home Road (former western portion of site, now part of subject site):</u>

Z-2002-19 Request to rezone 574, 598 & 620 North Ellicott Creek Road (former addresses of this site) from SA to Multi-Family Residential District Four A (MFR-4A) for 72 townhouses was recommended for denial by the Planning Board on September 9, 2002.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Z-2001-19A The rezoning application was modified to request a rezoning from SA to (Residential District Three (R3) for 51 single-family lots on a public looped road. Planning Board recommended denial on October 17, 2002. The petition was never presented to the Town Board.

Z-2003-02 Application to rezone from SA to MFR-4A for 40 townhouses. Planning Board recommended denial; Town Board denied on June 7, 2004.

Z-2005-06 On December 15, 2005 the Town Board rezoned the site from SA to OB with the condition that there be no vehicular connection between the OB zoned portion and North Ellicott Creek Road; this condition was recorded as a deed restriction.

Z-2016-16B On March 19, 2018 the Town Board rezoned from OB to MFR-5 with the following conditions:
See those listed above for Z-2017-11

Z-2016-16C On October 1, 2018 the Town Board Approved a Relief of Zoning Conditions for the rezoning from OB to MFR- 5 with the following revisions:
See those listed above for Z-2017-11_A

History of previous Site Plan approvals:

SP-1983-07 The Planning Board on April 21, 1983 approved a site plan for the relocation of the Sweet Home Café to the site necessitated by the construction of the Lockport Expressway (I-990).

SP-1983-07_A The Planning Director on April 27, 1987 approved a site plan for a cooler addition to the restaurant/tavern.

SP-1983-07_B The Planning Board on August 11, 2005 approved a site plan for 51 space parking expansion and addition of a 1,070 sq. ft. patio to the south side of the existing restaurant/tavern.

SP-1983-07_C The Planning Director on April 28, 2016 approved a site plan a 749 sq. ft. patio addition and refuse enclosure.

SP-2005-06 The Planning Board on March 17, 2005 approved a site plan for a two building (6,000 sq. ft. ea.) office development with parking for 60 vehicles.

SP-2006-07 The Planning Board on March 17, 2005 approved a site plan for a five building, 71,238 sq. ft. office development with parking for 398 vehicles.

SP-2018-08 The Planning Board on March 18, 2019 approved a site plan for a forty eight unit townhouse development the "Villas at Essex Woods" on land addressed 2350 and 2360 Sweet Home Road

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

SP-2018-08_A The Planning Director on July 16, 2019 approved a site plan for the addition of 12 ft. x 14 ft. sunrooms or covered patios to specific units internal to the site.

The Planning Board offers the following findings consistent with Section 8-3 of the Zoning Ordinance.

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

With a total site size of lot 9.95± acres, the development of 48 townhouse units would create a density of 4.9± units/acre. This places it within the Mixed Residential category as described in the Comprehensive Plan. The Plan recommends locations for this type of residential development as "attractive for infill development along high access suburban and commercial corridors" and "areas of transition between commercial uses and lower density single-family neighborhoods, as well as along collector or arterial highways or other areas that are generally unattractive for large lot, single-family development." The proposal is therefore consistent with the Comprehensive Plan.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The proposed rezoning is consistent with Section 1-2-2K of the Zoning Ordinance which seeks to guide future development of the Town to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The mixed nature of the surrounding development indicates that the proposed townhouse development would be a compatible use at this location. The development site is situated adjacent to offices on the north side that are zoned OB and the existing MFR-5 zoned approved Townhome development. Across Sweet Home Road are single-family homes zoned NCD-SA. To the south and southwest are properties that face North Ellicott Creek Road and are zoned SA. The proposed buildings will be single-story, minimizing any negative visual impacts from single-family residential properties. The proposed MFR-5 zoning would downzone the site and provide a transition area to the nearby residences on North Ellicott Creek Road.

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is an Unlisted action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal.

RECOMMENDATION

The Planning Board at their meeting of April 20, 2023 held a public hearing on the subject rezoning request and recommended that the Town Board find that pursuant to Local Law #3-82, as amended, the requirements of SEQR have been completed and that the subject request will not

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

have a significant adverse effect on the environment. The Planning Board also recommended that the subject rezoning request be **denied** as the financial considerations and ability to sell units without sunrooms by the petitioner is not a justification for rezoning.

The Planning Department requests that if the Town Board desires to act on the rezoning request, that a decision date be established after the public hearing so that the Planning Department can prepare a determination of environmental significance pursuant to SEQR, and prepare a resolution for the Town Board's consideration.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/SM/ac
Att.
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01_(2350_Sweet_Home)_2023\Z-2023-01_TB_Ltr_06142023.docx
cc: Martin Polowy, Town Attorney

Planning Board Denial – April 20, 2023
Ayes – 4; Noes – 3 (Gilmour, Giuliani, Kahn)

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-01

PETITIONER

DJC Land, Inc.
c/o Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy
5500 Main Street, Suite 343
Williamsville, NY 14221

PROPERTY LOCATION

2350 Sweet Home Road

WHEREAS the Town of Amherst Planning Board on Thursday, April 20, 2023 held a public hearing on the proposed rezoning of 0.17± acres of land from Office Building District (OB) to Multi-family Residential District Five (MFR-5), and

WHEREAS the Planning Board has reviewed plans and other materials regarding the rezoning proposal, and

WHEREAS the materials and plans have been referred to the Town's various review agencies, and

WHEREAS in accordance with Section 8-3-5 of the Zoning Ordinance the Planning Board finds that:

A. The proposed zoning and development plan is generally consistent with the policies of the Comprehensive Plan and the Zoning Ordinance.

B. There are adequate services and utilities available or proposed to be made available in the construction of the development.

C. The proposal is incompatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

D. The subject property is not suitable for uses permitted by the proposed district.

E. The proposed change does not tend to improve the balance of uses, or meet a specific demand in the Town.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived because a wetland investigation conducted October 2016 by Wilson Environmental Technologies concluded that no federal or state wetland areas exist within the subject portion of the site.

WHEREAS pursuant to Local Law #3-82, as amended, the Planning Board recommends that the Town Board determine that the requirements of SEQR are complete and that the subject proposal is not expected to have a significant adverse effect on the environment.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

'23 APR 26 PM12:59

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-01

PETITIONER

DJC Land, Inc.

PROPERTY LOCATION

2350 Sweet Home Road

NOW THEREFORE BE IT RESOLVED that the Planning Board recommends to the Town Board in accordance with Section 8-3-4 of the Zoning Ordinance, that the rezoning request be denied.

The foregoing resolution was adopted by the Town of Amherst Planning Board, April 20, 2023; moved by Penberthy; seconded by Chmiel; ayes 4, noes 3 (Gilmour, Giuliani, Kahn).

Robert J. Gilmour, Planning Board Chair

4-25-23.
Date

SM/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01_(2350_Sweet_Home)_2023\Z-2023-01_resolution_042023.doc
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

'23 APR 26 PM12:59

Rezoning Application - Rezoning of Portion of 2350 Sweet Home Road from OB to MFR-5
Applicant: Essex Homes of WNY, Inc.
Date: January 23, 2023

Prepared By: Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 510-4338
E-mail: shopkins@hsmlegal.com

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: _____ **Acreage** .17 Acres **Fee $** _____

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid ___ _____ AC CEP TB BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. _____ RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	1,250.00
2 – 20 ACRES $1,250 + $250/acres or fraction thereof over 2 acres		_____
20 – 30 ACRES $5,700 + $150/acre or fraction thereof over 20 acres		_____
OVER 30 ACRES $6,900 +$75/acre or fraction thereof over 30 acres		_____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	$ 15.00
	TOTAL FEE:	$1,265.00

[Note: A completed Short Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is provided at Exhibit "5".]

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Essex Homes of WNY, Inc.

Address: c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code

Phone: 716.510-4338 Fax:

E Mail shopkins@hsmlegal.com

2. **The undersigned hereby petitions the Honorable Town Board to rezone the following described property**

From: OB District

To: MFR-5 District

3. **Street address of land to be rezoned:** (must be verified by Town Assessor's Office)

Portion of 2350 Sweet Home Road

SBL #: 40.12-1-14

4. **Area of land to be rezoned** (in acres): .17 Acres

5. **Owner of Land:**

Name: Essex of WNY, Inc. c/o Sean Hopkins, Esq.

Address: 5500 Main Street, Suite 343 - Williamsville, NY 14221

Telephone: 716.510-4338 [E-mail: shopkins@hsmlegal.com]

6. **Representative** (Architect, Engineer, Landscape Architect, Surveyor or Attorney):

Name: Sean W. Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

7. Petitioner's interest in property

_____ Option to purchase

__X__ Owner

_____ Other (explain) _____

8. The following are all others having an interest in this application and join herein with the petitioner named above: (describe extent of interest; attach sheets as needed)

Not Applicable.

9. Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor. Legal description of property to be rezoned from OB to MFR-5 attached as Exhibit "1" and a copy of the survey prepared by GPI Engineering & Surveying is provided at Exhibit "2" Full-size copy of the survey is also attached to this Application.

10. Said property has the following deed restrictions or Covenants: (attach copy)

Liber 11341 Page 2501

Copy of Declaration of Restrictions as recorded on February 21, 2019 attached as Exhibit "3".

11. Information on proposed project:

A. Description of the character of the proposed development:

See Exhibit "4". A reduced-size copy the Site Plan prepared by Carmina Wood Design is provided at Exhibit "6" and a full-size copy is also attached to this Application.

B. Rationale for rezoning request:

1. Why was this site chosen? See Exhibit "4"

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

2. Why cannot land be used with the existing zoning?

See Exhibit "4".

3. How will this rezoning impact surrounding properties?

See Exhibit "4".

4. How will this rezoning impact the school system?

See Exhibit "4".

12. Quantitative Data:

A. Total # of dwelling units: 48 Attached Residential Units

B. Distribution of dwelling units by type: Attached Townhomes

C. Gross Residential Density per acre: 4.04 units per acre

D. Total amount of Open Space: Approximately 5.2 acres

E. Proposed Non-Residential Floor Area: Not Applicable

13. Development Schedule:

Start: Project under construction.

Finish: To be based on demand for the attached residential units.

Stages (# of): Based on market demand

14. If any portion of the proposed development is planned to be sold or leased, please describe:

The upscale residential units are for sale.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

15. Open Space ownership and maintenance provisions (if applicable):

Greenspace and landscaping will be privately owned and maintained.

16. Basis for Findings (Sec. 8-3-5 of the Town Zoning Code) (Attach sheets and supplemental materials as necessary.)

A. <u>The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Towr Zoning Ordinance.</u>

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps, and/or figures in the plan that support the proposed zoning at this location (The Comprehensive Plan document is available at the Planning Department, Town Clerk's Office, Amherst libraries, or at www.amherst.ny.us). Add sheets as needed.

See Exhibit "7".

2. Pursuant to NYS Town Law Section 272a(11), "all Town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this Section." The Town Board adopted the Comprehensive Plan pursuant to NYS Town Law 272 on January 2, 2007. If the rezoning is approved, the Town Board may require the Plan to be amended, as applicable.

Cite all text, map, and / or figures that must be amended to support the proposed zoning at this location (attach pages as necessary) and provide detailed suggested amendments.

See Exhibit "7".

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

3. State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

See Exhibit "7".

B. Adequate Services and Utilities are available or are proposed to be made available with the construction of the development:

1. Sanitary Sewer
   Yes.
2. Storm Sewer/Drainage
   Yes.
3. Water
   Yes.
4. Other Yes.

C. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

See Exhibit "7".

D. Suitability of the subject property for uses permitted by the current versus the proposed district:

See Exhibit "7".

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

E. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

See Exhibit "7".

17. The petitioner encloses herewith the sum of $ 1,265.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.

18. The undersigned certifies that all information required to be disclosed pursuant to Section 809 of the General Municipal Law (see below) is as follows:

The undersigned swears or affirms that all statements made herein are true, that all drawings submitted correctly show the situation involved in this petition.

[Authorization of Owner of the Project Site is attached.]

Signature of Petitioner

Subscribed and sworn to before me this 23rd day of January, 20 23

Notary Public, Erie County, New York

MARIANNE BRAUTLACH
Notary Public, State of New
Qualified in Erie County
My Commission Expires 01/14

N.Y.S. General Municipal Law - Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state office or any office or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children grandchildren, or the spouse of any of them

   (a) is the applicant, or
   (b) is an officer, director, partner or employee of the applicant, or
   (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
   (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such applicant, petition or request.

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party Officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four or section two of the election law.

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Exhibit 1 – Legal Description of Portion of 2350 Sweet Homes Road to be Rezoned from OB to MFR-5

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

EXHIBIT 1

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED FROM OFFICE BUILDING DISTRICT ("OB") TO MULTIFAMILY RESIDENTIAL DISTRICT FIVE ("MFR-5")

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 209.37 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: through the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a line parallel and distant 22.00 feet northerly of a southerly line of said North Forest Properties #5 LLC lands as measured at right angles, a distance of 608.37 feet to a point being distant 25.33 feet easterly from the west line of said North Forest Properties #5 LLC lands;
2) N-00°-12'-48"-W, a distance of 361.56 feet to a point;
3) N-88°-54'-31"-E, a distance of 4.13 feet to a point;
4) S-01°-05'-29"-E, along a line parallel and distant 35.00 feet easterly of the west line of said North Forest Properties #5 LLC lands as measured at right angles, a distance of 353.67 feet to a point;
5) N-89°-47'-10"-E, along a line parallel and distant 30.00 feet northerly of a southerly line of said North Forest Properties #5 LLC lands as measured at right angles, a distance of 598.82 feet to the said west line of Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the said west line of Liber 6673 of Deeds at page 573, a distance of 8.00 feet to the POINT OF BEGINNING, containing 7,285 square feet or 0.17 acre more or less.

Exhibit 2 – Reduced-Size Copy of Survey of Property to be Rezoned from OB to MFR-5 as Prepared by Mark Andrews of GPI Engineering & Surveying [Note: Full-size copy also attached

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

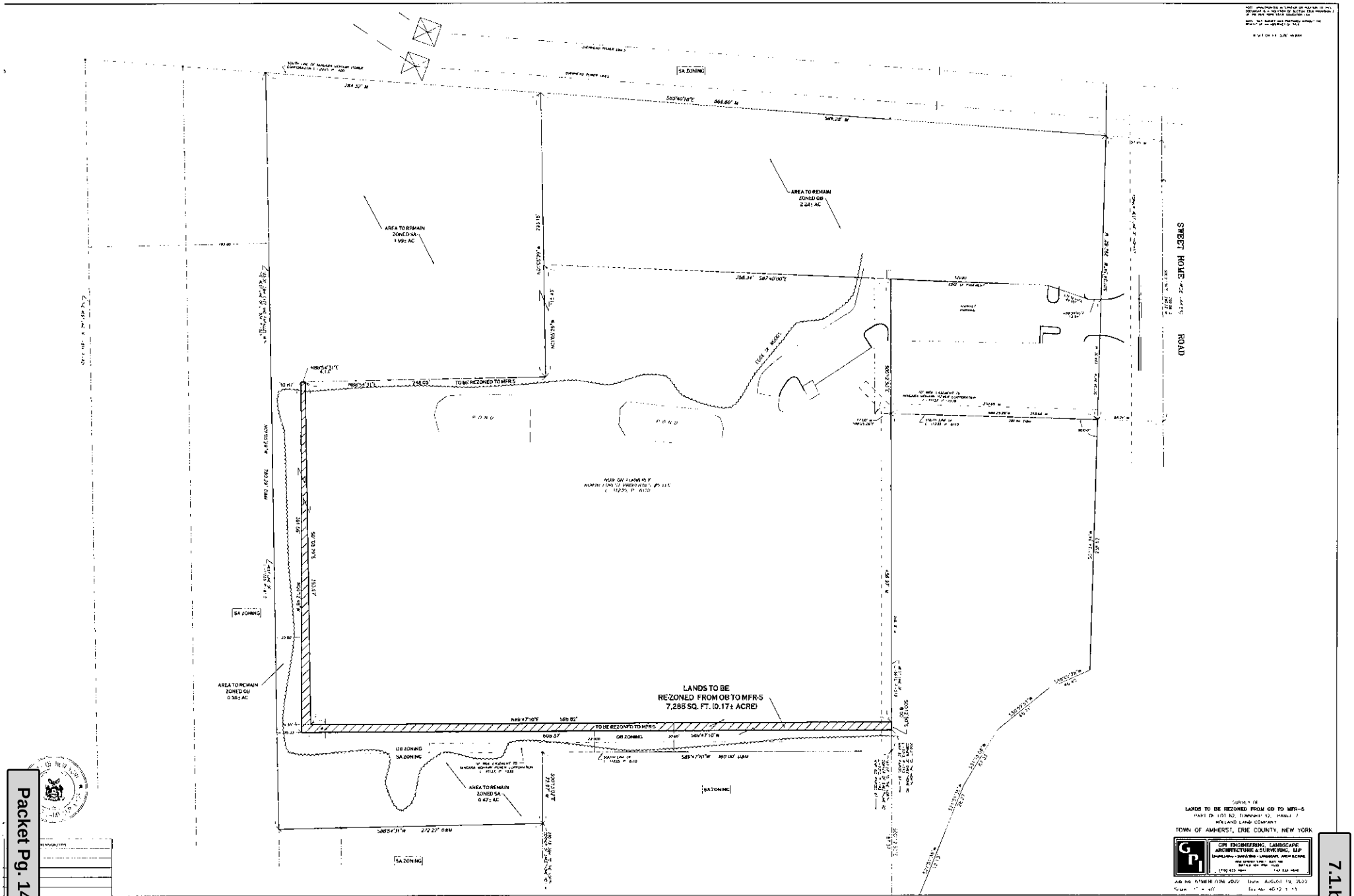

SWEET HOME ROAD
AREA TO REMAIN ZONED OB 2.24± AC
AREA TO REMAIN ZONED SA 1.99± AC
TO BE REZONED TO MFR-S
LANDS TO BE RE-ZONED FROM OB TO MFR-S 7,285 SQ. FT. (0.17± ACRE)
AREA TO REMAIN ZONED OB 0.36± AC
AREA TO REMAIN ZONED SA 0.67± AC
SA ZONING
OB ZONING
POND
LANDS TO BE REZONED FROM OB TO MFR-S
TOWN OF AMHERST, ERIE COUNTY, NEW YORK
CPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP

Exhibit 3 – Copy of Declaration of Restrictions Recorded at the Erie County Clerk's Office on February 21, 2019

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

FILED
FEB 21 2019
ERIE COUNTY
CLERK'S OFFICE

Return Original to Box 460
Hopkins Sorgi & Romanowski PLLC
Attn: Sean W. Hopkins, Esq.

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (***"Declaration"***) is made as of the 20th day of February, 2019 by **ESSEX HOMES OF WNY, INC.** (hereinafter ***"Declarant"***) under facts and circumstances summarized by the following recitals:

WHEREAS, the Declarant is the owner of real property consisting of 2350 Sweet Home Road as more particularly described in the metes and bounds legal description of 2350 Sweet Home Road attached hereto as **Schedule "A";**

WHEREAS, the Declarant is the owner of real property consisting of a portion of 2360 Sweet Home Road comprised of approximately 10.22 acres as more particularly described in the metes and bounds legal description of a portion of 2360 Sweet Home Road attached hereto as **Schedule "B";**

WHEREAS, in December of 2016, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst (***"Town Board"***) amend the zoning classification of approximately 7.14 acres of a portion of 2360 Sweet Home Road from Office Building District (***"OB"***) to Multifamily Residential District Five (***"MFR-5"***);

WHEREAS, in September of 2017, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst (***"Town Board"***) amend the zoning classification of 2350 Sweet Home Road from General Business District (***"GB"***) to Multifamily Residential District Five (***"MFR-5"***);

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-241 for the purpose of approving an amendment of the zoning classification of 2350 Sweet Home Road from GB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-241;

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-242 for the purpose of approving an amendment of the zoning classification of a portion of 2360 Sweet Home Road from OB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-242;

WHEREAS, the conditions contained in Resolutions 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 are identical;

WHEREAS, pursuant to Condition No. 18 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 are to be subject to a Declaration of Restrictions recorded at the Erie County Clerk's Office;

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

WHEREAS, Conditions No. 1 to 14 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 are as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 shall not be developed as any buildings or other above ground structures, and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed

for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at 566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel at 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

WHEREAS, a metes and bounds legal description of the 5.2 acres of Permanent Open Space referenced above in Condition No. 1, as contained in Resolutions 2018-241 and 2018-242 adopted by the Town Board on March 19, 2018, consisting of a portion of 2360 Sweet Home Road, is attached as **Schedule "C"** (hereinafter "***Permanent Open Space***");

WHEREAS, in July of 2018, RAS Development I LLC filed an Application for relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 for the purpose of seeking to allow a gated emergency access driveway to be installed connecting 2350 Sweet Home Road and a portion of 2360 Sweet Home to North Ellicott Creek Road;

WHEREAS, during its meeting held on October 1, 2018, the Town Board adopted Resolution No. 2018-1046 for the purpose of approving the requested Relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 to allow a gated emergency access driveway to be installed connecting to North Ellicott Creek Road subject to six (6) conditions as follows:

1. The gated emergency access connection will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

2. Pursuant to the Town Code, all property owners within 600 ft. of the project site will receive written notice from the Town of any future proposed amendment of any of the zoning conditions.

3. The amended Zoning Condition No. 14 will be incorporated into the Declaration of Restrictions to be recorded at the Erie County Clerk's Office.

4. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

5. That the gated emergency access driveway to North Ellicott Creek Road be straightened as much as possible.

6. That the final site plan be fully compliant with fire code.

NOW, THEREFORE, in exchange for good and valuable consideration the sufficiency of which is acknowledged, the Declarant agrees to restrict the future use of 2350 Sweet Home Road as described in **Schedule "A"**, a portion of 2360 Sweet Home Road as described in **Schedule "B"** including the Permanent Open Space consisting of a portion of 2360 Sweet Home Road as described in **Schedule "C"**, in accordance with the conditions as set forth in Resolutions No. 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 and the conditions set forth in Resolution 2018-1046 as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and described in the attached **Schedule "C"** shall not be developed as any buildings or other above ground structures and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at 566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel at 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and a gated emergency access only driveway connection to North Ellicott Creek Road, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

15. The gated emergency access connection to North Ellicott Creek Road will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

16. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

The restrictions being established herein pursuant to the conditions contained in Resolutions No. 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 and Resolution No. 2018-1046 as adopted by the Town Board on October 1, 2018 shall be binding on all parties claiming thereunder and shall run and touch the land except that the recorded restriction can be changed, modified or eliminated by a majority vote of the Town Board.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK
SIGNATURE ON FOLLOWIG PAGE]

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

IN WITNESS WHEREOF, the party hereto has the full legal authority to execute this Declaration of Restrictions.

ESSEX HOMES OF WNY, INC.

By: Philip J. Nanula
Name: Philip J. Nanula
Title: President

STATE OF NEW YORK)
ss.:
COUNTY OF ERIE)

On this 12th day of January, 2019, before me, the undersigned, a notary public in and for said state, personally appeared Philip J. Nanula, personally known to me or proved to me on the basis of satisfactory evidence to the be the individual whose name is subscribed to within this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Michelle Lynn Ward
Notary Public

MICHELLE LYNN WARD
Notary Public - State of New York
NO. 01WA6275111
Qualified in Niagara County
My Commission Expires 1/14/2021

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

SCHEDULE A

METES AND BOUNDS LEGAL DESCRIPTION OF 2350 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot 82, Township 12 and Range 7 of the Holland Land Company's Survey, being more particularly described as follows:

BEGINNING at the intersection of the northerly line of North Ellicott Creek Road with the westerly line of Sweet Home Road; Thence N 01°58'37 E, along the westerly line of Sweet Home Road, a distance of 258.52 feet; Thence 88°01'23" W, a distance of 213.69 feet; Thence S 00°11'13" W, a distance of 535.55 feet to a point in the northerly line of North Ellicott Creek Road; Thence N 45°33'50" E, along the northerly line of North Ellicott Creek Road, a distance of 30.24 feet; Thence N 22°15'39" E, along the northerly line of North Ellicott Creek Road, a distance of 140.40 feet; Thence N 31°42'11" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 67.33 feet; Thence N 51°23'54" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 68.71 feet; Thence N 66°26'31" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 46.40 feet to the point of beginning, containing 1.742 acres.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

SCHEDULE B

METES AND BOUNDS LEGAL DESCRIPTION OF PORTION OF 2360 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-13'-02"-E, along a easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to a point;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

THENCE: S-00-12'-50"-E, through said North Forest Properties #5 LLC lands, a distance of 304.96 feet to a point;

THENCE: S-88-25'-26"-E, through said North Forest Properties #5 LLC lands, a distance of 26.18 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 348.18 feet to the POINT OF BEGINNING, containing 10.22 acres more or less.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

SCHEDULE C

METES AND BOUNDS LEGAL DESCRIPTION
PERMANENT OPEN SPACE CONSISTING OF A PORTION OF
2360 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-12'-50"-E, along an easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to the southwest corner thereof;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

THENCE: Through said North Forest Properties #5 LLC lands, the following fifteen (15) courses and distances:

6) S-00-12'-50"-E a distance of 166.47 feet to a point;
7) N-87-51'-46"-W a distance of 16.24 feet to a point;
8) S-12-26'-56"-W a distance of 27.13 feet to a point;
9) S-58-06'-54"-W a distance of 97.91 feet to a point;
10) S-46-53'-26"-W a distance of 15.19 feet to a point;
11) S-32-16'-28"-W a distance of 17.19 feet to a point;
12) S-25-41'-59"-W a distance of 28.12 feet to a point;
13) N-80-56'-26"-W a distance of 50.68 feet to a point;
14) N-67-33'-18"-W a distance of 62.20 feet to a point;
15) S-82-26'-00"-W a distance of 63.13 feet to a point;
16) N-71-38'-03"-W a distance of 27.07 feet to a point;
17) S-00-12'-50"-E a distance of 5.50 feet to a point;

18) S-88-54'-31"-W a distance of 244.27 feet to a point;
19) S-01-05'-29"-E a distance of 353.63 feet to a point;
20) N-89-47'-10"-E a distance of 598.82 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 30.00 feet to the POINT OF BEGINNING, containing 5.21 acres more or less.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

MICHAEL P. KEARNS, ERIE COUNTY CLERK
REF:

DATE:2/21/2019
TIME:2:22:37 PM
RECEIPT: 19024620

HOPKINS SORGI & ROMANOWSKI PLLC- BOX 460
ACCOUNT #: 9074

ITEM - 01 781
RECD: 2/21/2019 2:24:28 PM
FILE: 2019035107 BK/PG D 11341/2501
ESSEX HOMES OF WNY INC
Recording Fees 100.00
Subtotal 100.00

TOTAL DUE	$100.00
PAID TOTAL	$100.00
PAID CHECK	$100.00
Check #1264:	100.00

REC BY: Megan
COUNTY RECORDER

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Exhibit 4 – Responses to Question No. 11 of the Application

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

EXHIBIT 4

RESPONSES TO QUESTION 11 OF REZONING APPLICATION FOR PORTION OF 2350 SWEET HOME ROAD FROM OB TO MFR-5

Question 11(A): Description of the character of the proposed development:

Response to Question 11(A): The residential project as previously approved by the Planning Board consists of 48 upscale attached residential units with attached garages for sale as depicted on the Site Plan prepared by Carmina Wood Design. The Project Sponsor is seeking the necessary approvals consisting of the rezoning of a small portion of the Project Site from OB to MFR-5 and relief of the Declaration of Restrictions recorded on February 21, 2019 to accommodate the proposed minor modifications to the approved project layout consisting primarily of first floor sunrooms to be constructed on the rear side of the attached townhome buildings on the southern and western boundaries of the Project Site as depicted on the Site Plan [Drawing C-100 – Date: 12/16/22] prepared by Carmina Wood Morris DPC. A reduced-size copy of the Site Plan is provided at **Exhibit "6"** and a full-size copy is also attached to this Application. A draft of the Amended Declaration of Restrictions is provided at **Exhibit "8"**.[1]

Question 11(B)(1): Rationale for rezoning request: 1. What was this site chosen?

Response to Question 11(B)(1): The majority of the Project Site is currently zoned MFR-5 in accordance with decisions issued by the Town Board on March 19, 2018. The Project Sponsor is seeking to amend a small portion of the Project Site from OB to MFR-5 to accommodate minor modifications to the approved project layout. It is important to mention that a large portion of the Project Site

[1] A copy of the Declaration of Restrictions recorded at the Erie County Clerk's Office on February 21, 2019 is provided at **Exhibit "3"**.

will consist of Permanent Open Space to ensure the residential project is consistent with the character of the surrounding vicinity.[2]

Question 11(B)(2): Why cannot land be used with the existing zoning?

Response to Question 11(B)(2): The Project Site is currently being developed in the accordance with the existing MFR-5 zoning of a majority of the Project Site that was approved by the Town Board on March 19, 2018.

Question 11(B)(3): How will this rezoning impact surrounding properties?

Response to Question 11(B)(3): The proposed rezoning of a small portion of the Project Site from OB to MFR-5 and the requested relief of the Declaration of Restriction in order to accommodate minor modifications to the approved project layout will have any adverse impacts on surrounding properties.

Question 11(B)(4): How will this rezoning impact the school system?

Response to Question 11(B)(4): The project will continue to have positive impacts on the school district. The approved residential project consisting of attached townhomes for sale will not result in any significant increased demand for educational services since the target market for the residential units is empty nesters, seniors and young professionals.

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[2] The approximately 5.2 acres of Permanent Open Space shall remain undeveloped in accordance with the Declarations of Restrictions recorded on at the Erie County Clerk's Office on February 21, 2019.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Exhibit 5 – Short Environmental Assessment Form with Attached Page 5[a]

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Short Environmental Assessment Form
Part 1 - Project Information

Prepared By: Sean Hopkins,
Hopkins Sorgi & McCarthy I
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 510-4338
E-mail: shopkins@hsmlegal.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information

Name of Action or Project:
Villas at Essex Woods Project

Project Location (describe, and attach a location map):
2350 Sweet Home Road - Town of Amherst - Erie County

Brief Description of Proposed Action:
The action involves the rezoning of approximately 0.17 acres of the Project Site from Office Building District ("OB") to Multifamily Residential District Five ("MFR-5") and a request to modify a Declaration of Restrictions containing zoning conditions imposed by the Town of Amherst Town Board to accommodate minor modifications to the previously approved residential project consisting of 48 attached residential units for sale including the addition of single-story sun rooms on the rear sides of the approved buildings. The project layout is depicted on the Site Plan [Drawing C-100] prepared by Carmina Wood Design dated December 16, 2022. The project is an Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") since the impact do not cross any of the thresholds for a Type I action per 6 NYCRR Part 617.4. It is important to mention that the Town Board, Planning Board and Zoning Board of Appeals have all previously issued negative declarations pursuant to the SEQRA with respect to the approved residential project that is currently under construction.

Name of Applicant or Sponsor:	Telephone: 716.510-4338
Essex Homes of WNY, Inc. c/o Sean W. Hopkins, Esq.	E-Mail: shopkins@hsmlegal.com

Address:
Hopkins Sorgi & McCarthy PLLC - 5500 Main Street, Suite 343

City/PO:	State:	Zip Code:
Williamsville	NY	14221

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☑	☐
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval: Town Board - Rezoning, Zoning Board of Appeals - Area Variances; Planning Department - Minor Site Plan Amendment	☐	☑

3.a. Total acreage of the site of the proposed action? 11.89 acres
b. Total acreage to be physically disturbed? .12 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 11.89 acres

4. Check all land uses that occur on, adjoining and near the proposed action.
☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☑ Commercial ☑ Residential (suburban)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____
☐ Parkland

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? [Project Sponsor is seeking to amend the zoning classification of .17 acres of the Project Site from OB to MFR-5 to accomodate single-story sun rooms on the rear side of attached townhome buildings.]	☐	☑	☐
b. Consistent with the adopted comprehensive plan?	☐	☑	☐
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	☐	☑	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	☑	☐	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	☑	☐	
b. Are public transportation service(s) available at or near the site of the proposed action?	☑	☐	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	☐	☑	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	☐	☑	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	☐	☑	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	☐	☑	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	☑	☐	
b. Is the proposed action located in an archeological sensitive area? [SHPO issued a No Impact determination for the Project Site on April 21, 2005.]	☐	☑	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☐	☑	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ There are not any wellands located on the portion of the Project Site to be developed. A wetland permit was issued by the USACE on April 20, 2006 and the 0.49 acres of impacts authorized by the permit have previously occurred.	☑	☐	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☑ Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	☑	☐	
16. Is the project site located in the 100 year flood plain?	☑	☐	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☑ NO ☐ YES	☐	☑	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: ☐ NO ☑ YES Existing on-site stormwater management system will be utilized as previously approved.			

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

	NO	YES
18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size:	☑	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	☑	☐
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	☑	☐

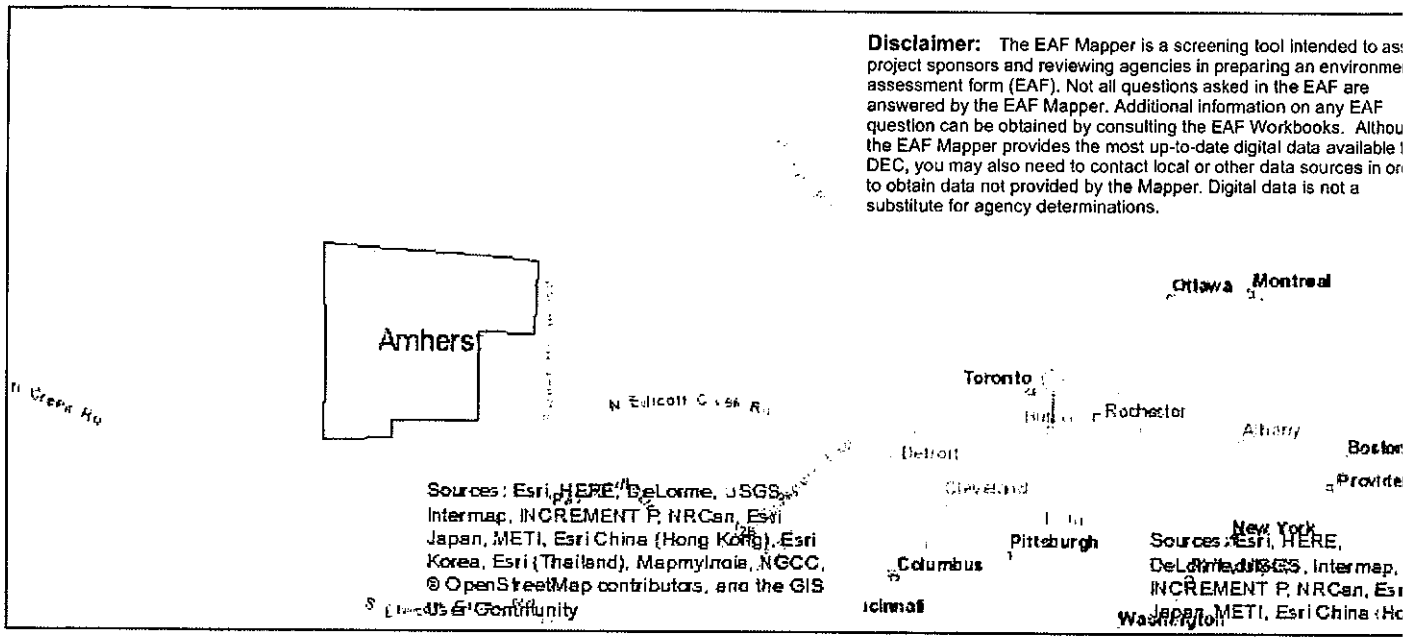
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Essex Homes of WNY, Inc. Date: January 23, 2023

Signature: Sean W. Hopkins, Esq., Counsel for Applicant

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

EAF Mapper Summary Report



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National Register of Historic Places]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

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TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

2350 Sweet Home Road

1. For each applicable category of proposed new structures, including additions to existing structures, provide the following information for all soil types on the project site (*according to Soil Survey of Erie County, NY; Table 11, Building Site Development, pp 294-305):*

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Cosad [Cv]	Severe	Severe	Severe	Severe	Moderate
Swormville [Sw]	Severe	Severe	Severe	Severe	Severe

2. If the Soil survey indicates either "severe" or "moderate" suitability for the proposed types of construction, a geotechnical and hydrological analysis based on one test per 3.5 acres of project area must be provided (per Town Board resolution, 3/17/03, amended 6/16/03).

   _x_ Geotechnical report attached _____ Not applicable

   [Note: Three copies of the Geotechnical Report prepared by Barron & Associates dated October 11, 2017 have been submitted with the land use applications dated January 23, 2023.]

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ● No

   On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ● No

   If so, the property may be within an area of the Town that is affected by a moratorium on connections to the sanitary sewer system.

4. Are there alternative locations on the site for this project? ☐ Yes ● No

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal: **Not Applicable.**

6. Are you aware of current or future plans or intentions by others in the Town of Amherst to develop property within 1000± ft. of the present project request: ☐ Yes ● No

   Describe: **Not Applicable.**

   (Potential environmental impacts from adjacent or nearby projects undergoing the approval process will receive a coordinated environmental review to determine cumulative effects on common receivers (e.g. traffic and drainage corridors) and other relevant environmental concerns.)

7. Maximum number of vehicular trips to be generated per hour upon completion of project: **Not Applicable.**

8. Will blasting occur during construction? ☐ Yes ● No

9. Does the project propose to connect and be tributary to the public sanitary sewer system? ● Yes ☐ No

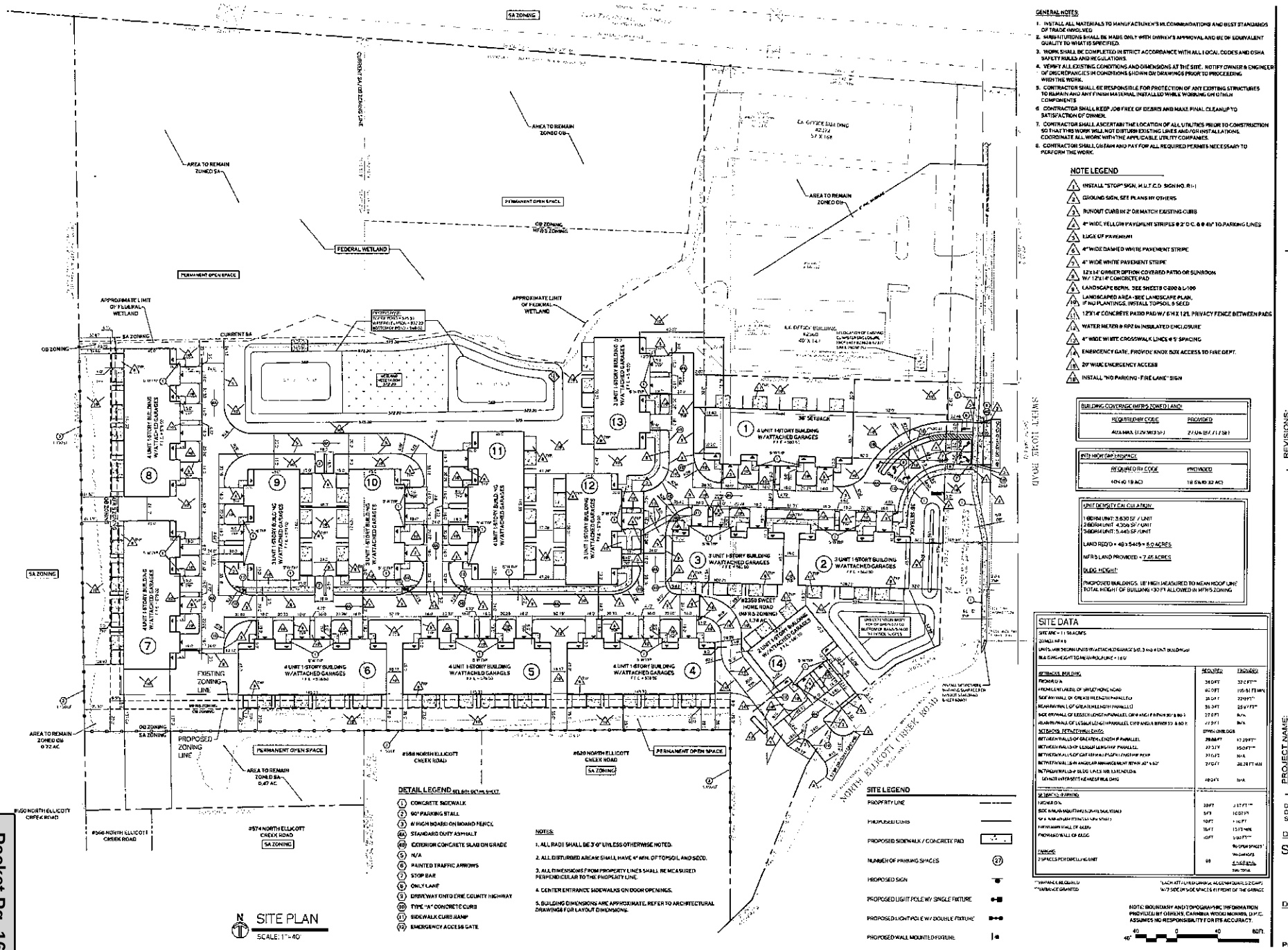
10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project: **Not applicable. The Project Sponsor is not proposing any modifications to approved number of upscale townhome units per the Site Plan approved by the Planning Board for the 48-unit project.**

(Please note that average flows of 2,500 gpd or greater will require an Engineer's Report that includes a detailed downstream sewer capacity analysis and the identification of and commitment to required I/I offset work during peak wastewater flow conditions.)

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Exhibit 6 – Reduced-Size Copy of Site Plan [Drawing C-100] as Prepared by Carmina Wood Morris DPC [Note: Full-size copy also attached

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of



SITE PLAN
SCALE: 1" = 40'

DETAIL LEGEND SEE SITE DETAIL SHEET

1. CONCRETE SIDEWALK
2. 90° PARKING STALL
3. 6' HIGH BOARD ON BOARD FENCE
4A. STANDARD DUTY ASPHALT
4B. EXTERIOR CONCRETE SLAB ON GRADE
5. N/A
6. PAINTED TRAFFIC ARROWS
7. STOP BAR
8. ONLY LANE
9. DRIVEWAY ONTO ERIE COUNTY HIGHWAY
10. TYPE "A" CONCRETE CURB
11. SIDEWALK CURB RAMP
12. EMERGENCY ACCESS GATE

NOTES:
1. ALL RADII SHALL BE 3'-0" UNLESS OTHERWISE NOTED.
2. ALL DISTURBED AREAS SHALL HAVE 4" MIN. OF TOPSOIL AND SEED.
3. ALL DIMENSIONS FROM PROPERTY LINES SHALL BE MEASURED PERPENDICULAR TO THE PROPERTY LINE.
4. CENTER ENTRANCE SIDEWALKS ON DOOR OPENINGS.
5. BUILDING DIMENSIONS ARE APPROXIMATE. REFER TO ARCHITECTURAL DRAWINGS FOR LAYOUT DIMENSIONS.

SITE LEGEND

- PROPERTY LINE
- PROPOSED CURBS
- PROPOSED SIDEWALK / CONCRETE PAD
- NUMBER OF PARKING SPACES (27)
- PROPOSED SIGN
- PROPOSED LIGHT POLE W/ SINGLE FIXTURE
- PROPOSED LIGHT POLE W/ DOUBLE FIXTURE
- PROPOSED WALL MOUNTED FIXTURE

GENERAL NOTES:
1. INSTALL ALL MATERIALS TO MANUFACTURER'S RECOMMENDATIONS AND BEST STANDARDS OF TRADE INVOLVED.
2. SUBSTITUTIONS SHALL BE MADE ONLY WITH OWNER'S APPROVAL AND BE OF EQUIVALENT QUALITY TO WHAT IS SPECIFIED.
3. WORK SHALL BE COMPLETED IN STRICT ACCORDANCE WITH ALL LOCAL CODES AND OSHA SAFETY RULES AND REGULATIONS.
4. VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS AT THE SITE. NOTIFY OWNER & ENGINEER OF DISCREPANCIES IN CONDITIONS SHOWN ON DRAWINGS PRIOR TO PROCEEDING WITH THE WORK.
5. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTION OF ANY EXISTING STRUCTURES TO REMAIN AND ANY FINISH MATERIAL INSTALLED WHILE WORKING ON OTHER COMPONENTS.
6. CONTRACTOR SHALL KEEP JOB FREE OF DEBRIS AND MAKE FINAL CLEANUP TO SATISFACTION OF OWNER.
7. CONTRACTOR SHALL ASCERTAIN THE LOCATION OF ALL UTILITIES PRIOR TO CONSTRUCTION SO THAT THIS WORK WILL NOT DISTURB EXISTING LINES AND/OR INSTALLATIONS. COORDINATE ALL WORK WITH THE APPLICABLE UTILITY COMPANIES.
8. CONTRACTOR SHALL OBTAIN AND PAY FOR ALL REQUIRED PERMITS NECESSARY TO PERFORM THE WORK.

NOTE LEGEND

1. INSTALL "STOP" SIGN, M.U.T.C.D. SIGN NO. R1-1
2. GROUND SIGN, SEE PLANS BY OTHERS
3. RUNOUT CURB IN 2' OR MATCH EXISTING CURB
4. 4" WIDE YELLOW PAVEMENT STRIPES @ 2' O.C. @ 45° TO PARKING LINES
5. EDGE OF PAVEMENT
6. 4" WIDE DASHED WHITE PAVEMENT STRIPE
7. 4" WIDE WHITE PAVEMENT STRIPE
8. 12'x14' OWNER OPTION COVERED PATIO OR SUNROOM W/ 12'x14' CONCRETE PAD
9. LANDSCAPE BERM, SEE SHEETS C-200 & L-100
10. LANDSCAPED AREA - SEE LANDSCAPE PLAN, IF NO PLANTINGS, INSTALL TOPSOIL & SEED
11. 12'x14' CONCRETE PATIO PAD W/ 6'HX 12'L PRIVACY FENCE BETWEEN PADS
12. WATER METER & RPZ IN INSULATED ENCLOSURE
13. 4" WIDE WHITE CROSSWALK LINES @ 5' SPACING
14. EMERGENCY GATE. PROVIDE KNOX BOX ACCESS TO FIRE DEPT.
15. 20' WIDE EMERGENCY ACCESS
16. INSTALL "NO PARKING - FIRE LANE" SIGN

BUILDING COVERAGE (MFRS ZONED LAND)

REQUIRED BY CODE	PROVIDED
40% MAX. (1.20 MEET)	27.0% (17.7 SF)

OPEN SPACE

REQUIRED BY CODE	PROVIDED
10% (0.19 AC)	18.5% (0.32 AC)

UNIT DENSITY CALCULATION

1 BDRM UNIT: 3,630 SF / UNIT
2 BDRM UNIT: 4,004 SF / UNIT
3 BDRM UNIT: 5,445 SF/UNIT

LAND REQ'D = 48 x 5445 = 5.0 ACRES

MFRS LAND PROVIDED = 7.45 ACRES

BLDG HEIGHT

PROPOSED BUILDINGS: 18' HIGH (MEASURED TO MEAN ROOF LINE)
TOTAL HEIGHT OF BUILDING 130 FT ALLOWED IN MFRS ZONING

SITE DATA

SITE AREA = 11.98 ACRES

ZONING: MFRS

UNITS: 48 SINGLES UNITS W/ ATTACHED GARAGES (#2, 3 AND 4 UNIT BUILDINGS)

BUILDING HEIGHT TO MEAN ROOF LINE = 18'-0"

	REQUIRED	PROVIDED
SETBACKS, BUILDING		
FROM RD. R/W	30.0 FT	32.0 FT**
FROM CENTERLINE OF STREET (HOME ROAD)	80.0 FT	105.61 FT MIN.
SIDE WALL OF GREATEST LENGTH PARALLEL	20.0 FT	22.9 FT**
REAR WALL (OF GREATEST LENGTH PARALLEL)	30.3 FT	28.9 FT**
SIDE WALL OF LESSER LENGTH PARALLEL OR @ ANGLE FROM 30° TO 90°	27.0 FT	N/A
REAR WALL OF LESSER LENGTH PARALLEL OR @ ANGLE BTWN 30° & 90°	17.0 FT	N/A
SETBACKS, DETACHED BLDGS.	20 MIN. BLDGS	
BETWEEN WALLS OF GREATEST LENGTH IF PARALLEL	29.8 FT	47.29 FT**
BETWEEN WALLS OF LESSER LENGTH IF PARALLEL	27.0 FT	45.0 FT**
BETWEEN WALLS OF GREATER AND LESSER LENGTH IF PERP.	27.0 FT	N/A
BETWEEN WALLS IN ANGULAR ARRANGEMENT WITH 30° TO 90°	27.0 FT	28.28 FT MIN
BETWEEN WALLS OF BLDG LINES NOT EXTENDED IN GENERAL PERPENDICULAR ARRANGEMENT	40.0 FT	N/A
SETBACKS, PARKING		
FROM RD R/W	30 FT	31.17 FT**
SIDE & REAR (ABUTTING NON-RESIDENTIAL)	5 FT	10.0 FT
SIDE & REAR (ABUTTING RESIDENTIAL)	10 FT	11.0 FT
FROM MAIN WALL OF BLDG	15 FT	15.13 FT
FROM SIDE WALL OF BLDG	10 FT	9.83 FT**
PARKING		90 SPACES*
2 SPACES PER DWELLING UNIT	96	W/ GARAGES
		6 + 1 ADA = 7
		TOTAL

**VARIANCE REQUIRED
***VARIANCE GRANTED

*EACH ATTACHED GARAGE ACCOMMODATES 2 CARS W/ 2 SIDE DRIVE SPACES IN FRONT OF THE GARAGE

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OWNER. CARMINA WOOD MORRIS, D.P.C. ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.

40' 0 40 80'

Carmina Wood Morris DPC
447 Main Street Suite 600
Buffalo, New York 14203
P 716 842 3100
F 716 842 3263

REVISIONS:
No: Description Date

PROJECT NAME:
Civil Plans For
Villas at Essex Woods
2350 Sweet Home Road
Amherst, New York

Date: 12/16/2022
Drawn by: JPB
Scale: As Noted

DRAWING NAME:
Site Plan

DRAWING NO.
C-10
Project no.: 17.117

© Carmina Wood Morris DPC

Exhibit 7 – Responses to Question No. 16 of the Application

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

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EXHIBIT 7

RESPONSES TO QUESTION 16 OF REZONING APPLICATION FOR PORTION OF 2350 SWEET HOME ROAD FROM OB TO MFR-5

Question 16(A)(1): **State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps and/or figures in the plan that support the proposed zoning at this location.**

Response to Question 16(A)(1): The Project Sponsor is seeking to amend the zoning classification of a small portion of 2350 Sweet Home Road consisting of only 0.17 acres from OB to MFR-5 to allow first floor sunrooms to be constructed on the rear side of the attached townhome buildings on the southern and western boundaries of the Project Site as depicted on the Site Plan [Drawing C-100 – Date: 12/16/22] prepared by Carmina Wood Morris DPC. A reduced-size copy of the Site Plan is provided at **Exhibit "6"** and a full-size copy is also attached to this Application. The Project Sponsor is simultaneously seeking to modify a Declaration of Restrictions Containing Zoning Conditions Imposed in Connection with a Rezoning Decision. A copy of the Declaration of Restrictions recorded at the Erie County Clerk's Office on February 21, 2019 is provided **at Exhibit "3"** and a draft of the Amended Declaration of Restrictions is provided at **Exhibit "8"**.

The requested rezoning of a small portion of the Project Site from OB to MFR-5 to accommodate the proposed minor modifications to the project layout as depicted on the Site Plan approved by the Planning Board for the residential project at 2350 Sweet Home Road (the "***Project Site***") is consistent with the adopted Bicentennial Comprehensive Plan. The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the

Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[1] In December of 2020, the Town Board most recently adopted amendments to the Bicentennial Comprehensive Plan. The Comprehensive Plan is intended to guide future growth and redevelopment in the Town.

Figure 6 of the Bicentennial Comprehensive Plan is the Conceptual Land Use Plan and the areas in the vicinity of the Project Site is designated as being appropriate for Mixed Residential uses. The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development in the Town of Amherst. "Mixed Residential" is described on Page 3-30 of the Comprehensive Plan as 4 to 12 units per acre. The Comprehensive Plan indicates that typical locations for the Mixed Residential category include "Areas of transition between commercial uses and lower density single-family neighborhoods, as well as along collector or arterial highways or other areas that are generally unattractive for large lot, single-family development. Other areas of the Town designated for concentrations of Mixed Residential use include underutilized areas near designated activity centers and commercial areas. Examples include areas adjacent to mixed-use centers at UB, near the I-290/I-990 interchange..." It is also important to mention that the Comprehensive Plan recognizes the need for diverse housing options including housing multifamily units.

---

[1] A copy of the resolution adopted by the Town Board on January 2, 2007 for the purpose of adopting the Bicentennial Comprehensive Plan pursuant to Town Law Section 272-a is included at the beginning of the Comprehensive Plan. This resolution recites the lengthy planning history that incorporated numerous opportunities for public input as well as a coordinated environmental review pursuant to SEQRA that involved the preparation a Generic EIS and the issuance of a Findings Statement.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

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Question 16(A)(2): Cite all text, map, and/or figures that must be amended to support the proposed zoning at this location and provide detailed suggested amendments.

Response to Question 16(A)(2): The requested rezoning of a small portion of the Project Site from OB to MFR-5 does not require an amendment to the Bicentennial Comprehensive Plan.

Question 16(A)(3): State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

Response to Question 16(A)(3): Section 1-2-1 of the Zoning Code is titled "Purpose" and it states as follows:

> *"The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of the town and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space, public facilities, business, services, industry or other purposes; by regulating and restricting the bulk, height, design, building coverage and location of structures; by regulating and limiting population density; and for the aforesaid purposes, to divide the land within the limits of the town into districts of such number and dimensions generally consistent with the policies of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Ordinance."*

The requested rezoning of a small portion of the Project Site from OB to MFR-5 and the requested modification of the Declaration of Restrictions to accommodate the minor modifications to the approved project layout are consistent with the "Purpose" of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen objectives that are discussed below as follows:

A. To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development;

Response: The residential project is consistent with the objective of protecting the character and value of existing land uses. The proposed rezoning of a small portion of the

Project Site from OB to MFR-5 and the request to modify the Declaration of Restrictions in order to accommodate minor modifications to the approved project layout represents orderly and beneficial development.

B. To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas;

Response: The proposed minor modification to the layout of the residential project are not inconsistent with this objective.

C. To prevent overcrowding of land;

Response: The Project Sponsor is not proposing any increase to the density of the approved residential project.

D. To prevent excessive concentration of population and to prevent spare and uncoordinated development;

Response: The Project Sponsor is not proposing any increase to the density of the approved residential project and the minor modifications to the approved project layout represents coordinated development. The minor modifications to the previously approved project layout will require an amendment of the Site Plan previously approved by the Planning Board.

E. To regulate and control the location and spacing of buildings on the lot and in relation to the surrounding property generally consistent with the policies of the Comprehensive Plan.

Response: The requested rezoning of a small portion of the Project Site from OB to MFR-5 and the requested modification of the Declaration of Restrictions to accommodate the minor modifications to the approved project layout are consistent with the policies of the Comprehensive Plan.

F. To protect persons and property from damage and injury due to fire or flood;

Response: The minor modifications to the approved project layout will not increase the likelihood of damage and injury due to fire and flood. The residential buildings will

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continue to be constructed in accordance with building permits issued by the Town of Amherst Building Department.

G. To preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only.

Response: There are not significant natural features located on the previously disturbed portion of the Project Site currently being developed.

H. To assure that structure and land use arrangements are aesthetically harmonious with nearby areas and structures.

Response: The development of the Project Site in a manner generally consistent with the updated Site Plan [Drawing C-100] prepared by Carmina Wood Design will be aesthetically harmonious with nearby areas and structures.

I. To regulate the location of buildings and intensity of uses in relation to streets according to plans so as to cause the least interference with and be damaged least by traffic movements and hence result in lessened street congestion and improved public safety.

Response: The minor modifications to the approved project layout do not involve changes to the access from the Project Site from public roadways.

J. To establish zoning patterns that insure economical extensions for sewers, water supply waste disposal and other public utilities, as well as development of recreation, schools and other public facilities;

Response: The Project Site has access to sanitary sewer and water lines as well as necessary public utilities to service the project.

K. To guide the future development of the town so as to being the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan.

Response: The minor modifications to the approved project layout are consistent with this objective since the residential project that is currently under construction is consistent with the policies contained in the Comprehensive Plan.

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L. To accomplish the specific intents and goals set forth in the introduction to the respective sections.

Response: The minor modifications to the approved project layout are consistent with this objective.

M. To protect the community from visual pollution resulting from the unregulated use of signs and other advertising devices.

Response: The minor modifications to the approved project layout are not inconsistent with this objective.

Question 16(C): Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

Response to Question 16(C): The Project Sponsor is seeking to amend the zoning classification of a small portion of the Project Site from OB to MFR-5, which is the zoning classification of the portion of the Project Site currently being developed as a residential project pursuant to the Site Plan approved by the Planning Board.

Question 16(D): Suitability of the subject property for uses permitted by the current versus the proposed district:

Response to Question 16(D): The small portion of the Project Site the Project Sponsor seeks to rezone from OB to MFR-5 is more suitable for uses permitted by the proposed MFR-5 zoning classification than the existing OB zoning classification.

Question 16(E): Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

Response to Question 16(D): The project has and will continue to improve the balance of uses and to satisfy a specific demand for upscale attached townhome style units for sale in the Town.

Exhibit 8 – Draft of Amended Declaration of Restrictions

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Return Original to Box 460
Hopkins Sorgi & McCarthy PLLC
Attn: Sean W. Hopkins, Esq.

AMENDED DECLARATION OF RESTRICTIONS

THIS AMENDED DECLARATION OF RESTRICTIONS ("***Declaration***") is made as of the ___ day of _____, 2023 by **ESSEX HOMES OF WNY, INC.** (hereinafter "***Declarant***") under facts and circumstances summarized by the following recitals:

WHEREAS, the Declarant is the owner of real property consisting of 2350 Sweet Home Road (hereinafter "***2350 Sweet Home Road***" or the "***Project Site***") as more particularly described in the metes and bounds legal description of 2350 Sweet Home Road attached hereto as **Schedule "A"**;

WHEREAS, in December of 2016, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst ("***Town Board***") amend the zoning classification of approximately 7.14 acres of a portion of 2360 Sweet Home Road from Office Building District ("***OB***") to Multifamily Residential District Five ("***MFR-5***");

WHEREAS, in September of 2017, RAS Development I LLC submitted an application with the Town of Amherst requesting that the Town Board of the Town of Amherst ("***Town Board***") amend the zoning classification of 2350 Sweet Home Road from General Business District ("***GB***") to Multifamily Residential District Five ("***MFR-5***");

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-241 for the purpose of approving an amendment of the zoning classification of 2350 Sweet Home Road from GB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-241;

WHEREAS, during its meeting held on March 19, 2018, the Town Board adopted Resolution No. 2018-242 for the purpose of approving an amendment of the zoning classification of a portion of 2360 Sweet Home Road from OB to MFR-5 subject to eighteen (18) conditions as contained in Resolution No. 2018-242;

WHEREAS, the conditions contained in Resolutions 2018-241 and 2018-242 as adopted by the Town Board on March 19, 2018 are identical;

WHEREAS, pursuant to Condition No. 18 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 are to be subject to a Declaration of Restrictions recorded at the Erie County Clerk's Office;

WHEREAS, Conditions No. 1 to 14 as contained in Resolutions 2018-241 and 2018-242, Conditions No. 1 to 14 as imposed by the Town Board on March 19, 2018 were as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 shall not be

developed as any buildings or other above ground structures, and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at

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566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel at 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

WHEREAS, a metes and bounds legal description of the 5.2 acres of Permanent Open Space referenced above in Condition No. 1, as contained in Resolutions 2018-241 and 2018-242 adopted by the Town Board on March 19, 2018, consisting of a portion of 2360 Sweet Home Road, is attached as **Schedule "B"** (hereinafter "***Permanent Open Space***");

WHEREAS, in July of 2018, RAS Development I LLC filed an Application for relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 for the purpose of seeking to allow a gated emergency access driveway to be installed connecting 2350 Sweet Home Road and a portion of 2360 Sweet Home to North Ellicott Creek Road;

WHEREAS, during its meeting held on October 1, 2018, the Town Board adopted Resolution No. 2018-1046 for the purpose of approving the requested Relief of Zoning Condition No. 14 as contained in Resolutions 2018-241 and 2018-242 to allow a gated emergency access driveway to be installed connecting to North Ellicott Creek Road subject to six (6) conditions as follows:

1. The gated emergency access connection will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

2. Pursuant to the Town Code, all property owners within 600 ft. of the project site will receive written notice from the Town of any future proposed amendment of any of the zoning conditions.

3. The amended Zoning Condition No. 14 will be incorporated into the Declaration of Restrictions to be recorded at the Erie County Clerk's Office.

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4. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

5. That the gated emergency access driveway to North Ellicott Creek Road be straightened as much as possible.

6. That the final site plan be fully compliant with fire code.

WHEREAS, on February 21, 2019, a Declaration of Restrictions recorded at the Erie County Clerk's Office at Liber 11341 of Deeds at Page 2501 containing the following sixteen (16) restrictions:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and described in the attached Schedule "C" shall not be developed as any buildings or other above ground structures and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the minimum setback of the residential buildings on the project site from the southern boundary and western boundary of the project site shall be 35 feet.

8. That the minimum setback of Building No. 5 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the northern boundary of 574 North Ellicott Creek Road shall be 109 feet.

9. That the minimum setback of Building No. 6 as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 from the southern boundary of the project site shall be 137 feet.

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10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side and the portion of the western side of 2360 Sweet Home Road to be developed for residential purposes. The Landscaping Plan to be prepared by a licensed landscape architect during the site plan review stage for the residential project on 2360 Sweet Home Road shall be prepared based on consideration of input received by the Petitioner from the owners of the parcels directly south of the project site at 566, 574, 598 and 620 North Ellicott Creek Road and the owner of the parcel west of the project site at 550 North Ellicott Creek Road.

12. That the Lighting Plan to be prepared during the site plan review stage for the residential project on the project site shall demonstrate that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel formerly consisting of 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 and a gated emergency access only driveway connection to North Ellicott Creek Road, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

15. The gated emergency access connection to North Ellicott Creek Road will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

16. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

WHEREAS, in January of 2023, the Declarant filed an Application seeking to amend the zoning classification of a portion of 2350 Sweet Home Road consisting of 0.17 acres from Office Building District ("GB") to Multifamily Residential District Five ("MFR-5");

WHEREAS, in January of 2023, the Declarant filed Application for Relief of Zoning Condition imposed by the Town Board on October 18, 2018 as contained in Resolution No. 2018-1046;

WHEREAS, during its meeting held on _____ __, 2023, the Town Board adopted Resolution No. 2023-__ for the purpose of approving an amendment of the zoning classification of a portion of 2350 Sweet Home Road from OB to MFR-5 and Resolution No. 2023-__ for the purpose of approving the requested Relief of Zoning Conditions contained in Resolution No. 2018-1046; subject to sixteen (16) conditions as follows:

NOW, THEREFORE, in exchange for good and valuable consideration the sufficiency of which is acknowledged, the Declarant agrees to restrict the future use of 2350 Sweet Home Road as described in **Schedule "A"** including the Permanent Open Space consisting of a portion of 2360 Sweet Home Road as described in **Schedule "B"**, in accordance with the conditions as set forth in Resolutions No. 2023-___ and 2023-____as adopted by the Town Board on _____ __, 2023 as follows:

1. That the 5.2 acres of Permanent Open Space as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022 shall not be developed as any buildings or other above ground structures, and shall remain permanently undeveloped.

2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.

3. That the maximum allowable density of the residential development on the project site shall be 48 units.

4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear side of second story loft space in Buildings Building Nos. 4, 5, 6, 7 and 8 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022.

5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.

6. That there shall be a maximum of four attached residential units in any residential building on the project site.

7. That the portions of the residential buildings that include second story loft space shall have a minimum setback of 35 feet from the southern boundary and the western boundary of the Project Site. Notwithstanding the minimum setback language in the preceding sentence, a first floor only sunroom shall be permitted on the rear side of the residential buildings along the southern side of the Project Site

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so long as the minimum setback of the first floor sunroom is 22 ft. from the southern boundary of the Project Site and a first floor only sunroom shall be permitted on the rear side of the residential buildings along the western side of the Project Site so long as the minimum setback of the first floor sunroom is 25.97 ft. from the western boundary of the Project Site. Additionally, patios on the rear side of the residential buildings on the southern side of the Project Site shall have a minimum setback of 22 ft. from the southern boundary of the Project Site and patios on the rear side of the residential buildings on the western side of the Project Site shall have a minimum setback of 25.97 ft. from the western boundary of the Project Site.

8. That the minimum setback of Building No. 6 as depicted on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022 from the northern boundary of 574 North Ellicott Creek Road shall be 94 feet.

9. That the minimum setback of Building No. 7 as depicted on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022 from the southern boundary of the project site shall be 137 feet.

10. That a solid high quality vinyl fence with a natural color (not white) with a minimum height of six feet as measured from finished grade shall be installed along portions of the eastern, western and the southern boundary of the project site as depicted on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022.

11. That extensive landscaping as required by the High Impact Screening standard as defined in the Town of Amherst Zoning Code shall be provided along the southern side of the project site and the portion of the western side of the portion of the project site formerly consisting of 2360 Sweet Home Road to be developed for residential purposes in accordance with the Landscape Plan previously approved by the Planning Board.

12. That the lighting to be installed in connection with the residential project shall comply with the Lighting Plan previously approved by the Planning Board demonstrating that the residential project will not result in any lighting spillover onto the parcels contiguous to the project site utilized for residential purposes at 550, 566, 574, 598 and 620 North Ellicott Creek Road. There shall not be any light poles installed on the project site with a height that exceeds 15 feet.

13. That there shall not be an internal driveway located on the Sweet Home Road frontage of the parcel at 2350 Sweet Home Road that connects to the northern side of the parcel formerly consisting of 2360 Sweet Home Road.

14. That with the exception of a driveway that will only service a two-unit building to be located along the North Ellicott Creek Road frontage that is depicted as Building No. 13 on the Site Plan prepared by Carmina Wood Morris DPC dated December 16, 2022 and a gated emergency access only driveway connection to North Ellicott

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Creek Road, there shall not be any driveway or roadway connection from the project site onto North Ellicott Creek Road.

15. The gated emergency access connection to North Ellicott Creek Road will not be accessible by the future residents of the project nor the public and will only be accessible by emergency personnel.

16. That the gated emergency access driveway to North Ellicott Creek Road be paved with a hard surface and not constructed of grass pavers.

The restrictions being established herein pursuant to the conditions contained in Resolutions No. 2023-___1 and 2023-___ as adopted by the Town Board on _____ __, 2023 shall be binding on all parties claiming thereunder and shall run and touch the land except that the recorded restriction can be changed, modified or eliminated by a majority vote of the Town Board.

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SIGNATURE ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the party hereto has the full legal authority to execute this Amended Declaration of Restrictions.

ESSEX HOMES OF WNY, INC.

By: _____
Name: Philip J. Nanula
Title: President

STATE OF NEW YORK)
ss.:
COUNTY OF ERIE)

On this ___ day of _____, 2023, before me, the undersigned, a notary public in and for said state, personally appeared Philip J. Nanula, personally known to me or proved to me on the basis of satisfactory evidence to the be the individual whose name is subscribed to within this instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

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SCHEDULE A

Parcel 1:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot 82, Township 12 and Range 7 of the Holland Land Company's Survey, being more particularly described as follows:

BEGINNING at the intersection of the northerly line of North Ellicott Creek Road with the westerly line of Sweet Home Road; Thence N 01°58'37 E, along the westerly line of Sweet Home Road, a distance of 258.52 feet; Thence 88°01'23" W, a distance of 213.69 feet; Thence S 00°11'13" W, a distance of 535.55 feet to a point in the northerly line of North Ellicott Creek Road; Thence N 45°33'50" E, along the northerly line of North Ellicott Creek Road, a distance of 30.24 feet; Thence N 22°15'39" E, along the northerly line of North Ellicott Creek Road, a distance of 140.40 feet; Thence N 31°42'11" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 67.33 feet; Thence N 51°23'54" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 68.71 feet; Thence N 66°26'31" E, continuing along the northerly line of North Ellicott Creek Road, a distance of 46.40 feet to the point of beginning, containing 1.742 acres.

Parcel 2 [Formerly 2360 Sweet Home Road]:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-13'-02"-E, along a easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to a point;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

THENCE: S-00-12'-50"-E, through said North Forest Properties #5 LLC lands, a distance of 304.96 feet to a point;

THENCE: S-88-25'-26"-E, through said North Forest Properties #5 LLC lands, a distance of 26.18 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 348.18 feet to the POINT OF BEGINNING, containing 10.22 acres more or less.

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SCHEDULE B

METES AND BOUNDS LEGAL DESCRIPTION
PERMANENT OPEN SPACE CONSISTING OF A PORTION OF
2350 SWEET HOME ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York being part of Lot No 82, Township 12 Range 7 of the Holland Land Survey, so-called, bounded and described as follows:

BEGINNING at point on the west line of lands described in a deed recorded in the Erie County Clerk's Office in Liber 6673 of Deeds at page 573, distant 187.00 feet N-00-12'-50"-W from the present north right of way line of North Ellicott Creek Road, at the north corner of lands acquired by the New York State Department of Transportation, S. H. 9409, Map 83, Parcel No. 87, recorded in Liber 9210 of Deeds at page 143;

THENCE: along the bounds of the lands conveyed to North Forest Properties #5 LLC by deed recorded in the Erie County Clerk's Office in Liber 11235 of Deeds at page 6110 the following five (5) courses and distances:

1) S-89°-47'-10"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 360.00 feet to a point;
2) S-00°-12'-50"-E, along an easterly line of said North Forest Properties #5 LLC lands, a distance of 72.97 feet to a point;
3) S-88°-54'-31"-W, along a southerly line of said North Forest Properties #5 LLC lands, a distance of 272.22 feet to the southwest corner thereof;
4) N-01°-05'-29"-W, along the west line of said North Forest Properties #5 LLC lands, a distance of 780.29 feet to the northwest corner thereof;
5) S-85°-40'-18"-E, along the north line of said North Forest Properties #5 LLC lands a distance of 619.92 feet to a point;

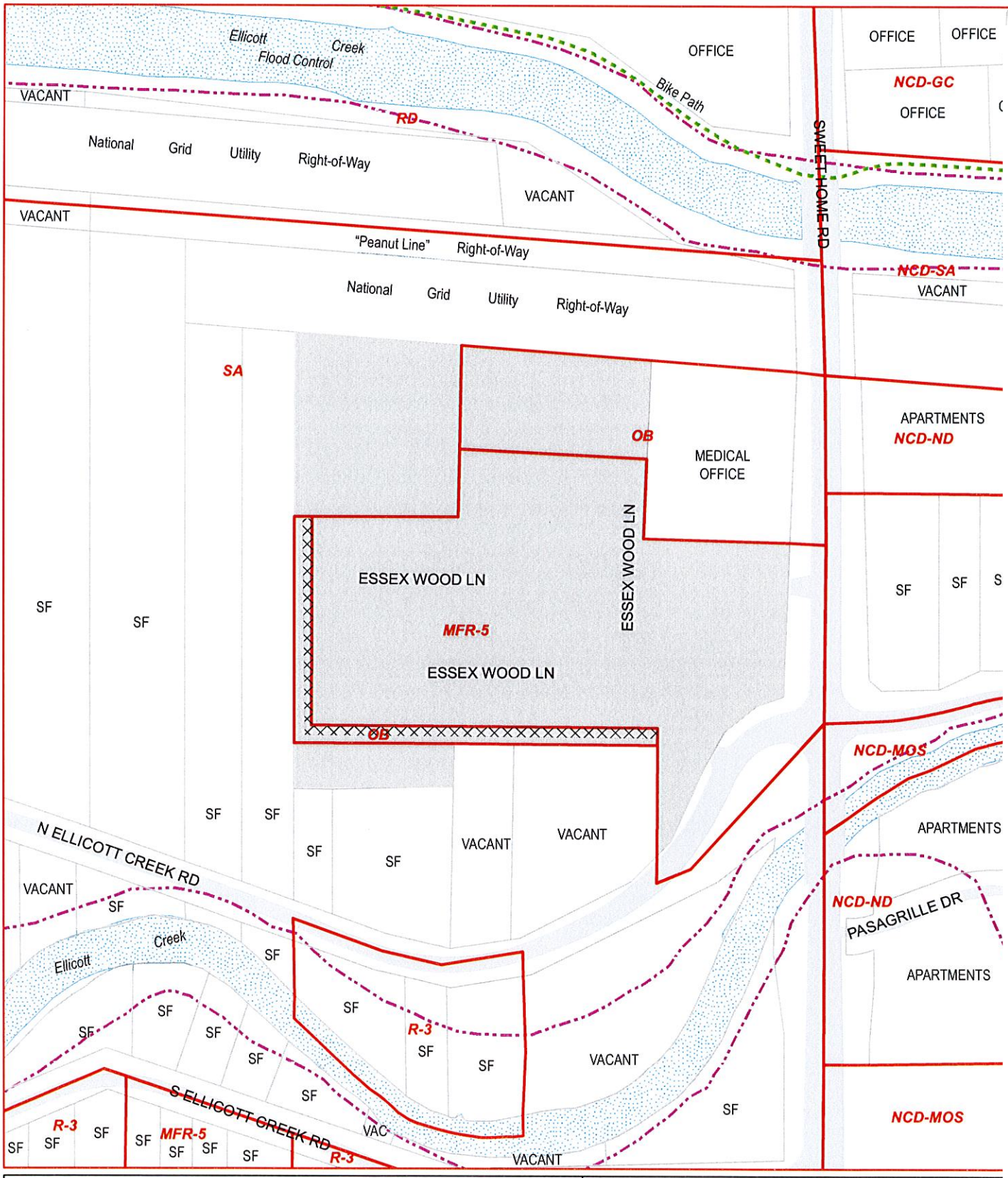
THENCE: Through said North Forest Properties #5 LLC lands, the following fifteen (15) courses and distances:

6) S-00-12'-50"-E a distance of 166.47 feet to a point;
7) N-87-51'-46"-W a distance of 16.24 feet to a point;
8) S-12-26'-56"-W a distance of 27.13 feet to a point;
9) S-58-06'-54"-W a distance of 97.91 feet to a point;
10) S-46-53'-26"-W a distance of 15.19 feet to a point;
11) S-32-16'-28"-W a distance of 17.19 feet to a point;
12) S-25-41'-59"-W a distance of 28.12 feet to a point;
13) N-80-56'-26"-W a distance of 50.68 feet to a point;
14) N-67-33'-18"-W a distance of 62.20 feet to a point;
15) S-82-26'-00"-W a distance of 63.13 feet to a point;
16) N-71-38'-03"-W a distance of 27.07 feet to a point;
17) S-00-12'-50"-E a distance of 5.50 feet to a point;

18) S-88-54'-31"-W a distance of 244.27 feet to a point;
19) S-01-05'-29"-E a distance of 353.63 feet to a point;
20) N-89-47'-10"-E a distance of 598.82 feet to the west line of said lands described in Liber 6673 of Deeds at page 573;

THENCE: S-00-12'-50"-E, along the west line of said Liber 6673 of Deeds at page 573, a distance of 30.00 feet to the POINT OF BEGINNING, containing 5.21 acres more or less.

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of



Z-2023-01

Request to Rezone .77 AC± of Land from OB to MFR-5
Property Located at 2350 Sweet Home Road

Essex Home of WNY, Petitioner

April 20, 2023

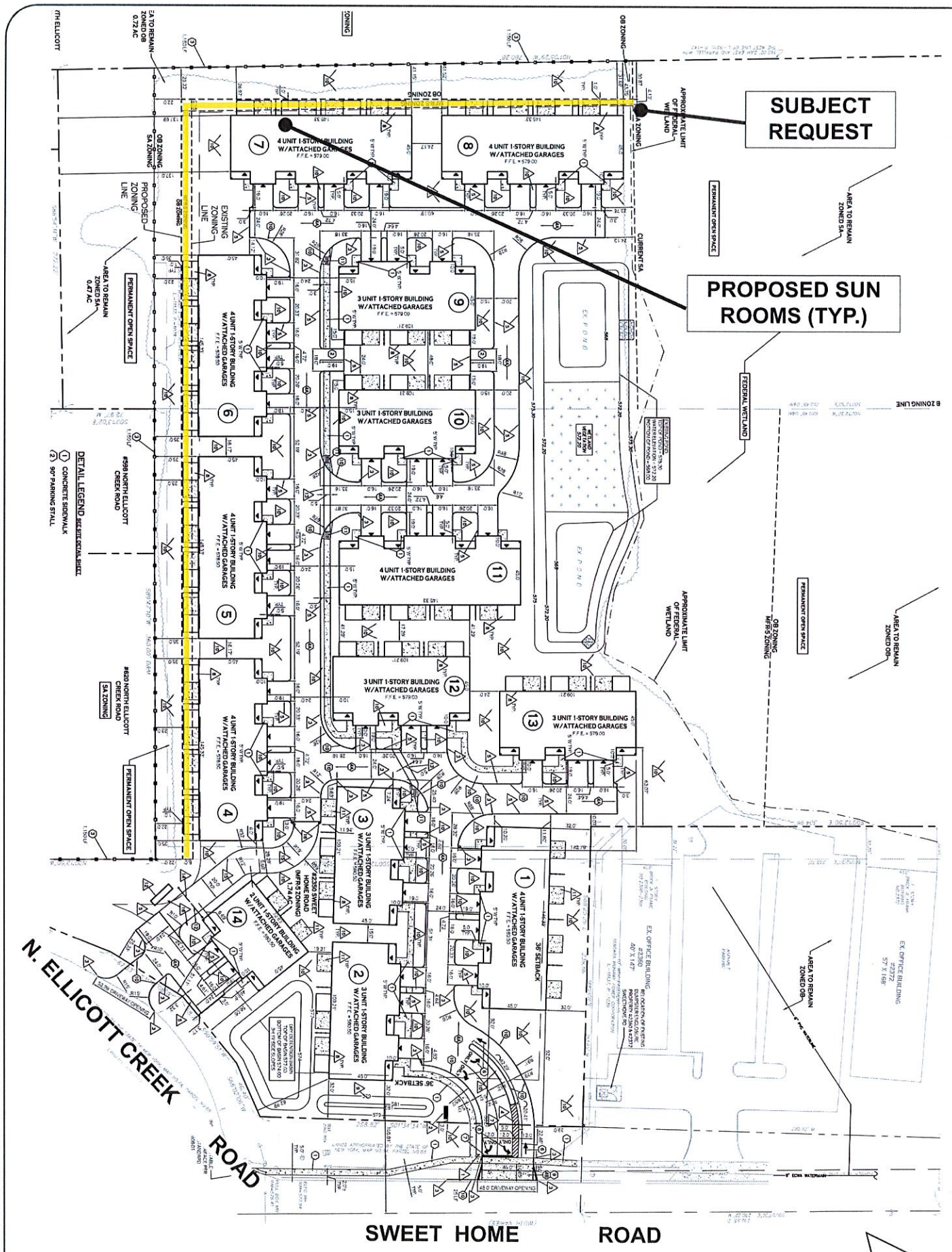
2350 Sweet Home Road

Floodway Boundary

Subject Request

Prepared by the Town of Amherst Planning Departm

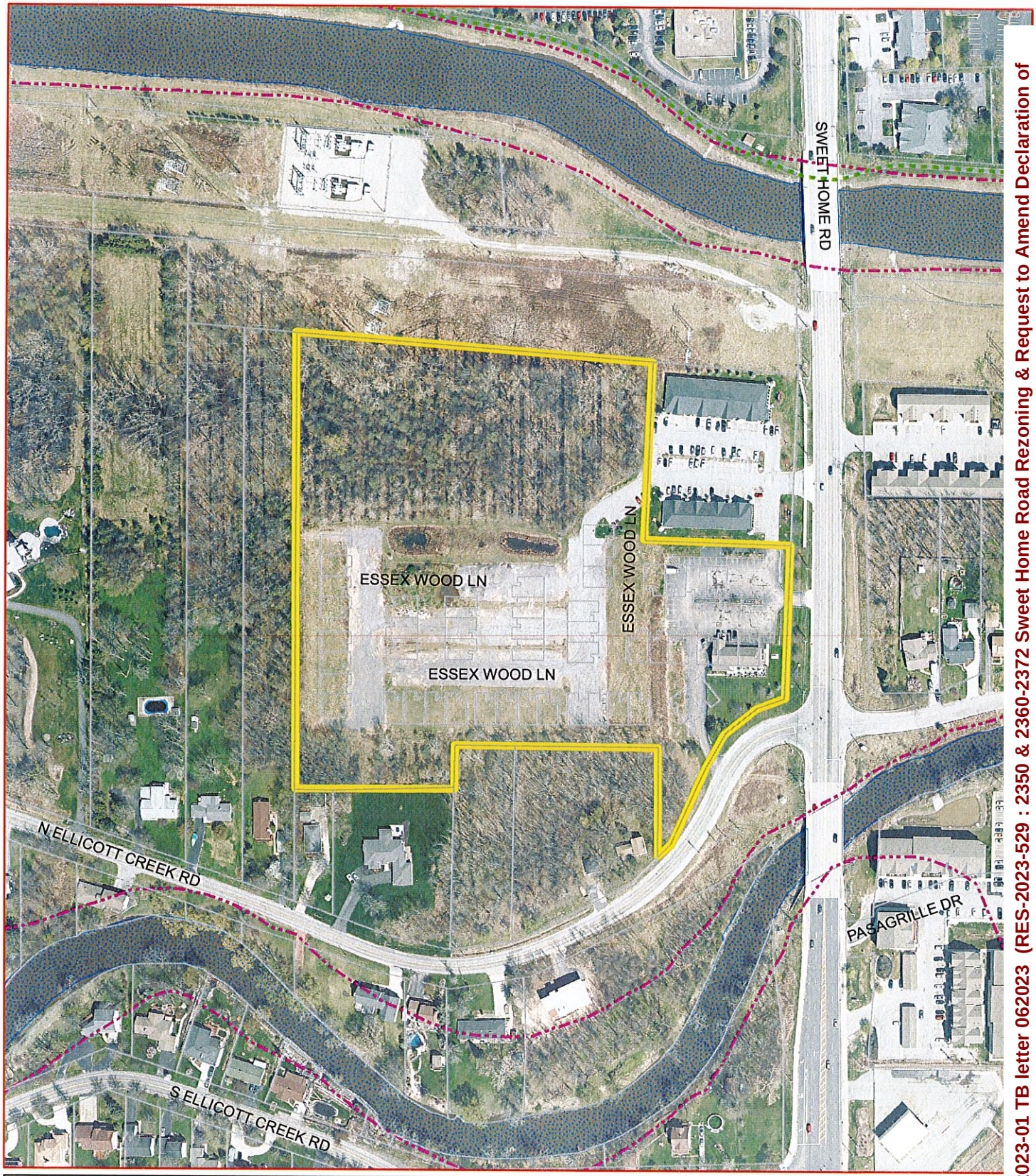
Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of



SITE PLAN

Z-2023-01
2350 Sweet Home Road

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of



Z-2023-01

Request to Rezone .77 AC± of Land from OB to MFR-5
Property Located at 2350 Sweet Home Road

Essex Home of WNY, Petitioner

April 20, 2023

2350 Sweet Home Road

Floodway Boundary

Prepared by the Town of Amherst Planning Departm

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kul
Supervisor
Daniel C. Howar
Planning Dire
Daniel J. Ulatowsk
Assistant Planning

MEMORANDUM

March 24, 2023

TO: Daniel Ulatowski, ~~Principal Planner~~
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberhold, Assistant Town Engineer

FROM: Scott Marshall, Principal Planner

SUBJECTS: REQUEST TO REZONE 0.17± ACRES OF LAND FROM **OB** TO **MFR-5, Z-2023-01**; PROPERT LOCATED AT **2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REQUEST TO AMEND A DECLARATION OF RESTRICTIONS FROM A ZONING DECISION LIMITING A MINIMUM SETBACK (#7) AND THE OPTION TO HAVE WINDOWS ON THE REAR FAÇADE (#4), **Z-2016-16D & Z-2017-11B**; PROPERTY LOCATED AT **2360-2372 & 235 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

TOWN OF AMHERST EAF ADDEDUM & GEOTECHNICAL REPORT:
Received March 23, 2023

REVIEW:

Do you agree with all statements made? NO COMMENT REGARDING PETITIONER'S ST

If you do not, briefly state why: _____

General comments relative to your agency interests: LANDS NOTED TO REMAIN OPENSPACE ALONG THE WEST AND SOUTH SHOULD BE DEED RESTRICTED TO LI ANY FUTURE DEVELOPMENT BEYOND THE PROPOSED SUN ROOM ADDITI

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 4/13/2023
ASST. PLANNING DIR./ZEO

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TOWN OF AMHER
PLANNING DEPT

SM/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01_(2350_Sweet_Home)_2023\Z-2023-01_Z-2016-16D_Z-2017-11B_EAF_Geotech_transmittal_042423.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Amherst

Town of Amherst Planning Department

2018.029

Erie County, New York

TOWN OF AMHERST
PLANNING
DEPARTMENT
2023 MAR 27 A 11:54

Brian J. Kulp
Supervisor
Daniel C. Howard
Planning Direc
Daniel J. Ulatowsk
Assistant Planning

MEMORANDUM

March 24, 2023

TO: Daniel Ulatowski, Principal Planner
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberhold, Assistant Town Engineer

FROM: Scott Marshall, Principal Planner

SUBJECTS: REQUEST TO REZONE 0.17± ACRES OF LAND FROM **OB** TO **MFR-5, Z-2023-01**; PROPERT LOCATED AT **2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

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TOWN OF AMHERST EAF ADDEDUM & GEOTECHNICAL REPORT:
Received March 23, 2023

REVIEW:

RECEIVED
MAR 31 2023
TOWN OF AMHERST
PLANNING DEPT.

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: None

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/30/31

SM/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01_(2350_Sweet_Home)_2023\Z-2023-01_Z-2016-16D_Z-2017-11B_EAF_Geotech_transmittal_042423.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

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Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. K
Supervis
Daniel C. Howa
Planning Di
Daniel J. Ulatow
Assistant Plannir

RECEIVED
MAR 27 2023
TOWN OF AMHERST
BUILDING DEPT

MEMORANDUM March 24, 2023

RECEIVED
MAR 28 2
TOWN OF AMHI
PLANNING DE

TO: Daniel Ulatowski, Principal Planner
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberhold, Assistant Town Engineer

FROM: Scott Marshall, Principal Planner

SUBJECTS: REQUEST TO REZONE 0.17± ACRES OF LAND FROM **OB** TO **MFR-5**, **Z-2023-01**; PROPER LOCATED AT **2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

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TOWN OF AMHERST EAF ADDEDUM & GEOTECHNICAL REPORT:
Received March 23, 2023

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: None at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: Doug Gesel **Date:** 3/27/2023

SM/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01_(2350_Sweet_Home)_2023\Z-2023-01_Z-2016-16D_Z-2017-11B_EAF_Geotech_transmittal_042423.doc
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Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AI(
Planning Director
Daniel J. Ulatowski, AI
Assistant Planning Dire

March 14, 2023

Essex Homes of WNY
c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221

SUBJECT:	Rezoning Application Review	**Z-2023-01**
	Proposed:	Rezoning of 0.17± ac. from OB to MFR-5
	Property located at:	**2350 Sweet Home Road (portion)**
	Application received:	January 25, 2023
	Representative:	Sean Hopkins, Esq.

Dear Mr. Hopkins,

Please consider the following comments:

1. Complete the attached revised Town of Amherst Addendum to the EAF.

2. Note that any other SEQR-related issues raised during the review process for this rezoning must be addressed prior to action by the Planning Board.

3. Provide an 8½ " x 11" reduction of any revised concept plan **and an electronic version** of any revised plans or information submitted for review.

This is a review only and does not constitute approval of the Rezoning Request. Should you have questions regarding this correspondence, please contact Scott A. Marshall, Principal Planner at smarshall@amherst.ny.us.

Very truly yours,

for Daniel C. Howard, AICP
Planning Director

DH/SM/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01_(2350_Sweet_Home)_2023\Z-2023-01_Pln_Dpt_Rvw_03142023.docx
cc: Carmina Wood Design, 487 Main St., Suite 500, Buffalo, NY 14203

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

MEMORANDUM

January 26, 2023

RECEIVED
JAN 27 2023
TOWN ATTORNEY

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/ Eric Blocher, General Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.17± ACRES OF LAND FROM **OB** TO **MFR-5**, **Z-2023-01**; PROPERTY LOCATED AT **2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: –

General comments relative to your agency interests: –

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) –

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 2/3/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01\Z-2023-01_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
JAN 27 2023
TOWN OF AMHERST
BUILDING DEPT

Brian J. Kulp
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

MEMORANDUM

January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
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FEB 08 2
TOWN OF AMH
PLANNING D

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SUBJECT: REQUEST TO REZONE 0.17± ACRES OF LAND FROM **OB** TO **MFR-5, Z-2023-01**; PROPERTY LOCATED AT **2350 SWEET HOME ROAD**. ESSEX HOMES OF WNY, PETITIONER.

REVIEW:

Do you agree with all statements made? No objections

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 2/7/23

DU/TV/bf
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Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
JAN 31 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, A
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Daniel J. Ulatowski,
Assistant Planning Di

MEMORANDUM

January 26, 2023

RECEIVED
JAN 27 2023
TOWN ATTORNEY

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
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REVIEW:

Do you agree with all statements made? Agree with all statements m

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 1/30/23

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cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

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Amherst

Town of Amherst Planning Department

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Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

MEMORANDUM

January 26, 2023

RECEIV
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TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
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Integrated Review Coordinator, ECDEP
Joseph Buffamonte, SEQR Review Coordinator, NYSDOT

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REVIEW:

Do you agree with all statements made? YES

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 1/31/23

DU/TV/bf
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cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

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Amherst

Town of Amherst Planning Department *Erie County, New York*

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JAN 30 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

MEMORANDUM

January 26, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Emily Murphy, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/ Eric Blocher, General Crew Chief
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REVIEW:

Do you agree with all statements made? YES

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 1/29/23

C. Schregel

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-01\Z-2023-01_Transmittal_012623.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

TOWN OF AMHERST

ASSESSOR'S OFFICE

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
PHONE: 716-631-7038
FAX 716-631-7144

Emily A. Murphy
Assessor
emurphy@amherst.ny.us

MEMORANDUM

TO: Daniel Ulatowski, AICP, Associate Planning Director
Douglas Gesel, Supervising Code Enforcement Officer
Jeff Burroughs, Town Engineer
Scott Marshall, Principle Planner

FROM: Bonnie B. Arnold, Real Property Appraiser

DATE: January 27, 2023

SUBJECT: Request to Rezone 0.17±Acres of Land from OB to MFR-5,Z-2023-01
Property Location: **2350 Sweet Home Road**
Petitioner: **Essex Homes of WNY**

Site plan Conditionally Approved as submitted.
If rezone is being done for construction of single family homes w/condo status then Assessors office does not agree

cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Carrato, Amy

From: Joan Stone <enots40@gmail.com>
Sent: Tuesday, April 11, 2023 7:33 PM
To: Planning Department email; Marshall, Scott; Palumbo, Gary; Voigt, Thomas J.; Ulatowski, Daniel; Carrato, Amy
Cc: Chris Stone
Subject: 2350 & 2360 Sweet Home Rd

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

To Planning Board Members,
My name is Chris Stone and I reside at 550 North Ellicott Creek Road in Amherst with my wife and daughter. Our property is located along the entire Western side of the Essex Homes development.
We recently received a letter stating that the developer wants to change more the zoning from OB to MFR-5, and to amend a declaration of restrictions which restricts windows on the rear of the buildings on the 2nd floor. There is a Planning Board meeting scheduled on 4/20/23 for comments on the project. Unfortunately due to an unavoidable conflict, we cannot attend this meeting, therefore we are contacting you in writing prior to the meeting.
We will first comment on the zoning change. The developer is looking to get some zoning changed in order to get the foundations of "sunrooms" closer to the property line minimizing the setback to 22'-25' from the original 35'. Our opinion on that is if the rezoning is allowed, there would not be anything to stop them from moving the entire buildings closer to the property lines. Because of the size of these buildings, this would not be desirable for the neighbors. We would like a "NO" vote to this change.
The next change request is allowing windows on the back side of the buildings on the 2nd floor. This was one of the most important declarations that we fought for. Again, because of the size of these buildings, this would be an invasion of privacy. We would like a "NO" vote to this also.
Now to explain a little back story to this project. Back in 2016 through 2018 there were extensive negotiations between the neighbors and the developer regarding the entire project. The developer made many changes in order to satisfy our concerns. The neighbors made many concessions during the negotiating period also. We all came to a decision and on 3/19/2018 the Town Board unanimously adopted the resolutions with the full support of the neighbors. There are 14 declarations filed at the Erie County Clerks Office as a result of our negotiations. As we see the project moving forward, we appreciate what we fought for. We started experiencing severe flooding in our yards so we went to the Town and it was addressed because we have the declaration in place to address the drainage. We then recognized that buildings were being built with windows on the back side of the 2nd story. We again contacted the town and the windows were removed because we have the declaration in place to restrict them. We also see these units are being leased rather than sold, which is against one of the declarations. We are not sure how this is being allowed to happen, so we plan to address this issue with the town next.
In closing we want to state that we are NOT in favor of any changes being brought to the Planning Board at this time.

Thank You for your attention,

Chris and Joan Stone
550 North Ellicott Creek Road
Amherst 14228
email: enots40@gmail.com

Attachment: Z-2023-01 TB letter 062023 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of

Town of Amherst, NY
Office of the Assessor
Emily A. Murphy Assessor

5583 Main Street
Williamsville, New York 14221
Phone: (716) 631-7038
www.amherst.ny.us
emurphy@amherst.ny.us

Memorandum

May 26, 2023

To: Francina Spoth, Town Clerk
Timothy Koller, Deputy Town Clerk
Re: Petition – 2350 Sweet Home Rd

The protest petition for 2350 Sweet Home Rd has been signed by the required property owners as stated in two of Town Law §265 (1) paragraphs (a) (b) or (c). The signatures satisfied tests (b) and (c). The Super Majority calculations are based on three tests:

(a) The owners of twenty percent or more of the area of land included in such proposed change; or
(b) The owners of twenty percent or more of the area of land immediately adjacent to that land included in such proposed change, extending 100 feet therefrom; or
(c) The owners of twenty percent or more of the area of land directly opposite thereto, extending one hundred feet from the street frontage of such opposite land.

Therefore a super majority vote will be required to enact the change in zoning, as it relates to 2350 Sweet Home Rd.

Should you have questions, please feel free to contact me.

Sincerely,

Jeffrey E. Hennard
Senior Real Property Appraiser

cc: Emily A. Murphy
Assessor

Attachment: protest petition (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of Restrictions)

PROTEST PETITION

5/22/23

We the residents in the vicinity of the Essex Woods project located at 2350 Sweet home Rd. in Amherst are protesting a proposal being brought to the Town Board by Essex Homes. We are looking to get the super majority vote rule put into effect. The below residents represent "20 percent or more of the area of land immediately adjacent to the land included in such proposed change, extending one hundred feet therefrom" which is a condition required by Town Law to get a super majority vote. This is also signed by additional concerned residents.

The item being protested is:

1. Request to rezone .77 acres from OB to MFR-5 at 2350 Sweet home Rd. Petitioner is Essex Homes of WNY.

Decision can be sent to Christopher Stone

NAME	ADDRESS	SIGNATURE
Anthony Chumbim	598, 620, 645 North Ellicott Creek Rd	
Lorraine Townsend	598, 620, 645 North Ellicott Creek Rd	
Christopher Stone	550 North Ellicott Crk Rd.	
Joan Stone	550 North Ellicott Crk Rd	
James Bartley	574 N. Ellicott Creek Rd	
Kim Bartley	574 N. Ellicott Creek Rd	
Nicholas Fabbo	566 North Ellicott Creek Rd	

'23 MAY 25 PM12:43

Attachment: protest petition (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of Restrictions)

PROTEST PETITION

5/22/23

We the residents in the vicinity of the Essex Woods project located at 2350 Sweet home Rd. in Amherst are protesting a proposal being brought to the Town Board by Essex Homes. We are looking to get the super majority vote rule put into effect. The below residents represent "20 percent or more of the area of land immediately adjacent to the land included in such proposed change, extending one hundred feet therefrom" which is a condition required by Town Law to get a super majority vote. This is also signed by additional concerned residents.

The item being protested is:

1. Request to rezone .77 acres from OB to MFR-5 at 2350 Sweet home Rd. Petitioner is Essex Homes of WNY.

Decision can be sent to Christopher Stone

NAME	ADDRESS	SIGNATURE
CORI FENSTER	520 N ELLICOTT CREEK RD	

Attachment: protest petition (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend Declaration of Restrictions)

June 19, 2023

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Request to Rezone 0.17± Acres of Land from OB to MFR-5 [Z-2023-01]
Location: 2350 & 2360-2372 Sweet Home Road
Applicant/Project Sponsor: Essex Homes of WNY, Inc.
File No. 10065.10

Dear Supervisor Kulpa:

This letter is being submitted on behalf of Essex Homes of WNY, Inc. ("Project Sponsor") for the purpose of withdrawing the pending request to amend the zoning classification of 0.17 acres of 2350 Sweet Home Road from OB to MFR-5 that was sought to accommodate single-story sunrooms or covered porches on the rear side of the buildings to be located on the southern and western portions of the project site.

The requested rezoning of 0.17 acres of the Project Site from OB to MFR-5 is being withdrawn at this time to provide the Project Sponsor with the opportunity to monitor market conditions and evaluate options as construction of the project continues.

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsmlegal.com with any questions regarding this letter.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

cc: Jacqualine Berger, Councilmember
Deborah Bruch Bucki RN PhD, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember
Francina J. Spoth, Town Clerk
Timothy J. Koller, Deputy Town Clerk
Daniel C. Howard, AICP, Planning Director
Phil Nanula, President, Essex Homes of WNY, Inc. [Via mail]
Kevin Curry, Essex Homes of WNY, Inc. [Via e-mail]
Jon Barniak, Carmina Wood Design [Via e-mail]

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsmlegal.com • www.hsmlegal.com

Attachment: Kulpa-Ltr-Withdrawl of Rezoning-06-20-23 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to Amend

HSM

June 26, 2023

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Request to Amend Declaration of Restrictions
Location: 2350 & 2360-2372 Sweet Home Road
Applicant/Project Sponsor: Essex Homes of WNY, Inc.
File No. 10065.10

Dear Supervisor Kulpa:

This letter is being submitted on behalf of Essex Homes of WNY, Inc. ("Project Sponsor") of confirming that the request that the pending application to modify the Declaration of Restrictions has been modified such that the only substantive modification the Project Sponsor is seeking pertains to Condition No. 4 adopted by the Town Board on October 1, 2018.

Condition No. 4 as adopted by the Town Board on October 1, 2018 stated as follows:

> "The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings."

Consistent with the discussion during the public hearing held by the Town Board on June 20th, the Project Sponsor is seeking approval of a modification to Condition No. 4 to allow windows within the loft space on the rear sides of buildings to be constructed on interior portion of the project site. A copy of the PowerPoint presentation given during the public hearing held by the Town Board is attached as Exhibit "1".

The updated draft of Condition No.4 as presented to the Town Board during the public hearing held on June 20th states as follows:

> "The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear side of second story loft space in Buildings Nos. 1, 2, 4, 5, 6, 7, 8 and 14 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022."

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsmlegal.com with any questions regarding this letter.

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsmlegal.com • www.hsmlegal.com

Attachment: Kulpa-Ltr-App to Amend Dec of Restrictions-06-25-23 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

cc: Jacqualine Berger, Councilmember
Deborah Bruch Bucki RN PhD, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember
Francina J. Spoth, Town Clerk
Timothy J. Koller, Deputy Town Clerk
Daniel C. Howard, AICP, Planning Director
Martin A. Polowy, Esq., Town Attorney
Phil Nanula, President, Essex Homes of WNY, Inc. [Via mail]
Kevin Curry, Essex Homes of WNY, Inc. [Via e-mail]
Jon Barniak, Carmina Wood Design [Via e-mail]
Christopher Wood, P.E., Carmina Wood Design [Via e-mail]

Attachment: Kulpa-Ltr-App to Amend Dec of Restrictions-06-25-23 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to

Exhibit 1 – Copy of PowerPoint Presentation Given During Public Hearing Held by the Town Board on June 20, 2023

Attachment: Kulpa-Ltr-App to Amend Dec of Restrictions-06-25-23 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to

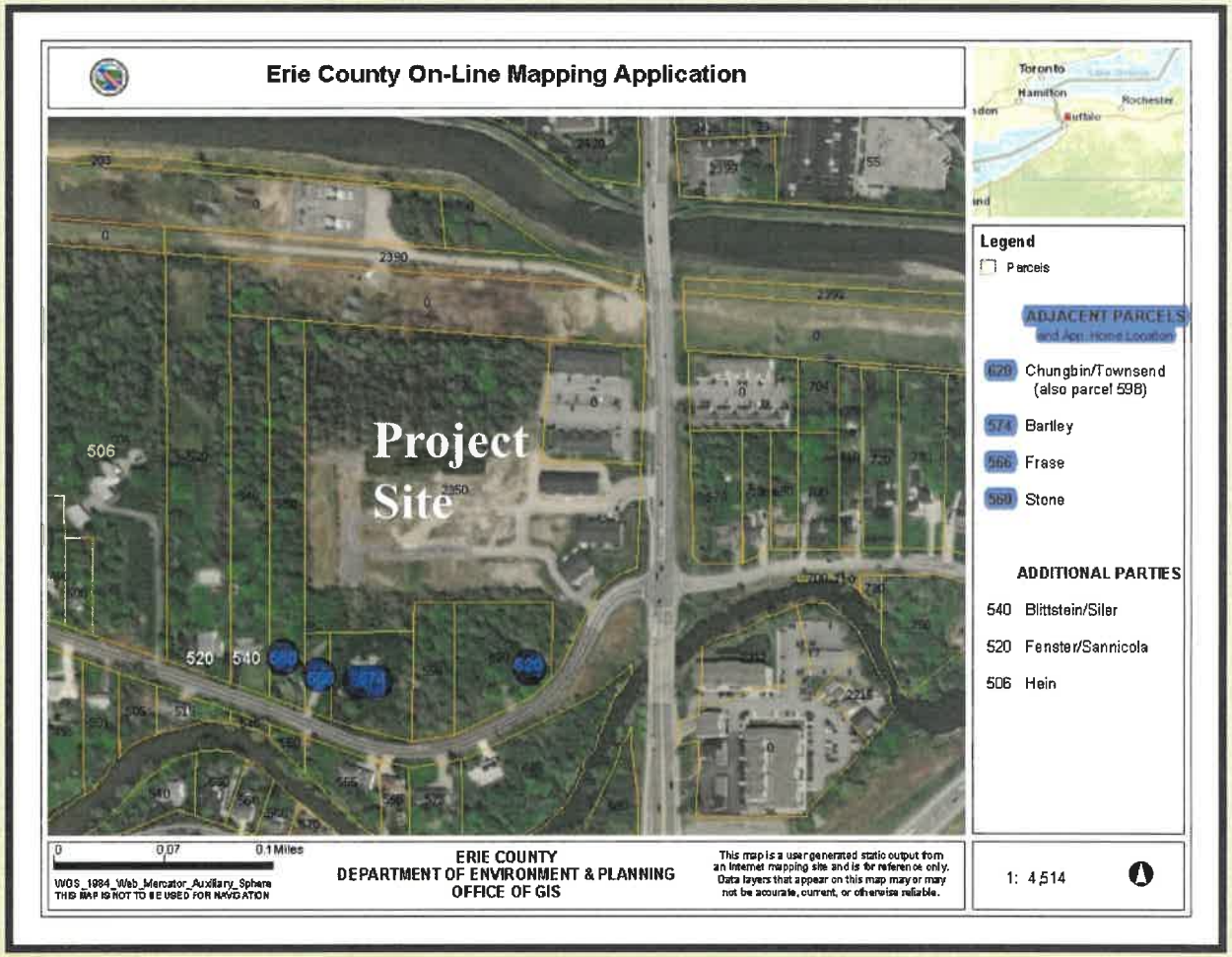
Town Board Public Hearing

Request to Amend Declaration of Restrictions

Address: 2350 & 2360-2372 Sweet Home Road

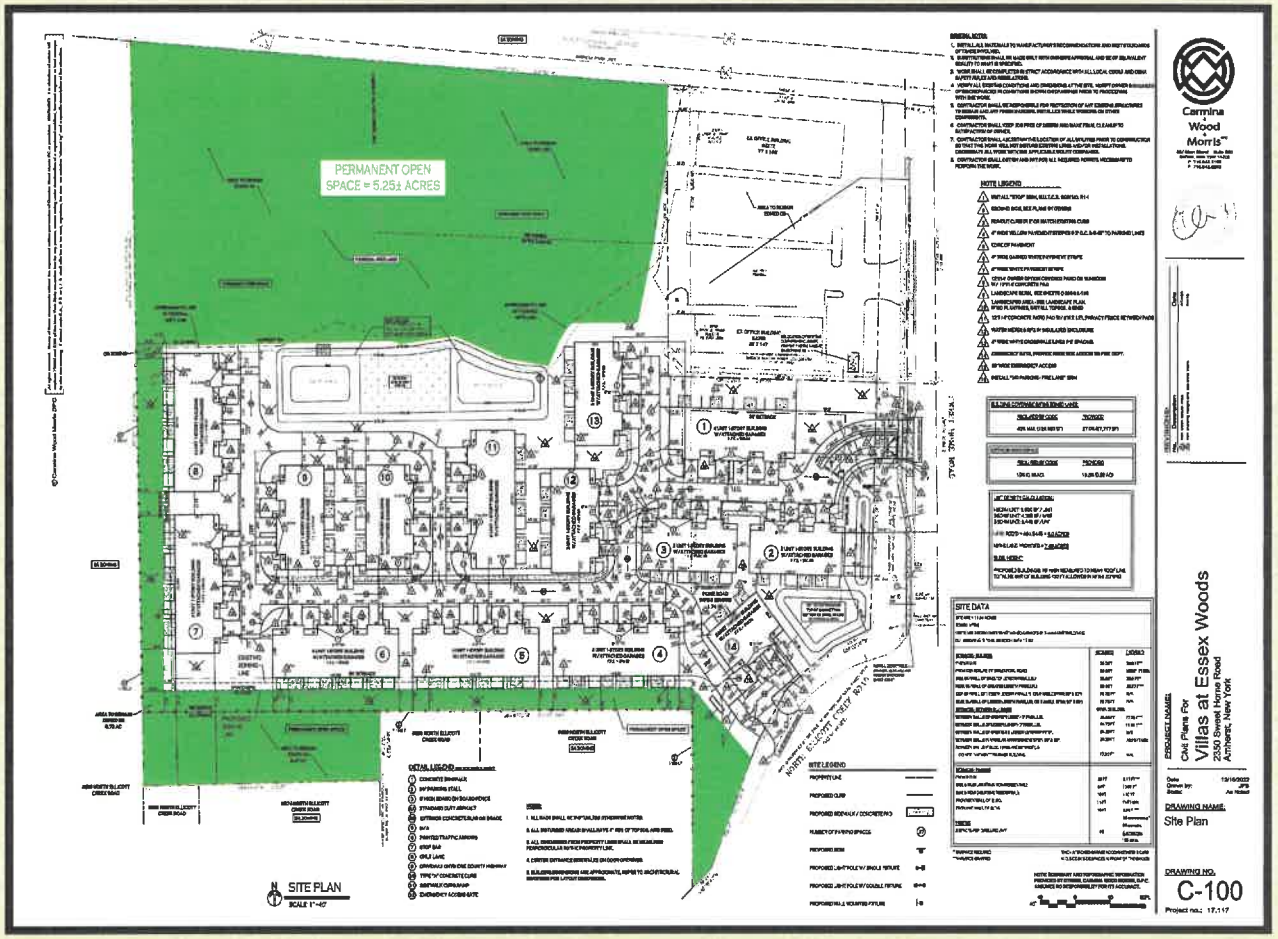
Petitioner: Essex Homes of WNY, Inc.

- **Applicant:** Essex Homes of WNY, Inc.
- **Project Site:** 2350 & 2360-2372 Sweet Home Road
- **Zoning Classification:** MFR-5 & OB
- Parcel at 2350 Sweet Home Road was cleared, filled and improved more than 10 years ago by North Forest Development in connection with the then anticipated future phase of an office building project
- Parcel at 2360 Sweet Home Road that was formerly Average Joes Bar was added to the Project Site by the previous developer during the project review process



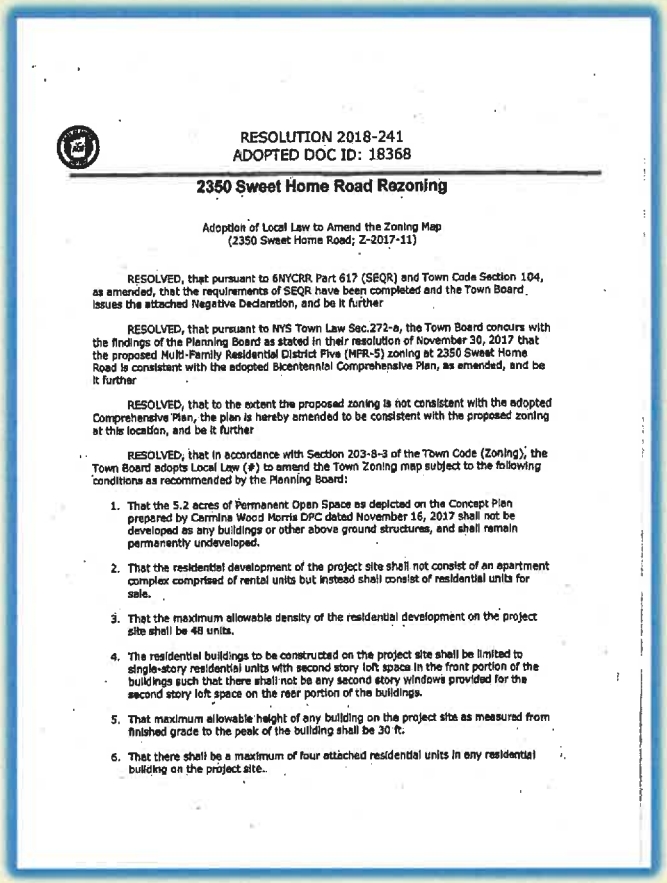
Site Plan - Villas at Essex Woods:

- Approved project purchased by Essex Homes of WNY, Inc. [RAS Development LLC was the original Project Sponsor]
- Project Site consists of 11.96 acres
- Low density residential project consisting of 48 attached upscale residential units for sale
- 14 buildings [2, 3 & 4-unit buildings]
- Density of only 4 units per acres
- Sale price of approximately $500,000 per unit
- 5.25 acres of Permanent Open Space [43.8% of the Project Site]



Rezoning of 2350 Sweet Home Road and Portion of 2360 Sweet Home Road Approved by the Town Board on March 19, 2018:

- Applicant: RAS Development LLC
- Originally proposed project consisted of multistory apartment project
- Portion of 2350 Sweet Home Road that was formerly a future phase of an approved office building project downzoned from OB to MFR-5 by the Town Board on March 19, 2018
- Parcel at 2360 Sweet Home Road that was formerly Average Joes Bar was downzoned from GB to OB by the Town Board on March 19, 2018
- Zoning conditions were imposed by the Town Board in connection with its rezoning decisions



RESOLUTION 2018-241
ADOPTED DOC ID: 18368

2350 Sweet Home Road Rezoning

Adoption of Local Law to Amend the Zoning Map
(2350 Sweet Home Road; Z-2017-11)

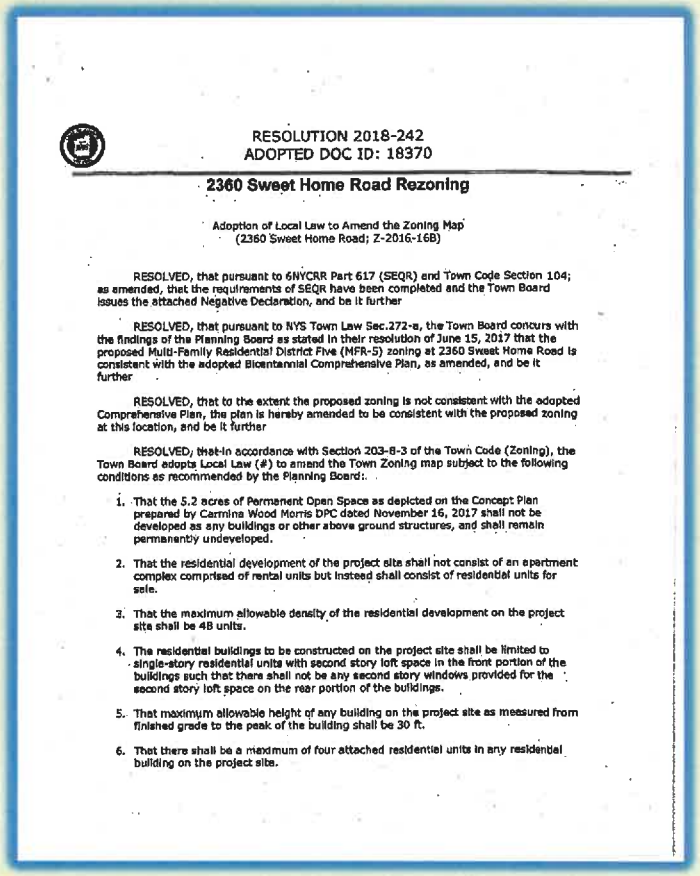
RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of November 30, 2017 that the proposed Multi-Family Residential District Five (MFR-5) zoning at 2350 Sweet Home Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to amend the Town Zoning map subject to the following conditions as recommended by the Planning Board:

1. That the 5.2 acres of Permanent Open Space as depicted on the Concept Plan prepared by Carmina Wood Morris DPC dated November 16, 2017 shall not be developed as any buildings or other above ground structures, and shall remain permanently undeveloped.
2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.
3. That the maximum allowable density of the residential development on the project site shall be 48 units.
4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.
5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.
6. That there shall be a maximum of four attached residential units in any residential building on the project site.



RESOLUTION 2018-242
ADOPTED DOC ID: 18370

2360 Sweet Home Road Rezoning

Adoption of Local Law to Amend the Zoning Map
(2360 Sweet Home Road; Z-2016-16B)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104; as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of June 15, 2017 that the proposed Multi-Family Residential District Five (MFR-5) zoning at 2360 Sweet Home Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

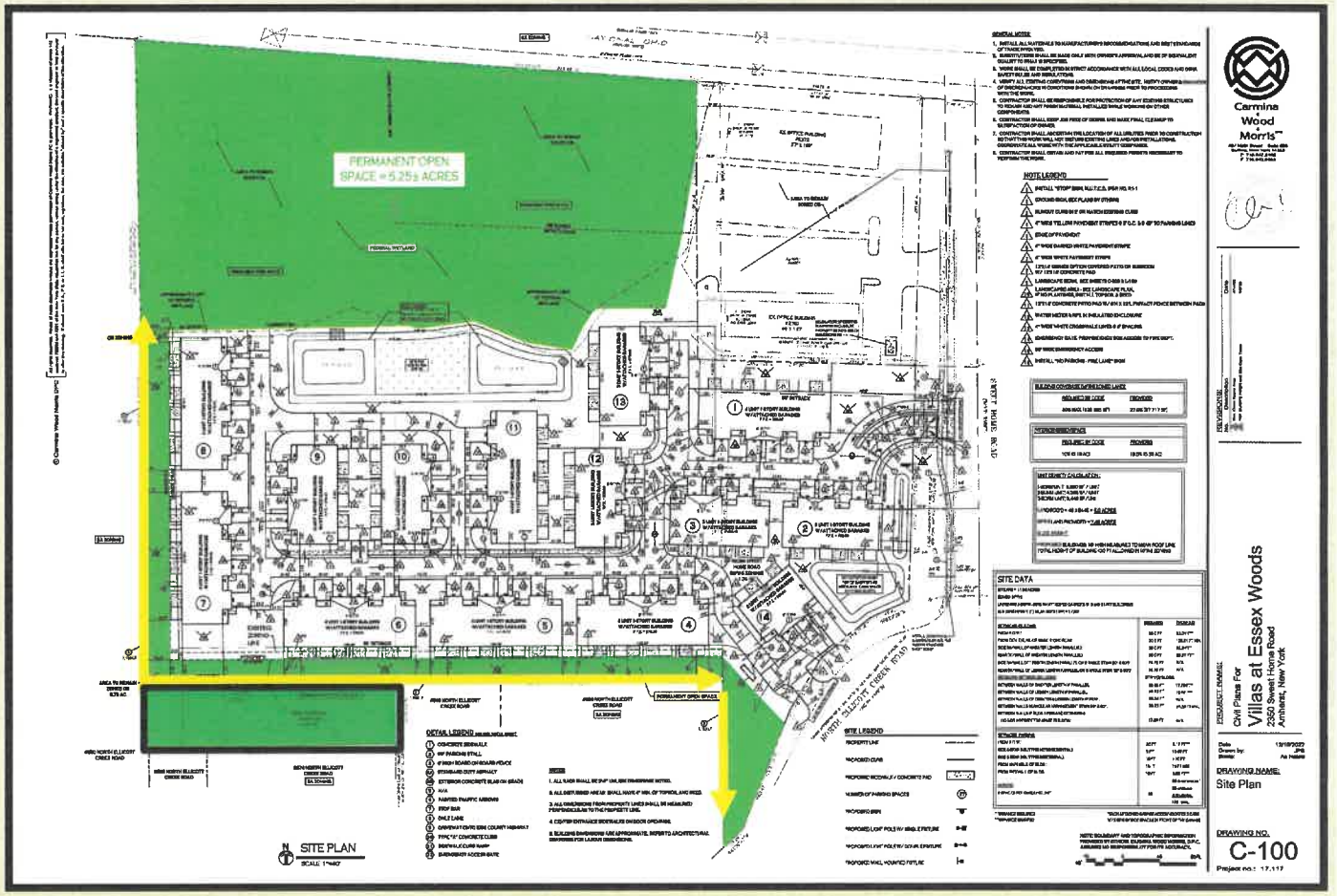
RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to amend the Town Zoning map subject to the following conditions as recommended by the Planning Board:

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2. That the residential development of the project site shall not consist of an apartment complex comprised of rental units but instead shall consist of residential units for sale.
3. That the maximum allowable density of the residential development on the project site shall be 48 units.
4. The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings.
5. That maximum allowable height of any building on the project site as measured from finished grade to the peak of the building shall be 30 ft.
6. That there shall be a maximum of four attached residential units in any residential building on the project site.

Site Plan:

- 6 ft. fence with a length of 1,150 ft. to be installed along southern and western portions of the Project Site
- .47 acres of Permanent Open Space with width of 72 ft. behind parcels at 566 and 574 North Ellicott Creek Road



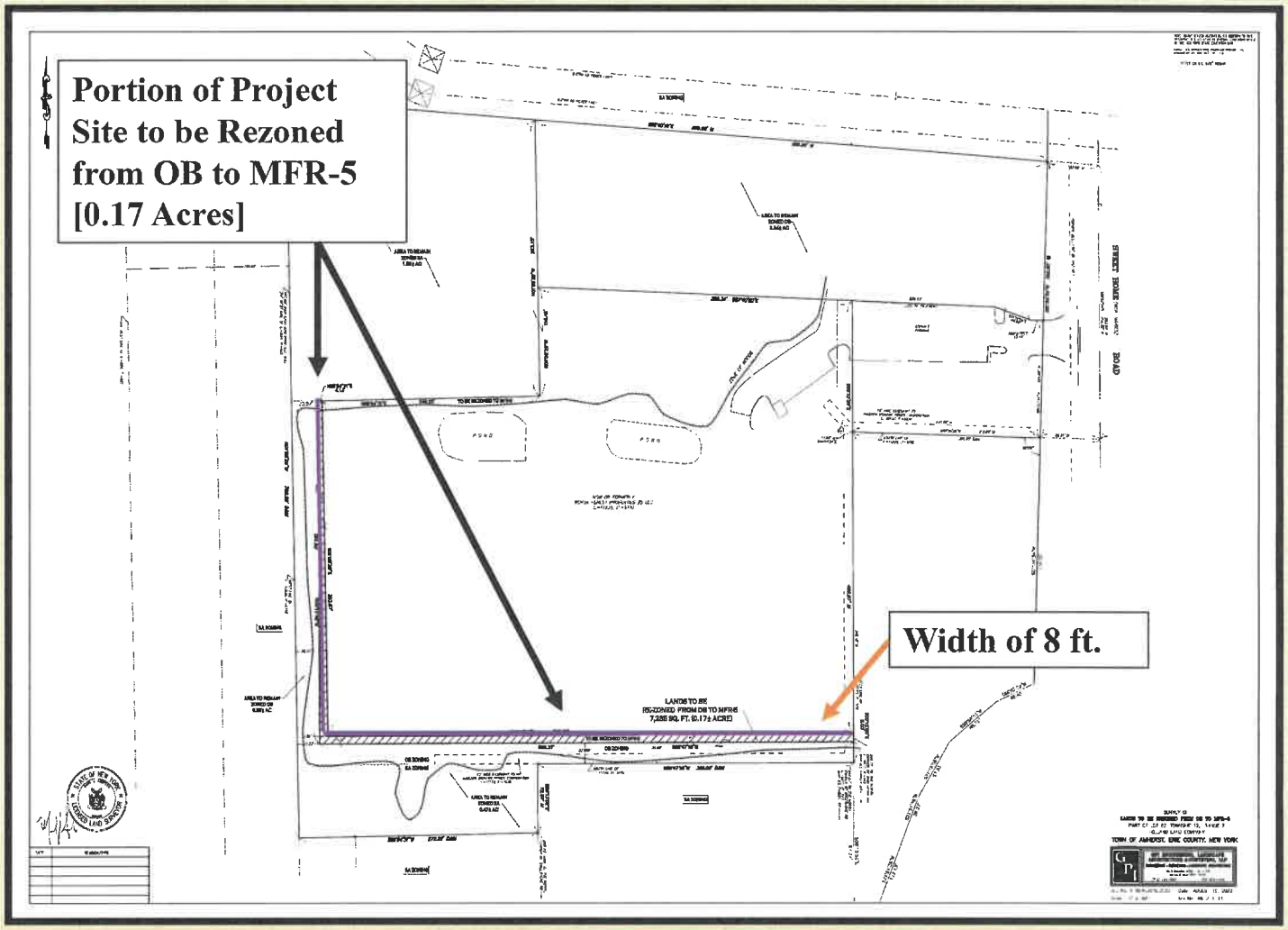
Villas at
ESSEX WOODS





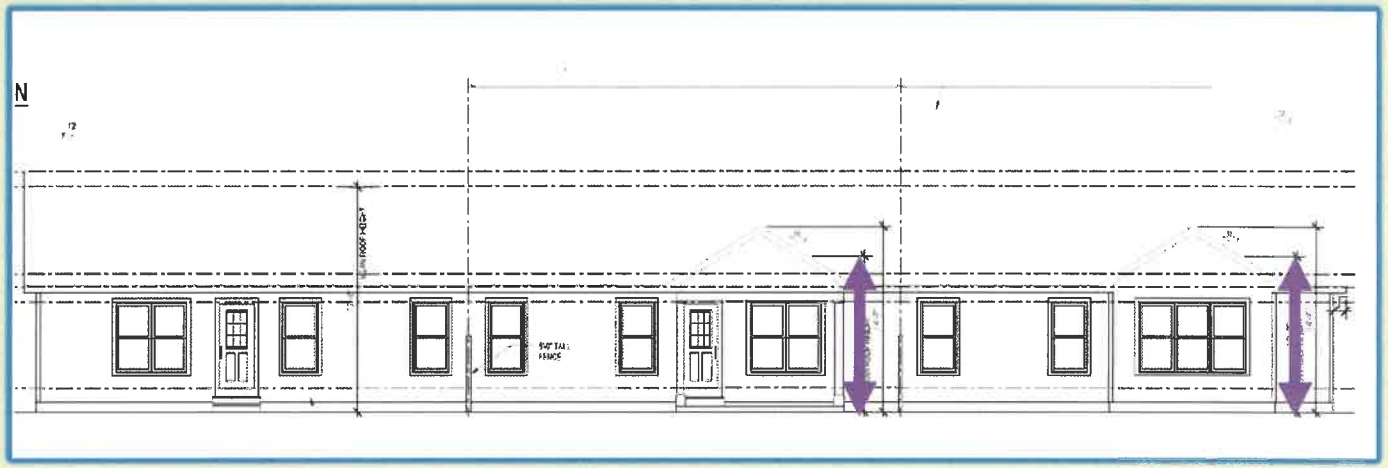
Survey of 0.17 Acres to be Rezoned from OB to MFR-5:

- **Demand for single-story sunrooms as a result of change in market conditions including work from home space [Covid-19 pandemic]**
- Rezoning of 0.17 acre of Project Site from OB to MFR-5 sought to accommodate single-story sunrooms and/or covered porches on rear side of buildings along southern and western portions of the Project Site
- Options for Rear Side of Units:
  1. At-grade patio;
  2. Covered porch; or
  3. Sunroom (12 ft. x 14 ft.)
- Requested rezoning being withdrawn to provide Essex Homes with the opportunity to monitor market conditions and evaluate options as construction of the project continues



Single-Story Sunrooms or Covered Porches on Rear Sides:

- Demand for single-story sunrooms as a result of change in market conditions including work from home space [Covid-19 pandemic]
- Fencing on southern and western edges of the Project Site
- Options for Rear Side of Residential Units in Buildings:
  - 1. At-grade patio
  - 2. Covered porch
  - 3. Sunroom (12 ft. x 14 ft.) [Mean Roof Height of 12 ft. 1 inch]



Patio

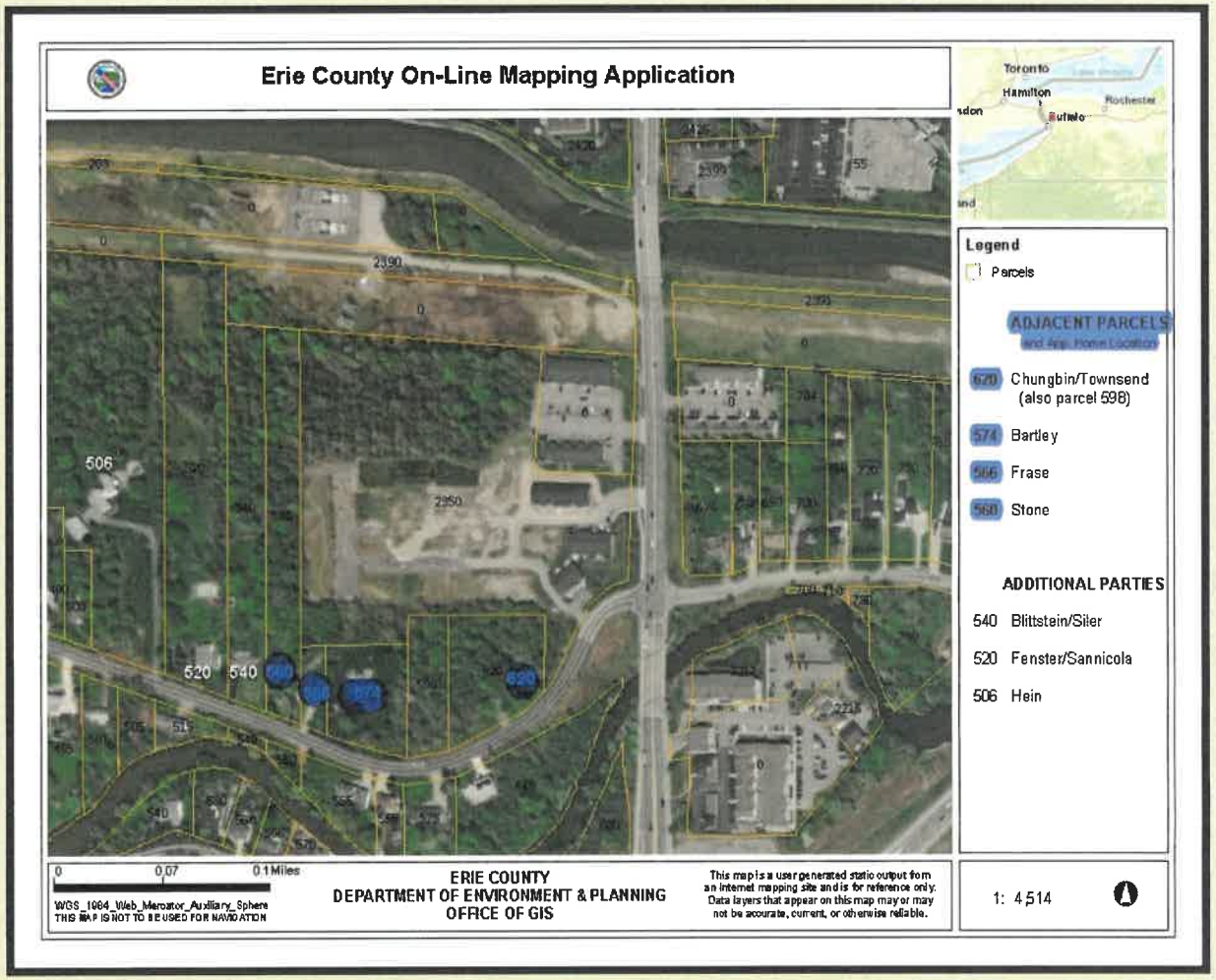
Covered Porch

Sunroom

Attachment: Kulpa-Ltr-App to Amend Dec of Restrictions-06-25-23 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to

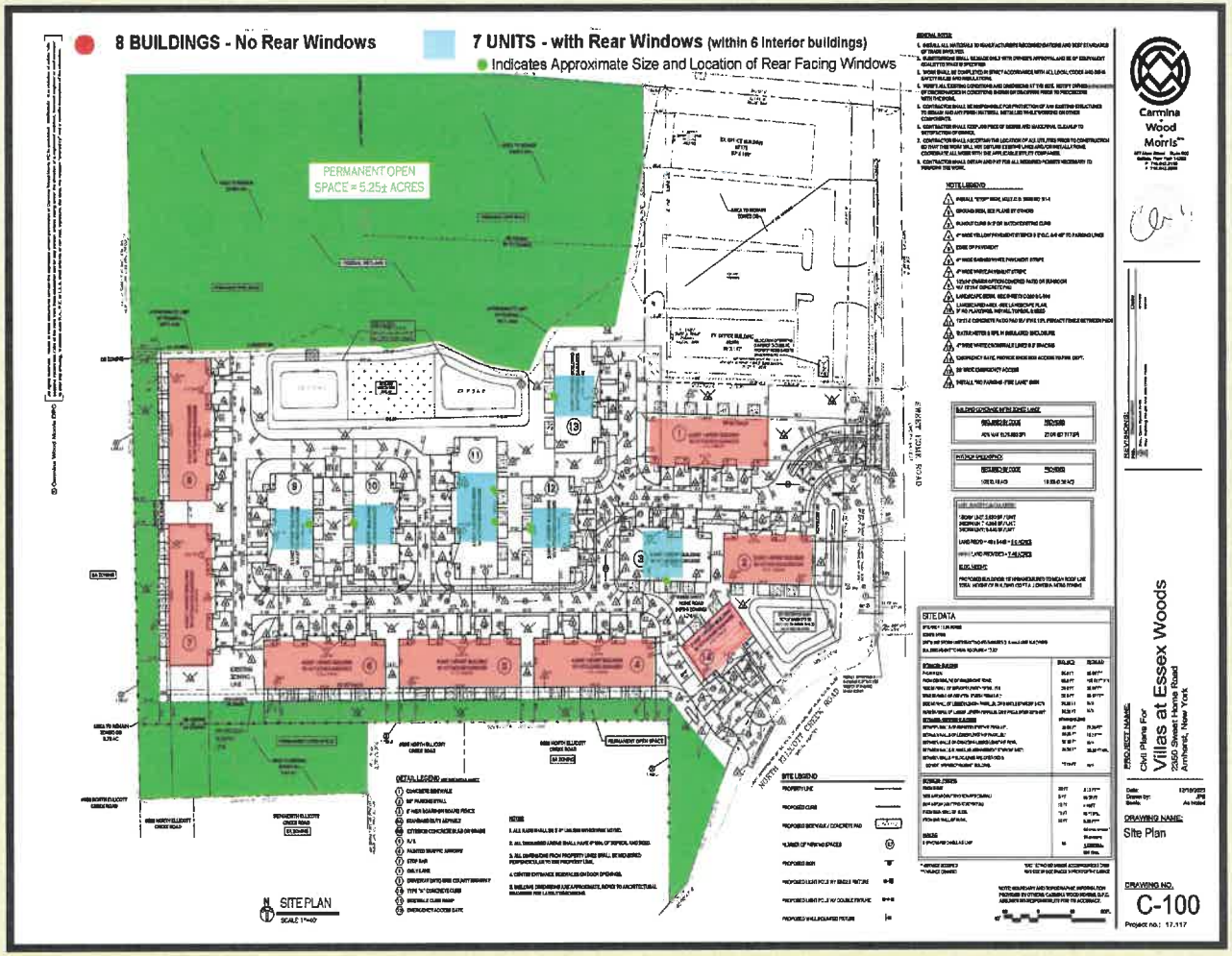
Request to Amend a Declaration of Restrictions as Part of a Rezoning Decision:

- Zoning conditions imposed on March 19, 2018 [Declaration of Restrictions recorded at the Erie County Clerk's Office on February 21, 2019]
- Application was filed in January of 2023 to request modifications of the zoning conditions to allow:
  - 1. Single-story sunrooms and single-story covered porches on the rear side of the perimeter buildings [this request is being withdrawn]
  - 2. Second-story windows on the rear side of 7 inward facing middle units of interior buildings



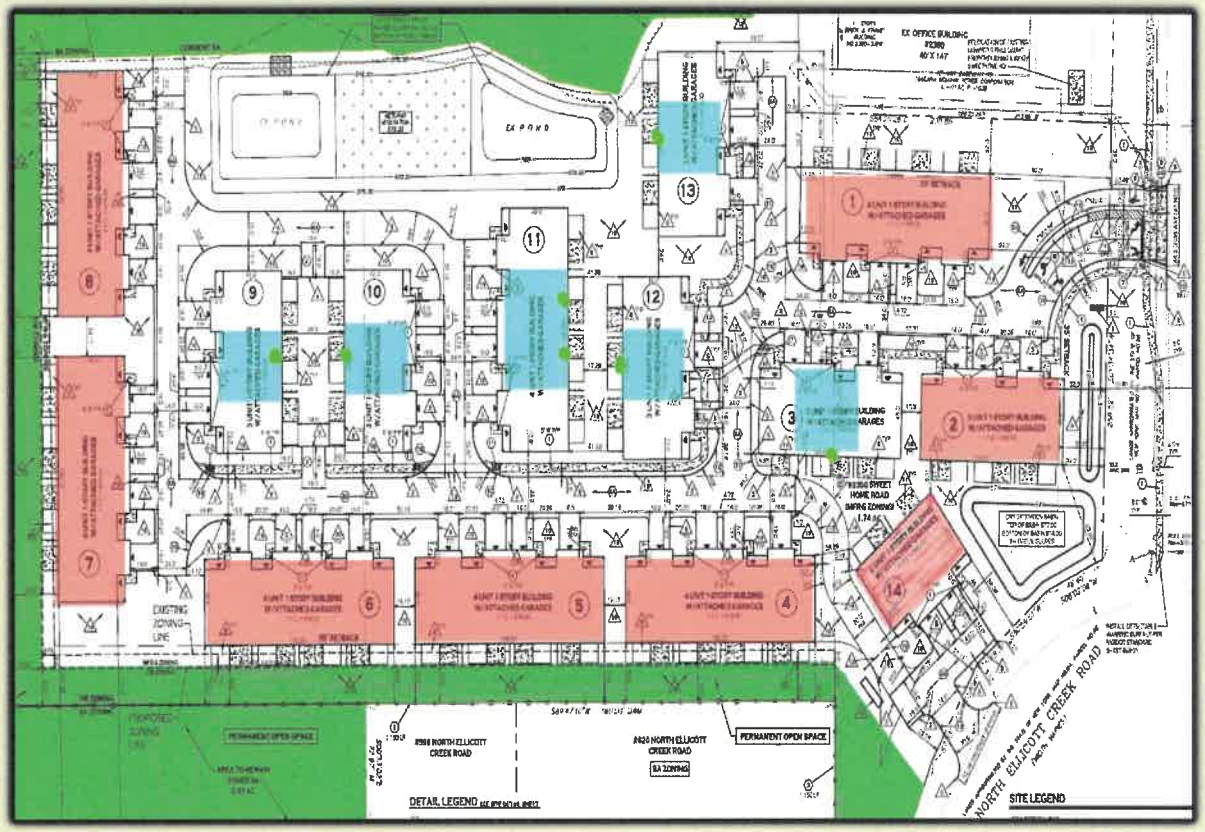
Windows on Rear Side of Second Story Loft Space of Select Units:

- No second-story windows proposed on rear of the perimeter buildings [Buildings No. 4, 5, 6, 7 and 8 (Shown in Red)]
- Second-story rear windows on only 7 of the 48 units - Middle units of interior buildings only [Units in Buildings No. 3, 9, 10, 11, 12 and 13 (Shown in Blue)]



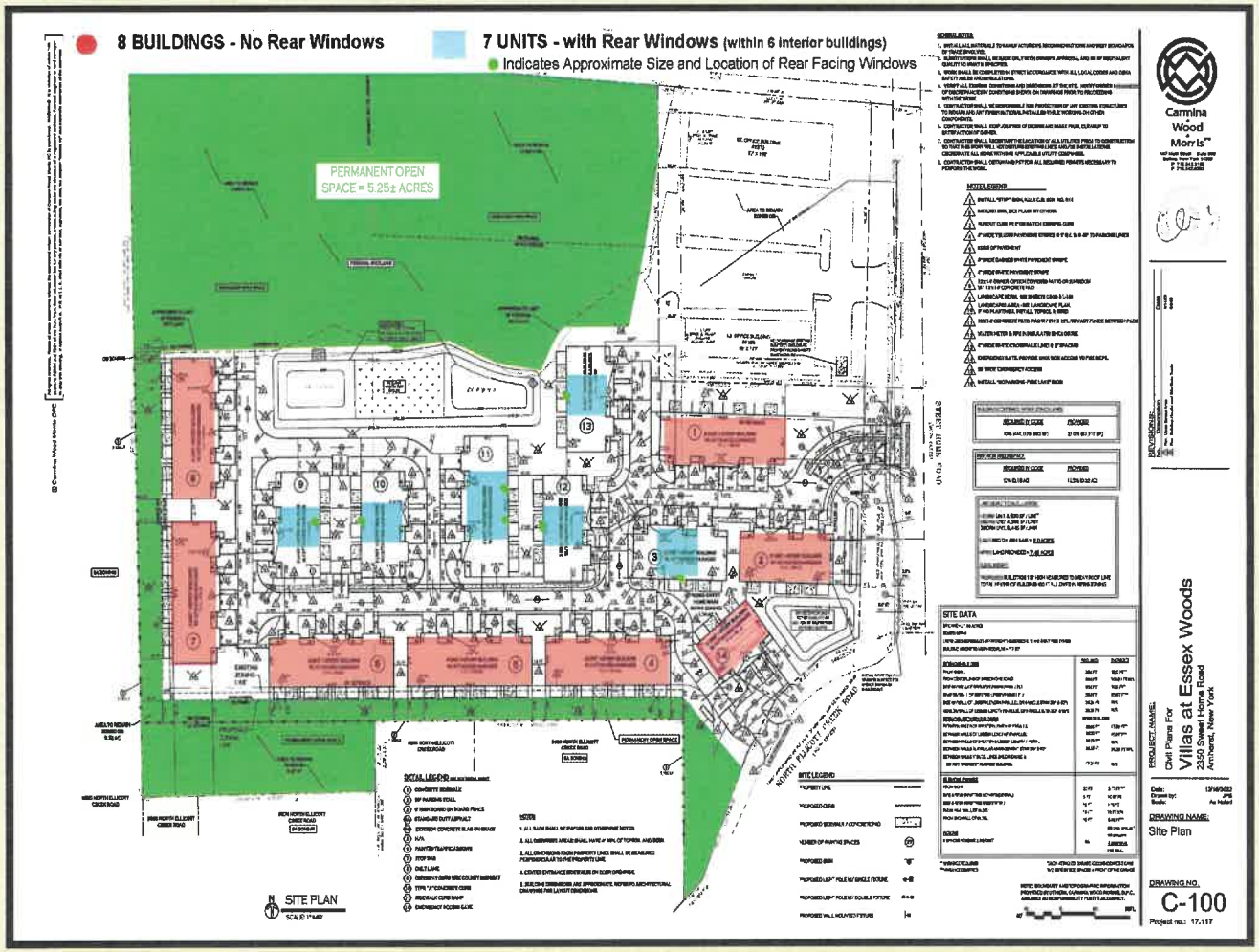
Windows on Rear Side of Second Story Loft Space of Select Units:

- No second-story windows proposed on rear of the perimeter buildings [Buildings No. 4, 5, 6, 7 and 8 (Shown in Red)]
- Second-story rear windows on only 7 of the 48 units - Middle units of interior buildings only [Units in Buildings No. 3, 9, 10, 11, 12 and 13 (Shown in Blue)]
- No adverse impacts since inward facing second-story rear windows will not provide views to any nearby homes



Draft Language for Condition No. 4:

- **Condition No. 4**: The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear of second story loft space in Buildings Nos. 1, 2, 4, 5, 6, 7, 8 and 14 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022.



State Environmental Quality Review Act ("SEQRA"):

- Unlisted Action - Completed Short Environmental Assessment Form prepared pursuant the SEQRA submitted
- No wetland impacts
- No impact on cultural or historic resources
- Town Board issued a Negative Declaration pursuant to SEQRA on March 19, 2018
- Planning Board issued a Negative Declaration pursuant to SEQRA in connection with Site Plan Approval
- No potentially significant adverse environmental impacts

Attachment: Kulpa-Ltr-App to Amend Dec of Restrictions-06-25-23 (RES-2023-529 : 2350 & 2360-2372 Sweet Home Road Rezoning & Request to

Conclusion:

- Requesting approval of requested modification of Condition No. 4 to allow second-story rear windows for middle units of interior buildings only [Buildings No. 3, 9, 10, 11, 12 and 13]

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 27750 A **RESOLUTION 2023-621** **ROLL CALL VOTE (ADOPTED)**

2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution - $185,000)

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 19, 2023**

RE: **2023 Engineering Department Sewer Building Improvements and Demolition**
2023 CIP Project No. F-6
Bond Resolution - $185,000

The above-referenced matter is scheduled for a Public Hearing on July 24, 2023 at 7:00 p.m. In this regard, kindly adopt a resolution (1) Adopting the attached SEQR determination for the above project as determined by the Town of Amherst Planning Department **prior to the Public Hearing being deemed closed**; and (2) Adopting the attached bond documents **once the Public Hearing has been deemed closed**.

For ease of reference and to provide detailed information regarding the bond action, also attached is the Map Plan and Report for the project.

Thank you.

MAP:nmb
Attachments
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item - July 24, 2023**)
Daryl C. Bramer, Comptroller *(w/attachment)*
Lynda Juul, Director of Finance *(w/attachment)*
Dan Howard, Director of Planning *(w/attachment)*
Dan Ulatowski, AICP, Assistant Planning Director/ZEO (*w/attachments*)
Jeffrey S. Burroughs, PE, Town Engineer (*w/attachment*)
Vaishali Reberholt, PE, Assistant Town Engineer (*w/attachment*)
Anne Dafchik, AIA, NCARB, Architect (*w/attachment*)
Daniel Rizzo, Director of Facilities (*w/attachments*)

7/24/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was opened at 8:02 PM.

Anne Dafchik, Architect, presented.

A motion to approve the SEQR determination was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 8:06 PM.

A motion to adopt the Bond Resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved via Roll Call vote 5-0.

FINANCIAL IMPACT:

Bond Resolution - $185,000

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AI
Planning Director

Daniel J. Ulatowski, AI
Assistant Planning Dire

Transmitted electronically

MEMORANDUM June 9, 2023

TO: Anne Dafchik, AIA, NCARB, Architect
Facilities Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
2023–2028 CIP – Engineering Department Building Improvements – F-6

The Planning Department has reviewed the scope of work for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\2023 Facility Improvements_ Engineering Dept Building - F-6.docx

cc:
Martin A. Polowy, Esq., Town Attorney
Daniel Howard, Planning Director

Attachment: SEQR F-6 - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution -

EXTRACT OF MINUTES

Meeting of the Town Board of the

Town of Amherst, in the County of Erie, New York

July 24, 2023

A regular meeting of the Town Board of the Town of Amherst, in the County of Erie, New York, was held at the Town Hall, 5583 Main Street, Williamsville, New York, on July 24, 2023.

There were present:	Hon. Brian J. Kulpa, Supervisor; and
Board Members:	Jacqualine Berger, Councilwoman, Deborah Bruch Bucki, Deputy Supervisor/Councilwoman, Shawn Lavin, Councilman Michael R. Szukala, Councilman
There were absent:	
Also present:	Francina J. Spoth, Town Clerk

* * *

The Supervisor stated that a public hearing had been called for this meeting at the Town Hall, 5583 Main Street, Williamsville, New York, at 7 o'clock P.M. (Prevailing Time) to consider the increase and improvement of facilities of the Town's Consolidated Sanitary Sewer District (the "District"), at the estimated total cost of $185,000, consisting of the demolition of the existing LAB building at the former Sanitary Sewer Treatment Plant 1, at the estimated maximum cost of $185,000 (2023-2028 CIP Project No. F-6), as described in the map, plan and report dated June, 2023 prepared by the Town Facilities Department; and to hear all persons interested in the subject thereof concerning the same and for such other action on the part of the Town Board with relation thereto as may be required by law. The Town Clerk presented affidavits showing that the

Attachment: CertExMinsAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

Notice of said public hearing had been duly published and posted pursuant to the provisions of Article 12 of the Town Law.

The Supervisor stated that the hearing in the said matter was now open and asked if there were any interested persons present who desired to be heard. The following persons appeared in favor of such increase and improvement of facilities of said District:

The following persons appeared in opposition to such increase and improvement of facilities:

The Supervisor inquired as to whether there were any other persons present who wished to be heard. No one appeared, whereupon the Supervisor declared the public hearing closed.

Attachment: CertExMinsAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed Extract of Minutes of a meeting of the Town Board of said Town of Amherst duly called and held on July 24, 2023, has been compared by me with the original minutes as officially recorded in my office as Town Clerk, and is a true, complete and correct copy thereof and of the whole of said original minutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this ____ day of July, 2023.

(SEAL)

_____

Francina J. Spoth, Town Clerk
Town of Amherst

Attachment: CertExMinsAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

BOND RESOLUTION OF THE TOWN OF AMHERST, NEW YORK, ADOPTED JULY 24, 2023, APPROPRIATING $185,000 FOR THE INCREASE AND IMPROVEMENT OF FACILITIES OF THE TOWN'S CONSOLIDATED SANITARY SEWER DISTRICT, AND AUTHORIZING THE ISSUANCE OF BONDS OF SAID TOWN IN THE PRINCIPAL AMOUNT OF $185,000 TO FINANCE SAID APPROPRIATION

Offered by: _____

Seconded By: _____

Recital

WHEREAS, after a public hearing duly called and held on July 24, 2023, the Town Board of the Town of Amherst (the "Town") determined that it is in the public interest to increase and improve the facilities of the Consolidated Sanitary Sewer District (herein referred to as the "District") in the estimated maximum cost of $185,000, consisting of the demolition of the existing LAB building at the former Sanitary Sewer Treatment Plant 1, as described in the map, plan and report dated June, 2023 prepared by the Town Facilities Department, and ordered that such facilities be so increased and improved;

Now, therefore, be it

RESOLVED BY THE TOWN BOARD OF THE TOWN OF AMHERST, IN THE COUNTY OF ERIE, NEW YORK (by the favorable vote of not less than two-thirds of all the members of said Board) AS FOLLOWS:

Attachment: CertBondResoPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

Section 1. The Town hereby appropriates the amount of $185,000 for the increase and improvement of facilities of the District, consisting of the demolition of the existing LAB building at the former Sanitary Sewer Treatment Plant 1, at the estimated maximum cost of $185,000 (2023-2028 CIP Project No. F-6) in connection therewith, as described in the map, plan and report dated June, 2023 prepared by the Town Facilities Department. The estimated maximum cost thereof, including preliminary costs and costs incidental thereto and the financing thereof, is $185,000. The plan of financing includes the issuance of $185,000 bonds of the Town to finance said appropriation and the assessment, levy and collection of assessments upon the several lots and parcels of land within the District which the Town Board shall deem especially benefited by said facilities, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same.

Section 2. Bonds of the Town are hereby authorized to be issued in the principal amount of $185,000 pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), to finance said appropriation.

Section 3. The following additional matters are hereby determined and stated:

(a) The period of probable usefulness of the specific object or purpose for which said bonds are authorized to be issued, within the limitations of Section 11.00 a. 12-a of the Law, is ten (10) years.; and

(b) The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the Town for expenditures made after the effective date of this resolution. The foregoing statement of intent with respect to

Attachment: CertBondResoPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

(c) The proposed maturity of the serial bonds authorized by this resolution will exceed five (5) years.

Section 4. Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of said bonds shall contain the recital of validity prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation said bonds shall be general obligations of the Town, payable as to both principal and interest by a general tax upon all the taxable real property within the Town. The faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds, and provision shall be made annually in the budget of the Town by appropriation for (a) the amortization and redemption of the bonds and any notes issued in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 5. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 of the Law relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the Town Board relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and the renewals of said bond anticipation notes, and as to executing contracts for credit enhancements and providing for substantially level or declining annual debt service, are hereby delegated to the Supervisor, the chief fiscal officer of the Town.

Attachment: CertBondResoPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

Section 6. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of said bonds, may be contested only if:

(a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of such resolution, or a summary thereof, are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the constitution.

Section 7. This resolution shall take effect immediately and the Town Clerk is hereby authorized and directed to publish the foregoing bond resolution, in summary, in *"The Amherst Bee,"* a newspaper having a general circulation in said Town, which newspaper is hereby designated as the official newspaper of the Town for such publication, together with the Town Clerk's statutory notice in the form prescribed by Section 81.00 of the Local Finance Law of the State of New York.

Attachment: CertBondResoPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

The adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Supervisor Brian J. Kulpa	voting _____
Councilwoman Jacqualine Berger	voting _____
Deputy Supervisor/Councilwoman Deborah Bruch Bucki	voting _____
Councilman Shawn Lavin	voting _____
Councilman Michael R. Szukala	voting _____

The Resolution was declared adopted.

Attachment: CertBondResoPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed resolution of the Town Board of said Town adopted at a meeting duly called and held on July 24, 2023, has been compared by me with the original resolution as officially recorded in my office in the Minute Book of said Town Board and is a true, complete and correct copy thereof and of the whole of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this ____ day of July, 2023.

(SEAL)

_____

Francina J. Spoth, Town Clerk
Town of Amherst

Attachment: CertBondResoPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond

At a meeting of the Town Board of the Town of Amherst, in the County of Erie, New York, held at the Town Hall, 5583 Main Street, Williamsville, New York, on the 24th day of July, 2023.

PRESENT:

Hon. Brian J. Kulpa, Supervisor
Jacqualine Berger, Councilwoman
Deborah Bruch Bucki, Deputy Supervisor/ Councilwoman
Shawn Lavin, Councilman
Michael R. Szukala, Councilman

In the Matter

of the

Increase and Improvement of Facilities of the Consolidated Sanitary Sewer District, in the Town of Amherst, in the County of Erie, New York, pursuant to Section 202-b of the Town Law

Offered by: _____

Seconded By: _____

RESOLUTION AND
ORDER AFTER PUBLIC
HEARING

WHEREAS, the Town Board of the Town of Amherst (herein called the "Town"), in the County of Erie, New York, on behalf of Consolidated Sanitary Sewer District (herein referred to as the "District"), has caused the Town Facilities Department, engineers duly licensed by the State of New York (the "Engineer"), to prepare a map, plan and report dated June, 2023 for

Attachment: CertROAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution

the increase and improvement of facilities of the District, consisting of the demolition of the existing LAB building at the former Sanitary Sewer Treatment Plant 1, at the estimated maximum cost of $185,000 (2023-2028 CIP Project No. F-6) required in connection therewith as described in said report; and

WHEREAS, the Engineer has estimated that the cost of such increase and improvement of facilities shall be $185,000 and said map, plan and report have been filed with the Town Board; and

WHEREAS, the Town Board adopted an Order describing in general terms the proposed increase and improvement of such facilities, specifying the estimated cost thereof, and stating the Town Board would meet to hear all persons interested in said increase and improvement of facilities on July 24, 2023 at 7 o'clock P.M. (Prevailing Time) at the Town Hall, 5583 Main Street, Williamsville, New York; and

WHEREAS, a Notice of such public hearing was duly published and posted pursuant to the provisions of Article 12 of the Town Law; and

WHEREAS, such public hearing was duly held by the Town Board on the 24th day of July, 2023 at 7 o'clock P.M. (Prevailing Time) at the Town Hall, 5583 Main Street, Williamsville, New York, with considerable discussion on the matter having been had and all persons desiring to be heard having been heard, including those in favor of and those in opposition to said increase and improvement of such facilities; and

WHEREAS, the Town Board, as lead agency, has given due consideration to the impact that the project described herein may have on the environment and has determined that such project is a Type II project which will not result in any significant adverse environmental

Attachment: CertROAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution

impacts, pursuant to the State Environmental Quality Review Act (SEQRA), constituting Article 8 of the Environmental Conservation Law, and 6 N.Y.C.R.R., Regulations Part 617.5;

Now, therefore, be it

DETERMINED, that it is in the public interest to increase and improve the facilities of the District as hereinabove described, at the estimated total cost of $185,000; and it is hereby

ORDERED, that the facilities of the District shall be so increased and improved and that the Engineer shall prepare plans and specifications and make a careful estimate of the expense of said increase and improvement of such facilities and, with the assistance of the Town Attorney, shall prepare a proposed contract for such increase and improvement of facilities of the District, which plans and specifications, estimate and proposed contract shall be presented to the Town Board as soon as possible; and it is hereby

FURTHER ORDERED, that the expense of said increase and improvement of facilities shall be financed by the issuance of $185,000 bonds of the Town, and the cost of said increase and improvement of facilities, including payment of principal of and interest on said bonds, shall be paid by the assessment, levy and collection of assessments upon the several lots and parcels of land within the District which the Town Board shall deem especially benefited by said facilities, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same; and it is hereby

FURTHER ORDERED, that the Town Clerk record, or cause to be recorded, a certified copy of this Resolution and Order After Public Hearing in the office of the Clerk of Erie County within ten (10) days after adoption thereof.

Attachment: CertROAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution

DATED: July 24, 2023

(SEAL)

TOWN BOARD OF THE TOWN OF AMHERST

The adoption of the foregoing Resolution and Order was duly put to a vote on roll call, which resulted as follows:

Supervisor Brian J. Kulpa	voting _____
Councilwoman Jacqualine Berger	voting _____
Deputy Supervisor/Councilwoman Deborah Bruch Bucki	voting _____
Councilman Shawn Lavin	voting _____
Councilman Michael R. Szukala	voting _____

The Resolution and Order were declared adopted.

Attachment: CertROAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution

Attachment: CertROAfterPH7.24 (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements and Demolition (Bond Resolution

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed resolution and order of the Town Board of said Town adopted at a meeting duly called and held on July 24, 2023, has been compared by me with the original resolution and order as officially recorded in my office in the Minute Book of said Town Board and is a true, complete and correct copy thereof and of the whole of said resolution and order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this ____ day of July, 2023.

(SEAL)

_____

Francina J. Spoth, Town Clerk
Town of Amherst

Town of Amherst

Facilities Department

2023 – 2028 Capital Improvement Project F-6
"Engineering Department Sewer Building Improvements and Demolition"
MAP, PLAN & REPORT

June 2023

Contents:

• Background
• Location
• Project Description and Improvements
• Project Justification
• Anticipated Project Schedule
• Financial Summary
• Taxation Summary
• Town of Amherst SEQR Determination

Prepared by:
Town of Amherst
Facilities Department
5583 Main Street, Williamsville, NY 14221
(716) 631 – 7080 | (716) 631 – 7109

Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements

Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements

Background

The Town of Amherst has identified Project "F-6", as a two-phase project. Phase 1, set for 2023, includes demolition of the existing LAB building at the former Sanitary Sewer Treatment Plant 1, adding a privacy fence behind Plant 1 and building envelope upgrades to the main garage. Phase 2, set for 2025, includes a generator replacement project that serves the main garage operations and office building, and installing a new storage building.

The buildings identified for improvements and demolition are located at 1042 N. Forest Rd., behind the Highway Dept. facilities.

The former lab building, also known as "**Plant 1**" is approximately 1,400 square feet in size. The building was constructed in 1947 and is severely deteriorated. The one-story structure was originally used as a laboratory and chlorine plant, and is currently used for storage of hoses, spill containers, and files/paperwork. The building has not been occupied for years. Much of the building systems have been removed, no longer exist, or are no longer operable.

Buildings 4 and 5 are also referred to as the "Pump House and Filtration Building". The Pump House and Filtration Building is a single building, with mixed program facility that is part of the Amherst Engineering Department, and is intended for water distribution and filtration services. This area was previously known as Wastewater Treatment Plant 1. It is broken into three distinct function areas: Pump house at west end, filtration building at east end, and connecting building in the middle. It consists of a single-story, 6,500 square foot building that houses storage/workshop areas, office and lab rooms, electrical and mechanical rooms, and restrooms. Currently, Sewer Maintenance operations and equipment storage are housed in this building.

Please note that the CIP description for this project will be amended on June 20, 2023 to clarify the scope of work being performed in each phase of the project. The funding source will also be amended at that time to correct the funding source as LG (Sanitary Sewer District Bond).

Approved 2023 – 2028 Capital Improvement Program (11-7-22)

Facilities Department (cont'd) *Recommended Schedule (X $1,000)*

Project ID	Project Title/Description	2023	2024	2025	2026	2027	2028	Total Cost
F-4	**Town Parking Lot Sealing & Striping:** Parking lot seal coating, crack filling and striping at Town buildings and facilities to prevent premature failure of asphalt surfacing.	100 LA	100 LA	100 LA	100 LA	100 LA	100 LA	**$600,000**
F-5	**Highway Garage Roof & Sprinkler System Replacement:** Replacement of sheet metal garage roof, and inspection and replacement of the fire suppressant sprinkler heads.			3,654.5 LA	490.4 LA			**$4,144,900**
F-6	**Engineering Department Building Improvements:** Phase 1 includes demolition of the existing LAB building at Plant 1 and installing a storage building. Phase 2 includes updating generators, replacing existing siding, and adding a privacy fence behind Plant 1.	185 LA		325 LA				**$510,000**
F-7	**Museum Improvements:** Maintain Town-owned buildings at the Buffalo Niagara Heritage Village required by the Town's contract.		100 LA	100 LA	100 LA	100 LA	100 LA	**$500,000**
F-8	**Williamsville Youth & Family Roof Restoration:** Roof restoration (coating) at 5005 Sheridan, Amherst Youth Foundation, to restore failing roof membrane and to protect building integrity.		458 LA					**$458,000**
F-9	**Jurek Post Renovations:** Replace the low slope roof and sloped shingle roof on the main building as well as the shingle roofs on the BBQ pit and the pavilion, and repair the south facing façade of the Jurek Post Building.	465 LA						**$465,000**
F-10	**Senior Center HVAC Replacement:** Replace three large rooftop air handler units that have exceeded their useful life.	500 LA 45 X	500 LA					**$1,045,000**

Key:

Funding Source
T – Tax
L – Bond
S – Surplus
E - Encumbered
I/M – I&I or Mitigation Funds
RF – Recreation Fund
OF – Open Space Fund
F/S – Federal or State Aid
X – Private Source

Funding Account
A – General Account
B – Part Town
C – Community Environment
D – Highway
F – Lighting
G – Sanitary Sewer District
H – Storm Drainage District
I – Water District
W – Water Pollution Control Facility
– Special District Number
NS – None Submitted

6

Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements

Location

The parcel is 1042 N. Forest Road, Amherst NY 14228. SBL: **55.19-3-33.21**.

The former wastewater treatment plant known as "Plant 1" is located at the southwest area of the site. The lab building, which once tested water samples, is east of the topsoil storage structure and south of the abandoned wastewater treatment clarifiers. Building 4 and 5 are located at the southern-most area of the site. It should be noted that Building 4 and 5 have been merged into one building and are no longer two separate buildings.

The Engineering garage and office building are located on the eastern side of the site, as indicated below. The Engineering Department occupies the office space at the front of the facility and the Sewer Maintenance Division occupies the garage space at the rear of the facility.



Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements



Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements



Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements

Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements

Project Description and Improvements

The project includes hazardous material testing, demolition survey and demolition of Lab Building "Plant 1". The project also includes hazardous material testing, design, and reconstruction / upgrades to Buildings 4 and 5, as used by the Sewer Maintenance Department for storage and operations of the man-hole crew. Building upgrades may include exterior or interior renovations, as well as plumbing, mechanical or electrical upgrades.

Other projects may be prioritized on an as-needed basis.

Project Justification

The project is necessary because Plant 1 has significant structural damage, based on a condition assessment conducted by Cannon/FOS in summer of 2022. Load bearing exterior walls and steel structural components inside the building are deteriorated to a point beyond reasonable reconstruction. Additionally, Cannon/FOS provided a letter to the Town stating that the building should be considered unsafe.

Buildings 4 & 5 have also been evaluated by Cannon/FOS, and deficiencies were noted with building exterior and interior components, as well has mechanical, electrical and plumbing concerns.

The Sewer Maintenance Department is tasked with providing necessary infrastructure services to residents and businesses. The department's ability to respond to issues that require the man-hole crew is critical to performing this task.

Anticipated Project Schedule

Bond Action: June 2023
Public Hearing: July 2023
Construction: July 2023 through December 2025

Financial Summary

The Town of Amherst allocated funding in the 2023-2028 Capital Improvement Program under Project F-6, for a total of $185,000. The funds have been identified as a Sanitary Sewer District Bond with a minimum useful life of 15 years. (See also 2023 CIP Amendment reallocating funds from General Fund to Sanitary Sewer District funds).

Demolition and Construction	173,430
Design/Testing	10,645
Legal / Admin	925
TOTAL	**$ 185,000**

Taxation Summary

Total Bond Amount	$185,000 (Sewer District Bond)
Bond Term	15 Years
Annual Tax Impact per $1,000 of AV	$0.0013
Annual Impact on Property with AV of $250,000	$0.2647

SEQR Determination

See attached memo from the Amherst Planning Department.

Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AI
Planning Director

Daniel J. Ulatowski, AI
Assistant Planning Dire

Transmitted electronically

MEMORANDUM June 9, 2023

TO: Anne Dafchik, AIA, NCARB, Architect
Facilities Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
2023–2028 CIP – Engineering Department Building Improvements – F-6

The Planning Department has reviewed the scope of work for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\2023 Facility Improvements_ Engineering Dept Building - F-6.docx

cc:
Martin A. Polowy, Esq., Town Attorney
Daniel Howard, Planning Director

Attachment: MPR F-6 Eng Dept Sewer Bldg Impr & Demo - Copy (RES-2023-621 : 2023 Engineering Department Sewer Building Improvements

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 27751 A **RESOLUTION 2023-622** **ROLL CALL VOTE (ADOPTED)**

WPCF Multi-Project Bond (Bond Resolution - $1.325M)

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 18, 2023**

RE: **Cryogenic Oxygen Plant Replacement Design**
2023-2028 CIP Project E-10 ($350,000)

Building Equipment and Infrastructure - Phase 4
2023-2028 CIP Project E-12 ($800,000)

HVAC Facility Improvements - Phase 5
2023-2028 CIP Project E-13 ($175,000)

Bond Resolution - $1.325M

The above-referenced matter is scheduled for a Public Hearing on July 24, 2023 at 7:00 p.m. In this regard, kindly adopt a resolution (1) Adopting the attached SEQR determination for the above project as determined by the Town of Amherst Planning Department **prior to the Public Hearing being deemed closed**; and (2) Adopting the attached bond documents **once the Public Hearing has been deemed closed**.

For ease of reference and to provide detailed information regarding the bond action, also attached is the Map Plan and Report for the project.

Thank you.

MAP:nmb
Attachment
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item - July 24, 2023**)
Daryl C. Bramer, Comptroller *(w/attachment)*
Lynda Juul, Director of Finance *(w/attachment)*
Dan Howard, Director of Planning *(w/attachment)*
Dan Ulatowski, AICP, Assistant Planning Director/ZEO (*w/attachments*)
Jeffrey S. Burroughs, PE, Town Engineer (*w/attachment*)
Michael Poslinski, Senior Engineer Assistant (*w/attachment*)

7/24/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was opened at 8:07 PM.

Jeff Burroughs, Town Engineer, presented.

A motion to approve the SEQR determination for the Cryogenic Oxygen Plant Replacement Design was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0.

A motion to approve the SEQR determination for the Building Equipment and Infrastructure - Phase 4 was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

A motion to approve the SEQR determination for the HVAC Facility Improvements - Phase 5 was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was closed at 8:13 PM.

A motion to adopt the Bond Resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved via Roll Call vote 5-0.

FINANCIAL IMPACT:

Bond Resolution - $1.325M

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AIC
Planning Director

Daniel J. Ulatowski, AIC
Assistant Planning Direct

Transmitted electronically

MEMORANDUM June 13, 2023

TO: Michael J. Poslinski, Senior Engineering Assistant
Engineering Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
WPCF – HVAC Facility Improvements, Phase 5
2023-2028 C.I.P. Project E-13

The Planning Department has reviewed the Map, Plan & Report for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\E_12_June 13_2023_WPCF_ Building and Equip_Phase 4.docx

cc:
Daniel Howard, Planning Director
Martin Polowy, Town Attorney

Attachment: SEQR.HvacWWTP-07172023125014 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AIC
Planning Director

Daniel J. Ulatowski, AIC
Assistant Planning Direct

Transmitted electronically

MEMORANDUM June 13, 2023

TO: Michael J. Poslinski, Senior Engineering Assistant
Engineering Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
WPCF – Building & Equipment Infrastructure, Phase 4
2023-2028 C.I.P. Project E-12

The Planning Department has reviewed the Map, Plan & Report for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\E_12_June 13_2023_WPCF_ Building and Equip_Phase 4.docx

cc:
Daniel Howard, Planning Director
Martin Polowy, Town Attorney

Attachment: SEQR.InfrastructureWWTP-07172023125037 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AICP
Planning Director

Daniel J. Ulatowski, AICP
Assistant Planning Director

Transmitted electronically

MEMORANDUM June 13, 2023

TO: Michael J. Poslinski, Senior Engineering Assistant
Engineering Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DJU

RE: SEQR Determination
Cyrogenic Oxygen Plant Design Replacement
2023-2028 C.I.P. Project E-10

The Planning Department has reviewed the Map, Plan & Report for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\E_10_June 13_2023_Cryogenic Oxygen Plant Replac.docx

cc:
Daniel Howard, Planning Director
Martin Polowy, Town Attorney

Attachment: SEQR.CryoWWTP-07172023125056 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

EXTRACT OF MINUTES

Meeting of the Town Board of the

Town of Amherst, in the County of Erie, New York

July 24, 2023

A regular meeting of the Town Board of the Town of Amherst, in the County of Erie, New York, was held at the Town Hall, 5583 Main Street, Williamsville, New York, on July 24, 2023.

There were present:	Hon. Brian J. Kulpa, Supervisor; and
Board Members:	Jacqualine Berger, Councilwoman, Deborah Bruch Bucki, Deputy Supervisor/Councilwoman, Shawn Lavin, Councilman Michael R. Szukala, Councilman
There were absent:	
Also present:	Francina J. Spoth, Town Clerk

* * *

The Supervisor stated that a public hearing had been called for this meeting at the Town Hall, 5583 Main Street, Williamsville, New York, at 7 o'clock P.M. (Prevailing Time) to consider the increase and improvement of facilities of the Town's Consolidated Sanitary Sewer District (the "District"), at the estimated total cost of $1,325,000, consisting of (i) planning costs for the replacement of the Cryogenic Oxygen Plant in the Town's Water Pollution Control Facility at the estimated maximum cost of $350,000 ("WPCF") (2023-2028 CIP Project No. E-10), (ii) infrastructure improvements to the WPCF - Phase 4 at the estimated maximum cost of $800,000 (2023-2028 CIP Project No. E-12), and (iii) HVAC improvements to the WPCF - Phase 5 at the estimated maximum cost of $175,000 (2023-2028 CIP Project No. E-13), as described in three (3) maps, plans and reports each dated June 21, 2023 prepared by the Town Engineering Department;

Attachment: CertExMins (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

and to hear all persons interested in the subject thereof concerning the same and for such other action on the part of the Town Board with relation thereto as may be required by law. The Town Clerk presented affidavits showing that the Notice of said public hearing had been duly published and posted pursuant to the provisions of Article 12 of the Town Law.

The Supervisor stated that the hearing in the said matter was now open and asked if there were any interested persons present who desired to be heard. The following persons appeared in favor of such increase and improvement of facilities of said District:

The following persons appeared in opposition to such increase and improvement of facilities:

The Supervisor inquired as to whether there were any other persons present who wished to be heard, whereupon the Supervisor declared the public hearing closed.

Attachment: CertExMins (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed Extract of Minutes of a meeting of the Town Board of said Town of Amherst duly called and held on July 24, 2023, has been compared by me with the original minutes as officially recorded in my office as Town Clerk, and is a true, complete and correct copy thereof and of the whole of said original minutes.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this ____ day of July, 2023.

(SEAL)

_____

Francina J. Spoth, Town Clerk
Town of Amherst

Attachment: CertExMins (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

BOND RESOLUTION OF THE TOWN OF AMHERST, NEW YORK, ADOPTED JULY 24, 2023, APPROPRIATING $1,325,000 FOR THE INCREASE AND IMPROVEMENT OF FACILITIES OF THE TOWN'S CONSOLIDATED SANITARY SEWER DISTRICT, AND AUTHORIZING THE ISSUANCE OF BONDS OF SAID TOWN IN THE PRINCIPAL AMOUNT OF $1,325,000 TO FINANCE SAID APPROPRIATION

Offered by: _____

Seconded By: _____

Recital

WHEREAS, after a public hearing duly called and held on July 24, 2023, the Town Board of the Town of Amherst (the "Town") determined that it is in the public interest to increase and improve the facilities of the Consolidated Sanitary Sewer District (herein referred to as the "District") in the total estimated maximum cost of $1,325,000, consisting of (i) planning costs for the replacement of the Cryogenic Oxygen Plant in the Town's Water Pollution Control Facility at the estimated maximum cost of $350,000 ("WPCF") (2023-2028 CIP Project No. E-10), (ii) infrastructure improvements to the WPCF - Phase 4 at the estimated maximum cost of $800,000 (2023-2028 CIP Project No. E-12), and (iii) HVAC improvements to the WPCF - Phase 5 at the estimated maximum cost of $175,000 (2023-2028 CIP Project No. E-13), as described in three (3) maps, plans and reports each dated June 21, 2023 prepared by the Town Engineering Department, and ordered that such facilities be so increased and improved;

Now, therefore, be it

Attachment: CertBondReso (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

RESOLVED BY THE TOWN BOARD OF THE TOWN OF AMHERST, IN THE COUNTY OF ERIE, NEW YORK (by the favorable vote of not less than two-thirds of all the members of said Board) AS FOLLOWS:

Section 1. The Town hereby appropriates the total amount of $1,325,000 for the increase and improvement of facilities of the District, consisting of (i) planning costs for the replacement of the Cryogenic Oxygen Plant in the Town's Water Pollution Control Facility at the estimated maximum cost of $350,000 ("WPCF") (2023-2028 CIP Project No. E-10), (ii) infrastructure improvements to the WPCF - Phase 4 at the estimated maximum cost of $800,000 (2023-2028 CIP Project No. E-12), and (iii) HVAC improvements to the WPCF - Phase 5 at the estimated maximum cost of $175,000 (2023-2028 CIP Project No. E-13), as described in three (3) maps, plans and reports each dated June 21, 2023 prepared by the Town Engineering Department. The total estimated maximum cost thereof, including preliminary costs and costs incidental thereto and the financing thereof, is $1,325,000. The plan of financing includes the issuance of $1,325,000 bonds of the Town to finance said appropriation and the assessment, levy and collection of assessments upon the several lots and parcels of land within the District which the Town Board shall deem especially benefited by said facilities, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same.

Section 2. Bonds of the Town are hereby authorized to be issued in the principal amount of $1,325,000 pursuant to the provisions of the Local Finance Law, constituting

Attachment: CertBondReso (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), to finance said appropriation.

Section 3. The following additional matters are hereby determined and stated:

(a) The period of probable usefulness of the specific object or purpose for which said $350,000 bonds herein authorized by Section 1(i) of this resolution are to be issued, within the limitations of Section 11.00 a. 62(2nd) of the Law, is five (5) years; and

(b) The period of probable usefulness of the objects or purposes for which said $800,000 bonds herein authorized by Section 1(ii) of this resolution are to be issued, within the limitations of Section 11.00 a. 1 of the Law, is forty (40) years.; and

(c) The period of probable usefulness of the objects or purposes for which said $175,000 bonds herein authorized by Section 1(iii) of this resolution are to be issued, within the limitations of Section 11.00 a. 13 of the Law, is ten (10) years.; and

(d) The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the Town for expenditures made after the effective date of this resolution. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

(e) The proposed maturity of the serial bonds authorized by this resolution may exceed five (5) years.

Section 4. Each of the bonds authorized by this resolution and any bond anticipation notes issued in anticipation of said bonds shall contain the recital of validity prescribed by Section 52.00 of the Law and said bonds and any notes issued in anticipation said bonds shall be general obligations of the Town, payable as to both principal and interest by a general tax upon

Attachment: CertBondReso (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

all the taxable real property within the Town. The faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds and any notes issued in anticipation of the sale of said bonds, and provision shall be made annually in the budget of the Town by appropriation for (a) the amortization and redemption of the bonds and any notes issued in anticipation thereof to mature in such year and (b) the payment of interest to be due and payable in such year.

Section 5. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 of the Law relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the Town Board relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and the renewals of said bond anticipation notes, and as to executing contracts for credit enhancements and providing for substantially level or declining annual debt service, are hereby delegated to the Supervisor, the chief fiscal officer of the Town.

Section 6. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of said bonds, may be contested only if:

(a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of such resolution, or a summary thereof, are not substantially complied with, and an

Attachment: CertBondReso (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the constitution.

Section 7. This resolution shall take effect immediately and the Town Clerk is hereby authorized and directed to publish the foregoing bond resolution, in summary, in *"The Amherst Bee,"* a newspaper having a general circulation in said Town, which newspaper is hereby designated as the official newspaper of the Town for such publication, together with the Town Clerk's statutory notice in the form prescribed by Section 81.00 of the Local Finance Law of the State of New York.

Attachment: CertBondReso (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

The adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Supervisor Brian J. Kulpa	voting _____
Councilwoman Jacqualine Berger	voting _____
Deputy Supervisor/Councilwoman Deborah Bruch Bucki	voting _____
Councilman Shawn Lavin	voting _____
Councilman Michael R. Szukala	voting _____

The Resolution was declared adopted.

Attachment: CertBondReso (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed resolution of the Town Board of said Town adopted at a meeting duly called and held on July 24, 2023, has been compared by me with the original resolution as officially recorded in my office in the Minute Book of said Town Board and is a true, complete and correct copy thereof and of the whole of said resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this ____ day of July, 2023.

(SEAL)

_____

Francina J. Spoth, Town Clerk
Town of Amherst

Attachment: CertBondReso (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

At a meeting of the Town Board of the Town of Amherst, in the County of Erie, New York, held at the Town Hall, 5583 Main Street, Williamsville, New York, on the 24th day of July, 2023.

PRESENT:

Hon. Brian J. Kulpa, Supervisor
Jacqualine Berger, Councilwoman
Deborah Bruch Bucki, Deputy Supervisor/ Councilwoman
Shawn Lavin, Councilman
Michael R. Szukala, Councilman

In the Matter

of the

Increase and Improvement of Facilities of the Consolidated Sanitary Sewer District, in the Town of Amherst, in the County of Erie, New York, pursuant to Section 202-b of the Town Law

Offered by: _____

Seconded By: _____

RESOLUTION AND
ORDER AFTER PUBLIC
HEARING

WHEREAS, the Town Board of the Town of Amherst (herein called the "Town"), in the County of Erie, New York, on behalf of Consolidated Sanitary Sewer District (herein referred to as the "District"), has caused the Town Engineering Department, engineers duly licensed by the State of New York (the "Engineer"), to prepare three (3) maps, plans and reports

Attachment: CertResoOrderAfterPH (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

each dated June 21, 2023 for the increase and improvement of facilities of the District, consisting of (i) planning costs for the replacement of the Cryogenic Oxygen Plant in the Town's Water Pollution Control Facility at the estimated maximum cost of $350,000 ("WPCF") (2023-2028 CIP Project No. E-10), (ii) infrastructure improvements to the WPCF - Phase 4 at the estimated maximum cost of $800,000 (2023-2028 CIP Project No. E-12), and (iii) HVAC improvements to the WPCF - Phase 5 at the estimated maximum cost of $175,000 (2023-2028 CIP Project No. E-13), at the total estimated maximum cost of $1,325,000 required in connection therewith as described in said report; and

WHEREAS, the Engineer has estimated that the cost of such increase and improvement of facilities shall be $1,325,000 and said maps, plans and reports have been filed with the Town Board; and

WHEREAS, the Town Board adopted an Order describing in general terms the proposed increase and improvement of such facilities, specifying the estimated cost thereof, and stating the Town Board would meet to hear all persons interested in said increase and improvement of facilities on July 24, 2023 at 7 o'clock P.M. (Prevailing Time) at the Town Hall, 5583 Main Street, Williamsville, New York; and

WHEREAS, a Notice of such public hearing was duly published and posted pursuant to the provisions of Article 12 of the Town Law; and

WHEREAS, such public hearing was duly held by the Town Board on the 24th day of July, 2023 at 7 o'clock P.M. (Prevailing Time) at the Town Hall, 5583 Main Street, Williamsville, New York, with considerable discussion on the matter having been had and all persons desiring to be heard having been heard, including those in favor of and those in opposition to said increase and improvement of such facilities; and

Attachment: CertResoOrderAfterPH (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

WHEREAS, the Town Board, as lead agency, has given due consideration to the impact that the project described herein may have on the environment and has determined that such project is a Type II project which will not result in any significant adverse environmental impacts, pursuant to the State Environmental Quality Review Act (SEQRA), constituting Article 8 of the Environmental Conservation Law, and 6 N.Y.C.R.R., Regulations Part 617.5;

Now, therefore, be it

DETERMINED, that it is in the public interest to increase and improve the facilities of the District as hereinabove described, at the estimated total cost of $1,325,000; and it is hereby

ORDERED, that the facilities of the District shall be so increased and improved and that the Engineer shall prepare plans and specifications and make a careful estimate of the expense of said increase and improvement of such facilities and, with the assistance of the Town Attorney, shall prepare a proposed contract for such increase and improvement of facilities of the District, which plans and specifications, estimate and proposed contract shall be presented to the Town Board as soon as possible; and it is hereby

FURTHER ORDERED, that the expense of said increase and improvement of facilities shall be financed by the issuance of $1,325,000 bonds of the Town, and the cost of said increase and improvement of facilities, including payment of principal of and interest on said bonds, shall be paid by the assessment, levy and collection of assessments upon the several lots and parcels of land within the District which the Town Board shall deem especially benefited by said facilities, so much upon and from each as shall be in just proportion to the amount of benefit which the improvement shall confer upon the same; and it is hereby

Attachment: CertResoOrderAfterPH (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

FURTHER ORDERED, that the Town Clerk record, or cause to be recorded, a certified copy of this Resolution and Order After Public Hearing in the office of the Clerk of Erie County within ten (10) days after adoption thereof.

DATED: July 24, 2023

(SEAL)

TOWN BOARD OF THE TOWN OF AMHERST

Attachment: CertResoOrderAfterPH (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

The adoption of the foregoing Resolution and Order was duly put to a vote on roll call, which resulted as follows:

Supervisor Brian J. Kulpa	voting _____
Councilwoman Jacqualine Berger	voting _____
Deputy Supervisor/Councilwoman Deborah Bruch Bucki	voting _____
Councilman Shawn Lavin	voting _____
Councilman Michael R. Szukala	voting _____

The Resolution and Order were declared adopted.

Attachment: CertResoOrderAfterPH (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed resolution and order of the Town Board of said Town adopted at a meeting duly called and held on July 24, 2023, has been compared by me with the original resolution and order as officially recorded in my office in the Minute Book of said Town Board and is a true, complete and correct copy thereof and of the whole of said resolution and order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this ___ day of July, 2023.

(SEAL)

_____

Francina J. Spoth, Town Clerk
Town of Amherst

Attachment: CertResoOrderAfterPH (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Attachment: MPR E-13 WPCF HVAC Facility Impr Phase 5 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Town of Amherst

Engineering Department

Water Pollution Control Facility

HVAC FACILITY IMPROVEMENTS – PHASE 5

Town of Amherst Project #2017.002D

2023 – 2028 Capital Improvement Program
Project E-13

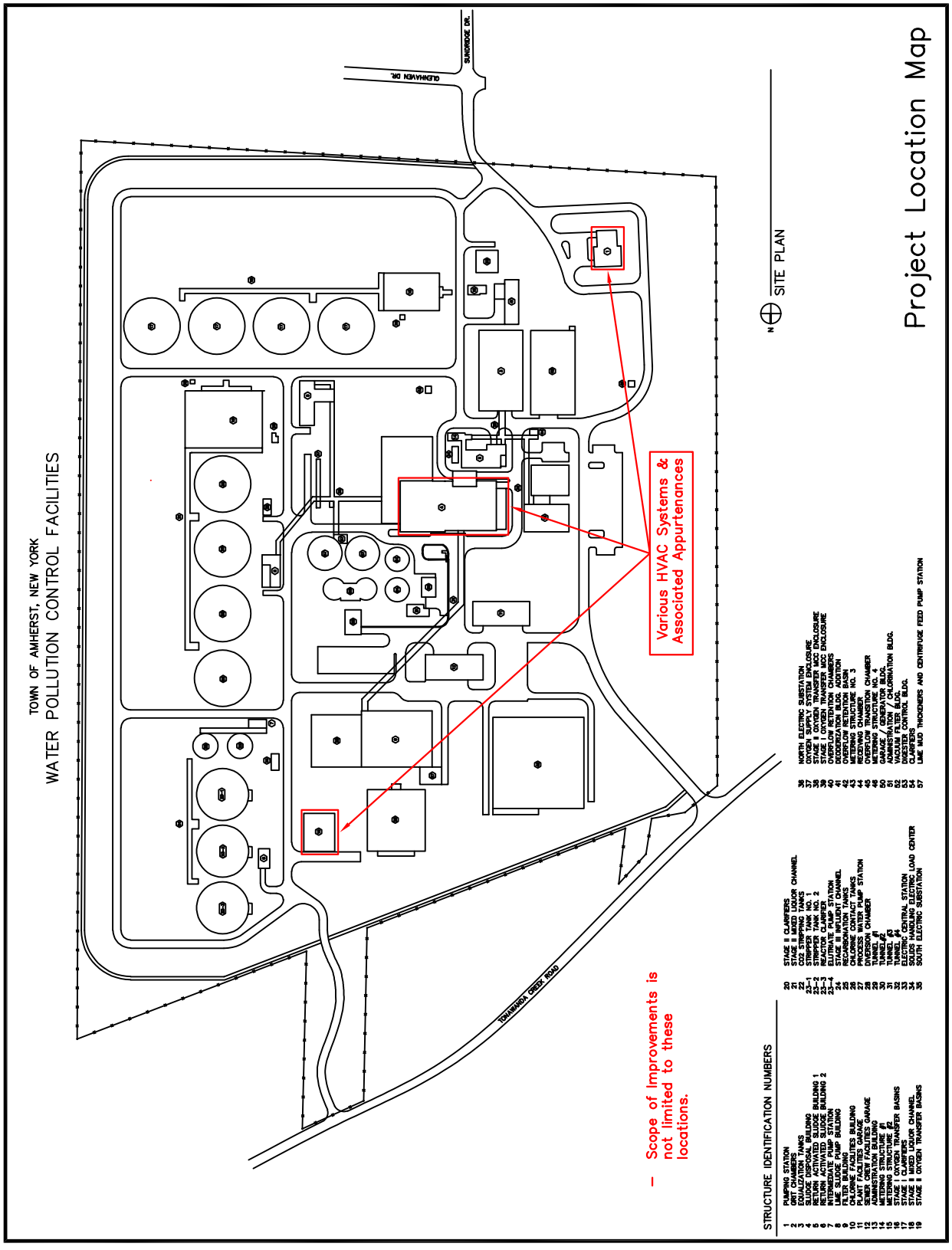
Map, Plan & Report
June 21, 2023

Contents:

- Project Site / Location Plan
- Existing Conditions
- Proposed Scope of Improvements
- Financial / Taxation Summary
- Town of Amherst Planning Department SEQR Determination

Town of Amherst Engineering Department
Water Pollution Control Facility
455 Tonawanda Creek Road
Amherst, NY 14228
(716) 691-9771 / Fax: (716) 691-4496

WATER POLLUTION CONTROL FACILITIES SITE PLAN:



1.0 FACILITY DESCRIPTION

The Town of Amherst (Town) WPCF, located at 455 Tonawanda Creek Road, has been in operation since the 1970s. The WPCF processes wastewater from the Towns of Amherst and Clarence, and the Village of Williamsville. This facility is a pure oxygen activated sludge treatment plant which provides preliminary, primary, and secondary treatment, as well as tertiary filtration. Plant effluent is seasonally disinfected with sodium hypochlorite and dechlorinated prior to discharge into Tonawanda Creek.

The WPCF is rated at a monthly average flow of 48 MGD according to the Town's State Pollution Discharge Elimination System (SPDES) Permit. In addition, the Town's High Flow Management Plan, High Flow Procedures state that Stage I treatment must sustain a minimum peak flow of 85 MGD, while Stage II must be capable of sustaining a minimum peak treatment capacity of 60 MGD.

2.0 WPCF HVAC FACILITY IMPROVEMENTS – PHASE 5

2.1 EXISTING CONDITIONS

The WPCF operates various units for its Heating, Ventilating and Air Conditioning (HVAC) systems. The types of heater systems installed at the facility include hot water (boiler), natural gas or electric type units as well as many air conditioning systems. The purpose of the HVAC systems is to provide for the proper temperature control, exhaust and make-up air for the plant processes, computer control components and related office areas, and provide treatment for the removal of odors or airborne contaminants. The majority of the HVAC systems were originally installed in the late 1970s. Many of the heating, cooling, and scrubber units are located in harsh and corrosive environments throughout the facility and require replacement. The advantages of the project will be to reduce energy consumption, reduce operating and maintenance costs, and provide an additional 20 years of useful life.

Initial funds for this project were bonded in 2017. This bond will provide additional funds towards the construction of this project. Currently, a consultant is designing this project, and the anticipated bid date will be in late 2023.

2.1.1 SCOPE OF IMPROVEMENTS

This project is for the replacement of various HVAC systems, which includes roof top units, hot water boilers, circulation pumps and associated appurtenances.

2.1.2 FINANCING

The WPCF HVAC Facility Improvements – Phase 5 Project will be completed during 2023 - 2024. The work described above will be bonded against the Consolidated Sanitary Sewer District at a *total project cost* of $175,000. The above project can be characterized as a replacement-in-kind project.

FINANCIAL SUMMARY:

Construction Costs	$ 174,125
Engineering Fees	$ 0

Attachment: MPR E-13 WPCF HVAC Facility Impr Phase 5 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Legal / Administrative /Interest	$ 875
Contingencies	$ 0
Total Amount to be bonded	**$ 175,000**

It is important to note that the above project costs are estimates only and the department reserves the ability to maneuver funding between projects as necessary.

2.1.3 TAX IMPACTS

Taxation Summary:

- Current Bond Request: $ 175,000
- Bond Term: 10 years
- Annual Tax Impacts: $0.0017 per year, per $1,000 AV
- Typical Property Taxation Impacts: $0.4290 per year, per $250,000 property

Attachment: MPR E-13 WPCF HVAC Facility Impr Phase 5 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AI
Planning Director

Daniel J. Ulatowski, AI
Assistant Planning Dire

Transmitted electronically

MEMORANDUM June 13, 2023

TO: Michael J. Poslinski, Senior Engineering Assistant
Engineering Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
WPCF – HVAC Facility Improvements, Phase 5
2023-2028 C.I.P. Project E-13

The Planning Department has reviewed the Map, Plan & Report for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\E_12_June 13_2023_WPCF_ Building and Equip_Phase 4.docx

cc:
Daniel Howard, Planning Director
Martin Polowy, Town Attorney

Attachment: MPR E-13 WPCF HVAC Facility Impr Phase 5 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Attachment: MPR E-12 WPCF Building & Equip Infrastructure Phase 4 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Town of Amherst

Engineering Department

Water Pollution Control Facility

BUILDING AND EQUIPMENT INFRASTRUCTURE – PHASE 4

Town of Amherst Project # 2023.002B

2023 – 2028 Capital Improvement Program
Project E-12

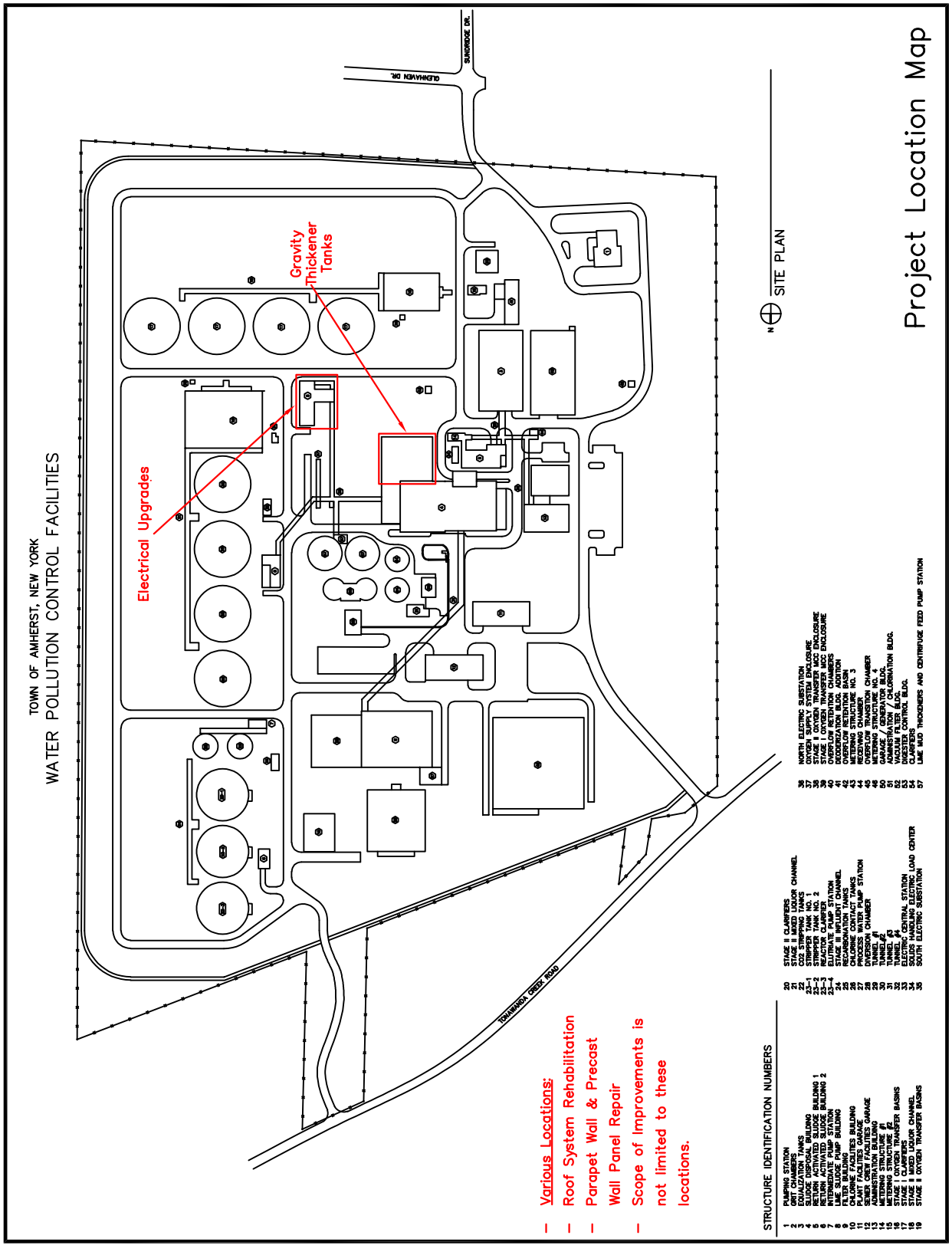
Map, Plan & Report
June 21, 2023

Contents:

- Project Site / Location Plan
- Existing Conditions
- Proposed Scope of Improvements
- Financial / Taxation Summary
- Town of Amherst Planning Department SEQR Determination

Town of Amherst Engineering Department
Water Pollution Control Facility
455 Tonawanda Creek Road
Amherst, NY 14228
(716) 691 - 9771 / Fax: (716) 691 - 4496

WATER POLLUTION CONTROL FACILITIES SITE PLAN:



Attachment: MPR E-12 WPCF Building & Equip Infrastructure Phase 4 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

1.0 FACILITY DESCRIPTION

The Town of Amherst (Town) WPCF, located at 455 Tonawanda Creek Road, has been in operation since the 1970s. The WPCF processes wastewater from the Towns of Amherst and Clarence, and the Village of Williamsville. This facility is a pure oxygen activated sludge treatment plant which provides preliminary, primary, and secondary treatment, as well as tertiary filtration. Plant effluent is seasonally disinfected with sodium hypochlorite and dechlorinated prior to discharge into Tonawanda Creek.

The WPCF is rated at a monthly average flow of 48 MGD according to the Town's State Pollution Discharge Elimination System (SPDES) Permit. In addition, the Town's High Flow Management Plan, High Flow Procedures state that Stage I treatment must sustain a minimum peak flow of 85 MGD, while Stage II must be capable of sustaining a minimum peak treatment capacity of 60 MGD.

2.0 WPCF BUILDING AND EQUIPMENT INFRASTRUCTURE – PHASE 4

2.1 EXISTING CONDITIONS

The WPCF has 58 buildings and structures on the premises with many of them housing equipment that is critical for plant operation. Most of the site structures were built in the late 1970s and are showing signs of deterioration.

In 2019, the Town hired a consultant to perform a building condition survey of the existing facilities at the WPCF. The final report contained a description of the building systems surveyed, their observed conditions, and recommended repairs. From the consultant's observations, they concluded that the many of the structures had deteriorating exterior building envelopes. These issues being failing roof systems, deteriorating parapet walls & precast wall panels, brick spalling and cracked or missing joint sealant.

The goal of this funding action and its associated projects will be to 1.) extend the life of various structures, 2.) improve building efficiency, and 3.) reduce safety concerns. In addition, essential equipment will be replaced in order to provide reliable equipment that will not interrupt the plant process.

This project will focus on the following areas of improvements, but are not limited to:

Roof System Rehabilitation:

Presently there are a number of buildings located at the WPCF with roof systems that are in failure mode for numerous reasons. Some roof areas have leaking and or ponding issues due to deficient drainage system installation, skylight failure and/or degradation over time. All buildings roofs with failures will be addressed with an entire roof replacement.

Initial funds for this project were bonded in 2016 & 2021. This Infrastructure Bond will provide additional funds towards this project. Currently, a consultant is designing this project, and the anticipated bid date will be in the fall of 2023.

Attachment: MPR E-12 WPCF Building & Equip Infrastructure Phase 4 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Attachment: MPR E-12 WPCF Building & Equip Infrastructure Phase 4 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Parapet Wall & Precast Wall Panel Repair / Rehabilitation:

From the 2019 building condition survey, the consultant observed that multiple buildings had existing precast concrete wall panels and parapet walls that were failing. Most of the structures were built in the late 1970s, and over time some of these walls have deteriorated due to cracked sealant joints, rusted steel lintels, misaligned anchor fasteners, failing wall flashing and no protective capping on the parapet walls.

In late April 2020, a precast panel forming part of the east parapet of Building 4 detached from the building and fell to the ground. It was observed that the roof system had failed in this area, and the anchorage that held the panel in place had corroded. In order to safe guard personal and other structures, the Town installed multiple anchor bolts on each of the precast panels in this section of the building.

Ultimately, all buildings with failing parapet walls and precast wall panels will need to be addressed with repairs or full replacements. Initial funds for this project were bonded in 2021. This Infrastructure Bond will provide additional funds towards this project. Currently, a consultant is designing this project, and the anticipated bid date will be in the fall of 2023.

Rebuild of Gravity Thickener Solids Handling Tanks:

The solids handling systems provide for the collection, thickening, dewatering and disposal of solids generated in the plant. The organic solids include raw sludge and scum from the Equalization Tanks, grit from the Grit Chambers and waste activated sludge and scum from the Stage 1 and Stage 2 Clarifiers. With a few exceptions, all solids handling processes and equipment are located in the Sludge Disposal Building.

Thickening wastewater solids reduces the volume of residuals, improves operation, and reduces costs for subsequent storage, processing, transfer, end use or disposal. The WPCF's blended sludge is thickened in the solids handling process utilizing four gravity thickener tanks. The chain & flight sludge collector tanks, pumps and associated appurtenances were originally installed in the late 1970s. The equipment for this system operates in a very harsh, corrosive atmosphere and are at the end of their useful life. The tanks are in need of rehabilitation, and the associated pumps & piping need replacement.

Initial funds for this project were bonded in 2020. This Infrastructure Bond will provide additional funds towards this project. Currently, a consultant is designing this project, and the anticipated bid date will be in late 2023.

Electrical Upgrades – Phase 4:

The electrical system is an essential part of this facility's operation. Almost all of the processes depend upon some form of electrical power; whether it is used to pump wastewater, sludge, chemicals, drive sludge collecting mechanisms or power sludge dewatering equipment.

Power from the electrical substations feed thirty-five motor control centers (MCC) that contain motor starters, current transformers, switches, control relays and circuit breakers. The MCCs were originally installed in the late 1970s. These units operate in a very harsh, corrosive atmosphere and the plant staff

has made numerous spot repairs to the units during the past 30 years. These units are in need of a replacement, because the units have exceeded their useful life, and further replacement parts are unavailable.

The MCCs located at the treatment plant have been in service much longer than their intended service-life. Replacing the aged electrical equipment will assure that key components of the wastewater treatment plant operate with uninterrupted electrical service and minimize the risk for workers who must operate these components.

Initial funds for this project were bonded in 2017. This Infrastructure Bond will provide additional funds towards this project. Currently, a consultant is designing this project, and the anticipated bid date will be in late 2023.

2.1.1 SCOPE OF IMPROVEMENTS

Roof System Rehabilitation:

Replace failing roof systems throughout the facility. These roof replacements will include complete correction of all critical design details including all insulation, flashing, drainage, curb details, and any other associated components of the roof system.

Parapet Wall & Precast Wall Panel Repair / Rehabilitation:

Rehabilitate or replace failing parapet walls and precast wall panels throughout the facility. This scope will also include any other improvements needed to the building's envelope.

Rebuild of Gravity Thickener Solids Handling Tanks:

Provide upgrades and replacements to various components of the existing solids handling system and any other associated components.

Electrical Upgrades – Phase 4:

Replacement of various electrical systems, which includes Motor Control Centers and associated appurtenances.

2.1.2 FINANCING

The WPCF Building and Equipment Infrastructure – Phase 4 Project will be completed during 2023 - 2024. The work described above will be bonded against the Consolidated Sanitary Sewer District at a *total project cost* of $800,000. The above project can be characterized as a replacement-in-kind project.

FINANCIAL SUMMARY:

Estimated Construction Costs	$ 796,000
Engineering Fees	$ 0
Legal / Administrative /Interest	$ 4,000
Contingencies	$ 0
Total Amount to be bonded	**$ 800,000**

Attachment: MPR E-12 WPCF Building & Equip Infrastructure Phase 4 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

It is important to note that the above project costs are estimates only and the department reserves the ability to maneuver funding between projects as necessary.

2.1.3 TAX IMPACTS

Taxation Summary:

• Current Bond Request:	$ 800,000	
• Bond Term:	40	years
• Annual Tax Impacts:	$0.0032	per year, per $1,000 AV
• Typical Property Taxation Impacts:	$0.8036	per year, per $250,000 property

Attachment: MPR E-12 WPCF Building & Equip Infrastructure Phase 4 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AI
Planning Director

Daniel J. Ulatowski, AI
Assistant Planning Dire

Transmitted electronically

MEMORANDUM June 13, 2023

TO: Michael J. Poslinski, Senior Engineering Assistant
Engineering Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
WPCF – Building & Equipment Infrastructure, Phase 4
2023-2028 C.I.P. Project E-12

The Planning Department has reviewed the Map, Plan & Report for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\E_12_June 13_2023_WPCF_ Building and Equip_Phase 4.docx

cc:
Daniel Howard, Planning Director
Martin Polowy, Town Attorney

Attachment: MPR E-12 WPCF Building & Equip Infrastructure Phase 4 (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Attachment: MPR E-10 WPCF Cryogenic O2 Plant Replacement Design (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Town of Amherst

Engineering Department

Water Pollution Control Facility

CRYOGENIC OXYGEN PLANT REPLACEMENT DESIGN

Town of Amherst Project # 2020.002B

2023 – 2028 Capital Improvement Program
Project E-10

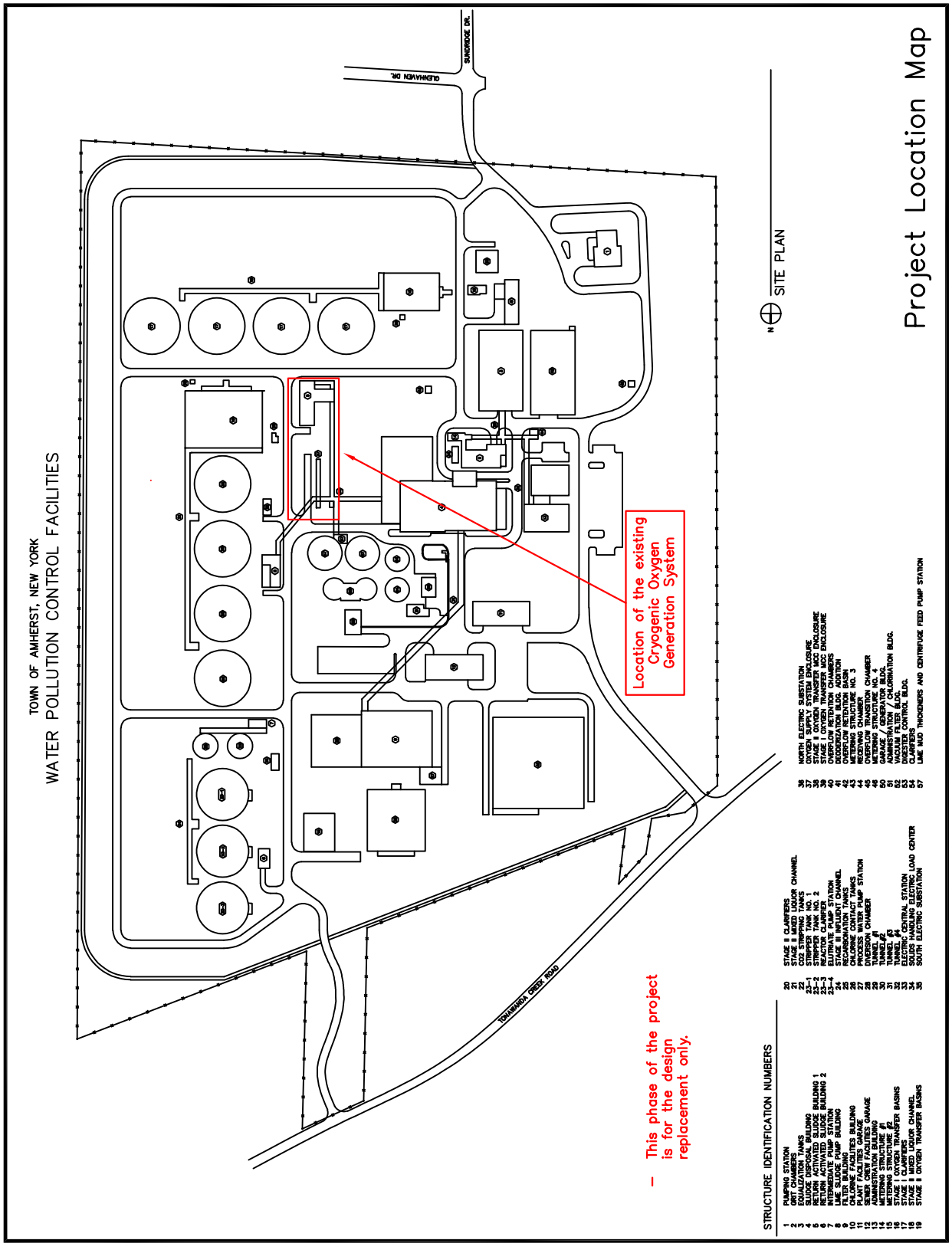
Map, Plan & Report
June 21, 2023

Contents:

- Project Site / Location Plan
- Existing Conditions
- Proposed Scope of Improvements
- Financial / Taxation Summary
- Town of Amherst Planning Department SEQR Determination

Town of Amherst Engineering Department
Water Pollution Control Facility
455 Tonawanda Creek Road
Amherst, NY 14228
(716) 691-9771 / Fax: (716) 691-4496

WATER POLLUTION CONTROL FACILITIES SITE PLAN:



1.0 FACILITY DESCRIPTION

The Town of Amherst (Town) WPCF, located at 455 Tonawanda Creek Road, has been in operation since the 1970s. The WPCF processes wastewater from the Towns of Amherst and Clarence, and the Village of Williamsville. This facility is a pure oxygen activated sludge treatment plant which provides preliminary, primary, and secondary treatment, as well as tertiary filtration. Plant effluent is seasonally disinfected with sodium hypochlorite and dechlorinated prior to discharge into Tonawanda Creek.

The WPCF is rated at a monthly average flow of 48 MGD according to the Town's State Pollution Discharge Elimination System (SPDES) Permit. In addition, the Town's High Flow Management Plan, High Flow Procedures state that Stage I treatment must sustain a minimum peak flow of 85 MGD, while Stage II must be capable of sustaining a minimum peak treatment capacity of 60 MGD.

2.0 WPCF CRYOGENIC OXYGEN PLANT DESIGN REPLACEMENT

2.1 EXISTING CONDITIONS

The facility's Stage I and Stage II oxygen transfer basins are fed with high-purity oxygen, generated on-site by a 40-ton cryogenic oxygen generation system. Cryogenic oxygen generation takes advantage of the differential boiling points of atmospheric gases to separate and refine a high-purity oxygen stream. This process requires more thorough and intense monitoring and operation than alternative methods of oxygen generation.

In 2011, a consultant determined that energy usage per unit of water treated was high compared to other activated sludge WWTPs of comparable size. Most of the energy was used by cryogenic equipment in the activated sludge system. The 40-year-old plus cryogenic system is nearing the end of its useful life. The variable costs of electric supply and delivery, the high cost of maintaining the existing system in good working order, improvements over the past decade in other oxygen generation technologies, and the Town's interest in providing municipal services in a cost-effective and operationally efficient manner prompted the Town to have a study performed to evaluate multiple replacement or upgrade options. The Town will be moving forward with design of the recommended replacement to the existing oxygen generation system with a more energy efficient system.

2.1.1 SCOPE OF IMPROVEMENTS

A consultant will be hired by the Town to design the replacement to the existing cryogenic oxygen generation system and any associated appurtenances with a more energy efficient oxygen generation system.

2.1.2 FINANCING

The WPCF Cryogenic Oxygen Plant Design Replacement Project will be designed during 2023 - 2024. The work described above will be bonded against the Consolidated Sanitary Sewer District at a *total project cost* of $350,000. The above project can be characterized as a replacement-in-kind project.

Attachment: MPR E-10 WPCF Cryogenic O2 Plant Replacement Design (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

FINANCIAL SUMMARY:

Construction Costs	$ 0
Engineering Fees	$ 348,250
Legal / Administrative /Interest	$ 1,750
Contingencies	$ 0
Total Amount to be bonded	**$ 350,000**

2.1.3 TAX IMPACTS

Taxation Summary:

• Current Bond Request:	$ 350,000	
• Bond Term:	5	years
• Annual Tax Impacts:	$0.0063	per year, per $1,000 AV
• Typical Property Taxation Impacts:	$1.5631	per year, per $250,000 property

Attachment: MPR E-10 WPCF Cryogenic O2 Plant Replacement Design (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AI
Planning Director

Daniel J. Ulatowski, AI
Assistant Planning Dire

Transmitted electronically

MEMORANDUM June 13, 2023

TO: Michael J. Poslinski, Senior Engineering Assistant
Engineering Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
Cyrogenic Oxygen Plant Design Replacement
2023-2028 C.I.P. Project E-10

The Planning Department has reviewed the Map, Plan & Report for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\E_10_June 13_2023_Cryogenic Oxygen Plant Replac.docx

cc:
Daniel Howard, Planning Director
Martin Polowy, Town Attorney

Attachment: MPR E-10 WPCF Cryogenic O2 Plant Replacement Design (RES-2023-622 : WPCF Multi-Project Bond (Bond Resolution - $1.325M))

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 27749 **RESOLUTION 2023-623** **ADJOURNED**

1350 Eggert Road Rezoning

Request to rezone 1350 Eggert Road from OB-TNB-1 to TI-2.5.

7/24/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was opened at 8:14 PM.

Sean Hopkins, Esq. presented.

The following speakers spoke in opposition:
Ray Volpe, 302 Crosby Blvd
Dan Dolloff, 278 Crosby Blvd
Susan Aureli, 312 Crosby Blvd
Pamela & John Sander, 34 Olney Dr
Kristen Lane, 37 Olney Dr
Janice Colvin, 49 Olney Dr
Jessica Kerr, 22 Olney Dr

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the hearing until August 21st, seconded by Councilmember Lavin and unanimously approved 5-0.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 8/21/2023 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Shawn Lavin, Councilmember	
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala	

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Directo

Daniel J. Ulatowski, A
Assistant Planning Di

July 14, 2023

Town Board Agenda of July 24, 2023

The Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: Request to rezone 3.61± acres of land from Office Building-Traditional Neighborhood Business District 1 (OB-TNB-1) to Traditional Infill 2.5 District (TI-2.5); property located at 1350 Eggert Road, 1097 Group LLC, Petitioner. (Z-2023-03).

Honorable Members:

The subject property is a 3.61 ± acre rectangular parcel located on the southwest corner of the intersection of Eggert Road and Crosby Boulevard approximately 500 feet north of the intersection of Main Street and Eggert Road.

The site is currently developed as a mixed-use building with the associated parking. The existing building includes 38 apartments and first floor office space. The building ranges from single-story at the south end to 3-story at the north end due to significant grade change on the site. A semi-circular parking and drop-off/pick-up area is located adjacent to the front building entrance with the majority of the development's parking to the rear of the existing building. A 20 ft. wide easement runs near the north property line of the parcel and provides access to the adjacent property at 289 Crosby Boulevard, currently used as a group home.

For information on the surrounding zoning and land use, please refer to the attached sketch.

The purpose of this request is to utilize a zoning district that allows for a ground floor residential use to introduce new residential buildings to an existing developed site. Based on a concept plan, the proposed development project proposes two, eight-unit residential buildings that are located on the western portion of the site. Additionally, approximately 5,130 square feet of vacant commercial space within the former school building will be converted into three apartment units.

The subject site was zoned Community Facilities (CF) district with the adoption of the Town wide Zoning Map & Ordinance on January 19, 1976.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Honorable Town Board

Rezone land from OB-TNB-1 to TI-2.5;
Property located at 1350 Eggert Road
Agenda of July 24, 2023

Z-2010-07: The subject site at 1350 Eggert Road was included in a request to rezone 26.56± acres of land for the establishment of the Traditional Neighborhood Business (TNB) overlay district. The intent of establishing the overlay district was to advance planning objectives in the Main & Eggert area to encourage investment and improve aesthetic design. The request was adopted by the Town Board on May 17, 2010

Z-2013-16: Request to rezone 3.61± acres of land from CF-TNB-1 to OB-TNB-1 to permit the redevelopment of the former Cantalician Center school site as a mixed-use project to include 38 apartment units and 5,130± sq. ft. of office space.

It should be noted that each parcel proposed to be located within a Traditional Infill District (those listed in §5A-1 of the Zoning Ordinance) is required to have a "frontage type" assigned. The frontage types (§5A-2 of the Zoning Ordinance) function as a supplemental overlay that provides additional design requirements in order to provide a desired character and form. As part of the subject rezoning request, the Planning Board has recommended approval with the condition that the "Residential" frontage type be assigned to this property. A "Residential" frontage type allows for buildings that are closer in mass and scale to large traditional houses. This is accomplished through dimensional requirements for a larger front setback (10'-30'), smaller building massing (40' width maximum) and a pitched roof design. These elements along with other dimensional standards facilitate an architectural form that is consistent with a typical residential building. The Planning Board, in recognition of the character of the surrounding neighborhood deemed this frontage type as the most appropriate for the future proposed development of the subject parcel and recommends the Town Board assign "Residential" frontage type as a condition of the rezoning.

The Planning Board offers the following findings consistent with Section 8-3 of the Zoning Ordinance.

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

Figure 6A in the Bicentennial Comprehensive Plan illustrates the subject site as appropriate for commercial-mixed use. Further, Figure 6A highlights the appropriate zoning district as Traditional Infill. The Traditional Infill areas are characterized by walkable, pedestrian scaled development that services the surrounding neighborhood. Smaller scale development with attention to architectural design creates a sense of place while preserving the character of the existing community. The subject request if assigned a residential frontage as permitted by the traditional infill zoning district will be consistent with goals and objectives of the Comprehensive Plan. As noted, the petitioner's proposed concept plan and building form must be revised to be consistent with the surrounding residential scale and building form.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The rezoning request is consistent with Section 1-2-2K of the Zoning Ordinance which seeks to guide the future development of the Town so as to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan. The Petitioner's concept plan should be consistent with the residential frontage standards pursuant to section 5A-2-6 of the Zoning Ordinance.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Honorable Town Board

Rezone land from OB-TNB-1 to TI-2.5;
Property located at 1350 Eggert Road
Agenda of July 24, 2023

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The proposed development faces to the north to a neighborhood park and single family houses. The rezoning request and introduction of a residential land use is compatible with the surrounding land uses which are single family residential to the north and west, zoned Residential District 3 (R-3). Multi-family residential to the northeast, zoned Residential District 4 (R-4), a place of worship to the southeast, zoned Community Facilities with the Traditional Neighborhood Business District overlay (CF-TNB-1), and a commercial office to the south, zoned Office Building with the Traditional Neighborhood Business District overlay (OB-TNB-1).

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is an Unlisted Action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

RECOMMENDATION

The Planning Department requests that if the Town Board desires to act on the rezoning request, that a decision date be established after the public hearing so that the Planning Department can prepare a determination of environmental significance pursuant to SEQR, and prepare a resolution for the Town Board's consideration.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/TV/ac
Att.
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_TB_Letter.doc
cc: Martin Polowy, Town Attorney

Planning Board Approval May 18, 2023
Ayes 6, Noes 0, Absent 1 (Chmiel)

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-03

PETITIONER

1097 Group LLC
Hopkins Sorgi & McCarthy
5500 Main St., Suite 343
Williamsville, NY 14221

PROPERTY LOCATION

1350 Eggert Road

'23 MAY 26 AM9:1

WHEREAS the Town of Amherst Planning Board on Thursday, May 18, 2023 held a public hearing on the proposed rezoning of land from Office Building- Traditional Neighborhood Business District 1(OB-TNB-1) to Traditional Infill District 2.5 (TI-2.5) , and

WHEREAS the Planning Board has reviewed plans and other materials regarding the rezoning proposal, and

WHEREAS the materials and plans have been referred to the Town's various review agencies, and

WHEREAS in accordance with Section 8-3-5 of the Zoning Ordinance the Planning Board finds that:

A. The proposed zoning and development plan if revised can be consistent with the policies of the Comprehensive Plan and the Zoning Ordinance.

B. There are adequate services and utilities available or proposed to be made available in the construction of the development.

C. The proposed zoning is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

D. The subject property is suitable for uses permitted by the current versus the proposed district.

E. The proposed change does tend to improve the balance of uses, or meets a specific demand in the Town.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived since hydric/potentially hydric soils have not been identified on the parcel.

WHEREAS pursuant to Local Law #3-82, as amended, the Planning Board recommends that the Town Board determine that the requirements of SEQR are complete and that the subject proposal is not expected to have a significant adverse effect on the environment.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-03

PETITIONER

1097 Group LLC

PROPERTY LOCATION

1350 Eggert Road

'23 MAY 26 AM9:1

NOW THEREFORE BE IT RESOLVED that the Planning Board recommends to the Town Board in accordance with Section 8-3-4 of the Zoning Ordinance, that the rezoning request be approved subject to:

1. A residential frontage be assigned to the parcel pursuant to Section 5A-2-1 of the Zoning Ordinance, and as extended along Crosby Boulevard.

2. That the use of the subject property as an ambulance service be prohibited and that a deed restriction prohibiting same on the property be filed with the Erie County Clerk's office.

The foregoing resolution was adopted by the Town of Amherst Planning Board, May 18, 2023; moved by Giuliani; seconded by Kahn; ayes 6; noes 0; absent 1 (Chmiel).

Robert J. Gilmour, Planning Board Chair

5/25/23
Date

TV/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_resolution_051823.docx
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Rezoning Application & Supporting Documentation - Rezoning of 1350 Eggert Road from OB-TNB-1 to TI-2.5 Applicant: 1097 Group LLC c/oSean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC

Prepared by: Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 716.510-4338
E-mail: shopkins@hsmlegal.com

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2023-03 **Acreage** 3.61 **Fee $** 1765

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____ ACCEPTED BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. 2/21/2023 RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	$1,250.00
2 – 20 ACRES **$1,250 + $250/acres or fraction thereof over 2 acres**		$500.00
20 – 30 ACRES **$5,700 + $150/acre or fraction thereof over 20 acres**		_____
OVER 30 ACRES **$6,900 +$75/acre or fraction thereof over 30 acres**		_____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	$15.00
TOTAL FEE:	~~$1,265.00~~ 1,765.00	1,765.00

RECEIVED FEB 21 2023 TOWN OF AMHERST PLANNING DEPT.

[Note: A completed Part 1 of the Full Environmental Assessment Form along with Page 5[a] and Attachment "A" is attached as Exhibit "1".]

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: 1097 Group LLC

Address: c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code

Phone: 510-4338 Fax:

E Mail shopkins@hsmlegal.com

2. **The undersigned hereby petitions the Honorable Town Board to rezone the following described property**

From: OB-TNB-1 District

To: TI-2.5 District

3. **Street address of land to be rezoned:** (must be verified by Town Assessor's Office)

1350 Eggert Road

SBL #: SBL No. 67.82-3-9.11

4. **Area of land to be rezoned** (in acres): Approximately 3.61 acres

5. **Owner of Land:**

Name: 1097 Group LLC c/o Sean Hopkins, Esq.

Address: 5500 Main Street, Suite 343 - Williamsville, NY 14221

Telephone: 716.510-4338

6. **Representative** (Architect, Engineer, Landscape Architect, Surveyor or Attorney):

Name: Sean W. Hopkins, Esq.

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsmlegal.com
City State Zip Code

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

7. Petitioner's interest in property

_____Option to purchase

__X_____Owner

__ _____Other (explain)

8. The following are all others having an interest in this application and join herein with the petitioner named above: (describe extent of interest; attach sheets as needed)

Not Applicable.

9. Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor. Legal description of the property to be rezoned from OB-TNB-1 to TI-2.5 attached as Exhibit "2" and the survey of the Project Site attached as Exhibit "3".

10. Said property has the following deed restrictions or Covenants: (attach copy) Not Applicable.

Liber _____ Page _____

11. Information on proposed project:

A. Description of the character of the proposed development:

See Exhibit 4.

B. Rationale for rezoning request:

1. Why was this site chosen?

See Exhibit 4

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

2. Why cannot land be used with the existing zoning?

See Exhibit 4.

3. How will this rezoning impact surrounding properties?

See Exhibit 4.

4. How will this rezoning impact the school system?

See Exhibit 4.

12. Quantitative Data:

A. Total # of dwelling units: 9 proposed two-story attached townhome units

B. Distribution of dwelling units by type: Apartments

C. Gross Residential Density per acre: 13 units per acre

D. Total amount of Open Space: Not Applicable

E. Proposed Non-Residential Floor Area: Not Applicable

[Note: A reduced size copy of the Site Plan for the proposed project is provided at Exhibit "6".]

13. Development Schedule:

Start: Summer 2023

Finish: 2024

Stages (# of): 1

14. If any portion of the proposed development is planned to be sold or leased, please describe:

The apartments will be leased.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

15. Open Space ownership and maintenance provisions (if applicable):

Greenspace and landscaping will be privately owned and maintained.

16. Basis for Findings (Sec. 8-3-5 of the Town Zoning Code) (Attach sheets and supplemental materials as necessary.)

A. The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Town Zoning Ordinance.

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps, and/or figures in the plan that support the proposed zoning at this location (The Comprehensive Plan document is available at the Planning Department, Town Clerk's Office, Amherst libraries, or at www.amherst.ny.us). Add sheets as needed.

See Exhibit 5.

2. Pursuant to NYS Town Law Section 272a(11), "all Town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this Section." The Town Board adopted the Comprehensive Plan pursuant to NYS Town Law 272 on January 2, 2007. If the rezoning is approved, the Town Board may require the Plan to be amended, as applicable.

Cite all text, map, and / or figures that must be amended to support the proposed zoning at this location (attach pages as necessary) and provide detailed suggested amendments.

See Exhibit 5.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

3. State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

See Exhibit 5.

B. Adequate Services and Utilities are available or are proposed to be made available with the construction of the development:

1. Sanitary Sewer

Yes.

2. Storm Sewer/Drainage

Yes.

3. Water

Yes.

4. Other Yes.

C. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

See Exhibit 5.

D. Suitability of the subject property for uses permitted by the current versus the proposed district:

See Exhibit 5.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

E. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

See Exhibit 5.

17. The petitioner encloses herewith the sum of $ 1,265.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.

18. The undersigned certifies that all information required to be disclosed pursuant to Section 809 of the General Municipal Law (see below) is as follows:

The undersigned swears or affirms that all statements made herein are true, that all drawings submitted correctly show the situation involved in this petition.

Signature of Petitioner

Subscribed and sworn to before me this 21st day of Feb., 2023

Notary Public, Erie County, New York

NOREEN A. ZIMMERMAN
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires Aug. 31, 20

N.Y.S. General Municipal Law - Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state office or any office or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them

   (a) is the applicant, or
   (b) is an officer, director, partner or employee of the applicant, or
   (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
   (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such applicant, petition or request.

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party Officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four or section two of the election law.

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

P/CurrPlan/Applications2007/Rezoning & Comp Plan Amend App.
10/08

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 1

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Rezoning of 1350 Eggert Road from OB-TNB-1 to TI-2.5		
Project Location (describe, and attach a general location map): 1350 Eggert Road - Town of Amherst - Erie County		
Brief Description of Proposed Action (include purpose or need): The proposed project ("action") consists of a two-story town home building consisting of nine units and related site improvements to be located on a portion of 1350 Eggert Road ("Project Site"). The proposed action has been defined broadly to include all required discretionary approvals and permits as well as all proposed site improvements including an amendment of the zoning classification of the Project Site from OB-TNB-1 to TI-2.5 by the Town of Amherst Town Board. The project purpose is to develop a portion of the Project Site for residential purposes per the recommended land use in Figure 6-A of the Town's adopted Comprehensive Plan. The proposed project which represents an expansion of the previously approved redevelopment of the Project Site is an Unlisted Action and will not result in any potentially significant adverse environmental impacts. There were previous multiple negative declarations issued by the Town of Amherst municipal boards in connection with the environmental reviews of the existing project.		
Name of Applicant/Sponsor: 1097 Group LLC c/o Sean Hopkins, Esq.	Telephone: 716.510-4338 E-Mail: shopkins@hsmlegal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Project Contact (if not same as sponsor; give name and title/role):	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor):	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:

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B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, or Village Board of Trustees ☑Yes ☐No	Town of Amherst Town Board - Rezoning	January 2023
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Town of Planning Board - Site Plan Amendment	To be Determined
c. City, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☐Yes ☑No		
e. County agencies ☐Yes ☑No		
f. Regional agencies ☐Yes ☑No		
g. State agencies ☐Yes ☑No		
h. Federal agencies ☐Yes ☑No		

i. Coastal Resources.
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No

ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No

iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes ☐No

If Yes, identify the plan(s):
NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No

If Yes, identify the plan(s):

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C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
OB-TNB-1

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☐ No

c. Is a zoning change requested as part of the proposed action? ☑ Yes ☐ No
If Yes,
i. What is the proposed new zoning for the site? TI-2.5

C.4. Existing community services.

a. In what school district is the project site located? Amherst Central School District

b. What police or other public protection forces serve the project site?
Town of Amherst Police Department

c. Which fire protection and emergency medical services serve the project site?
Volunteer Fire Department

d. What parks serve the project site?
Various parks including public park contiguous to the project site

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Residential consisting of two-story attached townhomes for lease.

b. a. Total acreage of the site of the proposed action? _____ acres
b. Total acreage to be physically disturbed? .5 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres

c. Is the proposed action an expansion of an existing project or use? ☑ Yes ☐ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % 23.6% [38 existing units] Units: 9

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☑ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? ☐ Yes ☐ No
iii. Number of lots proposed? _____
iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: _____ months
ii. If Yes:
- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

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f. Does the project include new residential uses? ☑ Yes ☐ No

If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase				9
At completion of all phases				

g. Does the proposed action include new non-residential construction (including expansions)? ☐ Yes ☑ No

If Yes,

i. Total number of structures _____

ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length

iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☐ Yes ☑ No

If Yes,

i. Purpose of the impoundment: _____

ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☐ Other specify: _____

iii. If other than water, identify the type of impounded/contained liquids and their source. _____

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) ☐ Yes ☑ No

If Yes:

i .What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____

iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No

If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? ☐ Yes ☐ No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☑ No

If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

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ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐Yes ☐No
If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes ☐No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑Yes ☐No
If Yes:

i. Total anticipated water usage/demand per day: 900 gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☑Yes ☐No
If Yes:

- Name of district or service area: ECWA Consolidated Water District
- Does the existing public water supply have capacity to serve the proposal? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No
- Do existing lines serve the project site? ☑Yes ☐No

iii. Will line extension within an existing district be necessary to supply the project? ☐Yes ☑No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
- Source(s) of supply for the district:

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐Yes ☐No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑Yes ☐No
If Yes:

i. Total anticipated liquid waste generation per day: 1,800 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):
Sanitary wastewater.

iii. Will the proposed action use any existing public wastewater treatment facilities? ☑Yes ☐No
If Yes:

- Name of wastewater treatment plant to be used: Town of Amherst Wastewater Treatment Plant
- Name of district: Town of Amherst Consolidated Sanitary Sewer District
- Does the existing wastewater treatment plant have capacity to serve the project? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will a line extension within an existing district be necessary to serve the project? ☐Yes ☑No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

_____

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or .4 acres (impervious surface)

_____ Square feet or 3.3 acres (parcel size)

ii. Describe types of new point sources. Runoff from impervious surfaces

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

Municipal system.

- If to surface waters, identify receiving water bodies or wetlands: _____
- Will stormwater runoff flow to adjacent properties? ☐Yes ☑No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☑No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☐Yes ☑No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☐No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☐Yes ☑No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☐No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7:00 to 7:00
- Saturday: 7:00 to 5:00
- Sunday: Not Applicable
- Holidays: Not Applicable

ii. During Operations:

- Monday - Friday: Not Applicable
- Saturday: _____
- Sunday: _____
- Holidays: _____

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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

Construction equipment and activities limited to daytime hours is a temporary and unavoidable adverse impact.

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe: _____

n. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Lighting on building will comply with the stringent lighting standard contained in the Zoning Code.

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe: _____

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored _____

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally, describe the proposed storage facilities: _____

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: _____ tons per _____ (unit of time)
- Operation : _____ tons per _____ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction: _____
- Operation: _____

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction: _____
- Operation: _____

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s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☑ Other (specify): Park

ii. If mix of uses, generally describe:

Mixture of uses and zoning classifications.

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	1.8	2.2	.4
• Forested	0	0	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0	0	0
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: Greenspace/Landscaping	1.5	1.1	(.4)

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c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐Yes ☑No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐ No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑ No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

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v. Is the project site subject to an institutional control limiting property uses? ☐Yes ☐No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐Yes ☐No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? >3 feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____%

c. Predominant soil type(s) present on project site:

Farmington channery loam [FaB]	95.9 %
Ovid silt loam [OvA]	3.2 %
Urban land-Wassaic complex [Ux]	.9 %

d. What is the average depth to the water table on the project site? Average: >5 feet

e. Drainage status of project site soils:
☐ Well Drained: ____% of site
☑ Moderately Well Drained: .9 % of site
☑ Poorly Drained 99.1 % of site

f. Approximate proportion of proposed action site with slopes:
☑ 0-10%: 100 % of site
☐ 10-15%: ____% of site
☐ 15% or greater: ____% of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: _____

h. Surface water features.
i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☐Yes ☑No
ii. Do any wetlands or other waterbodies adjoin the project site? ☐Yes ☑No
If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.
iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☐Yes ☑No
iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name _____ Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐Yes ☑No
If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? ☐Yes ☑No

j. Is the project site in the 100-year Floodplain? ☐Yes ☑No

k. Is the project site in the 500-year Floodplain? ☐Yes ☑No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:
i. Name of aquifer: _____

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

m. Identify the predominant wildlife species that occupy or use the project site:
Typical suburban species.

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation):
ii. Source(s) of description or evaluation:
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No
If Yes:
i. Species and listing (endangered or threatened):

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No
If Yes:
i. Species and listing:

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No
If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site?
ii. Source(s) of soil rating(s):

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name:
ii. Basis for designation:
iii. Designating agency and date:

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☑ Yes ☐ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: Eligible property:School 13 - Eggert Rd Elementary School, Eligible property:St. Benedicts Roman Catholic Church Complex

iii. Brief description of attributes on which listing is based:

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s):

ii. Basis for identification:

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource:

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.):

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation:

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name 1097 Group LLC Date February 21, 2023

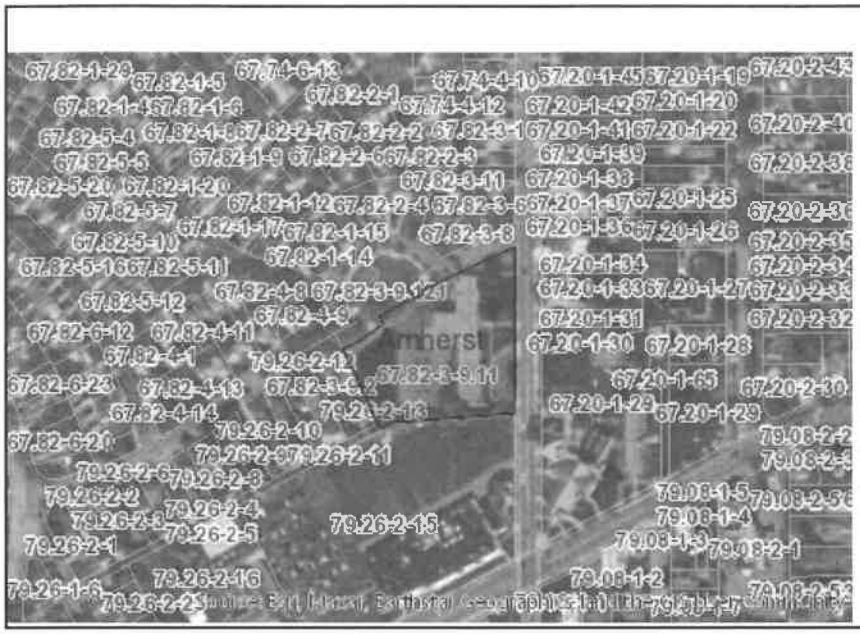
Signature Title Attorney for Project Sponsor

PRINT FORM

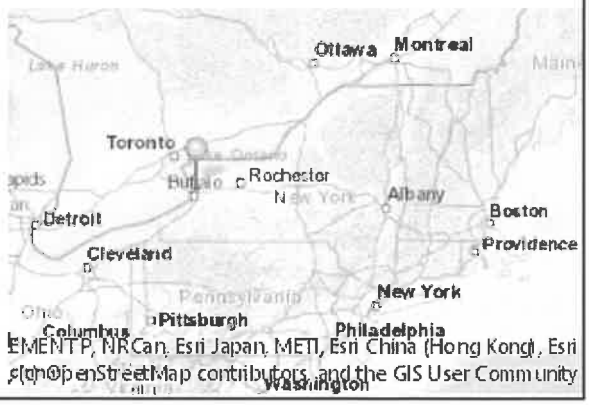
Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EAF Mapper Summary Report

Monday, February 20, 2023 12:59 PM



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	No
E.2.h.iii [Surface Water Features]	No
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	No
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Yes - Digital mapping data for archaeological site boundaries are not available. Refer to EAF Workbook.
E.3.e.ii [National or State Register of Historic Places or State Eligible Sites - Name]	Eligible property:School 13 - Eggert Rd Elementary School, Eligible property:St. Benedicts Roman Catholic Church Complex
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Rezoning of 1350 Eggert Road from OB-TNB-1 to TI-2.5

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

1. For each applicable category of proposed new structures, including additions to existing structures, provide the following information for all soil types on the project site (*according to Soil Survey of Erie County, NY; Table 11, Building Site Development, pp 294-305):*

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Farmington Channery Loam	Severe	Severe	Severe	Severe	Moderate
Ovid Silt Loam	Severe	Severe	Severe	Severe	Severe
Urban Land-Wassaic Complex	Moderate	Moderate	Moderate	Moderate	Moderate

2. If the Soil survey indicates either "severe" or "moderate" suitability for the proposed types of construction, a geotechnical and hydrological analysis based on one test per 3.5 acres of project area must be provided (per Town Board resolution, 3/17/03, amended 6/16/03).

   _x_ Geotechnical report attached _____ Not applicable

   [Note: Three copies of the Geotechnical Report prepared by Terracon Consultants - NY, Inc. dated July 28, 2022 have been submitted to the Planning Department].

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes x No
   On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes x No

   If so, the property may be within an area of the Town that is affected by a moratorium on connections to the sanitary sewer system.

4. Are there alternative locations on the site for this project? ☐ Yes x No

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:

   Not Applicable.

6. Are you aware of current or future plans or intentions by others in the Town of Amherst to develop property within 1000± ft. of the present project request: ☐ Yes ☒ No
   Describe: Not Applicable.

   (Potential environmental impacts from adjacent or nearby projects undergoing the approval process will receive a coordinated environmental review to determine cumulative effects on common receivers (e.g. traffic and drainage corridors) and other relevant environmental concerns.)

7. Maximum number of vehicular trips to be generated per peak hour upon completion of project 7 [Weekday A.M. Peak]
   Source: ITE Trip Generation Report

8. Will blasting occur during construction? ☐ Yes ☒ No

9. Does the project propose to connect and be tributary to the public sanitary sewer system? ☒ Yes ☐ No

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:
    1,800 average flow 7,200 peak flow.

    (Average flows of 2,500 gpd or greater will require an Engineer's Report that includes a detailed downstream sewer capacity analysis and the identification of and commitment to required I/I offset work during peak wastewater flow conditions.)

11. Based on the Town's *2011 Reconnaissance Level Survey of Historic Resources,* is your property 'blue-rated' for historic significance? ☐ Yes ☒ No

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 2

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 2 OF REZONING APPLICATION

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED FROM OB-TNB-1 TO TI-2.5

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, and State of New York, being part of Lot 18, Township 12, Range 7 of the Holland Land Company's Survey and known as part of lands shown on map filed in Erie County Clerk's Office under Cover No. 1492, bounded and described as follows:

BEGINNING at the intersection of the center line of Eggert Road with southeast line of Crosby Boulevard as shown on said map cover extended northeasterly; Thence southwesterly along the southeast line of Crosby Boulevard, 311.95 feet; Thence southeasterly at an exterior angle of 88°37'34", a distance of 10.25 feet to a point; Thence southwesterly at an exterior angle of 89°30'14", a distance of 32.04 feet to a point; Thence continuing southwesterly at an interior angle of 175°08'50", a distance of 95.35 feet to a point; Thence southeasterly at an interior angle of 92°40'17", a distance of 22.57 feet to a point on the northwesterly line of a 20' wide right of way for ingress and egress granted to Mother of Divine Grace Housing Development Fund Company Inc. and recorded in Erie County Clerk's Office in Liber 10219 of Deeds at page 613; Thence southwesterly at an exterior angle of 99°29'49" along said northwesterly easement line, a distance of 75.13 feet to a point; Thence continuing southwesterly at an exterior angle of 170°43'40" along said northwesterly easement line, a distance of 49.19 feet to a point, said point being on the northeasterly line of premises conveyed to Mother of Divine Grace Housing Development Fund Company, Inc. by Warranty Deed dated September 27, 1990 and recorded in the Erie County Clerk's Office on September 27, 1990 in Liber 10219 of Deeds at page 613; Thence southeasterly at right angles along the northeasterly line of said premises conveyed to Mother of Divine Grace Housing and along an extension of said northeasterly line, a distance of 233.32 feet to the southwest corner of lands conveyed to School District No. 13 by deed recorded in the Erie County Clerk's Office in Liber 1693 of Deeds at page 292; Thence northeasterly along the southeast line of said school lands, a distance of 39.70 feet to the southwest corner of lands conveyed to School District No. 13 by deed recorded in Liber 2504 of Deeds at page 268; Thence easterly along the south line of said school lands, a distance of 355.91 feet to a point on the center line of Eggert Road; Thence northerly along the center line of said road, a distance of 448.69 feet to the point of beginning.

Said parcel containing an area of 3.61 acres, more or less.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 3

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

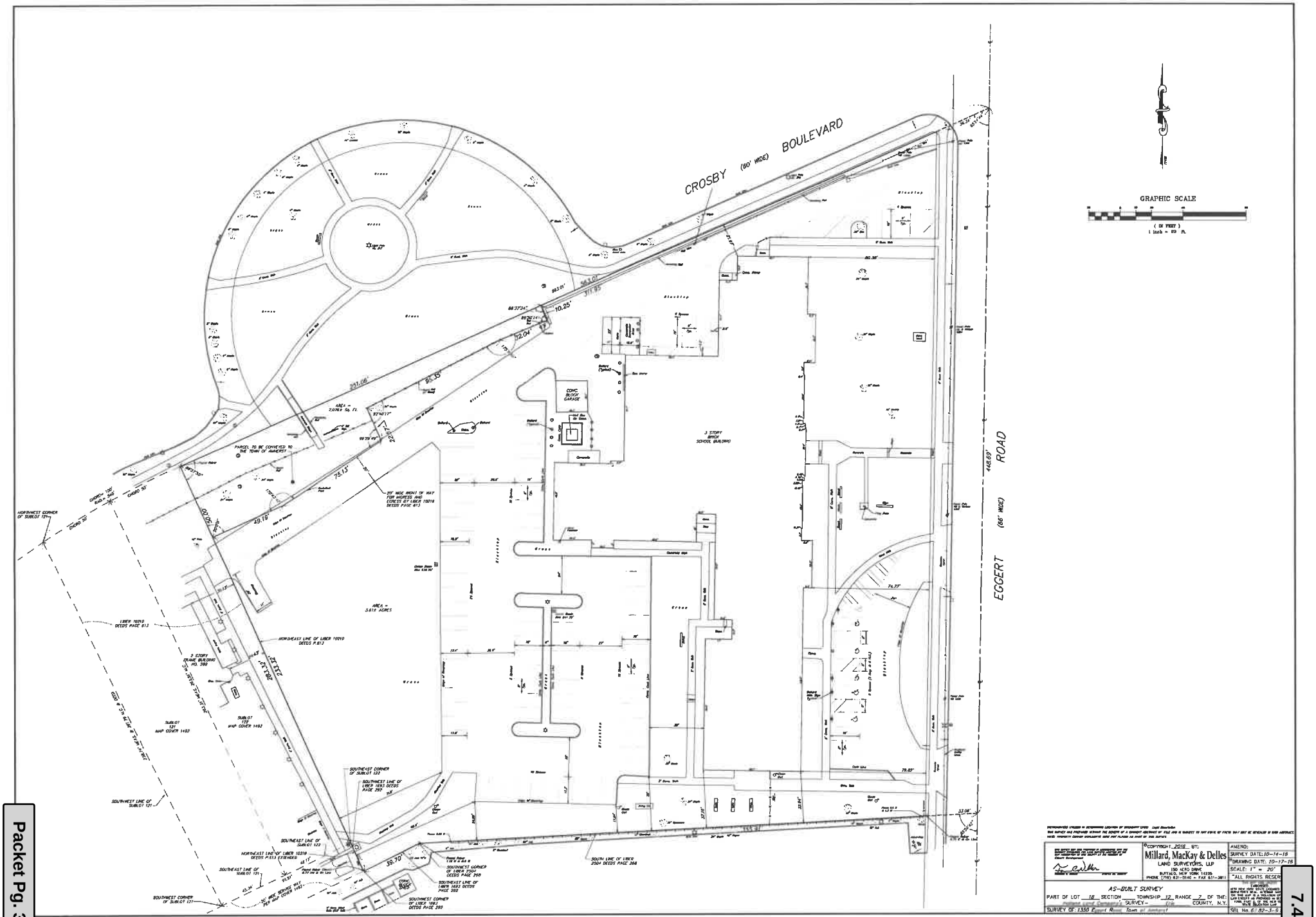

CROSBY (60' WIDE) BOULEVARD
EGGERT ROAD (66' WIDE)
GRAPHIC SCALE
(IN FEET)
1 inch = 60 ft.
3 STORY BRICK SCHOOL BUILDING
CONC. BLOCK GARAGE
AREA = 3.619 ACRES
AREA = 7,0165 Sq. Ft.
PARCEL TO BE CONVEYED TO THE TOWN OF AMHERST
20' WIDE RIGHT OF WAY FOR INGRESS AND EGRESS BY LIBER 10218 DEEDS PAGE 813
3 STORY BRICK BUILDING NO. 380
3 STORY FRAME BUILDING NO. 388
LIBER 10218 DEEDS PAGE 813
NORTHEAST LINE OF LIBER 10218 DEEDS P.813
SOUTHEAST CORNER OF SUBLOT 122
SOUTHEAST LINE OF LIBER 1693 DEEDS PAGE 299
SOUTHEAST LINE OF SUBLOT 122
NORTHEAST LINE OF LIBER 10218 DEEDS P.813 (ESTIMATED)
SOUTHEAST LINE OF SUBLOT 121
SOUTHWEST CORNER OF SUBLOT 121
SOUTHWEST LINE OF SUBLOT 121
SOUTHEAST CORNER OF LIBER 7200 DEEDS PAGE 268
SOUTHEAST LINE OF LIBER 1693 DEEDS PAGE 299
SOUTHWEST CORNER OF LIBER 1693 DEEDS PAGE 299
SOUTH LINE OF LIBER 2504 DEEDS PAGE 268
NORTHWEST CORNER OF SUBLOT 121
SUBLOT 121 MAP COVER 1492
SUBLOT 122 MAP COVER 1492
CHORD 50'
CHORD 50'
311.85'
10.25'
12.04'
251.06'
95.35'
75.13'
49.19'
232.32'
39.70'
446.69'
74.73'
79.83'
33.08'
©COPYRIGHT 2016 BY:
Millard, MacKay & Delles
LAND SURVEYORS, LLP
150 ALEXANDRIA
BUFFALO, NEW YORK 14235
PHONE (716) 821-3140 • FAX 821-3811
AMEND:
SURVEY DATE: 10-14-16
DRAWING DATE: 10-17-16
SCALE: 1" = 20'
"ALL RIGHTS RESERVED"
AS-BUILT SURVEY
PART OF LOT 18 SECTION TOWNSHIP 12 RANGE 7 OF THE
SURVEY OF 1350 Eggert Road Town of Amherst COUNTY, N.Y.
SRL No. 6.82-3-6

EXHIBIT 4

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 4

REZONING OF 1350 EGGERT ROAD FROM OB-TNB-1 TO TI-2.5

Question 11(A): Description of the character of the proposed development:

Response to Question 11(A): The proposed project consists of the development of a portion of the property at 1350 Eggert Road ("Project Site") as a two-story townhome building consisting of nine units with attached garages. A full-size copy of the Site Plan [Drawing C-100] depicting the proposed project is attached is attached and a reduced-size copy of the Site Plan is also attached as **Exhibit "6"**. A copy of the Conceptual Elevation Plan for the proposed two-story townhome building is attached as **Exhibit "7".**

Question 11(B)(1): Rationale for rezoning request: 1. What was this site chosen?

Response to Question 11(B)(1): The Project Site is an appropriate location for the requested rezoning from OB-TNB-1 to TI-2.5 since the requested zoning classification is consistent with Figure 6-A of the Comprehensive Plan that designates the property on the west side of Eggert Road in the vicinity of Main Street and Eggert Road as a "Traditional Area" [Designation Area No. 32 on Figure 6-A]. A color copy of Figure 6-A of the Comprehensive Plan is attached as **Exhibit "8"**.

Question 11(B)(2): Why cannot land be used with the existing zoning?

Response to Question 11(B)(2): The Project Site is currently being utilized in accordance with its existing zoning classification but the existing OB-TNB-1 zoning classification does not allow the proposed two-story townhome building consisting exclusively of residential units for lease as permitted principal use.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Question 11(B)(3): How will this rezoning impact surrounding properties?

Response to Question 11(B)(3): The requested rezoning of the Project Site from R-3 and OB to DC-5 to accommodate the proposed two-story townhome building consisting of nine units will not result in any potentially significant adverse impacts on surrounding properties. A completed Part 1 of the Full Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is provided at **Exhibit "1"** of this Rezoning Application.

Question 11(B)(4): How will this rezoning impact the school system?

Response to Question 11(B)(4): The proposed project will have positive impacts on the school district since it generate property taxes. The proposed townhome project will potentially generate some demand for educational services provided by the school district but it is anticipated will have overall positive fiscal impacts since the annual school taxes will be higher than the cost of educational services for school age children of the future residents of the townhomes.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 5

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 5

REZONING OF 1350 EGGERT ROAD FROM OB-TNB-1 TO TI-2.5

Question 16(A)(1): **State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps and/or figures in the plan that support the proposed zoning at this location.**

Response to Question 16(A)(1): The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[1] On December 14, 2020, the Town Board most recently adopted amendments to the Bicentennial Comprehensive Plan. The proposed townhome project is consistent with the Comprehensive Plan including Figure 6-A that designates the Project Site as a "Traditional Area".

Question 16(A)(2): **Cite all text, map, and/or figures that must be amended to support the proposed zoning at this location and provide detailed suggested amendments.**

Response to Question 16(A)(2): The proposed project is consistent with the Comprehensive Plan and such there is not a need to amend the Comprehensive Plan to accommodate the proposed project.

Question 16(A)(3): **State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:**

Response to Question 16(A)(3): Section 1-2-1 of the Zoning Code is titled "Purpose" and it states as follows:

---

[1] A copy of the resolution adopted by the Town Board for the purpose of adopting the Bicentennial Comprehensive Plan pursuant to Town Law Section 272-a is included at the beginning of the Comprehensive Plan. This resolution recites the lengthy planning history that incorporated numerous opportunities for public input as well as a coordinated environmental review pursuant to SEQRA that involved the preparation a Generic EIS and the issuance of a Findings Statement.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

> *"The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of the town and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space, public facilities, business, services, industry or other purposes; by regulating and restricting the bulk, height, design, building coverage and location of structures; by regulating and limiting population density; and for the aforesaid purposes, to divide the land within the limits of the town into districts of such number and dimensions generally consistent with the policies of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Ordinance."*

The proposed rezoning of the Project Site to accommodate the proposed townhome project on a portion of the Project Site is consistent with the "Purpose" of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen objectives that are discussed below as follows:

A. To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development;

Response: The proposed rezoning of the Project Site will be consistent with the objective of protecting the character and value of existing land uses. The proposed rezoning will allow a portion of the Project Site to be redeveloped as a 2-story townhome building consisting of nine units with attached garages, which represents orderly and beneficial development.

B. To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas;

Response: The proposed rezoning of the Project Site will not be inconsistent with this objective.

C. To prevent overcrowding of land;

Response: The proposed project will not result in the overcrowding of land. The project is consistent with the type of development designated as appropriate for the Project Site per the adopted Comprehensive Plan.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

D. To prevent excessive concentration of population and to prevent spare and uncoordinated development;

Response: The proposed rezoning of the Project Site will not result in excessive concentration of population and the residential project represents an example of coordinated development.

E. To regulate and control the location and spacing of buildings on the lot and in relation to the surrounding property generally consistent with the policies of the Comprehensive Plan.

Response: The responses to the Questions in Section 16 provided above sets forth the reasons the proposed rezoning is consistent with the policies of the Comprehensive Plan.

F. To protect persons and property from damage and injury due to fire or flood;

Response: The Site Plan Application review process will trigger the need for an Engineer's Report to be prepared by a licensed engineer to be prepared for review and approval by the Town's Engineering Department. The project will not increase the likelihood of damage and injury due to fire and flood. The proposed multifamily building will be constructed per the stringent requirements of the NYS Building Code including the fire safety standards contained therein.

G. To preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only.

Response: The proposed rezoning and the proposed project will not be inconsistent with this objective. There are not significant natural features located on the Project Site.

H. To assure that structure and land use arrangements are aesthetically harmonious with nearby areas and structures.

Response: The development of the Project Site in a manner consistent with the Site Plan [Drawing C-100] will be aesthetically harmonious with nearby areas and structures.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

I. **To regulate the location of buildings and intensity of uses in relation to streets according to plans so as to cause the least interference with and be damaged least by traffic movements and hence result in lessened street congestion and improved public safety.**

Response: The proposed project will have vehicular access to Eggert Road via the existing driveway connection. No new curb cuts onto the streets in the vicinity of the Project Site are proposed.

J. **To establish zoning patterns that insure economical extensions for sewers, water supply waste disposal and other public utilities, as well as development of recreation, schools and other public facilities;**

Response: The Project Site has access to sanitary sewer and water lines as well as necessary public utilities to service the proposed project.

K. **To guide the future development of the town so as to being the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan.**

Response: The proposed rezoning of the Project Site is consistent with this objective since the proposed use is consistent with the policies contained in the Comprehensive Plan.

L. **To accomplish the specific intents and goals set forth in the introduction to the respective sections.**

Response: The proposed rezoning of the Project Site is consistent with this objective.

M. **To protect the community from visual pollution resulting from the unregulated use of signs and other advertising devices.**

Response: The proposed rezoning and the proposed project will not be inconsistent with this objective.

Question 16(C): **Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:**

Response to Question 16(C): The proposed rezoning of the Project Site is compatible with the present zoning and conforming uses of nearby properties and the character of the neighborhood which includes a mixture of use including commercial and residential uses.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Question 16(D): **Suitability of the subject property for uses permitted by the current versus the proposed district:**

Response to Question 16(D): The Project Site is suitable for uses permitted by the existing OB-TNB-1 zoning classification and the proposed TI-2.5 zoning classification of the Project Site.

Question 16(E): **Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:**

Response to Question 16(D): The proposed change in the zoning classification of the Project Site from OB-TNB-1 to TI-2.5 to accommodate the proposed project will have positive impacts on the balance of uses in the Town by providing residential units for lease within a portion of the Town that has been designated as appropriate for this use by the Town Board.

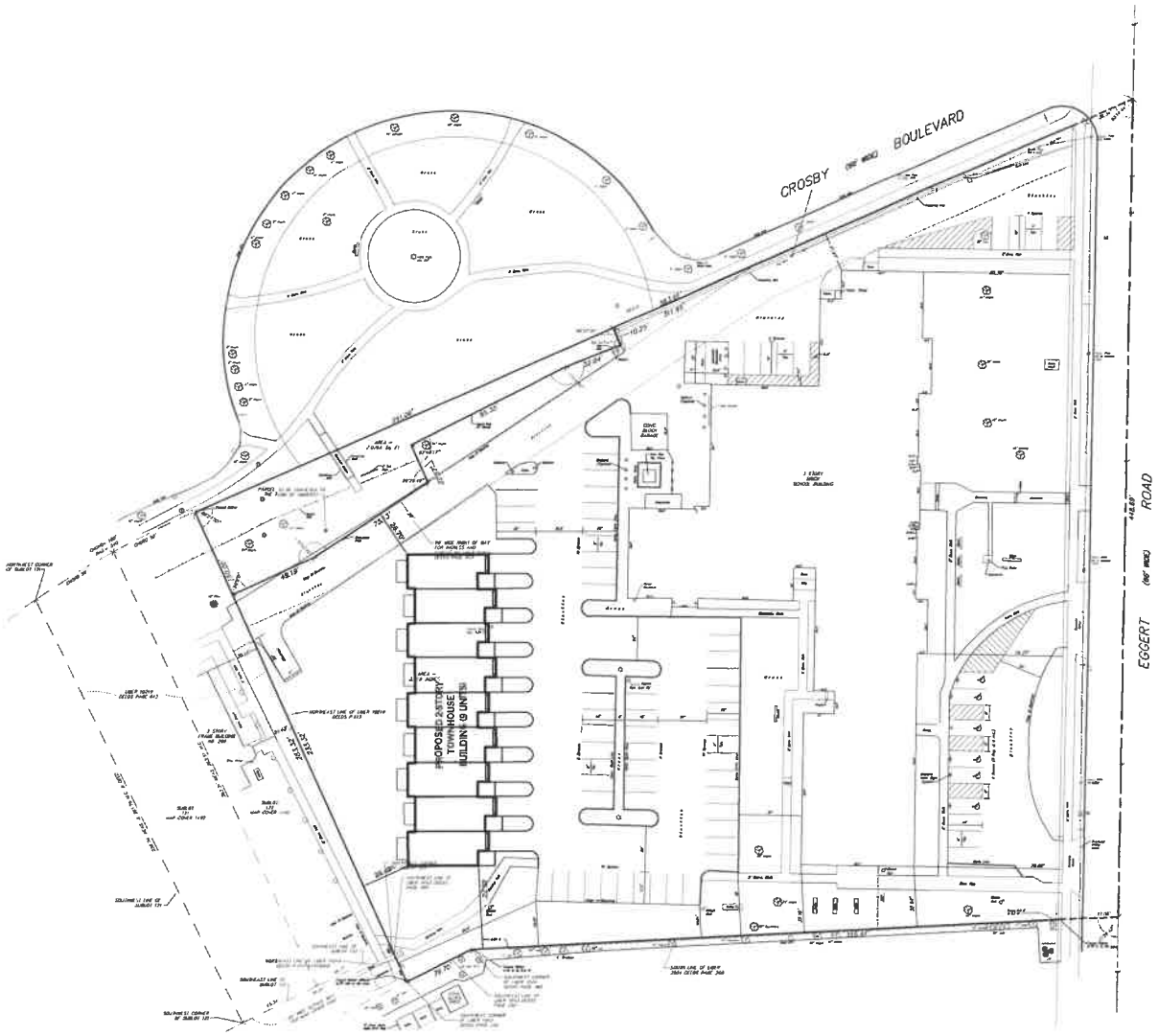
Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 6

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

© Carmina Wood Morris DPC

All data required, these drawings and the designs incorporated herein, as an instrument of service are and shall remain the property of Carmina Wood Morris DPC and shall not be used in whole or in part for any other project without the written permission of Carmina Wood Morris DPC. Unauthorized use of these drawings and designs without the written permission of Carmina Wood Morris DPC constitutes a violation of Section 43 of the New York State Education Law. Any person, unless acting under the direction of a licensed architect, engineer or land surveyor, who alters this drawing, is in violation of Section 7209 of the New York State Education Law. If altered, such person shall affix to the drawing his or her seal, signature, and the date of such alteration, and a specific description of the alteration.



SITE PLAN
SCALE: 1"=30'

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS, CARMINA WOOD MORRIS, D.P.C. ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.

30' 30 0 30 60Ft.

Carmina Wood Morris DPC
487 Main Street - Suite 500
Buffalo, New York 14203
P 716.842.3188
F 716.842.0263

PRELIMINARY
NOT FOR CONSTRUCTION

REVISIONS:
No. Description Date

PROJECT NAME:
New Construction for:
Multi-family Development
1350 Eggert Road
Amherst, New York

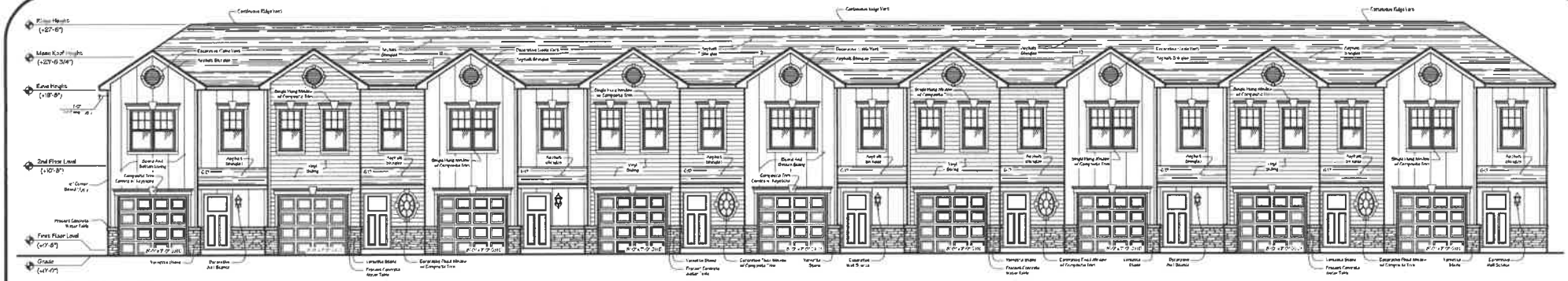
Issued for Construction:
Date: 12/2/21
Drawn by: C. Wood
Scale: As Noted

DRAWING NAME:
Concept Site Plan

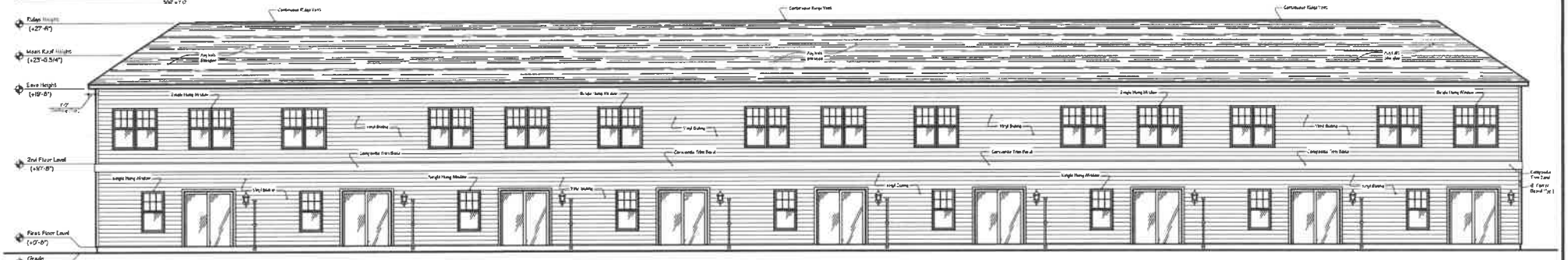
DRAWING NO.
C-100
Project no.: 21.xxx

EXHIBIT 7

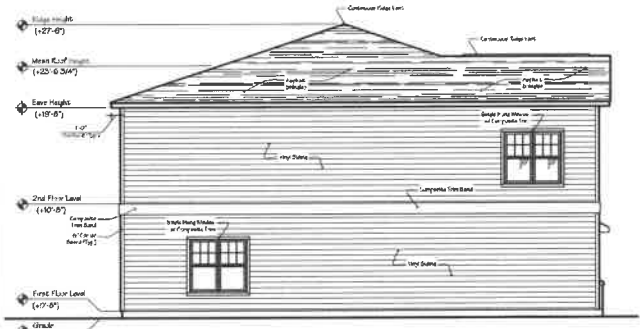
Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)



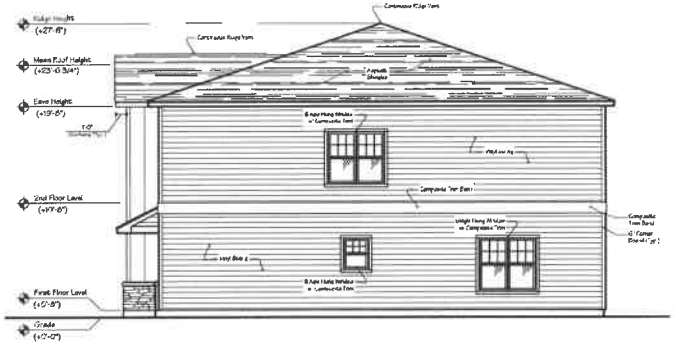
Concept East Elevation



Concept West Elevation



Concept North Elevation



Concept South Elevation

ELLICOTT DEVELOPMENT

Concept Elevations For:
9 Unit Townhouse Building

1350 Eggerst Road Amherst, NY
8/8/22

SUTTON architecture
"Design 2 Build"

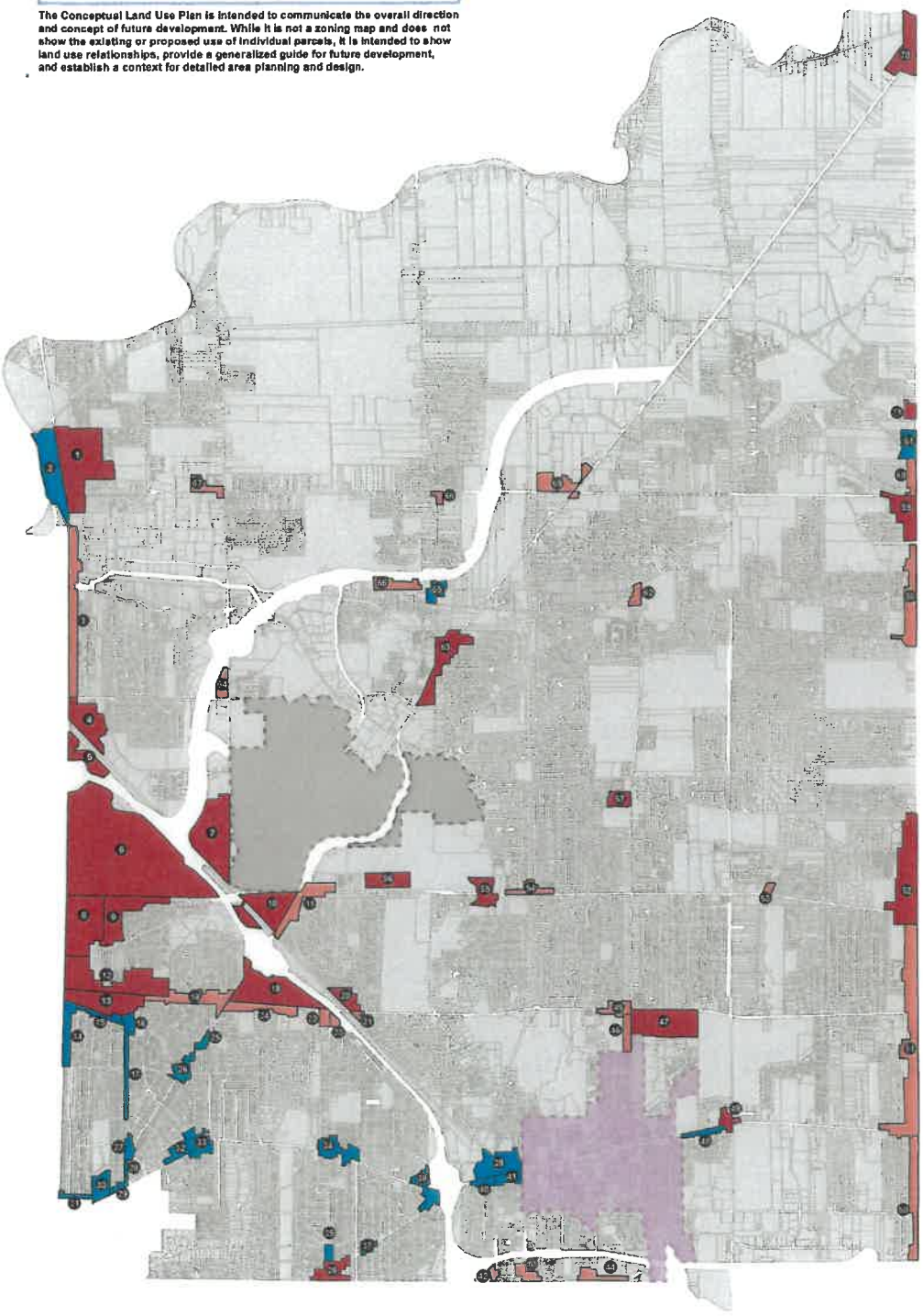
Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

EXHIBIT 8

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Town of Amherst Bicentennial Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.



1. Wegmans (NFB)
2. Walgreens (NFB)
3. NFB / Ellicott Creek Strip
4. Home Depot (NFB)
5. Innkeepers Lane
6. Consumer Square / Ridge Lea
7. University Place
8. Boulevard Mall
9. Wegmans (Alberta)
10. Golden Triangle
11. Maple / Amherst Manor
12. Walmart (Sheridan)
13. Northtown Plaza
14. NFB Strip
15. Eggert Strip
16. Eggert / Bailey
17. Bailey Strip
18. Sheridan / Millersport Strip
19. Northtown Auto (Sheridan)
20. Sheridan / Sunrise - North Side
21. Sheridan / Sunrise - South Side
22. Sheridan / Harlem - West Side
23. Sheridan / Harlem - East Side
24. Sheridan / Getzville Strip
25. Millersport / Arcade
26. Six Corners
27. Bailey / Grover Cleveland
28. Bailey Live-Work
29. Main / Bailey
30. University Plaza
31. Kenmore Avenue
32. Eggertsville (Main / Eggert - West Side)
33. Eggertsville (Main / Eggert - East Side)
34. Snyder (Main / Harlem)
35. Harlem Strip
36. Harlem / Kensington
37. Kensington / Saratoga
38. Main / Kensington
39. West of Village - North of Main
40. West of Village - South of Main (West Side)
41. West of Village - South of Main (East Side)
42. Wehrle / South Forest
43. Wehrle / South Union
44. Wehrle / Cayuga
45. Sheridan / Hopkins
46. Evans Strip
47. Williamsville Place
48. Main Strip
49. Main / Youngs
50. Transit / Wehrle
51. Transit from Main to Maple
52. Transit / Maple
53. Maple / Ayer
54. Maple Strip
55. Maple / North Forest
56. Gun Club
57. Clearfield Plaza
58. Transit / Casey
59. Transit / North French
60. Transit / Dodge
61. Swormville
62. Hopkins / Dodge
63. Getzville Plaza
64. Sweet Home / Skinnersville
65. Campbell / Dodge
66. Dodge Strip
67. Sweet Home / North French
68. Campbell / North French
69. Crosspointe
70. Transit / Millersport
71. Transit Strip

Commercial and Mixed-Use Designations

- Suburban Center
- Suburban Corridor
- Traditional Areas
- Village of Williamsville
- University at Buffalo

SOURCE NOTES:

Original Source Data Provided by the Town of Amherst Information Technology Department, URS Corporation and Wallace Roberts & Todd, LLC

Map Compiled by the Town of Amherst Planning Department

Date: December 2020

N

0 0.2 0.4 0.6 0.8 1 Miles

FIGURE 6-A

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)



Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Z-2023-03

Request to Rezone 3.61± AC of Land from OB-TNB-1 to TI-2.5
Property Located at 1350 Eggert Road
1097 Group LLC, Petitioner

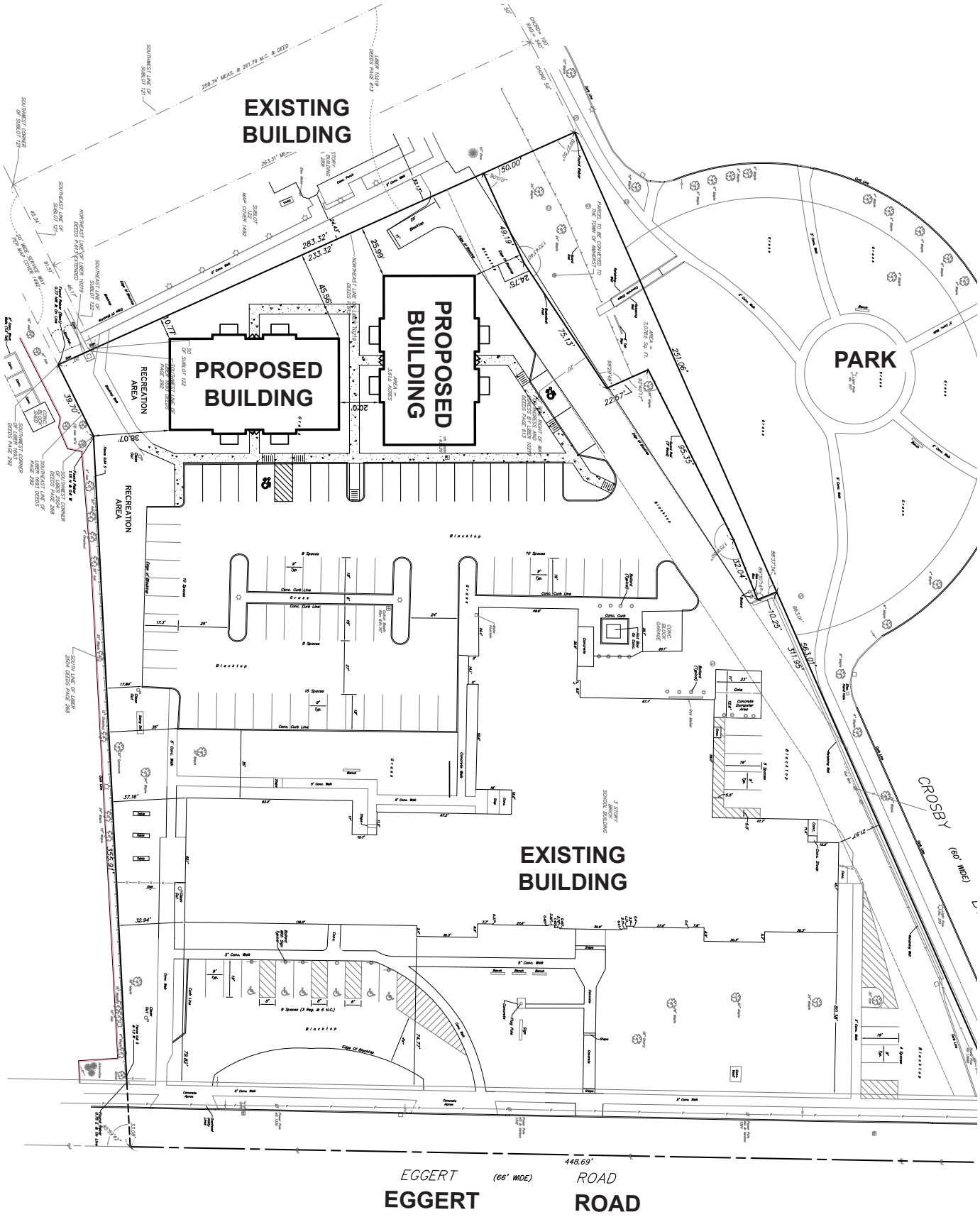
May 18, 2023

1350 Eggert Road

Recreation & Open Space

N

Prepared by the Town of Amherst Planning Department



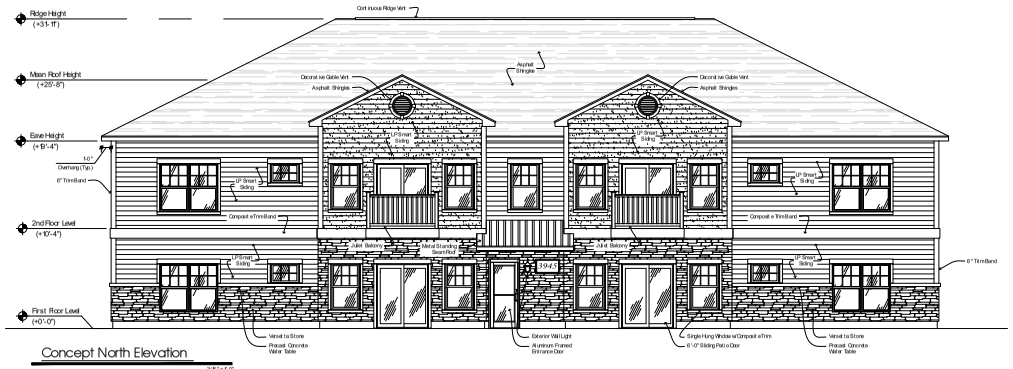
CONCEPT PLAN

Z-2023-03
1350 Eggert Road

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

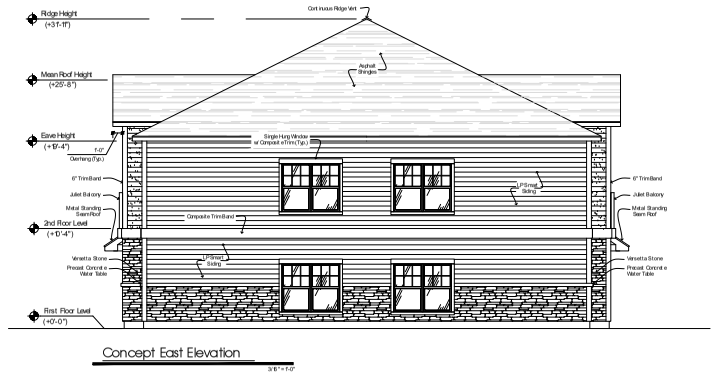
ELEVATION

Z-2023-03
1350 Eggert Road



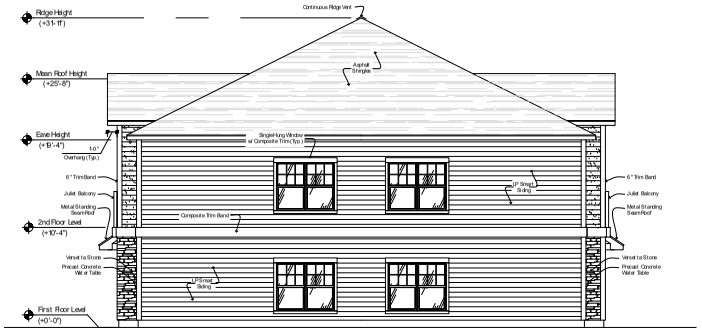
Concept North Elevation

3/16" = 1'-0"



Concept East Elevation

3/16" = 1'-0"



Concept West Elevation

3/16" = 1'-0"

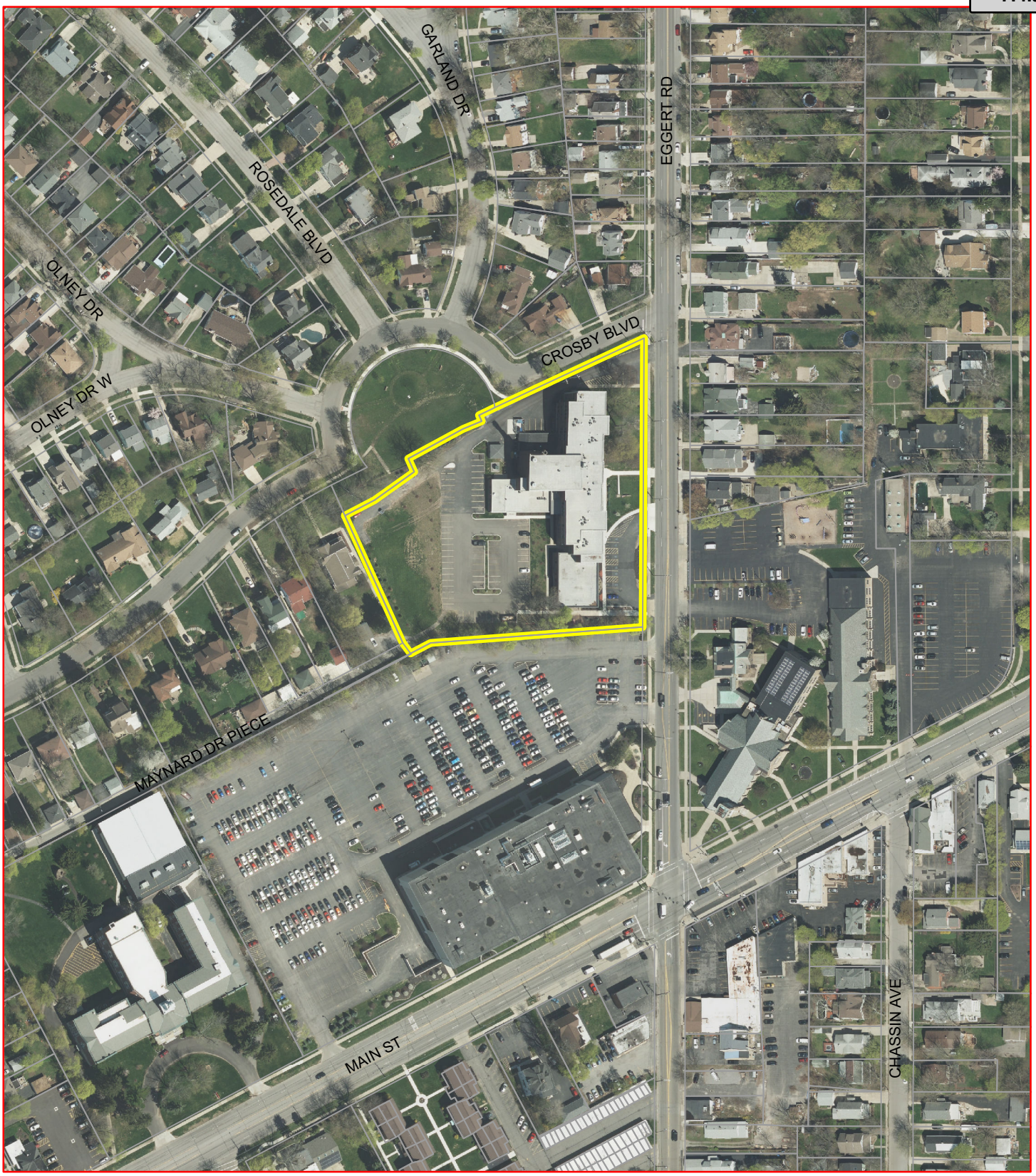


Concept South Elevation

3/16" = 1'-0"

Packet Pg. 342

7.4.a



Z-2023-03

Request to Rezone 3.61± AC of Land from OB-TNB-1 to TI-2.5
Property Located at 1350 Eggert Road
1097 Group LLC, Petitioner

May 18, 2023

1350 Eggert Road

Prepared by the Town of Amherst Planning Department

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Amherst
Town of Amherst Planning Department
Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard, AI
Planning Director
Daniel J. Ulatowski, A
Assistant Planning Dire

2014.027

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2023 APR 26 P 1:14

MEMORANDUM

April 24, 2023

TO: Daniel Ulatowski, Principal Planner
Douglas Gesel, Supervising Code Enforcement Officer, Building Departme
Vaishali Reberhold, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Krista Halt, Senior Fire Inspector (c/o Bldg)

RECEIVED
MAY 01 2023
TOWN OF AMHERST
PLANNING DEPT.

FROM: Scott Marshall, Principal Planner TV

SUBJECT: REQUEST TO REZONE 3.61± ACRES OF LAND FROM **OB-TNB-1** TO **TI-2.5, Z-2023-03**; PROPERTY LOCATED AT **1350 EGGERT ROAD**. 1097 GROUP LLC, PETITIONER.

REVISED CONCEPT PLAN & CONCEPTUAL ELEVATION:
Received April 24, 2023

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 4/28/23

C. Schregel

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_Rev_Plan_Transmittal_042423.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Daniel J. Ulatowski, AICP
Assistant Planning Director

April 27, 2023

1097 Group, LLC
c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221

SUBJECT:	Rezoning Application Review	**Z-2023-03**
	Proposed:	Rezoning of 3.61± ac. from OB-TNB-1 to TI-2.5
	Property located at:	**3150 Eggert Road**
	Revised application materials received:	April 24, 2023
	Representative:	Sean Hopkins, Esq.

Dear Mr. Hopkins,

Please consider the following comments:

1. The following items on the Environmental Assessment Form should be corrected or completed:
   - Item D2 c. *i.* – should at a minimum equal the total wastewater generated enumerated in item D2 d *i.*
2. The subject site is located within an archaeologically sensitive area. An archaeological assessment will be required prior to the Planning Board offering a recommendation on SEQR.

This is a review only and does not constitute approval of the Rezoning Request. Should you have questions regarding this correspondence, please contact Scott A. Marshall, Principal Planner at smarshall@amherst.ny.us.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/SM/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_Pln_Dpt_Rvw_04272023.docc:
cc: Carmina Wood Design, 487 Main St., Suite 500, Buffalo, NY 14203
Sutton Architecture PLLC, 5409 Main St., Williamsville, NY 14221

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Daniel J. Ulatowski, AICP
Assistant Planning Director

RECEIVED
APR 11 2023
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM March 2, 2023

RECEIVED
MAR 03 2023
TOWN ATTORNEY

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Amherst Central School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 3.61± ACRES OF LAND FROM **OB-TNB-1** TO **TI-2.5**, **Z-2023-03**; PROPERTY LOCATED AT **1350 EGGERT ROAD**. 1097 GROUP LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? No objection to Local Law.

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/24/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, N.Y. AND REPLY TO MUNICIPALITY

Submit this form with full statement of proposed action (as described in GML 239-m(c)) at www.Erie.gov/IRonline, OR mail a hard copy (retain a copy for your files) to: Erie County Division of Planning, 95 Franklin Street, Room 1053, Buffalo, N.Y., 14202

DO NOT WRITE IN THIS SPACE
Case No.: ZR-23-162
Postmark/Delivery Date: 3/3/23

The proposed action described herein is referred in accordance with the provisions of NYS General Municipal Law §239 l - nn
A Municipal Referral Map is available to help determine whether an applicable action is subject to referral.

Description of Proposed Action

1. Name of Municipality: Town of Amherst, New York

§239-m(4)(b) provides that the county shall have 30 days after receipt of a full statement of the proposed action to reply.
If the county fails to reply within such period, the referring body may take final action.
However, any county reply received after 30 days but 2 or more days prior to final action by the referring body shall be subject to §239-m(5)
The referring body shall file a report of its final action with the county within 30 days per §239-m(6).

2. Hearing Schedule: Date April 20, 2023 Time 6:30 pm Location 5583 Main Street, Williamsville, New York 14221

3. Action is before: ☐ Legislative Body ☐ Board of Appeals ☑ Planning Board

4. Action consists of: ☐ New Ordinance ☑ Rezone/Map Change ☐ Ordinance Amendment
☐ Site Plan ☐ Variance ☐ Special Use Permit ☐ Other:

5. Location of Property: ☐ Entire Municipality ☑ Address: 1350 Eggert Road

5a. S.B.L. of Property: 67.82-3-9.11

6. Referral required as site is within 500' of: ☐ State or County Property/Institution ☐ Municipal Boundary ☐ Farm Operation located in an Agricultural District
☐ Expressway ☑ County Road ☐ State Highway ☐ Proposed State or County Road, Property, Building/Institution, Drainageway

7. Proposed change or use: *(specify the action, such as the scope of variances or site plans)* Request to Rezone 3.61± acres from OB-TNB-1 to T1-2.5

8. Other remarks: Z-2023-03

9. Submitted by: Thomas Voigt, Assistant Planner (M) **Email:** tvoigt@amherst.ny.us

10. Return Address: Town of Amherst Planning Department, 5583 Main Street, Williamsville, New York 14221

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 3/3/23. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ **The proposed action is not subject to review under the law.**
2. ☐ **Comment on proposed action is attached hereto.**
3. ☐ **The proposed action is subject to review; Recommendation on Proposed Action is attached hereto.**
4. ☒ **No Recommendation; proposed action has been reviewed and determined to be of local concern.**

By the Division of Planning: [signature] **Date:** 3/14/23

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Daniel J. Ulatowski, AI
Assistant Planning Direc

MEMORANDUM March 2, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Amherst Central School District

RECEIVED
MAR 09 2023
TOWN OF AMHERST
PLANNING DEPT.

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 3.61± ACRES OF LAND FROM **OB-TNB-1** TO **TI-2.5, Z-2023-03**; PROPERTY LOCATED AT **1350 EGGERT ROAD**. 1097 GROUP LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: none at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: Doug Gesel **Date:** 3-8-23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

RECEIVED
MAR 03 2023
TOWN OF AMHERST
BUILDING DEPT

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Amherst

Town of Amherst Planning Department

2014.027

Erie County, New York

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2023 MAR -3 A 11:50

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Daniel J. Ulatowski, AI
Assistant Planning Direc

MEMORANDUM

March 2, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Amherst Central School District

RECEIVED
MAR 07 2023
TOWN OF AMHERST
PLANNING DEPT.

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director TV

SUBJECT: REQUEST TO REZONE 3.61± ACRES OF LAND FROM **OB-TNB-1** TO **TI-2.5, Z-2023-03**; PROPERTY LOCATED AT **1350 EGGERT ROAD**. 1097 GROUP LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/6/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
MAR 07 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Daniel J. Ulatowski, AICP
Assistant Planning Director

MEMORANDUM

March 2, 2023

RECEIVED
MAR 03 2023
TOWN ATTORNEY

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Amherst Central School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director DU

SUBJECT: REQUEST TO REZONE 3.61± ACRES OF LAND FROM **OB-TNB-1** TO **TI-2.5, Z-2023-03**; PROPERTY LOCATED AT **1350 EGGERT ROAD**. 1097 GROUP LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? Agree with all statements made

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/3/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-03_(1350_Eggert_Rd)_2023\Z-2023-03_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Carrato, Amy

From: Cerra, Dawn
Sent: Tuesday, May 23, 2023 3:29 PM
To: Carrato, Amy
Subject: **RE: **FW: Feedback via the Town Boards and Committees [#240]

Thanks.

Thank you kindly,

Dawn
Clerk's Office
Municipal Building
5583 Main Street
Williamsville, NY 14221
Website: www.amherst.ny.us
Office: 716-631-7047
Amherst: Ambitious Citizens, Amazing Community, Ample Opportunities

---

From: Carrato, Amy
Sent: Tuesday, May 23, 2023 3:26 PM
To: Cerra, Dawn ; Uthman, Vianne ; Fadel, Bryan
Subject: RE: **FW: Feedback via the Town Boards and Committees [#240]

Hi Dawn,
The Planning Board has already voted on this matter. It will go to the Town Board.
Please forward to the Town Board, Engineering, Highway and Building.

From: Cerra, Dawn <dcerra@amherst.ny.us>
Sent: Tuesday, May 23, 2023 3:24 PM
To: Uthman, Vianne <vuthman@amherst.ny.us>; Carrato, Amy <acarrato@amherst.ny.us>; Fadel, Bryan <bfadel@amherst.ny.us>
Subject: **FW: Feedback via the Town Boards and Committees [#240]

Not sure if this should be ZBA or Planning Board.

Thank you kindly,

Dawn
Clerk's Office
Municipal Building
5583 Main Street
Williamsville, NY 14221
Website: www.amherst.ny.us
Office: 716-631-7047
Amherst: Ambitious Citizens, Amazing Community, Ample Opportunities

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

From: burst@emailmeform.com <burst@emailmeform.com>
Sent: Monday, May 22, 2023 4:48 PM
To: Cerra, Dawn <dcerra@amherst.ny.us>
Subject: Feedback via the Town Boards and Committees [#240]

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

For best security and privacy of your information, we recommend viewing this entry in the Data Manager

View Entry

Name*:	Ray Volpe
Address:	302 Crosby Blvd. Buffalo, NY 14226-3318
Phone*:	716-834-9254
Email:	LibertaT37@gmail.com
Please select the Board or Committee you wish to contact*:	Planning Board
Comment/Question/Etc.:	Last Thursday, May 18th a Town Hall public hearing was held entertaining a variance request File# Z-2023-03 to rezone the land above the EKO playground. If approved, the developer would be adding additional buildings to the site overlooking the park. The buildings would be located on land originally designated as a catch basin to prevent flooding of the EKO park area below. Currently, it's a grassy area separating the parking area from the group home. I have reviewed a video transcript of the Planning Board meeting and the flooding issue was never discussed. I have a video showing water cascading down the steps from the proposed bldg site into the park below during a heavy rainfall. Portions of the playground area and Crosby Blvd were flooded. I'm concerned that the park is already subject to flooding and that the proposed development plan will further threaten the playground. I am asking for assistance in getting this information to the Planning Board.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Carrato, Amy

From: Ray Volpe <libertat37@gmail.com>
Sent: Monday, May 22, 2023 2:45 PM
To: Daniel & Mary Dolloff; Tracie Cloutier; Sheree Singer Lamendola; Sue & Bob Aurelli; Paul Wischerath; bifrost3@roadrunner.com; johnsander7819@outlook.com; sanderpamela88@gmail.com; Carrato, Amy
Cc: Judy Adams-Volpe
Subject: Posting to Olney Facebook page

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

I've contacted (left msgs) with 4 town council members asking for their help in getting flooding information to the planning board reviewing variance request File# Z-2023-03.
I've also posted a letter to EKO park neighbors subscribing to the Olney Facebook group. It reads:

Dear EKO Park Neighbor,

Last Thursday, May 18th a Town Hall public hearing was held entertaining a variance request to rezone the land above the EKO playground. If approved, the developer would be adding additional buildings to the site overlooking the park. The buildings would be located on land originally designated as a catch basin to prevent flooding of the EKO park area below. Currently, it's a grassy area separating the parking area from the group home.

I have reviewed a video transcript of the Planning Board meeting[1] and the flooding issue was never discussed. I also have a video[2] showing water cascading down the steps from the parking area into the park during a heavy rainfall. Portions of the playground area below the steps and Crosby Blvd are flooded. I have left phone msgs with Town Council Members (see below) asking for assistance in getting this information to the Planning Board.

Obviously I'm concerned that the park is already subject to flooding and that the proposed development plans will further threaten the playground.

Anyone wishing to assist in insuring a full review of the variance request can express their concerns to our council members:

Jacqualine G. Berger (716) 631-7014

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Deborah Bruch Bucki RN, Phd (716) 631-7018

Shawn A. Lavin, (716) 631-7015

Michael Szukala, (716) 63107016

Any and all help in this effort would be appreciated.

Ray Volpe

302 Crosby Blvd

(716) 834-9254

LibertaT37@gmail.com

1A link to the video transcript was provided by Mary and Dan Dolloff

2The video was provided by Tracy Cloutier

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Please forgive any typos, autocorrect & other mobile multitask-induced errors. Please delete my name and email address before forwarding.
Use Bcc: when sending to multiple addresses. This helps eliminate spam lists.

Attachment: TB letter packet 072423 (RES-2023-623 : 1350 Eggert Road Rezoning)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 27711 **RESOLUTION 2023-624** **WITHDRAWN**

SEQR Determination 2350 Sweet Home Road, Z-2016-16_D & Z-2017-11_B

DRAFT RESOLUTION
2350 Sweet Home Road, Z-2016-16_D & Z-2017-11_B

RESOLVED, that pursuant to 6NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Town Code Chapter 104, as amended, the Town Board is deemed the Lead Agency for those actions which it has sole discretionary power, including but not limited to rezoning decisions and adoptions of local laws, and be it further

RESOLVED, that this Town Board as SEQR Lead Agency has reviewed a request to amend declaration of restrictions required as part of a rezoning decision at 2350 Sweet Home Road and has identified the areas of environmental concern, thoroughly analyzed them for significant adverse impact, including any concerns and/or recommendations from other agencies, and be it further

RESOLVED, that the requirements of SEQR are now complete therefore this Town Board issues the attached Negative Declaration as its determination of environmental significance, for the subject action.

FINANCIAL IMPACT:

None

RESULT: WITHDRAWN

Attachment: Z-2016-16_D_&_Z-2017-11_B_draft TB neg dec_06282023 (RES-2023-624 : SEQR Determination - 2350 Sweet Home Road)

D R A F T
(7/24/23)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency:	Town of Amherst Town Board	**Project**:	Z-2016-16D & Z-2017-11B Amend Restrictions
Address:	5583 Main Street Williamsville, NY 14221 (716) 631-7051	**Date**:	

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action: Request to Amend Declaration of Restrictions required as part of a previous Rezoning Decision.

SEQR Status: Unlisted action.

Description of Action: Amend the declaration of restrictions required as part of a rezoning decision limiting the ability of units to have windows on the rear elevations of the buildings (#4) in the "Villas at Essex Woods" townhome development.

Location: 2350 & 2360-2372 Sweet Home Road, Town of Amherst, Erie County, New York

Petitioner: Essex Homes of WNY, Inc.

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Short Environmental Assessment Form (EAF) - Part 1, a complete request to amend the declaration of restrictions required as part of a rezoning decision application, and concept plan, a preliminary staff analysis was undertaken. Based on the results of the EAF Part 2 and compared to the criteria listed in Section 617.7, all indications are that the proposed request to amend the declaration of restrictions required as part of a rezoning decision to allow the addition of second story windows on the rear of interior buildings (Nos. 3, 9, 10, 11, 12 & 13 as depicted on site plan prepared by Carmina Wood Morris dated December 126, 2022) within the development will not have a significant impact on the environment, as follows:

1. The project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on March 30, 2023 reviewed the application and EAF submitted on January 25, 2023 the Geotechnical Engineering Report prepared by Barron & Associates, PC and submitted on January 25, 2023 and had no objection or comments on the proposed changes.

2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of any site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on January 31, 2023 and Zoning Enforcement Officer on April 13, 2023 reviewed the application and EAF submitted on January 25, 2023 and EAF Addendum Submitted on March 23, 2023 and has no objection or comments on the proposed changes.

4. The project is within an area identified by the State as potentially containing significant cultural or archeological resources, however, the site has been previously disturbed, therefore, the action will not impair the character or quality of important historical resources.

5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is to amend the declaration of restrictions required as part of a rezoning decision to allow the addition of second story windows on the rear of interior buildings within the Multifamily Residential District Five (MFR-5) zoning district. Neighboring uses are residential and zoned MFR-5 and Suburban Agriculture District (SA); therefore, the project is consistent with surrounding land use.

Attachment: Z-2016-16_D_&_Z-2017-11_B_draft TB neg dec_06282023 (RES-2023-624 : SEQR Determination - 2350 Sweet Home Road)

6. The proposed amendment to the restrictions required as part of a rezoning decision to allow for second story windows on townhouse units interior to the Essex Woods development will not cause a major change in the use of either the quantity or type of energy.

7. The amendments to the restrictions required as part of a rezoning decision to allow for second story windows on townhouse units interior to the Essex Woods development will not create any hazard to human health. The Fire Chief's Association on February 7, 2023 has reviewed the request to amend the declaration of restrictions required as part of a rezoning decision and supporting documentation and has no objection to or adverse comments on the proposed changes.

8. The amendments to the restrictions required as part of a rezoning decision will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed addition of windows on the surrounding land uses.

9. The amendments to the restrictions required as part of a rezoning decision to allow for the second story windows on townhouse units interior to the Essex Woods development will not significantly increase the number of people using the site over its previous level of use.

10. Review by the Town Traffic/Safety Board on February 1, 2023, indicates that significant negative traffic impacts are not expected to result from the proposal to amend the declaration of restrictions required as part of a rezoning decision.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on January 31, 2023, Engineering on March 30, 2023, Traffic/Safety Board on February 1, 2023, Assessor on February 15, 2023, Fire Chiefs' Association on February 7, 2023, Zoning Enforcement Officer on April 13, 2023, along with the outside agency Erie County Department of Environment & Planning on March 17, 2023. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

Attachment: Z-2016-16_D_&_Z-2017-11_B_draft TB neg dec_06282023 (RES-2023-624 : SEQR Determination - 2350 Sweet Home Road)

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

SM/ac
X:\Current_Planning\Files\Rezonings\2016\Z-2016-16_D_(2360-2372_&_2350_Sweet_Home)_2023\Z-2016-16_D_&_Z-2017-11_B_draft TB neg dec_06282023.docx
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDOT
Carmina Wood Design, 487 Main St., Suite 500, Buffalo, NY 14203
Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main St., Ste. 343, Williamsville, NY 14221

Attachment: Z-2016-16_D_&_Z-2017-11_B_draft TB neg dec_06282023 (RES-2023-624 : SEQR Determination - 2350 Sweet Home Road)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 27712 **RESOLUTION 2023-625** **WITHDRAWN**

Adoption to Amend Declaration of Restrictions Required as Part of a Rezoning Decision (2350 Sweet Home Road, Z-2016-16_D & Z-2017-11_B)

DRAFT RESOLUTION

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR are complete, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of April 20, 2023 that the proposed request to amend declaration of restrictions required as part of a rezoning decision at 2350 Sweet Home Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts an amendment to condition number 4 of the declaration of restrictions required as part of a rezoning decision made on October 1, 2018 to:

4. That the residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear side of second story loft space in Buildings Nos. 1, 2, 4, 5, 6, 7, 8 and 14 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022.

BE IT FURTHER RESOLVED, the filed Amended declaration of restrictions be amended and filed in the Erie County Clerk's office for the subject properties and that copies of the filed amended declaration of restriction be provided to the Town of Amherst.

FINANCIAL IMPACT:

None

RESULT: WITHDRAWN

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 27754 **RESOLUTION 2023-626** **ADOPTED**

SEQR Determination (3945 Rensch Road, Z-2023-02)

RESOLVED, that pursuant to 6NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Town Code Chapter 104, as amended, the Town Board is deemed the Lead Agency for those actions which it has sole discretionary power, including but not limited to rezoning decisions and adoptions of local laws, and be it further

RESOLVED, that this Town Board as SEQR Lead Agency has reviewed a request for a rezoning at 3945 Rensch Road from Residential District 4 (R-4) to Center-5 (CTR-5) and has identified the areas of environmental concern, thoroughly analyzed them for significant adverse impact, including any concerns and/or recommendations from other agencies, and be it further

RESOLVED, that the requirements of SEQR are now complete therefore this Town Board issues the attached Negative Declaration as its determination of environmental significance, for the subject action.

7/24/2023
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

FINANCIAL IMPACT:

None

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Councilmember
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Attachment: Z-2023-02_draft TB_Neg Dec_072423 (RES-2023-626 : SEQR Determination - 3945 Rensch Road, Z-2023-02)

DRAFT
(7/24/23)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Project: Z-2023-02

Address: 5583 Main Street
Williamsville, NY 14221
(716) 631-7051

Date:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action: Rezoning Request - 3945 Rensch Road

SEQR Status: Unlisted Action.

Description of Action: Rezoning of 0.57± acres of land from Residential District 4 (R-4) to Center-5 (CTR-5) to allow for the development of a three-story multi-family building containing 12 apartments, recreation space and parking.

Location: East side of Rensch Road, approximately 1,400 feet from its intersection with Sweethome Road, Town of Amherst, Erie County, New York.

Petitioner: Rensch Group LLC

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Full Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Based on the results of the EAF Part 2 and compared to the criteria listed in Section 617.7, all indications are that the proposed rezoning of 0.57± acres of land from R-4 to CTR-5 for a proposed 12-unit apartment building will not have a significant impact on the environment, as follows:

1. Based on the concept plan submitted, the rezoning from R-4 to CTR-5 is not anticipated to significantly increase the density of development. Therefore, the project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems over what would be expected if developed under the existing zoning. The Town Engineering Department on March 8, 2023 reviewed the application, EAF and Geotechnical Engineering Report prepared by Barron & Associates submitted on March 1, 2023, and had no objection to the proposed rezoning.

2. The project will not result in significant increase in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources over what would be expected if developed under the existing zoning. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on March 9, 2023 and Zoning Enforcement Officer on April 4, 2023 reviewed the application and EAF and has no objection to the proposed rezoning.

4. The project is within an area identified by the State as potentially containing significant cultural or archeological resources. However, the site has been previously disturbed by construction of a single-family residence, therefore, the project will not impair the character or quality of important historical resources. During site plan review, the NYS Office of Parks, Recreation, Historic Preservation will review the project for potential impact on these resources.

5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for rezoning from to from R-4 to CTR-5. Neighboring uses are zoned General Business (GB) to the east and south, Research & Development (RD) to the south west and north, and Multifamily Residential 6 (MFR-6); therefore, the project is consistent with surrounding land use.

6. The proposed rezoning to CTR-5 for a proposed 12-unit apartment building will not cause a major change in the use of either the quantity or type of energy over what would be expected if developed under the existing zoning.

Attachment: Z-2023-02_draft TB_Neg Dec_072423 (RES-2023-626 : SEQR Determination - 3945 Rensch Road, Z-2023-02)

7. The rezoning to CTR-5 for the proposed 12-unit apartment building will not create any hazard to human health. The Fire Chief's Association on April 12, 2023, has reviewed the rezoning request and supporting documentation and has no objection to or adverse comments on the proposed rezoning.

8. The rezoning to CTR-5 will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed 12-unit apartment building will be consistent with the scale of surrounding land uses.

9. The rezoning to CTR-5 for the proposed 12-unit apartment building will not significantly increase the number of people using the site over what would be expected if developed under the existing zoning..

10. Review by the Town Traffic/Safety Board on March 8, 2023, indicates that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on March 9, 2023, Engineering on March 8, 2023, Traffic/Safety Board on March 8, 2023, Fire Chiefs' Association on April 12, 2023, Zoning Enforcement Officer on April 4, 202223, and Right-of-Way Agent on March 24, 2023 along with outside agencies including Erie County Department of Environment & Planning on March 14, 2023. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____
Gary Palumbo, Associate Planner date

_____ _____
Brian J. Kulpa, Supervisor date

GP/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_draft TB_Neg Dec_072423.docx
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDEC (type 1's)
NYSDOT (if on state hwy.)
Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02_draft TB_Neg Dec_072423 (RES-2023-626 : SEQR Determination - 3945 Rensch Road, Z-2023-02)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 27659 **RESOLUTION 2023-528** **ADOPTED**

Adoption of Local Law to Amend the Zoning Map (3945 Rensch Road – Z-2023-02)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR are complete, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of April 20, 2023 that the proposed Center-5 zoning at 3945 Rensch Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#_____) to amend the Town Zoning map subject to the following conditions as recommended by the Planning Board:

1. That the comments and supporting documentation requested by the Engineering Department (Downstream sewer capacity analysis is required) and Traffic Safety Board (correct curb cut on site plan) be addressed to their satisfaction during the site plan review process.

2. Cultural Resource clearance be obtained from NYSOPRHP prior to approval of site plan by the Planning Board.

6/20/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was opened at 7:03 PM.

Sean Hopkins, Esq. presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the July 24th Town Board meeting, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:10 PM.

7/24/2023
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Councilmember
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst
Town of Amherst Planning Department
Erie County, New York

Brian J. Kulpa
Supervisor

Daniel C. Howard,
Planning Direct

Daniel J. Ulatowski,
Assistant Planning Di

Town Board Agenda of June 20, 2023

June 13, 2023

The Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Subject: Request to rezone 0.57± acres of land from R-4 to CTR-5; property located at 3945 Rensch Road., Rensch Group LLC Petitioner. (Z-2023-02).

Honorable Members:

The subject property is a 0.57± acre rectangular parcel located on the east side of Rensch Road, approximately 1,400 feet from its intersection with Sweethome Road. Rensch Road is a Town-owned highway and designated as a local street in the Bicentennial Comprehensive Plan.

For information on the surrounding zoning and land use, please refer to the attached sketch.

The purpose of this request is to allow a mixed-use development comprised of a three-story multi-family building containing 12 apartments, recreation space and parking.

History of previous rezoning requests:
The subject property was rezoned from Commercial Service District (CS) to Residential District Four (R-4) by the Town Board on November 19, 2012 (Z-2012-08).

The Planning Board offers the following findings consistent with Section 8-3 of the Zoning Ordinance.

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

The proposed Center-5 (CTR-5) zoning is consistent with the adopted Bicentennial Comprehensive Plan as the proposal provides an opportunity for mixed use development consistent with Figure 6-A. At 24 units/acre the proposal is also consistent with Section 3.3.1 and Figure 6 of the Comprehensive Plan which calls for medium density residential development at 12 to 60 units per acre on the west side of Rensch Road.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The proposed rezoning from R-4 to CTR-5 is consistent with Section 1-2-2K of the Zoning Ordinance which seeks to guide the future development of the Town so as to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Honorable Town Board

Rezone land from R-4 to CTR-5;
property located at 3945 Rensch Road
Agenda of June 20, 2023

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The proposed 3-story structure within a mixed-use district is consistent with the variety of surrounding uses, which include hotel, commercial, other multi-family developments. The subject parcel abuts properties zoned General Business (GB) to the east and south, Research & Development (RD) to the south west and north, and Multifamily Residential 6 (MFR-6) farther north, which are compatible with the proposed CTR-5 zoning.

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is a SEQR Unlisted action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal.

RECOMMENDATION

The Planning Board at their meeting of April 20, 2023 held a public hearing on the subject rezoning request and recommended that the Town Board find that pursuant to Local Law #3-82, as amended, the requirements of SEQR have been completed and that the subject request will not have a significant adverse effect on the environment. The Planning Board also recommended that the subject rezoning request be approved subject to the following condition:

1. That the comments and supporting documentation requested by the Engineering Department (Downstream sewer capacity analysis is required) and Traffic Safety Board (correct curb cut on site plan) be addressed to their satisfaction during the site plan review process.

The Planning Department requests that if the Town Board desires to act on the rezoning request, that a decision date be established after the public hearing so that the Planning Department can prepare a determination of environmental significance pursuant to SEQR, and prepare a resolution for the Town Board's consideration.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/GP/ac
Att.
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_TB_Letter_06202023.docx
cc: Martin Polowy, Town Attorney

Planning Board Approval – April 20, 2023
Ayes – 7; Noes – 0

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-02

PETITIONER

Rensch Group LLC
c/o Sean Hopkins
5500 Main Street, Suite 343
Williamsville, NY 14221

PROPERTY LOCATION

3945 Rensch Road

WHEREAS the Town of Amherst Planning Board on Thursday, April 20, 2023 held a public hearing on the proposed rezoning of land from Residential District Four (R-4) to Center 5 District (CTR-5), and

WHEREAS the Planning Board has reviewed plans and other materials regarding the rezoning proposal, and

WHEREAS the materials and plans have been referred to the Town's various review agencies, and

WHEREAS in accordance with Section 8-3-5 of the Zoning Ordinance the Planning Board finds that:

A. The proposed zoning and development plan is generally consistent with the policies of the Comprehensive Plan and the Zoning Ordinance and is consistent with the Conceptual Land Use Plan which shows medium density residential use in a mixed-use form in this area of the Town.

B. There are adequate services and utilities available or proposed to be made available in the construction of the development.

C. The proposal is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

D. The subject property is no longer suitable for uses permitted by the current zoning district versus the proposed district.

E. The proposed change does tend to improve the balance of uses, or meets a specific demand in the Town.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived because the parcel is developed.

WHEREAS pursuant to Local Law #3-82, as amended, the Planning Board recommends that the Town Board determine that the requirements of SEQR are complete and that the subject proposal is not expected to have a significant adverse effect on the environment.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

'23 APR 26 PM1:00

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-02

PETITIONER

Rensch Group LLC

PROPERTY LOCATION

3945 Rensch Road

NOW THEREFORE BE IT RESOLVED that the Planning Board recommends to the Town Board in accordance with Section 8-3-4 of the Zoning Ordinance, that the rezoning request be approved subject to the following conditions:

1. That the comments and supporting documentation requested by the Engineering Department and Traffic Safety Board be addressed to their satisfaction during the site plan review process.

The foregoing resolution was adopted by the Town of Amherst Planning Board, April 20, 2023; moved by Penberthy; seconded by Chmiel; ayes 7, noes 0.

Robert J. Gilmour, Planning Board Chair

4-25-23
Date

GP/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_resolution_042023.doc
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

'23 APR 26 PM

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Rezoning Application & Supporting Documentation - Rezoning of 3945 Rensch Road from R-4 to SC-3
pp icant Rensch Group LLC c/o Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC

Prepared by: Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 716.510-4338
E-mail: shopkins@hsmlegal.com

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2023-02 **Acreage** .50 **Fee $** 1,265.00

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____ ACCEPTED BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. 2/21/2023 RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	$1,250.00
2 – 20 ACRES **$1,250 + $250/acres or fraction thereof over 2 acres**		_____
20 – 30 ACRES **$5,700 + $150/acre or fraction thereof over 20 acres**		_____
OVER 30 ACRES **$6,900 +$75/acre or fraction thereof over 30 acres**		_____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	$15.00
	TOTAL FEE:	$ 1,265.00

RECEIVED FEB 21 2023 TOWN OF AMHERST PLANNING DEPT.

[Note: A completed Full Environmental Assessment Form along with Page 5[a] and Attachment "A" is attached as Exhibit "1".]

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Rensch Group LLC

Address: c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
City State Zip Code

Phone: 510-4338 Fax:

E Mail shopkins@hsmlegal.com

2. **The undersigned hereby petitions the Honorable Town Board to rezone the following described property**

From: R-4 District

To: SC-3 District

3. **Street address of land to be rezoned:** (must be verified by Town Assessor's Office)

3945 Rensch Road

SBL #: SBL No. 54.12-1-21.2

4. **Area of land to be rezoned** (in acres): Approximately .5 acres

5. **Owner of Land:**

Name: Rensch Group LLC c/o Sean Hopkins, Esq.

Address: 5500 Main Street, Suite 343 - Williamsville, NY 14221

Telephone: 716.510-4338

6. **Representative** (Architect, Engineer, Landscape Architect, Surveyor or Attorney):

Name: Sean W. Hopkins, Esq.

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsmlegal.com
City State Zip Code

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7. **Petitioner's interest in property**

_____Option to purchase

_X____Owner

__ _____Other (explain)

8. **The following are all others having an interest in this application and join herein with the petitioner named above:** (describe extent of interest; attach sheets as needed)

Not Applicable.

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor.** Legal description of the property to be rezoned from R-4 to SC-3 attached as Exhibit "2" and survey of the Project Site attached as Exhibit "3".

10. **Said property has the following deed restrictions or Covenants:** (attach copy) Not Applicable.

Liber _____ Page _____

11. **Information on proposed project:**

A. Description of the character of the proposed development:

See Exhibit 4.

B. Rationale for rezoning request:

1. Why was this site chosen?

See Exhibit 4.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

2. Why cannot land be used with the existing zoning?

See Exhibit 4.

3. How will this rezoning impact surrounding properties?

See Exhibit 4.

4. How will this rezoning impact the school system?

See Exhibit 4.

12. Quantitative Data:

A. Total # of dwelling units 12 units

B. Distribution of dwelling units by type Apartments

C. Gross Residential Density per acre 24 units per acre

D. Total amount of Open Space Not Applicable

E. Proposed Non-Residential Floor Area Not Applicable.

[Note: A reduced size copy of the Site Plan for the proposed redevelopment project is provided at Exhibit "6".]

13. Development Schedule:

Start Summer 2023

Finish 2024

Stages (# of) 1

14. If any portion of the proposed development is planned to be sold or leased, please describe:

The apartments will be leased.

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15. Open Space ownership and maintenance provisions (if applicable):

Greenspace and landscaping will be privately owned and maintained.

16. Basis for Findings (Sec. 8-3-5 of the Town Zoning Code) (Attach sheets and supplemental materials as necessary.)

A. <u>The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Town Zoning Ordinance.</u>

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps, and/or figures in the plan that support the proposed zoning at this location (The Comprehensive Plan document is available at the Planning Department, Town Clerk's Office, Amherst libraries, or at www.amherst.ny.us). Add sheets as needed.

See Exhibit 5.

2. Pursuant to NYS Town Law Section 272a(11), "all Town land use regulations must be in accordance with a comprehensive plan adopted pursuant to this Section." The Town Board adopted the Comprehensive Plan pursuant to NYS Town Law 272 on January 2, 2007. If the rezoning is approved, the Town Board may require the Plan to be amended, as applicable.

Cite all text, map, and / or figures that must be amended to support the proposed zoning at this location (attach pages as necessary) and provide detailed suggested amendments.

See Exhibit 5.

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3. State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

See Exhibit 5.

B. Adequate Services and Utilities are available or are proposed to be made available with the construction of the development:

1. Sanitary Sewer
   Yes.
2. Storm Sewer/Drainage
   Yes.
3. Water
   Yes.
4. Other Yes.

C. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:

See Exhibit 5.

D. Suitability of the subject property for uses permitted by the current versus the proposed district:

See Exhibit 5.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

E. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:

See Exhibit 5.

17. The petitioner encloses herewith the sum of $ 1,265.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.

18. The undersigned certifies that all information required to be disclosed pursuant to Section 809 of the General Municipal Law (see below) is as follows:

The undersigned swears or affirms that all statements made herein are true, that all drawings submitted correctly show the situation involved in this petition.

Signature of Petitioner

Subscribed and sworn to before me this 21st day of Feb., 20 23

Notary Public, Erie County, New York

NOREEN A. ZIMMERMAN
Notary Public, State of New Yo
Qualified in Niagara County
My Commission Expires Aug. 31,

N.Y.S. General Municipal Law - Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state office or any office or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

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2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them

   (a) is the applicant, or
   (b) is an officer, director, partner or employee of the applicant, or
   (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
   (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such applicant, petition or request.

3. In the county of Nassau the provisions of subdivisions one and two of this section shall also apply to a party officer. "Party Officer" shall mean any person holding any position or office, whether by election, appointment or otherwise, in any party as defined by subdivision four or section two of the election law.

4. Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

5. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 1

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Rensch Group LLC		
Project Location (describe, and attach a general location map): 3945 Rensch Road, Town of Amherst - Erie County		
Brief Description of Proposed Action (include purpose or need): The proposed project ("action") consists of a three-story multifamily building consisting of twelve units and related site improvements to be located at 394 Rensch ("Project Site"). The proposed action has been defined broadly to include all required discretionary approvals and permits as well as all propose site improvements including an amendment of the zoning classification of the Project Site from R-4 to SC. The project purpose is to develop the Project Site for residential purposes per a recommended land use contained in the Town's adopted Comprehensive Plan. The proposed project wis an Unlisted Action and will not result in any potentially significant adverse environmental impact		
Name of Applicant/Sponsor: Rensch Group LLC c/o Sean Hopkins, Esq.	Telephone: 716.510-4338 E-Mail: shopkins@hsmlegal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Project Contact (if not same as sponsor; give name and title/role):	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor):	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financi assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, or Village Board of Trustees ☑Yes☐No	Town of Amherst Town Board - Rezoning	January 2023
b. City, Town or Village Planning Board or Commission ☑Yes☐No	Town of Amherst Planning Board - Site Plan Approval	To be Determined
c. City, Town or Village Zoning Board of Appeals ☐Yes☑No		
d. Other local agencies ☑Yes☐No	Town of Amherst Building Department - Building Permit	To be Determined
e. County agencies ☑Yes☐No	ECWA - Water	To be Determined
f. Regional agencies ☐Yes☑No		
g. State agencies ☐Yes☑No		
h. Federal agencies ☐Yes☑No		

i. Coastal Resources.
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes☑No

ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes☑No
iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes☐No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes☐No
If Yes, identify the plan(s):
NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes☑No
If Yes, identify the plan(s):

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C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
Residential District Four ("R-4")

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☑ No

c. Is a zoning change requested as part of the proposed action? ☑ Yes ☐ No
If Yes,
i. What is the proposed new zoning for the site? Shallow Corridor 3 ("SC-3")

C.4. Existing community services.

a. In what school district is the project site located? Sweet Home Central School District

b. What police or other public protection forces serve the project site?
Town of Amherst Police Department

c. Which fire protection and emergency medical services serve the project site?
Local Volunteer Fire Department

d. What parks serve the project site?
There are various park that will be accessible to the residents of the Project Site.

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Multifamily

b. a. Total acreage of the site of the proposed action? .5 acres
b. Total acreage to be physically disturbed? .4 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? .5 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☑ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
ii. Is a cluster/conservation layout proposed? ☐ Yes ☐ No
iii. Number of lots proposed? _____
iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: _____ months
ii. If Yes:
- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

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f. Does the project include new residential uses? ☑ Yes ☐ No
If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase				12
At completion of all phases				12

g. Does the proposed action include new non-residential construction (including expansions)? ☐ Yes ☑ No
If Yes,
i. Total number of structures _____
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length
iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☐ Yes ☑ No
If Yes,
i. Purpose of the impoundment: _____
ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☐ Other specify
_____
iii. If other than water, identify the type of impounded/contained liquids and their source.
_____
iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres
v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):
_____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) ☐ Yes ☑ No
If Yes:
i. What is the purpose of the excavation or dredging? _____
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.
_____
iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No
If yes, describe. _____
_____
v. What is the total area to be dredged or excavated? _____ acres
vi. What is the maximum area to be worked at any one time? _____ acres
vii. What would be the maximum depth of excavation or dredging? _____ feet
viii. Will the excavation require blasting? ☐ Yes ☐ No
ix. Summarize site reclamation goals and plan: _____
_____
_____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☑ No
If Yes:
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____
_____

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ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐Yes ☐No
If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes ☐No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑Yes ☐No
If Yes:

i. Total anticipated water usage/demand per day: 2,400 gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☑Yes ☐No
If Yes:

- Name of district or service area: Erie County Consolidated Water District
- Does the existing public water supply have capacity to serve the proposal? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No
- Do existing lines serve the project site? ☑Yes ☐No

iii. Will line extension within an existing district be necessary to supply the project? ☐Yes ☑No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
- Source(s) of supply for the district:

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐Yes ☐No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑Yes ☐No
If Yes:

i. Total anticipated liquid waste generation per day: 2,400 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):
Sanitary wastewater.

iii. Will the proposed action use any existing public wastewater treatment facilities? ☑Yes ☐No
If Yes:

- Name of wastewater treatment plant to be used: Town of Amherst Wastewater Treatment Plant
- Name of district: Town of Amherst Consolidated Sanitary Sewer District
- Does the existing wastewater treatment plant have capacity to serve the project? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will a line extension within an existing district be necessary to serve the project? ☐Yes ☑No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

_____

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or .2 acres (impervious surface)

_____ Square feet or .5 acres (parcel size)

ii. Describe types of new point sources. _____

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

Stormwater runoff will be directed into the municipal storm water system.

- If to surface waters, identify receiving water bodies or wetlands: _____
- Will stormwater runoff flow to adjacent properties? ☐Yes ☐No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☐No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☐Yes ☑No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☐No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☐Yes ☑No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☐No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7:00 to 7:00
- Saturday: 7:00 to 5:00
- Sunday: As needed
- Holidays: Not Applicable

ii. During Operations:

- Monday - Friday: Not Applicable
- Saturday:
- Sunday:
- Holidays:

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

Construction equipment and activities limited to daytime hours is a temporary and unavoidable adverse impact.

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe: _____

n. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Lighting improvements on the Project Site will comply with the stringent lighting standard contained in the Zoning Code.

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe: _____

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored _____

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally, describe the proposed storage facilities: _____

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: _____ tons per _____ (unit of time)
- Operation : _____ tons per _____ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction: _____
- Operation: _____

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction: _____
- Operation: _____

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☑ Other (specify): Mixed-Use

ii. If mix of uses, generally describe:

Mixtures of land uses including commercial, student housing and multifamily

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	.2	.4	.2
• Forested	0	0	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0	0	0
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: Greenspace and Landcaping	.3	.1	(.2)

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☑Yes ☐No
If Yes,
i. Identify Facilities:
There is a People Inc. group home located within 1,500 ft. of the Project Site on Rensch Road

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐ No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑ No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

v. Is the project site subject to an institutional control limiting property uses? ☐ Yes ☐ No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐ Yes ☐ No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? >10 feet

b. Are there bedrock outcroppings on the project site? ☐ Yes ☑ No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %

c. Predominant soil type(s) present on project site: Churchville Silt Loam 100 %

d. What is the average depth to the water table on the project site? Average: >10 feet

e. Drainage status of project site soils:
☐ Well Drained: _____ % of site
☐ Moderately Well Drained: _____ % of site
☑ Poorly Drained 100 % of site

f. Approximate proportion of proposed action site with slopes:
☑ 0-10%: 100 % of site
☐ 10-15%: _____ % of site
☐ 15% or greater: _____ % of site

g. Are there any unique geologic features on the project site? ☐ Yes ☑ No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☐ Yes ☑ No

ii. Do any wetlands or other waterbodies adjoin the project site? ☐ Yes ☑ No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☐ Yes ☑ No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name _____ Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐ Yes ☑ No

If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? ☐ Yes ☑ No

j. Is the project site in the 100-year Floodplain? ☐ Yes ☑ No

k. Is the project site in the 500-year Floodplain? ☐ Yes ☑ No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐ Yes ☑ No
If Yes:

i. Name of aquifer: _____

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

m. Identify the predominant wildlife species that occupy or use the project site:
Typical suburban species.

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation):
ii. Source(s) of description or evaluation:
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No
If Yes:
i. Species and listing (endangered or threatened):

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No
If Yes:
i. Species and listing:

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No
If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site?
ii. Source(s) of soil rating(s):

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name:
ii. Basis for designation:
iii. Designating agency and date:

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☑ Yes ☐ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: Eligible property:4030 Rensch Road, Amherst

iii. Brief description of attributes on which listing is based:

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s):

ii. Basis for identification:

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource:

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.):

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation:

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Rensch Group LLC Date February 21, 2023

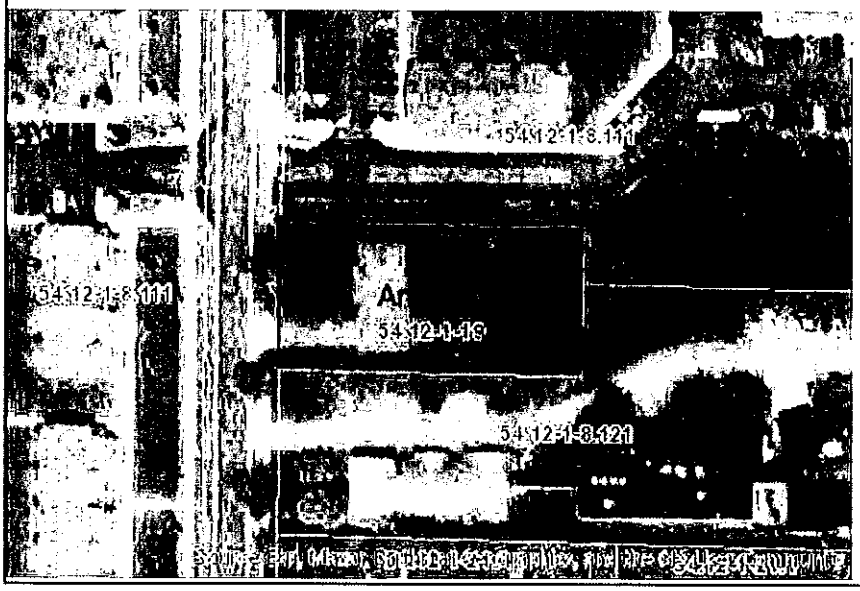
Signature  Title Attorney for Project Sponsor

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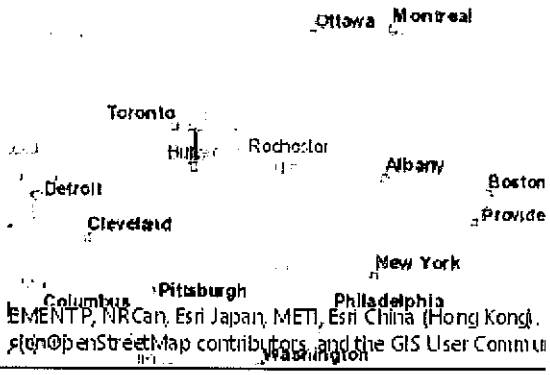
Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EAF Mapper Summary Report

Monday, February 20, 2023 12:55 PM



Disclaimer: The EAF Mapper is a screening tool intended to ass project sponsors and reviewing agencies in preparing an environme assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Althou the EAF Mapper provides the most up-to-date digital data available DEC, you may also need to contact local or other data sources in or to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	No
E.2.h.iii [Surface Water Features]	No
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	No
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Yes - Digital mapping data for archaeological site boundaries are not available. Refer to EAF Workbook.
E.3.e.ii [National or State Register of Historic Places or State Eligible Sites - Name]	Eligible property:4030 Rensch Road, Amherst
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Rezoning of 3945 Rensch Road from R-3 to SC-3

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

1. For each applicable category of proposed new structures, including additions to existing structures, provide the following information for all soil types on the project site (*according to Soil Survey of Erie County, NY; Table 11, Building Site Development, pp 294-305):*

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Churchville Silt Loam	Severe	Severe	Severe	Severe	Moderate

2. If the Soil survey indicates either "severe" or "moderate" suitability for the proposed types of construction, a geotechnical and hydrological analysis based on one test per 3.5 acres of project area must be provided (per Town Board resolution, 3/17/03, amended 6/16/03).

   _x_ Geotechnical report attached _____ Not applicable

   [Note: Three copies of the Geotechnical Report prepared by Barron & Associates P.C. dated August 24, 2022 have been submitted to the Planning Department].

3. Is your property located: On Youngs Road between Dodge and Klein Roads? □ Yes x No
   On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? □ Yes x No

   If so, the property may be within an area of the Town that is affected by a moratorium on connections to the sanitary sewer system.

4. Are there alternative locations on the site for this project? □ Yes x No

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:

   Not Applicable.

6. Are you aware of current or future plans or intentions by others in the Town of Amherst to develop property within 1000± ft. of the present project request: □ Yes ☒ No
   Describe: Not Applicable.

   (Potential environmental impacts from adjacent or nearby projects undergoing the approval process will receive a coordinated environmental review to determine cumulative effects on common receivers (e.g. traffic and drainage corridors) and other relevant environmental concerns.)

7. Maximum number of vehicular trips to be generated per peak hour upon completion of project 11 [Weekday A.M. Peak]
   Source: ITE Trip Generation Report

8. Will blasting occur during construction? □ Yes ☒ No

9. Does the project propose to connect and be tributary to the public sanitary sewer system? ☒ Yes □ No

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:
    2,400 average flow 9,600 peak flow.

    (Average flows of 2,500 gpd or greater will require an Engineer's Report that includes a detailed downstream sewer capacity analysis and the identification of and commitment to required I/I offset work during peak wastewater flow conditions.)

11. Based on the Town's *2011 Reconnaissance Level Survey of Historic Resources,* is your property 'blue-rated' for historic significance? □ Yes ☒ No

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 2

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 2 OF REZONING APPLICATION

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED FROM R-4 to SC-3

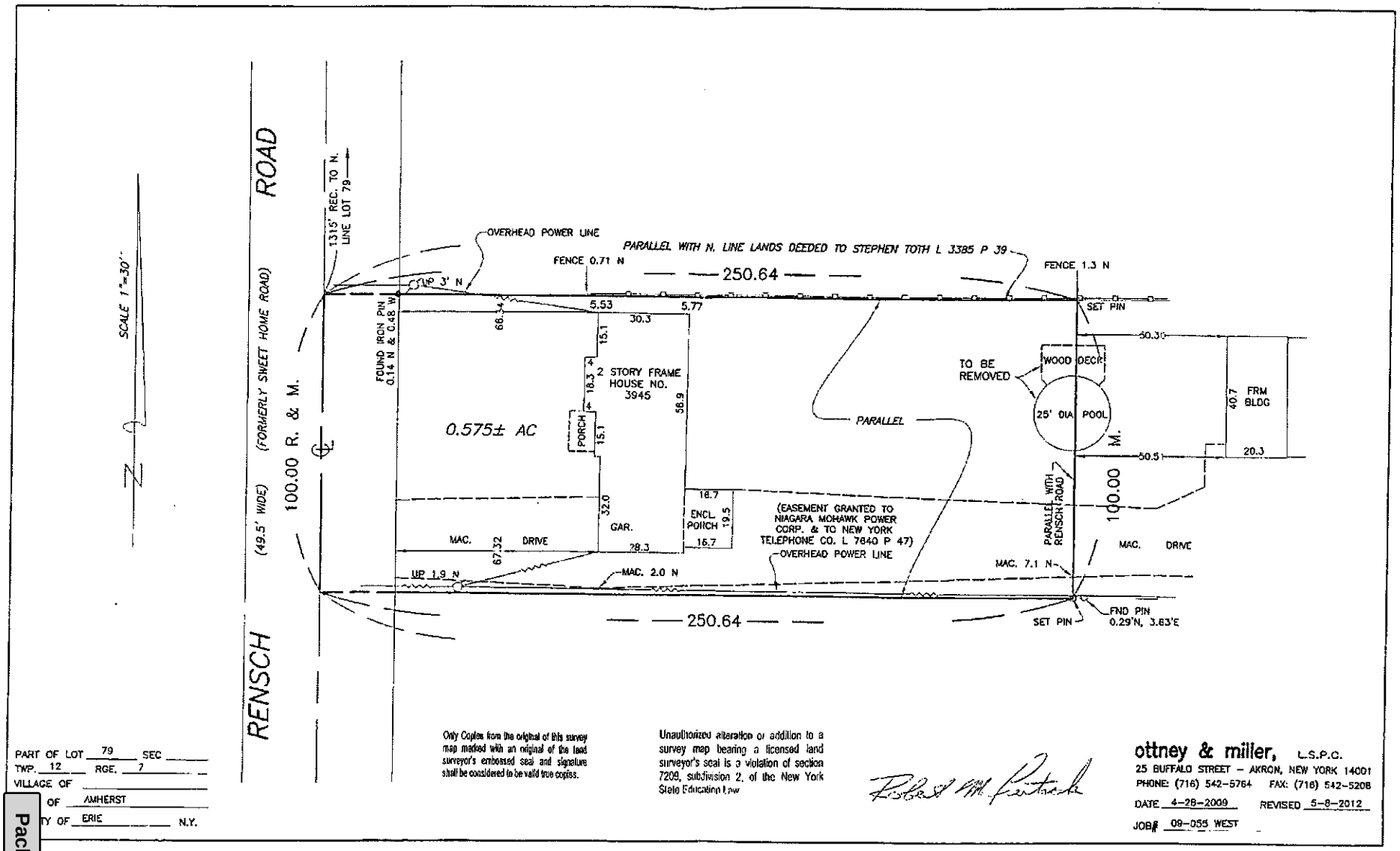
ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 79, Township 12, Range 7 of the Holland Land Company's Survey, described as follows:

Beginning at a point in the center line of Rensch Road (f/k/a Sweet Home Road) distant 1315 feet south of the north line of Lot No. 79, Township 12, Range 7, as measured along the center line of Rensch Road; running thence south along the center line of said Rensch Road 100 feet to a point; running thence east parallel with the north line of lands conveyed to Stephen Toth by a deed recorded in Erie County Clerk's Office in liber 3385 of Deeds at page 39, 250.64 feet to a point; running thence north parallel with the center line of Rensch Road, 100 feet to a point; running thence west and parallel with the said north line of said Toth's lands, 250.64 feet to the point or place of beginning.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 3

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)



PART OF LOT 79 SEC
TWP. 12 RGE. 7
VILLAGE OF
OF AMHERST
TY OF ERIE N.Y.

Only Copies from the original of this survey map marked with an original of the land surveyor's embossed seal and signature shall be considered to be valid true copies.

Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of section 7209, subdivision 2, of the New York State Education Law

ottney & miller, L.S.P.C.
25 BUFFALO STREET – AKRON, NEW YORK 14001
PHONE: (716) 542-5764 FAX: (716) 542-5208

DATE 4-28-2009 REVISED 5-8-2012
JOB# 09-055 WEST

EXHIBIT 4

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 4 REZONING APPLICATION

REZONING OF 3945 RENSCH ROAD FROM R-4 TO SC-3

Question 11(A): Description of the character of the proposed development:

Response to Question 11(A): The proposed multifamily project to be located on the parcel the approximately .5 acre parcel at 3945 Rensch Road ("Project Site") will be upscale in character and will feature an attractive multifamily building that will replace the existing residential structure. A reduced-size copy of the Conceptual Elevation Plan prepared by Sutton Architecture PLLC is provided at **Exhibit "7"**. There will be a total of 12 attached residential units for lease along with related site improvements. The conceptual layout for the proposed upscale multifamily project is depicted on the full-size Site Plan [Drawing C-100] prepared by Christopher Wood, P.E., of Carmina Wood Design attached to this Rezoning Application. A reduced size copy of the Site Plan depicting the project layout is also provided at **Exhibit "6"**.

Question 11(B)(1): Rationale for rezoning request: 1. What was this site chosen?

Response to Question 11(B)(1): The Project Site is an appropriate location for the requested rezoning of the Project Site from R-4 to SC-3 to accommodate the proposed upscale multifamily project given the character and scale of nearby land uses. It is also important to mention that the requested amendment of the zoning classification of portions of the Project Site is consistent with the Conceptual Land Use Plan for the Town of Amherst contained at Figure 6 of the adopted Bicentennial Comprehensive Plan ("Comprehensive Plan"), which designates the Project Site as appropriate for "Medium Residential" use as well as Figure 6-A of the Comprehensive Plan, that designates the Project Site as appropriate for "Suburban Center" [Designation Area No. 7 on

Figure 6-A]. Color copies of Figure 6 and Figure 6-A of the adopted Comprehensive Plan are attached as **Exhibit "8"**.

Question 11(B)(2): Why cannot land be used with the existing zoning?

Response to Question 11(B)(2): The Project Site is currently zoned Residential District Four ("R-4") and the R-3 zoning classification is no longer consistent with the zoning classifications and uses of nearby properties that include a large student housing on property zoned MFR-6, a mixed-use project and a hotel on parcels zoned GB, etc. As mentioned previously, Figure 6 of the adopted Comprehensive Plan designates the Project Site as appropriate for "Medium Residential" use.[1]

Question 11(B)(3): How will this rezoning impact surrounding properties?

Response to Question 11(B)(3): The requested rezoning of the Project Site from R-4 to SC-3 to accommodate the proposed upscale multifamily project will not result any potentially significant adverse impacts on surrounding properties. The density of the project will not be inconsistent with the surrounding vicinity.

Question 11(B)(4): How will this rezoning impact the school system?

Response to Question 11(B)(4): The proposed project will have positive impacts on the school district since the property taxes that will be generated on an annual basis will be substantially higher than the

---

[1] Page 3-32 of Chapter 3 of the Comprehensive Plan indicates that the Medium Residential category is appropriate for multifamily housing with a density of 12 to 60 units per acre and states as follows: "Medium Residential comprises the relatively small proportion of the Town's housing stock devoted to multi-family, largely rental apartment housing. Although longstanding policy has tended to favor low-density, single-family residential use, recent development trends have seen a substantial increase in the amount of new multi-family housing. The need for higher density housing will grow along with the component of the population that will increasingly choose smaller housing types, including retirees, empty nesters, singles, and other smaller household types.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

current property taxes. The proposed project will potentially generate some demand for educational services provided by the Sweet Home Central School District but it is anticipated that the proposed upscale multifamily project will have overall positive fiscal impacts since the annual school taxes will be higher than the cost of educational services for school age children of the residents.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 5

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 5

REZONING OF 3945 EGGERT ROAD FROM R-4 TO SC-3

Question 16(A)(1): **State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan. Cite specific sections, maps and/or figures in the plan that support the proposed zoning at this location.**

Response to Question 16(A)(1): The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[1] On December 14, 2020, the Town Board most recently adopted amendments to the Bicentennial Comprehensive Plan. The proposed apartment project is consistent with the Comprehensive Plan including Figure 6, which designates the Project Site as appropriate "Medium Residential" use and Figure 6-A, which designates the Project Site as a "Suburban Center". Color copies of Figure 6 and 6-A of the adopted Comprehensive Plan are attached as **Exhibit "8"**.

Question 16(A)(2): **Cite all text, map, and/or figures that must be amended to support the proposed zoning at this location and provide detailed suggested amendments.**

Response to Question 16(A)(2): The proposed SC-3 zoning classification and the proposed multifamily project are consistent with the Comprehensive Plan and such there is not a need to amend the Comprehensive Plan to accommodate the proposed project.

---

[1] A copy of the resolution adopted by the Town Board for the purpose of adopting the Bicentennial Comprehensive Plan pursuant to Town Law Section 272-a is included at the beginning of the Comprehensive Plan. This resolution recites the lengthy planning history that incorporated numerous opportunities for public input as well as a coordinated environmental review pursuant to SEQRA that involved the preparation a Generic EIS and the issuance of a Findings Statement.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Question 16(A)(3): State why the proposed zoning is consistent with intent and objectives (Sec. 1-2-2) of the Zoning Ordinance:

Response to Question 16(A)(3): Section 1-2-1 of the Zoning Code is titled "Purpose" and it states as follows:

> *"The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of the town and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space, public facilities, business, services, industry or other purposes; by regulating and restricting the bulk, height, design, building coverage and location of structures; by regulating and limiting population density; and for the aforesaid purposes, to divide the land within the limits of the town into districts of such number and dimensions generally consistent with the policies of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Ordinance."*

The proposed rezoning of the Project Site to accommodate the proposed multifamily project is consistent with the "Purpose" of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen objectives that are discussed below as follows:

A. To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development;

Response: The proposed rezoning of the Project Site will be consistent with the objective of protecting the character and value of existing land uses. The proposed rezoning will allow a portion of the Project Site to be redeveloped as a multifamily building consisting of twelve units represents orderly and beneficial development.

B. To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas;

Response: The proposed rezoning of the Project Site will not be inconsistent with this objective.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

C. To prevent overcrowding of land;

Response: The proposed project will not result in the overcrowding of land. The project is consistent with the type of development designated as appropriate for the Project Site per the adopted Comprehensive Plan.

D. To prevent excessive concentration of population and to prevent spare and uncoordinated development;

Response: The proposed rezoning of the Project Site will not result in excessive concentration of population and the residential project represents an example of coordinated development.

E. To regulate and control the location and spacing of buildings on the lot and in relation to the surrounding property generally consistent with the policies of the Comprehensive Plan.

Response: The responses to the Questions in Section 16 provided above sets forth the reasons the proposed rezoning is consistent with the policies of the Comprehensive Plan.

F. To protect persons and property from damage and injury due to fire or flood;

Response: The Site Plan Application review process will trigger the need for an Engineer's Report to be prepared by a licensed engineer to be prepared for review and approval by the Town's Engineering Department. The project will not increase the likelihood of damage and injury due to fire and flood. The proposed multifamily building will be constructed per the stringent requirements of the NYS Building Code including the fire safety standards contained therein.

G. To preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only.

Response: The proposed rezoning and the proposed project will not be inconsistent with this objective. There are not significant natural features located on the Project Site.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

H. To assure that structure and land use arrangements are aesthetically harmonious with nearby areas and structures.

Response: The development of the Project Site in a manner consistent with the Site Plan [Drawing C-100] will be aesthetically harmonious with nearby areas and structures.

I. To regulate the location of buildings and intensity of uses in relation to streets according to plans so as to cause the least interference with and be damaged least by traffic movements and hence result in lessened street congestion and improved public safety.

Response: The proposed project will have vehicular access to Rensch Road and will be consistent with the above criteria.

J. To establish zoning patterns that insure economical extensions for sewers, water supply waste disposal and other public utilities, as well as development of recreation, schools and other public facilities;

Response: The Project Site has access to sanitary sewer and water lines as well as necessary public utilities to service the proposed project.

K. To guide the future development of the town so as to being the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan.

Response: The proposed rezoning of the Project Site is consistent with this objective since the proposed zoning classification and use are consistent with the policies contained in the Comprehensive Plan.

L. To accomplish the specific intents and goals set forth in the introduction to the respective sections.

Response: The proposed rezoning of the Project Site is consistent with this objective.

M. To protect the community from visual pollution resulting from the unregulated use of signs and other advertising devices.

Response: The proposed rezoning and the proposed project will not be inconsistent with this objective.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Question 16(C): **Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:**

Response to Question 16(C): The proposed rezoning of the Project Site is compatible with the present zoning and conforming uses of nearby properties and the character of the neighborhood which includes a mixture of uses including commercial and residential uses on properties zoned GB, MFR-6, etc.

Question 16(D): **Suitability of the subject property for uses permitted by the current versus the proposed district:**

Response to Question 16(D): The Project Site is not suitable for the redevelopment pursuant to its existing R-4 zoning classification [development limited to a duplex] and the existing R-4 zoning classification is inconsistent with the adopted Comprehensive Plan. The Project Site is suitable for redevelopment pursuant to the proposed SC-3 zoning classification.

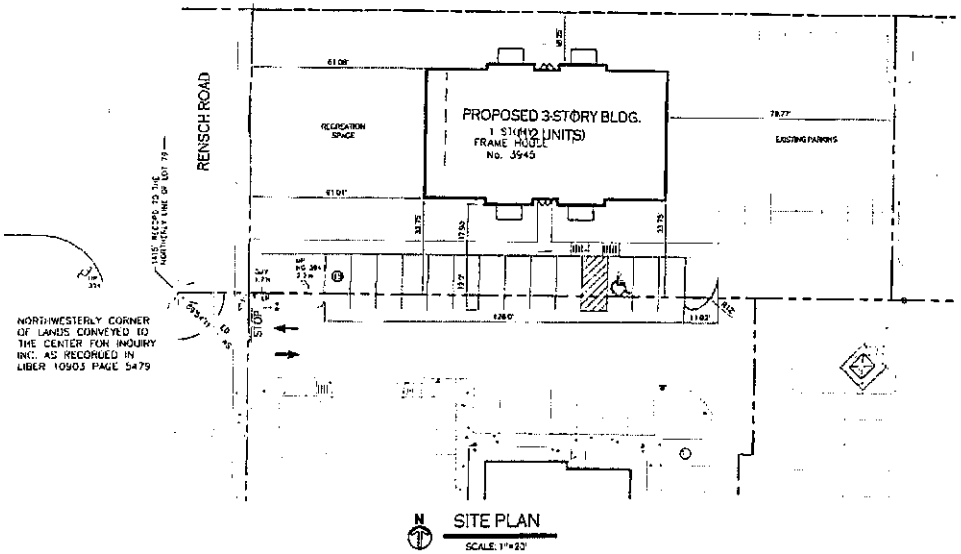
Question 16(E): **Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:**

Response to Question 16(D): The proposed change in the zoning classification of the Project Site from R-4 to SC-3 to accommodate the proposed project will have positive impacts on the balance of uses in the Town by providing residential units for lease within a portion of the Town that has been designated as appropriate for this use by the Town Board per the recommendations of the adopted Comprehensive Plan.

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

EXHIBIT 6

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)



SITE DATA		
SITE AREA = 0.5 AC		
ZONED: RU ZONE TO SC-3		
USE: PROPOSED 3-STORY 12 UNIT APARTMENT BUILDING		
SETBACKS - BUILDING	REQUIRED	PROVIDED
FRONT	5' MIN.	61.01' MIN
SIDE	0' MIN	18.25 MIN.
REAR	0' MIN	79.77' MIN.
SETBACKS - PARKING		
FRONT	10' MIN	> 10 FT
SIDE	0' MIN	0
REAR	0' MIN	N/A
TOTAL VEHICLE SPACES	12	13
BICYCLE	6	6
ELECTRIC VEHICLE STATION	-	-
GREENSPACE		
INTERIOR PARKING GREENSPACE	5% (1,355 SF)	13% (3,265 SF)
MAX. BUILDING HEIGHT	3 STORIES / 42'	3 STORIES / < 42'
OUTDOOR AMENITY SPACE	5% (9,825 AC)	20% (2.1 AC)

PARKING CALCULATION PER SECTION 9A-8-1-A1

APARTMENTS/TOWNHOMES:
REQ'D: 1 SPACE PER 2 BDRM UNIT = 1 x 12 UNITS = 12 SPACES
REQ'D = 12 SPACES REQ'D

TOTAL PARKING SPACES REQUIRED = 12 SPACES

BICYCLE CALCULATION PER SECTION 9A-8-1-A6

RESIDENTIAL:
REQ'D 0.5 PER UNIT (20 max)
REQ'D = 0.5 x 12 = 6 SPACES REQ'D

TOTAL BICYCLE SPACES REQUIRED = 6 SPACES

ELECTRIC VEHICLE CALCULATION PER SECTION 9A-8-1-C8

1% OF TOTAL PARKING = 13 x 0.01 = 1 SPACES REQ'D

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS. CARMINA WOOD DESIGN ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY

20' 0 20 40'

CARMINAWOOD DESIGN

Multi-family Development
3945 Rensch Road
Amherst, New York

REVISIONS		
No.	Description	Date

DRAWING NAME:
Site Plan

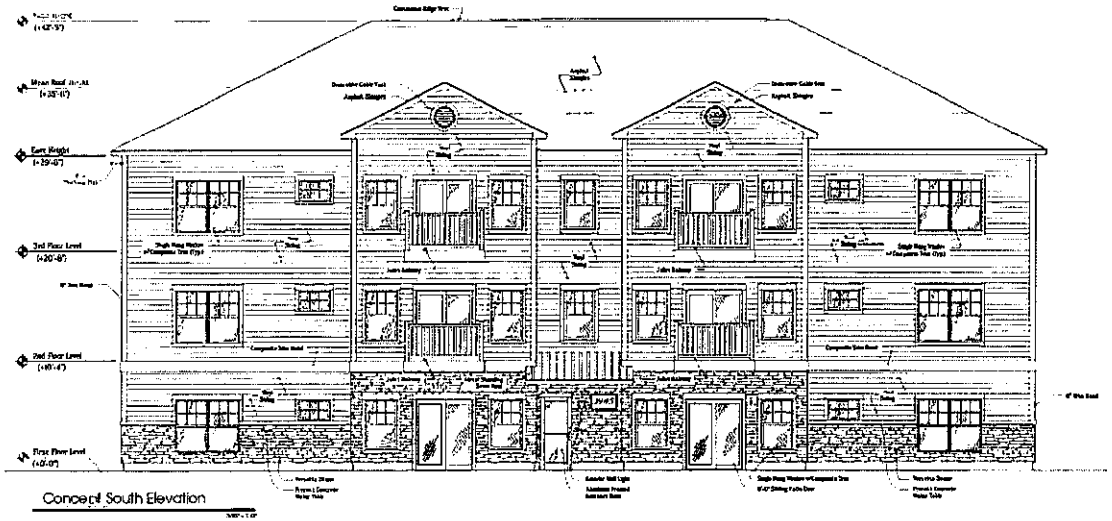
Date: 9.15.22
Drawn By: C. Wood
Scale: As noted

DRAWING NO.
C-100

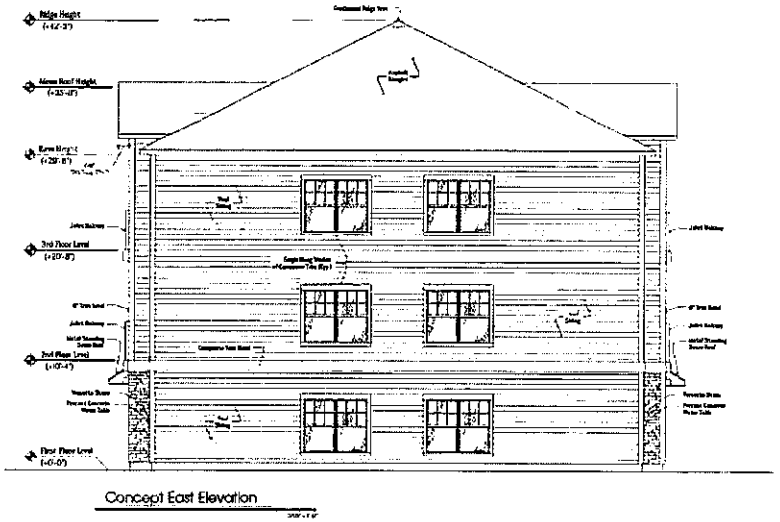
Project No: 22.XXX

EXHIBIT 7

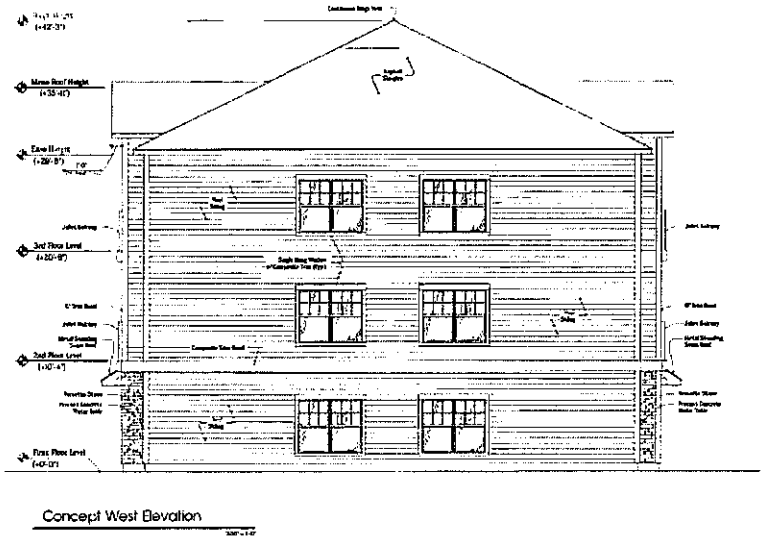
Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)



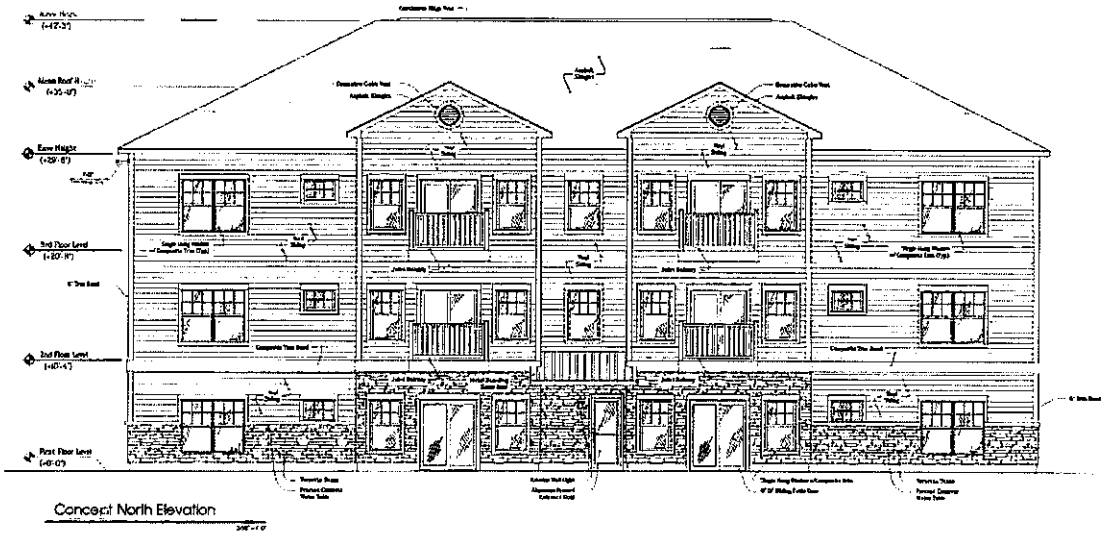
Concept South Elevation



Concept East Elevation



Concept West Elevation



Concept North Elevation

Concept First Floor Plan For:
12 Unit Multi Family Building

3945 Rensch Road Amherst, NY
8/24/22

ELLICOTT DEVELOPMENT

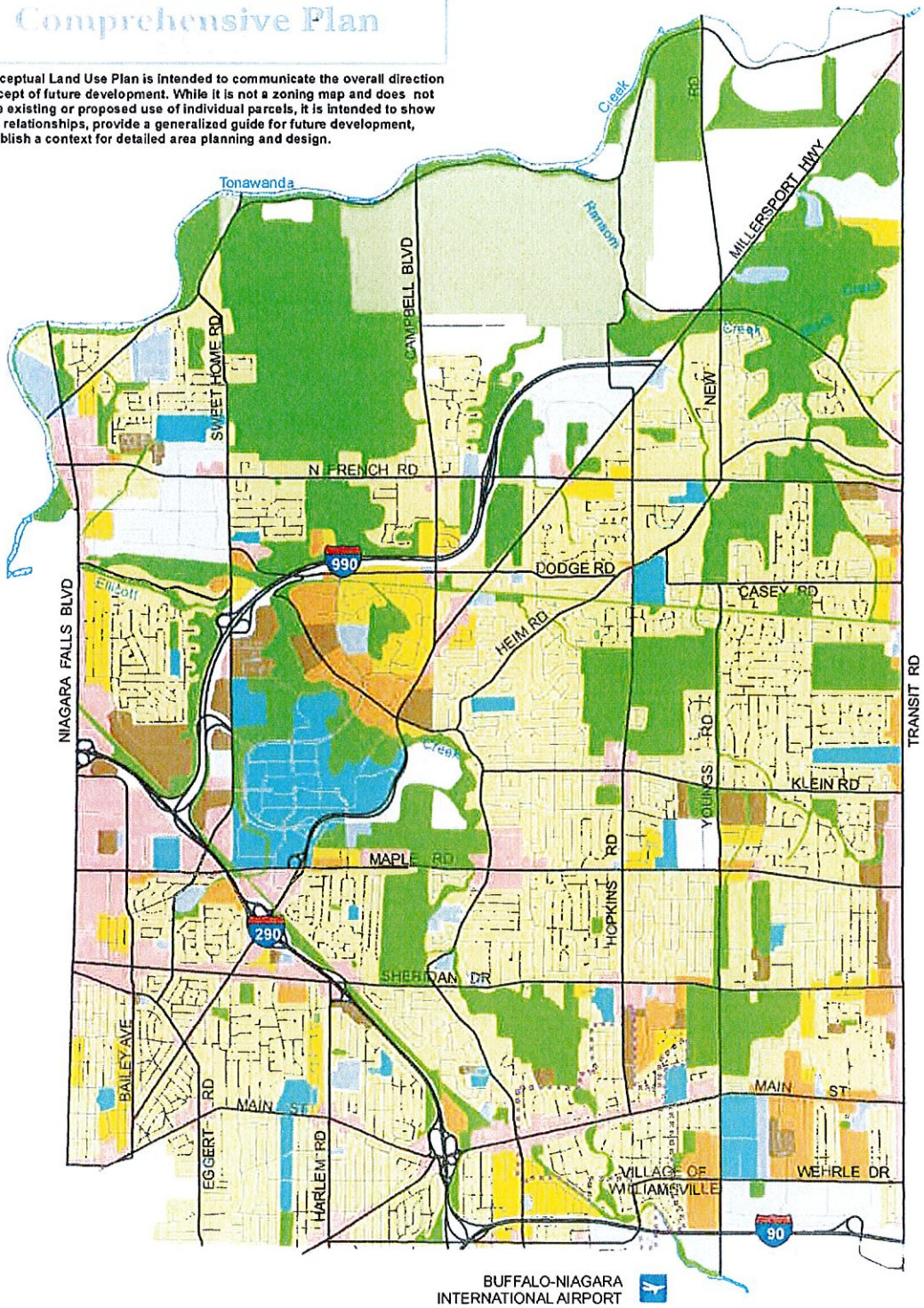
SUTTON architecture
"Design & Build"

EXHIBIT 8

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Town of Amherst Bicentennial Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.



Conceptual Land Use Plan

- Rural Residential
- Single Family Residential
- Mixed Residential
- Medium Residential
- Commercial / Mixed Use*
- Special Use Center
- Commercial - Office
- Industrial - Office
- Community Facilities
- Educational Campus
- Recreation, Open Space & Greenways
- Agriculture
- Transportation
- Surface Water
- Village of Williamsville Boundary

* See Map Figure 6-A for Additional Designations

SOURCE NOTES:

Original Source Data Provided by the Town of Amherst Information Technology Department, URS Corporation and Wallace Roberts & Todd, LLC

Map Compiled by the Town of Amherst Planning Department

Date: December 2020

N

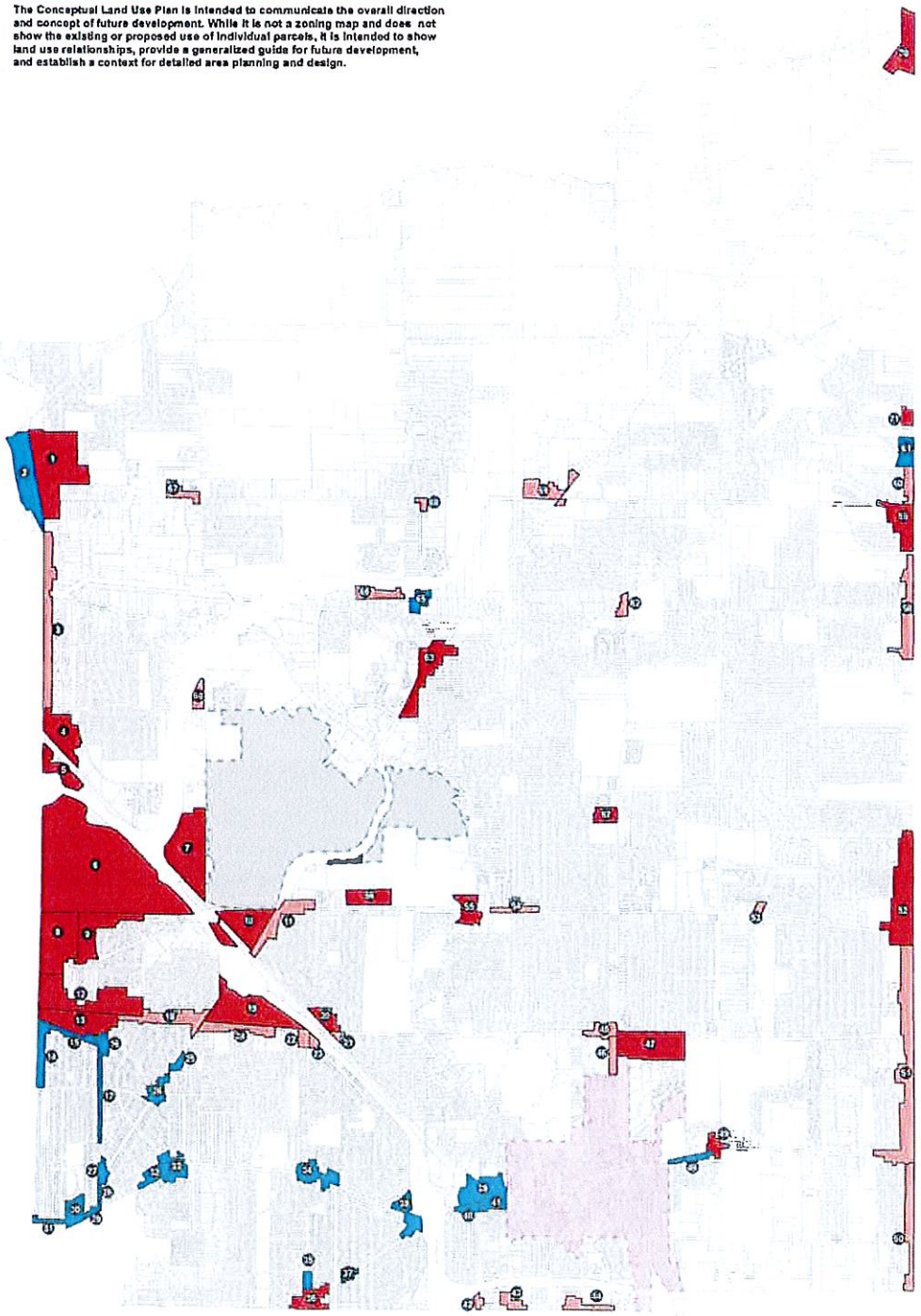
0 0.25 0.5 0.75 1 1.25

FIGURE 6

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Town of Amherst
Bicentennial
Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.



1 Wegmans (NFB)
2 Walgreens (NFB)
3 NFB / Elicott Creek Strip
4 Home Depot (NFB)
5 Inkeepers Lane
6 Consumer Square / Ridge Lea
7 University Place
8 Boulevard Mall
9 Wegmans (Alberta)
10 Golden Triangle
11 Maple / Amherst Manor
12 Walmart (Sheridan)
13 Northtown Plaza
14 NFB Strip
15 Eggert Strip
16 Eggert / Bailey
17 Bailey Strip
18 Sheridan / Millersport Strip
19 Northtown Auto (Sheridan)
20 Sheridan / Sunrise - North Side
21 Sheridan / Sunrise - South Side
22 Sheridan / Harlem - West Side
23 Sheridan / Harlem - East Side
24 Sheridan / Getzville Strip
25 Millersport / Arcade
26 Six Corners
27 Bailey / Grover Cleveland
28 Bailey Live-Work
29 Main / Bailey
30 University Plaza
31 Kenmore Avenue
32 Eggertsville (Main / Eggert - West Side)
33 Eggertsville (Main / Eggert - East Side)
34 Snyder (Main / Harlem)
35 Harlem Strip
36 Harlem / Kensington
37 Kensington / Saratoga
38 Main / Kensington
39 West of Village - North of Main
40 West of Village - South of Main (West Side)
41 West of Village - South of Main (East Side)
42 Wehrle / South Forest
43 Wehrle / South Union
44 Wehrle / Cayuga
45 Sheridan / Hopkins
46 Evans Strip
47 Williamsville Place
48 Main Strip
49 Main / Youngs
50 Transit / Wehrle
51 Transit from Main to Maple
52 Transit / Maple
53 Maple / Ayer
54 Maple Strip
55 Maple / North Forest
56 Gun Club
57 Clearfield Plaza
58 Transit / Casey
59 Transit / North French
60 Transit / Dodge
61 Swormville
62 Hopkins / Dodge
63 Getzville Plaza
64 Sweet Home / Skinnersville
65 Campbell / Dodge
66 Dodge Strip
67 Sweet Home / North French
68 Campbell / North French
69 Crosspointe
70 Transit / Millersport
71 Transit Strip

FIGURE 6-A

Commercial and Mixed Use Designations

Suburban Center
Suburban Corridor
Traditional Areas
Village of Williamsville
University at Buffalo

SOURCE NOTES:

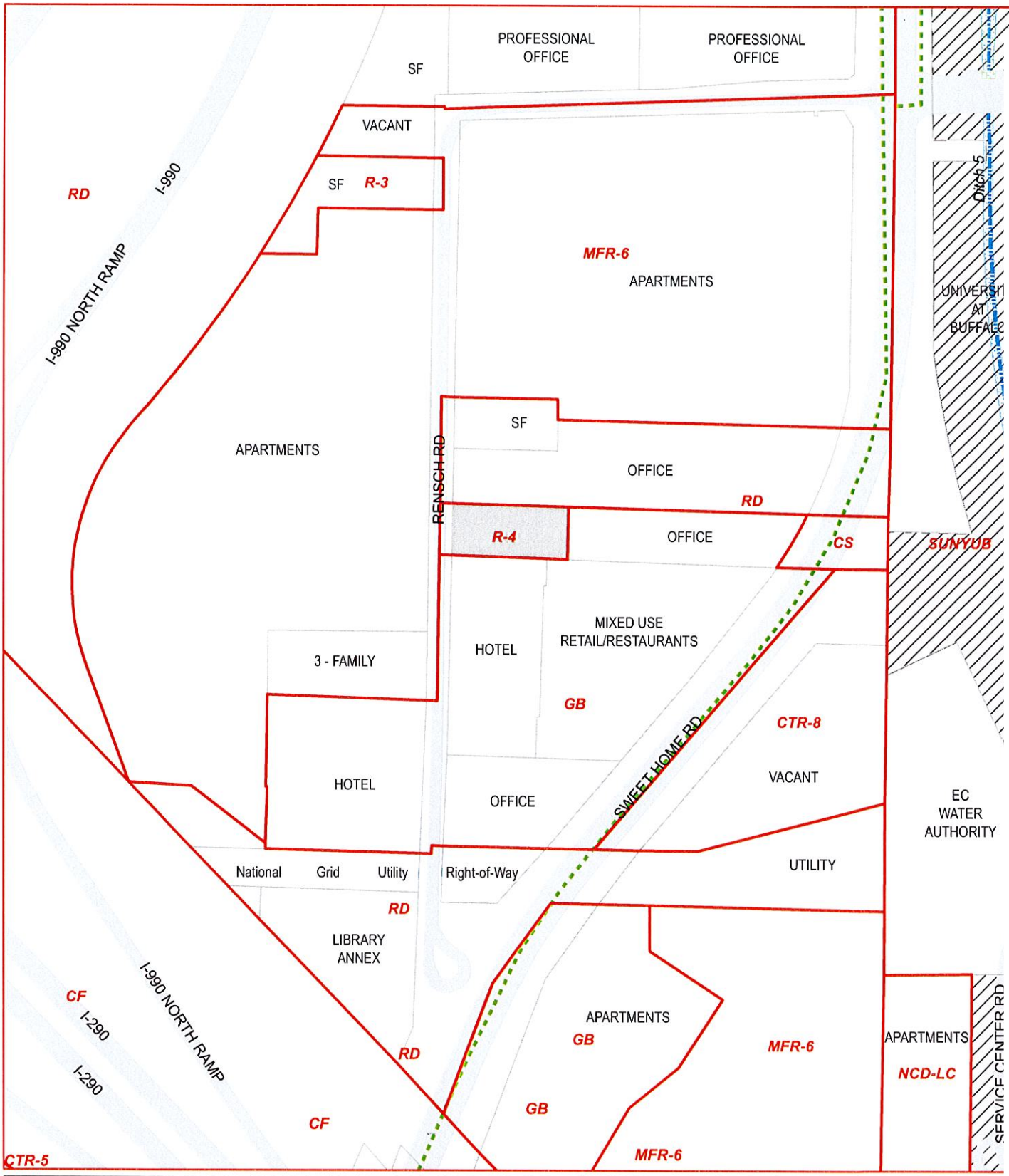
Original Source Data Provided by the Town of Amherst Information Technology Department, URS Corporation and Wallace Roberts & Todd, LLC

Map Compiled by the Town of Amherst Planning Department

Date: December 2020

0 0.2 0.4 0.6 0.8 1 Miles

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)



Z-2023-02

Request to Rezone 0.5± Acres of Land from R4 to CTR-5
Property Located at 3945 Rensch Road

Rensch Group, LLC, Petitioner

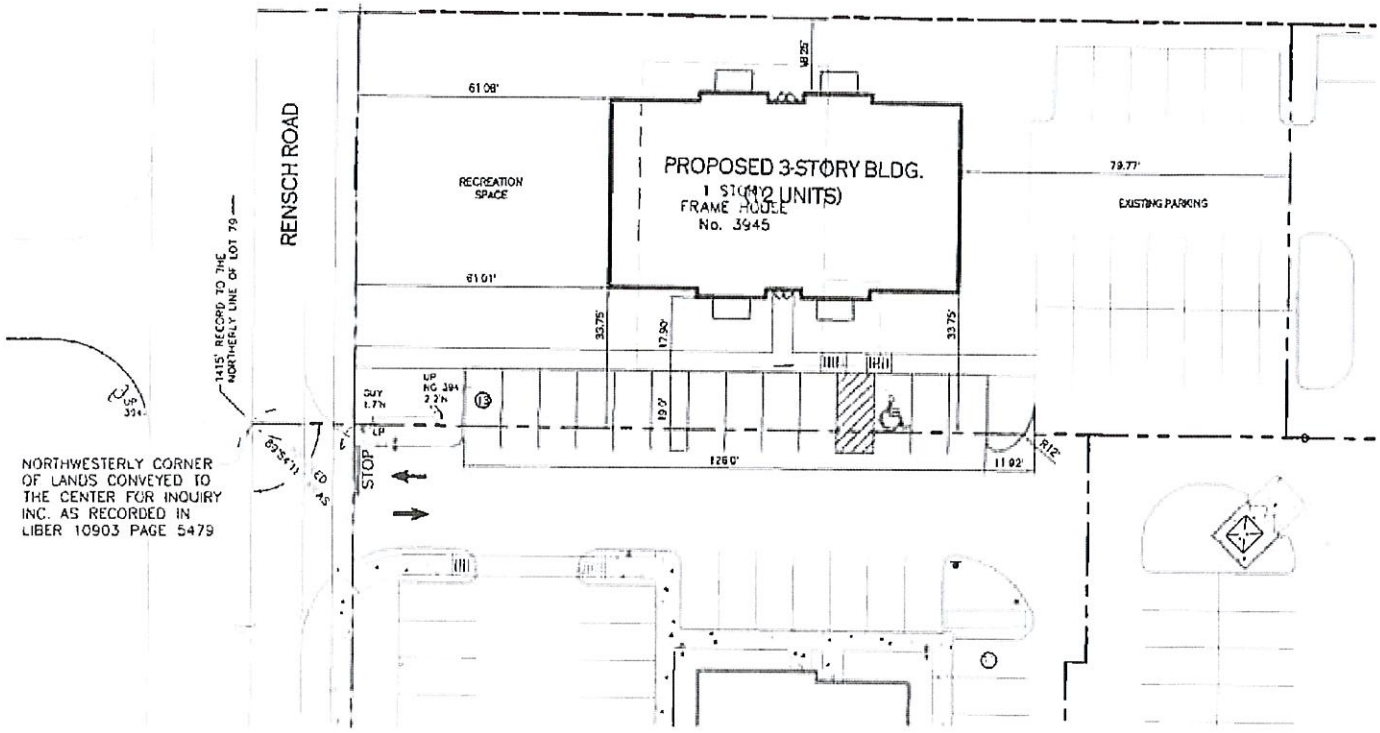
April 20, 2023

3945 Rensch Road

Existing Bikepath

Prepared by the Town of Amherst Planning Departm

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)



SITE PLAN

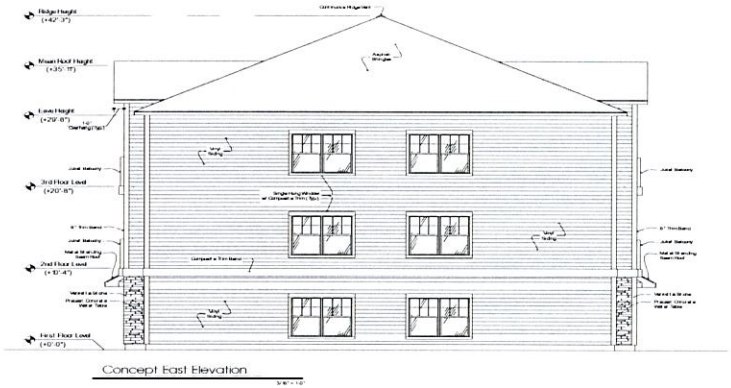
Z-2023-02
3945 Rensch Road

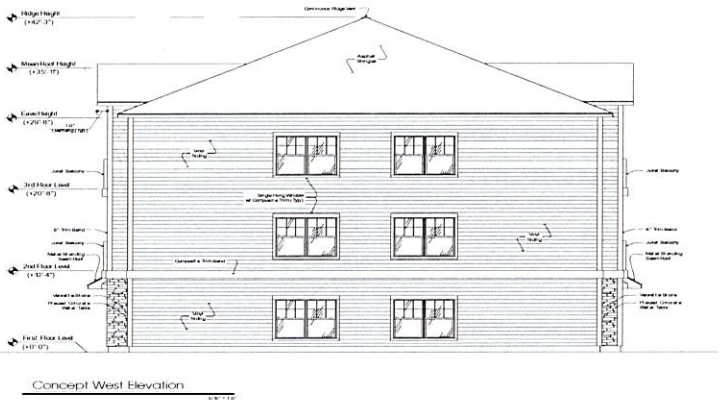
Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

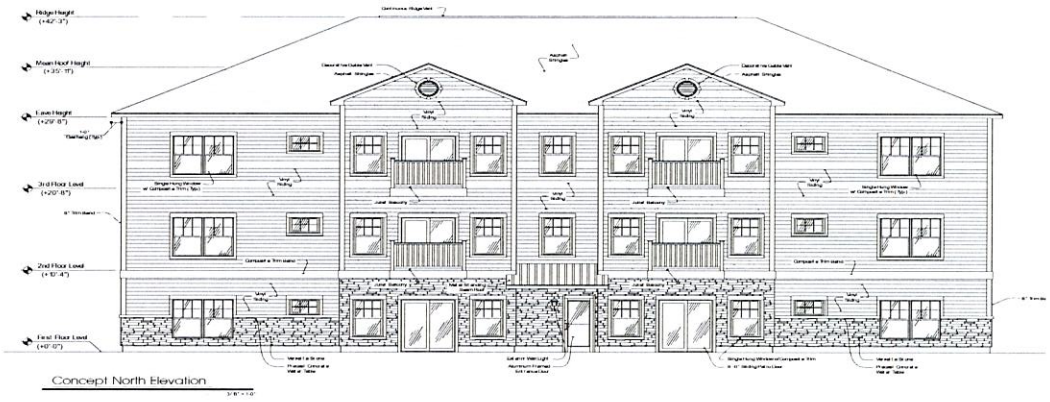
ELEVATION

Z-2023-02
3945 Rensch Road











Z-2023-02

Request to Rezone 0.5± Acres of Land from R4 to CTR-5
Property Located at 3945 Rensch Road

Rensch Group, LLC, Petitioner

April 20, 2023

3945 Rensch Road

Existing Bikepath

Prepared by the Town of Amherst Planning Departm

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
APR 13 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulj
Supervisor
Daniel C. Howard
Planning Direc
Daniel J. Ulatowsk
Assistant Planning

MEMORANDUM

March 2, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Sweet Home School District

RECEIVED
MAR 03 2023
TOWN OF AMHERST
BUILDING DEPT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.5± ACRES OF LAND FROM **R-4** TO **SC-3**, **Z-2023-02**; PROPERTY LOCATED AT **3945 RENSCH ROAD**. RENSCH GROUP, LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? no objection to re-zone

If you do not, briefly state why: _____

General comments relative to your agency interests: Access to building for fire apparatus not adequate - Comply w/ appendix D

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 4/12/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department *Erie County, New York*

RECEIVED
APR 11 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kul
Supervisor
Daniel C. Howard
Planning Direc
Daniel J. Ulatowsk
Assistant Planning

MEMORANDUM

March 2, 2023

RECEI
MAR 03
TOWN ATT

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
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Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Sweet Home School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.5± ACRES OF LAND FROM **R-4** TO **SC-3**, **Z-2023-02**; PROPERTY LOCATED AT **3945 RENSCH ROAD**. RENSCH GROUP, LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? No objection to Local Law

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/24/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kul
Supervisor
Daniel C. Howard P
Planning Direc
Daniel J. Ulatowsk CP
Assistant Planning tor

MEMORANDUM

March 2, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Sweet Home School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.5± ACRES OF LAND FROM **R-4** TO **SC-3**, **Z-2023-02**; PROPERTY LOCATED AT **3945 RENSCH ROAD**. RENSCH GROUP, LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? THE SUBJECT PROPERTY IS PART OF

If you do not, briefly state why: A LARGER DESIGNATED MIXED-USE CENTER, AS SHOWN ON FIGURE 6A OF THE COMP. PLA

General comments relative to your agency interests: RECOMMEND THAT THE REZONI REQUEST BE AMENDED TO CTR-5.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: D. Ulatowski **Date:** 4/3/2023
DANIEL J. ULATOWSKI, ZEO

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor
Daniel C. Howard, Al
Planning Director
Daniel J. Ulatowski, A
Assistant Planning Dire

April 4, 2023

Rensch Group, LLC
c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221

SUBJECT:	Rezoning Application Review	**Z-2023-02**
	Proposed:	Rezoning of 0.5± ac. from R-4 to SC-3
	Property located at:	**3945 Rensch Road**
	Application received:	February 21, 2023 (REVISED REVIEW)
	Representative:	Sean Hopkins, Esq.

Dear Mr. Hopkins,

Please consider the following comments:

1. The following items on the Environmental Assessment Form should be corrected or completed:
   - Part A – Project description: correct the description to indicate the Sallow Corridor 3 zoning district. Description indicates the SC (Shopping Center District).
2. Note that any other SEQR-related issues raised during the review process for this rezoning must be addressed prior to action by the Planning Board.
3. Provide an 8½ " x 11" reduction of any revised concept plan **and an electronic version** of any revised plans or information submitted for review.
4. The Planning Department recommends that the request be revised from rezoning to Shallow Corridor 3 (SC-3) to Center 5 (CTR-5). This change will bring the proposed rezoning into conformance with Figure 6-A (Commercial and Mixed-Use Designation) of the Bicentennial Comprehensive Plan, as well as allowing a better coordinated design for neighborhood-wide redevelopment plan in the future.

This is a review only and does not constitute approval of the Rezoning Request. Should you have questions regarding this correspondence, please contact Gary Palumbo, Associate Planner at gpalumbo@amherst..ny.us or Scott A. Marshall, Principal Planner at smarshall@amherst.ny.us.

Very truly yours,

for Daniel C. Howard, AICP
Planning Director

DH/SM/ac
Attachment
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Pln_Dpt_Rvw_04042023.docx

cc: Carmina Wood Design, 487 Main St., Suite 500, Buffalo, NY 14203
Sutton Architecture PLLC, 5409 Main St., Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, N.Y. AND REPLY TO MUNICIPALITY

Submit this form with full statement of proposed action (as described in GML 239-m(c)) at www.Erie.gov/IRonline, OR mail a hard copy (retain a copy for your files) to: Erie County Division of Planning, 95 Franklin Street, Room 1053, Buffalo, N.Y., 14202

DO NOT WRITE IN THIS SPACE
Case No.: ZR-23-163
Postmark/Delivery Date: 3/3/23

The proposed action described herein is referred in accordance with the provisions of NYS General Municipal Law §239 l - nn
A Municipal Referral Map is available to help determine whether an applicable action is subject to referral.

Description of Proposed Action

1. Name of Municipality: Town of Amherst, New York

§239-m(4)(b) provides that the county shall have 30 days after receipt of a full statement of the proposed action to reply.
If the county fails to reply within such period, the referring body may take final action.
However, any county reply received after 30 days but 2 or more days prior to final action by the referring body shall be subject to §239-m(5)
The referring body shall file a report of its final action with the county within 30 days per §239-m(6).

2. Hearing Schedule: Date April 20, 2023 Time 6:30pm Location 5583 Main Street, Williamsville, New York 14221

3. Action is before: ☐ Legislative Body ☐ Board of Appeals ☑ Planning Board

4. Action consists of: ☐ New Ordinance ☑ Rezone/Map Change ☐ Ordinance Amendment
☐ Site Plan ☐ Variance ☐ Special Use Permit ☐ Other:

5. Location of Property: ☐ Entire Municipality ☑ Address: 3945 Rensch Road

5a. S.B.L. of Property: 54.12-1-21.2

6. Referral required as site is within 500' of: ☐ State or County Property/Institution ☐ Municipal Boundary ☐ Farm Operation located in an Agricultural District
☐ Expressway ☐ County Road ☑ State Highway ☐ Proposed State or County Road, Property, Building/Institution, Drainageway

7. Proposed change or use: *(specify the action, such as the scope of variances or site plans)* Request to rezone 0.5 ± acres from Residential District (R-4) to Shallow Corridor-3 (SC-3)

8. Other remarks: Z-2023-02

9. Submitted by: Thomas Voigt, Assistant Planner **Email:** tvoigt@amherst.ny.us

10. Return Address: Town of Amherst Planning Department, 5583 Main Street, Williamsville, New York 14221

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 3/3/23. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. ☐ **The proposed action is not subject to review under the law.**
2. ☐ **Comment on proposed action is attached hereto.**
3. ☐ **The proposed action is subject to review; Recommendation on Proposed Action is attached hereto.**
4. ☒ **No Recommendation; proposed action has been reviewed and determined to be of local concern.**

By the Division of Planning: [signature] **Date:** 3/14/23

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department

8 10054

Erie County, New York

Brian J. Kulp
Supervisor
Daniel C. Howard,
Planning Direc
Daniel J. Ulatowski
Assistant Planning I

MEMORANDUM

March 2, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Sweet Home School District

RECEIVED
MAR 08 2023
TOWN OF AMHERST
PLANNING DEPT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.5± ACRES OF LAND FROM **R-4** TO **SC-3, Z-2023-02**; PROPERTY LOCATED AT **3945 RENSCH ROAD**. RENSCH GROUP, LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: Downstream capacity Anaylsis is required

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

None

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/8/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department — *Erie County, New York*

810054

Brian J. Ki
Supervis
Daniel C. Howa
Planning Dir
Daniel J. Ulatows
Assistant Planni

MEMORANDUM

March 2, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Sweet Home School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.5± ACRES OF LAND FROM **R-4** TO **SC-3, Z-2023-02**; PROPERTY LOCATED AT **3945 RENSCH ROAD**. RENSCH GROUP, LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? YES

If you do not, briefly state why: _____

General comments relative to your agency interests: NOTE: C-100 SHOWS A CURB CUT INCORRECTLY ON THE WEST SIDE OF RENSCH RD

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: C. Schregel **Date:** 3/8/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kul
Supervisor
Daniel C. Howard, P
Planning Director
Daniel J. Ulatowski, P
Assistant Planning Director

RECEIVED
MAR 09 2023
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM March 2, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
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Martin Polowy, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Sweet Home School District

RECEIVED
MAR 03 2023
TOWN OF AMHERST
BUILDING DEPT

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.5± ACRES OF LAND FROM **R-4** TO **SC-3, Z-2023-02**; PROPERTY LOCATED AT **3945 RENSCH ROAD**. RENSCH GROUP, LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: none at this time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

Please call the Planning Department if additional information is required (631-7051).

Signature: Doug Gesel **Date:** 3-9-23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulp
Supervisor
Daniel C. Howard,
Planning Direc
Daniel J. Ulatowski
Assistant Planning I

RECEIVED
MAR 07 2023
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM

March 2, 2023

RECEIV
MAR 03 20
TOWN ATTO

TO: Tim Koller, Deputy Town Clerk
Daniel J. Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
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Sweet Home School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 0.5± ACRES OF LAND FROM **R-4** TO **SC-3**, **Z-2023-02**; PROPERTY LOCATED AT **3945 RENSCH ROAD**. RENSCH GROUP, LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? Agree with all statements ma

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 3/3/23

DU/TV/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-02_(3945_Rensch_Rd)_2023\Z-2023-02_Transmittal_030223.doc
cc: Sean Hopkins, Hopkins Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-02 TB letter 062023 (RES-2023-528 : Local Law to Amend the Zoning Map - 3945 Rensch Road – Z-2023-02)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 27759 **RESOLUTION 2023-627** **ROLL CALL VOTE (ADOPTED)**

Senior Center Cafe/Gift Shop (Bond Resolution - $200,000)

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 18, 2023**

RE: **Senior Center Renovations**
2023-2028 C.I.P. - Project F-17
Bond Resolution - $200,000

Kindly take the following action with respect to the above bond request:

(1) Adopt the attached SEQR determination for the above project as determined by the Town of Amherst Planning Department; and

(2) Adopt the attached bond resolution authorizing the issuance of $200,000.00 in serial bonds for the above-referenced Town improvement.

The adoption of the bond resolution does not require a public hearing to be held because the improvement is a Town improvement not involving a special district.

Also attached is the Map Plan and Report which provides further detail on the scope of the project.

Thank you.

MAP:nmb
Attachments
c: Tim Koller, Deputy Town Clerk (*w/attachments*, **Agenda Item - July 24, 2023**)
Daryl C. Bramer, Comptroller (*w/attachments*)
Lynda Juul, Director of Finance (*w/attachments*)
Dan Ulatowski, AICP, Assistant Planning Director/ZEO (*w/attachments*)
Dan Howard, Director of Planning (*w/attachments*)
Daniel J. Rizzo, Expansion Coordinator, Special Projects (*w/attachments*)
Anne Dafchik, AIA, NCARB, Architect (*w/attachments*)

7/24/2023
A motion to adopt the SEQR determination was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. A motion to approve the Bond resolution was made by Supervisor Kulpa, seconded by Deputy Supervisor Bucki and unanimously approved via Roll Call vote 5-0.

FINANCIAL IMPACT:

Bond Resolution - $200,000

RESULT:	**ROLL CALL VOTE (ADOPTED) [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AI
Planning Director

Daniel J. Ulatowski, AI
Assistant Planning Dire

Transmitted electronically

MEMORANDUM July 3, 2023

TO: Anne Dafchik, AIA, NCARB, Architect
Facilities Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
2023–2028 CIP – Senior Center Café/Giftshop – F-17

The Planning Department has reviewed the scope of work for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\F-17_senior Center Cafe_Giftshop_7_3_2023.docx

cc:
Martin A. Polowy, Esq., Town Attorney
Daniel Howard, Planning Director

Attachment: SEQR F-17 (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

EXTRACT OF MINUTES

Meeting of the Town Board of the

Town of Amherst, in the

County of Erie, New York

July 24, 2023

* * *

A regular meeting of the Town Board of the Town of Amherst, in the County of Erie, New York, was held at the Town Hall, 5583 Main Street, Williamsville, New York, on July 24, 2023.

There were present:	Hon. Brian J. Kulpa, Supervisor; and
Board members:	Jacqualine Berger, Councilwoman Deborah Bruch Bucki, Deputy Supervisor/ Councilwoman Shawn Lavin, Councilman Michael R. Szukala, Councilman
There were absent:	
Also present:	Francina J. Spoth, Town Clerk

* * *

_____ offered the following resolution and moved its adoption:

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

BOND RESOLUTION OF THE TOWN OF AMHERST, NEW YORK, ADOPTED JULY 24, 2023, AUTHORIZING THE CONSTRUCTION OF IMPROVEMENTS TO THE TOWN SENIOR CENTER, STATING THE ESTIMATED TOTAL MAXIMUM COST THEREOF IS $200,000, APPROPRIATING SAID AMOUNT FOR SUCH PURPOSE, AND AUTHORIZING THE ISSUANCE OF BONDS IN THE PRINCIPAL AMOUNT OF $200,000 TO FINANCE SAID APPROPRIATION.

THE TOWN BOARD OF THE TOWN OF AMHERST, IN THE COUNTY OF ERIE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said Town Board) AS FOLLOWS:

Section 1. The Town of Amherst, in the County of Erie, New York (herein called the "Town"), is hereby authorized to finance the construction of improvements to the Town Senior Center, as described in the map, plan and report dated July 2023, prepared by the Town Facilities Department (2023-2028 Capital Improvement Program Project F-17). The estimated total maximum cost thereof, including preliminary costs and costs incidental thereto and the financing thereof, is $200,000 and said amount is hereby appropriated for such purpose. The plan of financing includes the issuance of bonds in the aggregate principal amount of $200,000 to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the Town to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

Section 2. Bonds of the Town in the principal amount of $200,000 are hereby authorized to be issued pursuant to the provisions of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York (herein called the "Law"), to finance said objects or purposes as set forth in section 1 hereof.

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Section 3. The following additional matters are hereby determined and declared:

(a) The period of probable usefulness applicable to the specific object or purpose for which said $200,000 bonds are authorized to be issued, within the limitations of Section 11.00 a. 12(a)(2) of the Law, is fifteen (15) years.

(b) The proceeds of the bonds herein authorized and any bond anticipation notes issued in anticipation of said bonds may be applied to reimburse the Town for expenditures made after the effective date of this resolution for the purpose for which said bonds are authorized. The foregoing statement of intent with respect to reimbursement is made in conformity with Treasury Regulation Section 1.150-2 of the United States Treasury Department.

(c) The proposed maturity of the bonds authorized by this resolution will exceed five (5) years.

Section 4. Each of the bonds authorized by this resolution, and any bond anticipation notes issued in anticipation of the sale of said bonds, shall contain the recital of validity as prescribed by Section 52.00 of the Law and said bonds, and any notes issued in anticipation of said bonds, shall be general obligations of the Town, payable as to both principal and interest by general tax upon all the taxable real property within the Town. The faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal of and interest on said bonds, and any notes issued in anticipation of the sale of said bonds, and provision shall be made annually in the budget of the Town by appropriation for (a) the amortization and redemption of the bonds, and any notes in anticipation thereof to mature in such year, and (b) the payment of interest to be due and payable in such year.

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Section 5. Subject to the provisions of this resolution and of the Law and pursuant to the provisions of Section 21.00 of the Law relative to the authorization of the issuance of bonds with substantially level or declining annual debt service, Section 30.00 relative to the authorization of the issuance of bond anticipation notes and Section 50.00 and Sections 56.00 to 60.00 and 168.00 of the Law, the powers and duties of the Town Board relative to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized, and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes, and as to the execution of agreements for credit enhancements, are hereby delegated to the Supervisor, the chief fiscal officer of the Town.

Section 6. The validity of the bonds authorized by this resolution, and of any notes issued in anticipation of the sale of said bonds, may be contested only if:

(a) such obligations are authorized for an object or purpose for which the Town is not authorized to expend money, or

(b) the provisions of law which should be complied with at the date of the publication of such resolution, or a summary thereof, are not substantially complied with,

and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or

(c) such obligations are authorized in violation of the provisions of the constitution.

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Section 7. This bond resolution is subject to a permissive referendum and the Town Clerk is hereby authorized and directed, within ten (10) days after the adoption of this resolution, to cause to be published, in full, in "The Amherst Bee," a newspaper having a general circulation within said Town and hereby designated the official newspaper of the Town for such publication and posted on the sign board of the Town maintained pursuant to the Town Law, a Notice in substantially the following form:

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

TOWN OF AMHERST. NEW YORK

PLEASE TAKE NOTICE that on July 24, 2023, the Town Board of the Town of Amherst, in the County of Erie, New York, adopted a bond resolution entitled:

"BOND RESOLUTION OF THE TOWN OF AMHERST, NEW YORK, ADOPTED JULY 24, 2023, AUTHORIZING THE CONSTRUCTION OF IMPROVEMENTS TO THE TOWN SENIOR CENTER, STATING THE ESTIMATED TOTAL MAXIMUM COST THEREOF IS $200,000, APPROPRIATING SAID AMOUNT FOR SUCH PURPOSE, AND AUTHORIZING THE ISSUANCE OF BONDS IN THE PRINCIPAL AMOUNT OF $200,000 TO FINANCE SAID APPROPRIATION,"

an abstract of which bond resolution concisely stating the purpose and effect thereof, being as follows:

FIRST: AUTHORIZING said Town is authorized to finance the construction of improvements to the Town Senior Center, as described in the map, plan and report dated July 2023, prepared by the Town Facilities Department (2023-2028 Capital Improvement Program Project F-17); STATING the estimated total maximum cost thereof, including preliminary costs, and costs incidental thereto and the financing thereof, is $200,000; APPROPRIATING said amount for such purpose; and STATING the plan of financing includes the issuance of bonds in the principal amount of $200,000 to finance said appropriation, and the levy and collection of taxes on all the taxable real property in the Town to pay the principal of said bonds and the interest thereon;

SECOND: AUTHORIZING the issuance of bonds in the principal amount of $200,000 pursuant to the Local Finance Law of the State of New York (the "Law") to finance said appropriation;

THIRD: DETERMINING and STATING the period of probable usefulness applicable to the purpose for which said bonds are authorized to be issued is fifteen (15) years; the proceeds of said bonds and any bond anticipation notes issued in anticipation thereof may be applied to reimburse the Town for expenditures made after the effective date of this bond resolution for the purpose for which said bonds are authorized; and the proposed maturity of said bonds will exceed five (5) years;

FOURTH: DETERMINING that said bonds, and any bond anticipation notes issued in anticipation of said bonds, and the renewals of said bond anticipation notes shall be general obligations of the Town; and PLEDGING to their payment the faith and credit of the Town;

FIFTH: DELEGATING to the Supervisor the powers and duties as to the issuance of said bonds, and any bond anticipation notes issued in anticipation of said bonds, or the renewals thereof; and

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

SIXTH: DETERMINING that the bond resolution is subject to a permissive referendum.

DATED: July 24, 2023

FRANCINA J. SPOTH,
Town Clerk

Section 8. The Town Clerk is hereby authorized and directed to cause said bond resolution to be published, in summary, after said bond resolution shall take effect, in the newspaper referred to in Section 7 hereof, and hereby designated the official newspaper for said publication, together with a Notice in substantially the form as provided by Section 81.00 of the Local Finance Law, constituting Chapter 33-a of the Consolidated Laws of the State of New York.

* * *

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

The adoption of the foregoing resolution was seconded by _____and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

The resolution was declared adopted.

****

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

CERTIFICATE

I, FRANCINA J. SPOTH, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY that the foregoing annexed extract from the minutes of a meeting of the Town Board of said Town of Amherst duly called and held on July 24, 2023, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said Town Board and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relate to the subject matters referred to in said extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this _____day of July, 2023.

(SEAL)

_____
Town Clerk

Attachment: CertBondReso (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Town of Amherst

Facilities Department

Renovations at Senior Center

2023 – 2028 Capital Improvement Project F-17 "Senior Center Café / Giftshop"
MAP, PLAN & REPORT

July 2023

Contents:

- Background
- Location
- Project Description and Improvements
- Project Justification
- Anticipated Project Schedule
- Financial Summary
- Taxation Summary
- Town of Amherst SEQR Determination

Prepared by:
Town of Amherst
Facilities Department
5583 Main Street, Williamsville, NY 14221
(716) 631-7080 | (716) 631-7109

Attachment: MPR F-17 Senior Center Cafe & Giftshop (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Town of Amherst, Senior Center Café / Giftshop
2023-2028 Capital Improvement Project F-17
Map, Plan & Report

Background

The Senior Center building was built in the late 1990's / early 2000's and continues to be a popular destination for retirees who are looking for programs and services to enrich their quality of life.

The Town has determined that Senior Center users would benefit from a café that serves coffee and light refreshments and allows for better connectivity with others and the outdoors.

Although the Senior Center currently has space for meeting rooms, none of them include a space for staffed coffee service. In a post-COVID era, many seniors are looking for opportunities to reconnect with colleagues.

Supervisor's Recommended 2023 – 2028 Capital Improvement Program (9-30-22 REVISED)

Facilities Department (cont'd) *Recommended Schedule (X $1,000)*

Project ID	Project Title/Description	2023	2024	2025	2026	2027	2028	Total Cost
F-11	**Senior Center Carpet Replacement:** Remove and replace carpeting where deteriorated.	92 LA						**$92,000**
F-12	**Senior Center Roof System Improvements:** Restoration of the existing roof system.				750 LA			**$750,000**
F-13	**Harlem Road Community Center HVAC Controls Replacement:** Replace antiquated pneumatic control system with low voltage digital controls at HRCC.	320 LA						**$320,000**
F-14	**Harlem Road Community Center Auditorium Renovations:** Replacement and abatement of ceiling, replace seating and carpeting, and paint the entire room.					475 LA		**$475,000**
F-15	**Town Hall Renovations:** Renovate and reconfigure space within select departments to create space efficiencies for office and storage functions and improve public interactions, conduct a study to determine risk of short circuits and arc flash, and resurface deteriorated areas and replace terrazzo hallway floors.	100 LA	300 LA	500 LA	250 LA	250 LA		**$1,400,000**
F-16	**Additional Town Space:** Purchase of additional offices and improvements to archival space.				1,500 LA			**$1,500,000**
F-17	**Senior Center Café/Giftshop:** Construction of a café/giftshop to service the Senior Center.	200 LA						**$200,000**

Key:

Funding Source
T – Tax
L – Bond
S – Surplus
E - Encumbered
I/M – I&I or Mitigation Funds
RF – Recreation Fund
OF – Open Space Fund
F/S – Federal or State Aid
X – Private Source

Funding Account
A – General Account
B – Part Town
C – Community Environment
D – Highway
F – Lighting
G – Sanitary Sewer District
H – Storm Drainage District
I – Water District
W – Water Pollution Control Facility
– Special District Number
NS – None Submitted

252
7

Attachment: MPR F-17 Senior Center Cafe & Giftshop (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Town of Amherst, Senior Center Café / Giftshop
2023-2028 Capital Improvement Project F-17
Map, Plan & Report

Location

The Senior Center is located at 370 John James Audubon Parkway, Amherst NY 14228. SBL: 41.03-1-66.



Figure 1 - Project Location



Figure 2 – Building on Site

Attachment: MPR F-17 Senior Center Cafe & Giftshop (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Project Description and Improvements

The proposed project includes design and construction to renovate the former Arts & Crafts room, near the main entrance to become a new coffee and café space. Interior renovations include new flooring, wall and ceiling finishes, lighting, millwork, and food storage / prep equipment, as well as supporting mechanical, electrical, and plumbing work. Display cases for retail sales and gift shop style items will be included within the cafe as part of the project. Exterior renovations include replacing a portion of storefront window framing with an exterior door, and sitework to add a concrete slab for an outdoor seating area along with accent landscaping and decorative fencing. Concrete slab will be less than 500 square feet. Additional work may be required once construction begins. Other projects may be prioritized on an as-needed basis.



Project Justification

The project will enhance quality of life for Amherst Senior Center users. Currently, food service as provided through a formal lunch program, and is only available during certain hours of the day. Many patrons have expressed interest in grabbing a cup of coffee and light refreshments with a friend in late afternoon or evening hours.

Attachment: MPR F-17 Senior Center Cafe & Giftshop (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

It is a goal of the Town to provide high quality programs and spaces that meet the needs of residents. The renovation of an underutilized classroom space to become a meeting space with coffee and light food service helps achieve this goal at the Amherst Senior Center.

Anticipated Project Schedule

Bond Action:	July 2023
Design:	September – October 2023
Construction:	starting December 2023, anticipated end date March 2024

Financial Summary

The Town of Amherst identified funding in the approved 2023-2028 Capital Improvement Program under Projects F-17, for a total of $200,000. The funds have been identified as a General Fund Bond with a minimum useful life of 15 years.

Design	$ 16,000
Legal / Admin	1,000
Construction / Renovations	183,000
TOTAL	**$ 200,000**

Taxation Summary

Total Bond Amount	$200,000 (General Fund)
Bond Term	15 Years
Annual Tax Impact per $1,000 of AV:	$0.0017 cost per $1,000 of assessed value
Annual Impact on Property with AV of $250,000	$0.4197

Town of Amherst SEQR Determinationp

See attached memo from the Amherst Planning Department.

Attachment: MPR F-17 Senior Center Cafe & Giftshop (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Amherst

Town of Amherst Planning Department *Erie County, New York*

Brian J. Kulpa
Supervisor

Daniel C. Howard, AI
Planning Director

Daniel J. Ulatowski, AI
Assistant Planning Dire

Transmitted electronically

MEMORANDUM July 3, 2023

TO: Anne Dafchik, AIA, NCARB, Architect
Facilities Department

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

RE: SEQR Determination
2023–2028 CIP – Senior Center Café/Giftshop – F-17

The Planning Department has reviewed the scope of work for the subject project and has determined it to be a Type II action under the provisions of SEQR according to Part 617.5. Therefore, no further environmental work is required.

Please contact our office if you have any questions.

X:\Special_Projects\SEQR_Engineering & Other TOA\Type_II_Actions_(PJ-2015-001)\F-17_senior Center Cafe_Giftshop_7_3_2023.docx

cc:
Martin A. Polowy, Esq., Town Attorney
Daniel Howard, Planning Director

Attachment: MPR F-17 Senior Center Cafe & Giftshop (RES-2023-627 : Senior Center Cafe/Gift Shop (Bond Resolution - $200,000))

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 27746 **RESOLUTION 2023-628** **ADOPTED**

Memorandum of Understanding (BNHV/TOA) (CRS #4172)

AGENDA ITEM - JULY 24TH, 2023

TO: **Town Board**

FROM: **Martin A. Polowy, Esq., Town Attorney**

DATE: **July 14, 2023**

RE: **Memorandum of Understanding Between:**
Buffalo Niagara Heritage Village ("BNHV") and
Town of Amherst (CRS# 4172)

Kindly adopt the following resolution with respect to the above matter:

RESOLVED, that the Town Board authorizes the Supervisor to execute the attached Memorandum of Understanding.

Thank you for your consideration.

MAP:EAB:hs
Attachment
c: Tim Koller, Deputy Town Clerk
(w/attachment, **Agenda Item: July 24, 2023**)

7/24/2023
Consent

FINANCIAL IMPACT:

None for the purposes of this resolution.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding entered into this _____ day of _____ 2023, will evidence the mutual understanding and intent, by and between the TOWN OF AMHERST (the "Town"), a municipal corporation organized and existing under and by virtue of the laws of the State of New York with offices and principal place of business located at 5583 Main Street, Williamsville, New York 14221, and BUFFALO NIAGARA HERITAGE VILLAGE ("BNHV"), formerly known as the AMHERST MUSEUM, a not-for-profit corporation operating under an Absolute Charter granted by the Board of Regents of the State of New York on behalf of the Education Department, with offices and principle place of business located at 3755 Tonawanda Creek Road, Amherst, New York 14228.

WHEREAS, the parties have expressed an interest to have BNHV operate and maintain its museum in accordance with its State Charter (the "Museum"), separate and apart from the Town, to be located on the Amherst Central Park, Amherst, New York campus located at the former site of the Westwood Country Club (the "Park"), and;

WHEREAS, the Town has preliminarily determined that the operation of the Museum at the Park would serve a public purpose and provide a public benefit to the residents of the Town.

NOW THEREFORE, the Town and BNHV desire to enter into this Memorandum of Understanding ("MOU") between them, setting forth the working arrangements that each of them agrees are necessary to complete the design and construction of the Museum and relocation of certain historic structures from the existing Museum location to the Park (the "Project").

1. Purpose.

The purpose of this MOU is to provide a framework for any future long-term user agreements between the Town and BNHV regarding the development of the Museum at Amherst Central Park.

2. Obligations of the Parties.

The parties acknowledge that no contractual relationship is created between them by this MOU, but agree to work together in the true spirit of partnership to ensure that there is a united, visible and responsive leadership of the development and to demonstrate financial, administrative, and managerial commitment to the development by means of the following individual services.

3. Cooperation.

The activities and services for the Project to be discussed by the parties in more depth shall include, but not be limited to:

a) Determine the exact location and site of the Museum within the Park;

b) Identify a site for long term collection storage;

Attachment: MOU.BNHV.TOA-07142023133035 (RES-2023-628 : Memorandum of Understanding (BNHV/TOA) (CRS #4172))

c) Identify the historic structures that will be relocated to the Park and the non-historic structures that will not be relocated but the functions of which must be incorporated into the Project;

d) Establish a construction budget and determine individual responsibilities between parties and financing mechanisms, which may include bonds, grants, and capital campaign contributions;

e) Establish a long-term facility license or lease.

4. Parties' Responsibilities.

Preliminarily and in the spirit of cooperation, the parties agree that the responsibilities for the Project will be divided as follows:

a) Town Responsibilities. The Town will, at Town expense:

i. Build the shell building, HVAC systems, plumbing, electricity, and permanent fixtures (the "Building" and "Fixtures");

ii. Relocate the historic structures adjacent to the Building; and

iii. Relocate the Museum's livestock to the Project, including preparation of grazing fields appropriate for the livestock, subject to all necessary approvals.

b) BNHV Responsibilities.

i. BNHV will furnish at BNHV expense all museum equipment, exhibit display fixtures, office equipment, agricultural equipment, and any outside or inside signage.

ii. BNHV will employ any staff required to operate the Museum.

iii. BNHV may hire a national museum designer/consultant to work with the general contractor and subcontractors hired by the Town to design, build, and install the Building and Fixtures, including the agricultural facilities.

iv. BNHV will cooperate with the Town to develop a plan for the Project that places the historic structures in appropriate historic context. BNHV will share with the Town any records or information about the historic structures that pertain to prior relocations or will aid in any future relocation.

v. BNHV will pursue available grant funding from public and private sources for the relocation, construction, and/or operation of the Museum.

Attachment: MOU.BNHV.TOA-07142023133035 (RES-2023-628 : Memorandum of Understanding (BNHV/TOA) (CRS #4172))

5. Mutual Agreements.

   a) The design and layout of the Building and Fixtures will be approved by both parties. The parties agree that BNHV will be an integral partner and decision maker with the Town regarding the overall design, location and aesthetic of the Building and Fixtures. The Building and Fixtures will be installed and designed to work with the furnishings required for the Museum; for example, temperature and humidity controls for collection storage and exhibits, and adequate doorway clearance for moving exhibits;

   b) The parties anticipate that BNHV's operating costs may be impacted by the construction and relocation process which may require adjustment of the annual operating subsidy provided by the Town during construction years.

   c) Any contracts arising out of concepts discussed in this MOU will be procured in accordance with the Town's procurement rules.

6. Construction Timeline.

Engineering for the Park will take place during 2023 and a construction timeline will be developed in early 2024. The parties agree to make reasonable best efforts to coordinate construction and relocation to allow for as much advance planning as possible and modified operation of BNHV activities during construction.

7. Resources.

Notwithstanding the above, the parties will endeavor to have final approval and secure financing necessary to fulfill their individual financial contributions, if any, once it is determined that the development of the Project will go forward.

8. Nonbinding.

This MOU is not a legally binding agreement and no party shall have any legal obligation or liability to the other party with respect to matter set forth in this MOU, unless and until formal written legal agreements are executed by all parties. Either party may, without liability, terminate discussions with the other party on any of the matters set forth in this MOU at any time.

Attachment: MOU.BNHV.TOA-07142023133035 (RES-2023-628 : Memorandum of Understanding (BNHV/TOA) (CRS #4172))

BUFFALO NIAGARA HERITAGE VILLAGE

By: _____

[President]

Date: _____

TOWN OF AMHERST

By: _____

Brian J. Kulpa, Town Supervisor

Date: _____

Attachment: MOU.BNHV.TOA-07142023133035 (RES-2023-628 : Memorandum of Understanding (BNHV/TOA) (CRS #4172))

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 27758 **RESOLUTION 2023-629** **ADOPTED**

License Agreement - 132 Boxelder Lane (Owners Patel/Murphy) (CRS #4208)

AGENDA ITEM : JULY 24th, 2023

TO: **Town Board**

FROM: **Nicole M. Burroughs, Senior Paralegal**

DATE: **July 18, 2023**

RE: **Request for License Agreement (CRS #4208)**
Placement of Shed and Concrete Pad
Property Located At:
132 Boxelder Lane, Amherst, New York 14228

Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement pending successful completion of the CRS.

The owners of the above-referenced property are seeking permission to place a shed and concrete pad that would encroach into an existing Town-owned easement, the details and stipulations of which are more fully described in the License Agreement.

This request was reviewed and approved by the Highway Department.

Thus, kindly adopt the following resolution:

RESOLVED, the Town Board authorizes the Supervisor to execute the attached License Agreement, pending successful completion of the Contract Routing System (CRS).

Thank you.

NMB:hs
Attachment
c: Tim Koller, Deputy Town Clerk
(w/attachment, **Agenda Item : July 24, 2023**)

7/24/2023
Consent

FINANCIAL IMPACT:

$230.00 Paid by homeowner to Town of Amherst ($150.00 - License Agreement; $80.00 ECCO Filing Fee)

A5010.02724

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Return to: Town of Amherst
Attorney's Office
5583 Main Street
Williamsville, New York 14221

TOWN OF AMHERST
LICENSE AGREEMENT

THIS AGREEMENT, made as of this 24th day of July, 2023, between the Town of Amherst, a municipal corporation existing under and by virtue of the laws of the State of New York, having its principal office at 5583 Main Street, Williamsville, New York 14221, Party of the First Part hereinafter referred to as the "Town" and

Bindesh Patel, Tenant By Entirety and Kathryn Murphy, Tenant By Entirety
132 Boxelder Lane
Amherst, New York 14228
SBL: 26.06-6-23

Parties of the Second Part hereinafter referred to as the "Owners."

WITNESSETH:

WHEREAS, the Owners are presently the owners of following described premises:

All of that tract or parcel of land situated in the Town of Amherst, County of Erie, State of New York, being part of Lot No. 47, Township 13, Range 7 and Lot No. 51, Township 13, Range 7 of the Holland Land Company's Survey known as subdivision lot No. 170 as shown under Map Cover 3533, known as Evergreen Landings.

It is more commonly known as:

132 Boxelder Lane
Amherst, New York 14228
SBL: 26.06-6-23

WHEREAS, the Town became the holder of Public Drainage Easements and Public Utility Easements as shown on the Subdivision Map filed in the Erie County Clerk's Office under Cover No. 3353. Said public drainage easements and public utility easements are shown on the survey attached hereto as Exhibit "A;"

WHEREAS, the Owners are desirous of utilizing a portion of the aforementioned easement area:

TBA : 7.24.2023
Address : 132 Boxelder Lane
Owner Name : Patel/Murphy

Attachment: 132BoxelderShed.OwnerSigned-07182023135456 (RES-2023-629 : License Agreement - 132 Boxelder Lane (Owners Patel/Murphy)

To encroach into an existing 15' wide public utility easement on the south side of the home and a 20' wide public drainage easement in the back of the home to place a shed on a concrete pad;

as shown on a sketch labeled Exhibit "A" attached hereto and made a part hereof.

WHEREAS, the intended use as hereinafter provided does not interfere with the municipal purpose of which said Public Drainage Easements and/or Public Utility Easements were acquired.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar ($1.00) paid to the Town, the receipt whereof is hereby acknowledged, and the covenants and promises hereinafter set forth the parties agree as follows:

The Town does hereby grant to the Owners, their successors, distributees and assigns a license and/or privilege to install, maintain, and use a portion of the Public Drainage Easement area and Public Utility Easement area as shown on Exhibit "A," subject to the following conditions:

a. There shall not be installed or placed devices, equipment or structures within the said easement area without prior approval of the Town;

b. The use of said license in the Public Drainage Easement area and/or Public Utility Easement area shall not interfere or restrict the operation, maintenance, repair and/or reconstruction of the Public Drainage Facilities;

c. If it becomes necessary to remove said encroachments for the purpose of repair and/or reconstruction of the Public Drainage facility, the cost of the removal and reinstallation of said improvements shall be at the expense of the Owner, his successors, distributees and assigns.

d. If at any time the Public Drainage or Public Utility facilities are exposed, unearthed or damaged, the Town shall be promptly notified and allowed inspection of the easement areas.

The Owner shall defend, indemnify and hold harmless the Town from any and all claims or causes of action arising out of the use and exercise of this agreement.

TBA : 7.24.2023
Address : 132 Boxelder Lane
Owner Name : Patel/Murphy

Attachment: 132BoxelderShed.OwnerSigned-07182023135456 (RES-2023-629 : License Agreement - 132 Boxelder Lane (Owners Patel/Murphy)

This Agreement shall commence on the 24th day of July, 2023 and shall automatically extend for one (1) year periods unless the same is cancelled as herein provided below.

Either party may cancel this Agreement by giving sixty (60) days written notice to the other of such cancellation and during said sixty (60) days cancellation shall remove the concrete pad and shed and any other structures or personal property within the easement area and shall restore same to the condition that existed prior to the placement of the concrete pad and shed.

This Agreement shall ensure to the benefit of the parties, hereto, their successors, distributees, and assigns.

IN WITNESS WHEREOF, the parties to this Agreement have executed the same, the day and year first above written.

TOWN OF AMHERST

Brian J. Kulpa
Supervisor

PROPERTY OWNERS

Bindesh Patel

PROPERTY OWNERS

Kathryn Murphy

TBA : 7.24.2023
Address : 132 Boxelder Lane
Owner Name : Patel/Murphy

Attachment: 132BoxelderShed.OwnerSigned-07182023135456 (RES-2023-629 : License Agreement - 132 Boxelder Lane (Owners Patel/Murphy)

STATE OF NEW YORK }
ERIE COUNTY }SS:

On the _____day of _____ in the year 2023 before me, the undersigned, personally appeared, **Brian J. Kulpa.** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK }
ERIE COUNTY }SS:

On the 18th day of July in the year 2023 before me, the undersigned, personally appeared, **Bindesh Patel**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

ALEXANDRA DILEO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01DI6420143
QUALIFIED IN ERIE COUNTY
Commission Expires AUGUST 02, 2025

Notary Public

STATE OF NEW YORK }
ERIE COUNTY }SS:

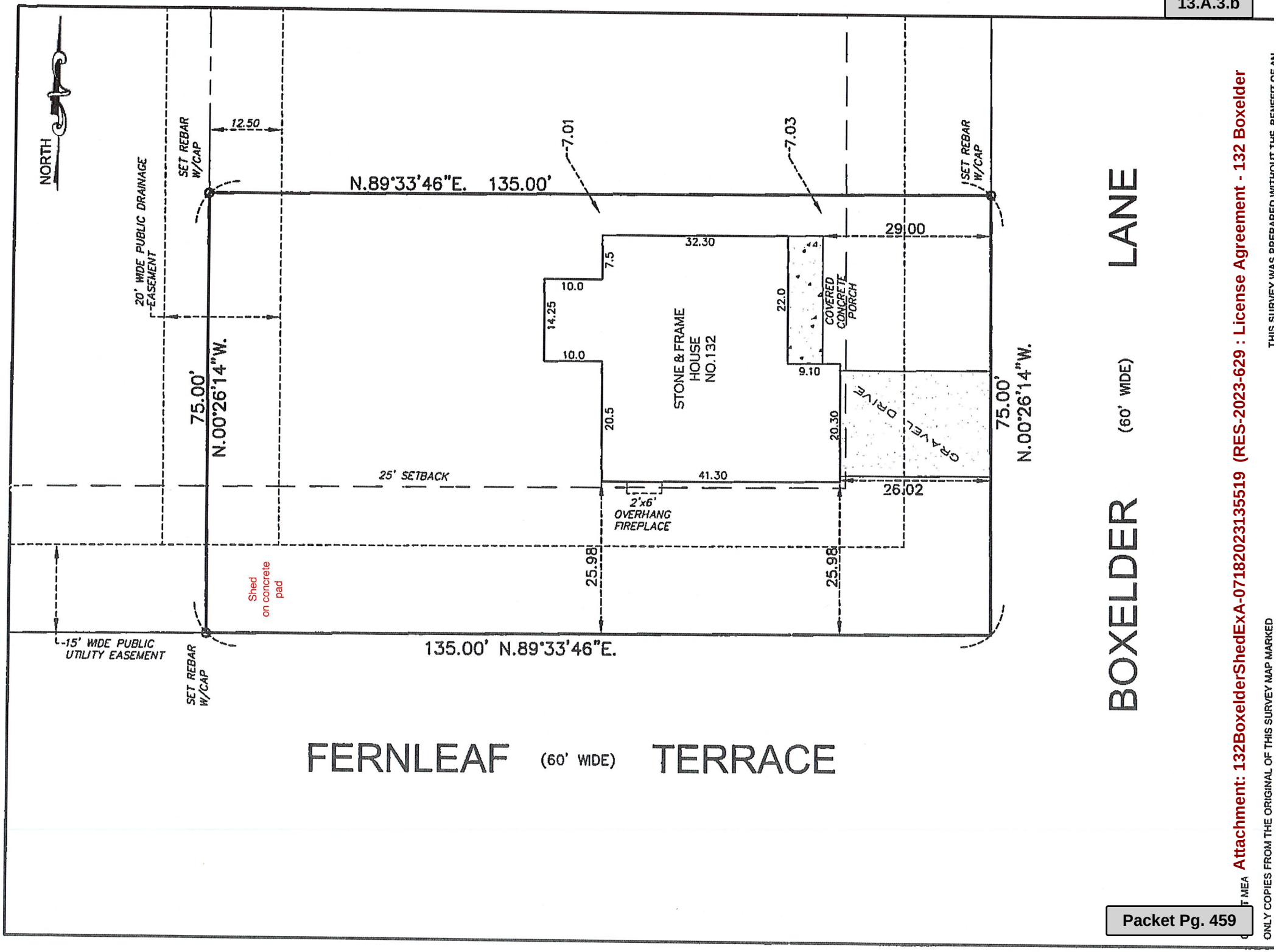
On the 18th day of July in the year 2023 before me, the undersigned, personally appeared, **Kathryn Murphy**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

ALEXANDRA DILEO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01DI6420143
QUALIFIED IN ERIE COUNTY
Commission Expires AUGUST 02, 2025

Notary Public

TBA : 7.24.2023
Address : 132 Boxelder Lane
Owner Name : Patel/Murphy

Attachment: 132BoxelderShed.OwnerSigned-07182023135456 (RES-2023-629 : License Agreement - 132 Boxelder Lane (Owners Patel/Murphy)



Attachment: 132BoxelderShedExA-07182023135519 (RES-2023-629 : License Agreement - 132 Boxelder
THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN
T MEA
ONLY COPIES FROM THE ORIGINAL OF THIS SURVEY MAP MARKED

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 27762 **RESOLUTION 2023-630** **ADOPTED**

License Agreement - 170 Londonderry Lane (Feuerstein) (CRS #4209)

AGENDA ITEM : JULY 24th, 2023

TO: **Town Board**

FROM: **Nicole M. Burroughs, Senior Paralegal**

DATE: **July 18, 2023**

RE: **Request for License Agreement (CRS #4209)**
Installation of Fence
Property Located At:
170 Londonderry Lane, Getzville, New York 14068

Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement pending successful completion of the CRS.

The owners of the above-referenced property are seeking permission to construct and install a fence that would encroach into an existing Town-owned easement, the details and stipulations of which are more fully described in the License Agreement.

This request was reviewed and approved by the Highway Department.

Thus, kindly adopt the following resolution:

RESOLVED, the Town Board authorizes the Supervisor to execute the attached License Agreement, pending successful completion of the Contract Routing System (CRS).

Thank you.

NMB:hs
Attachment
c: Tim Koller, Deputy Town Clerk
(w/attachment, **Agenda Item : July 24, 2023**)

7/24/2023
Consent

FINANCIAL IMPACT:

$230.00 Paid by homeowner to Town of Amherst ($150.00 - License Agreement; $80.00 ECCO Filing Fee)

A5010.02724

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Return to: Town of Amherst
Attorney's Office
5583 Main Street
Williamsville, New York 14221

TOWN OF AMHERST
LICENSE AGREEMENT

THIS AGREEMENT, made as of this 24th day of July, 2023, between the Town of Amherst, a municipal corporation existing under and by virtue of the laws of the State of New York, having its principal office at 5583 Main Street, Williamsville, New York 14221, Party of the First Part hereinafter referred to as the "Town" and

Aaron N. Feuerstein and Jessica Feuerstein, As Husband and Wife
170 Londonderry Lane
Getzville, New York 14068
SBL: 42.05-4-5

Parties of the Second Part hereinafter referred to as the "Owners."

WITNESSETH:

WHEREAS, the Owner is presently the owner of following described premises:

All of that tract or parcel of land situated in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 58, Township 12, Range 7 of the Holland Land Company's Survey and according to a map filed in the Erie County Clerk's Office under Cover No. 2554, is known as Subdivision Lot No. 183.

It is more commonly known as:

170 Londonderry Lane
Getzville, New York 14068
SBL: 42.05-4-5

WHEREAS, the Town became the holder of a Public Drainage Easement as shown on the Subdivision Map filed in the Erie County Clerk's Office under Cover No. 2554. Said public drainage easement is shown on the survey attached hereto as Exhibit "A;"

WHEREAS, the Owners are desirous of utilizing a portion of the aforementioned easement area:

TBA : 7.24.2023
Address : 170 Londonderry Lane
Owner Name : Feuerstein

Attachment: 170LondonderryLn.OwnerSigned-07182023135608 (RES-2023-630 : License Agreement - 170 Londonderry Lane (Feuerstein)

To install a 4' high chain link fence that will encroach into the existing Public Drainage Easement

as shown on a sketch labeled Exhibit "A," attached hereto and made part hereof. Said fence is to be constructed as detailed above.

WHEREAS, the intended use as hereinafter provided does not interfere with the municipal purpose of which said Public Drainage Easement was acquired.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar ($1.00) paid to the Town, the receipt whereof is hereby acknowledged, and the covenants and promises hereinafter set forth the parties agree as follows:

The Town does hereby grant to the Owners, their successors, distributees and assigns a license and/or privilege to install, maintain, and use a portion of the Public Drainage Easement area as shown on Exhibit "A" and more fully detailed above, subject to the following conditions:

a. There shall not be installed or placed devices, equipment or structures within the said easement area without prior approval of the Town;

b. The use of said license in the Public Drainage Easement areas shall not interfere or restrict the operation, maintenance, repair and/or reconstruction of the Public Drainage Facilities;

c. If it becomes necessary to remove said encroachments for the purpose of repair and/or reconstruction of the Public Drainage facility, the cost of the removal and reinstallation of said improvements shall be at the expense of the Owner, his successors, distributees and assigns.

d. If at any time the Public Drainage facilities are exposed, unearthed or damaged, the Town shall be promptly notified and allowed inspection of the easement areas.

The Owners shall defend, indemnify and hold harmless the Town from any and all claims or causes of action arising out of the use and exercise of this agreement.

This Agreement shall commence on the 24th day of July, 2023 and shall terminate one (1) year thereafter.

TBA : 7.24.2023
Address : 170 Londonderry Lane
Owner Name : Feuerstein

Attachment: 170LondonderryLn.OwnerSigned-07182023135608 (RES-2023-630 : License Agreement - 170 Londonderry Lane (Feuerstein)

This Agreement, however, shall automatically extend for one (1) year periods unless the same is cancelled as herein provided.

Either party may cancel this Agreement by giving sixty (60) days written notice to the other of such cancellation and during said sixty (60) days cancellation shall remove the said fence and any other structures or personal property within the easement area and shall restore same to the condition that existed prior to the installation of the fence.

This Agreement shall ensure to the benefit of the parties, hereto, their successors, distributees, and assigns.

IN WITNESS WHEREOF, the parties to this Agreement have executed the same, the day and year first above written.

TOWN OF AMHERST

_____

Brian J. Kulpa
Supervisor

PROPERTY OWNER

Aaron N. Feuerstein

PROPERTY OWNER

Jessica Feuerstein

TBA : 7.24.2023
Address : 170 Londonderry Lane
Owner Name : Feuerstein

Attachment: 170LondonderryLn.OwnerSigned-07182023135608 (RES-2023-630 : License Agreement - 170 Londonderry Lane (Feuerstein)

STATE OF NEW YORK }
ERIE COUNTY }SS:

On the _____day of July in the year 2023 before me, the undersigned, personally appeared, **Brian J. Kulpa**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK }
ERIE COUNTY }SS:

On the 18th day of July in the year 2023 before me, the undersigned, personally appeared, **Aaron N. Feuerstein**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

MARK S. KLEIN
County of Erie, State of NY
My Commission expires
12-31-23

STATE OF NEW YORK }
ERIE COUNTY }SS:

On the 18TH day of July in the year 2023 before me, the undersigned, personally appeared, **Jessica Feuerstein,** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

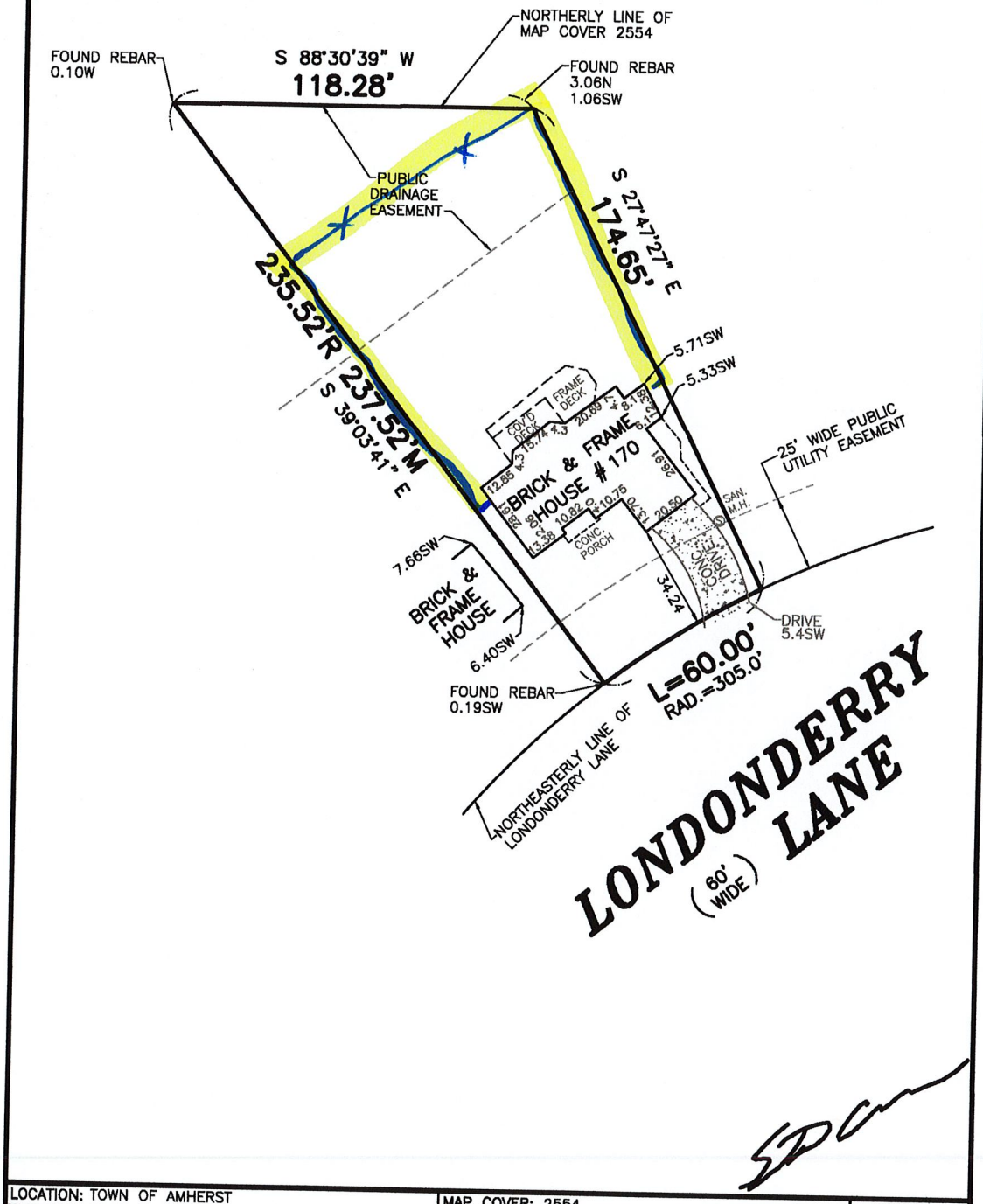
MARK S. KLEIN
County of Erie, State of NY
My Commission expires
12-31-23

TBA : 7.24.2023
Address : 170 Londonderry Lane
Owner Name : Feuerstein

Attachment: 170LondonderryLn.OwnerSigned-07182023135608 (RES-2023-630 : License Agreement - 170 Londonderry Lane (Feuerstein)

Feet	Inches
0.08 –	1 Inch
0.17 –	2"
0.25 –	3"
0.33 –	4"
0.42 –	5"
0.50 –	6"
0.58 –	7"
0.67 –	8"
0.75 –	9"
0.83 –	10"
0.92 –	11"
1.00 –	12"

NOTE: 1)THIS SURVEY IS NULL AND VOID WITH AN AFFIDAVIT OF NO CHANGE
2)THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATE OF FACTS THAT MAY BE REVEALED BY AN EXAMINATION OF SUCH



LOCATION: TOWN OF AMHERST	MAP COVER: 2554		JOB NO.: 23–10623
COUNTY OF ERIE, STATE OF NEW YORK	SUBLOT(S): 83		
PART OF LOT 58, TOWNSHIP 12, RANGE 7	DATE: JUNE 16, 2023	SCALE: 1"=40'	DRAWN BY: J. HARTWELL
OF THE HOLLAND LAND COMPANY'S SURVEY	REVISIONS:		CHECKED BY: S. CARVER

STEVE A. CARVER PLS.
LAND SURVEY SERVICES
1089 KINKEAD AVE #104
N. TONAWANDA NY 14120
TEL. 716–525–1250
FAX 716–525–1275
STEVE@CARVERSURVEY.COM

Unauthorized alteration or addition to any survey, drawing, design, specification, plan or report is a violation of Section 7209, Provision 2 of the New York State Education Law. Only copies from the original of this survey map marked with an original of the land surveyor's embossed seal and signature shall be considered to be valid true copies.

Copyright Steve A. Carver PLS, all rights reserved. No portion of this drawing may be reproduced, stored or transmitted by any means without prior written permission of the surveyor.
This survey is a report of the findings in the field and is not a guarantee of Title.
This survey is null and void with an affidavit of no change.

Attachment: 170LondonderryLnExA-07182023135627 (RES-2023-630 : License Agreement - 170 Londonderry Lane (Feuerstein) (CRS#4209))

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Attorney
Initiated by: **Samuel A Alba**
Co-Sponsored by:

DOC ID: 27763 **RESOLUTION 2023-631** **ADOPTED**

Settlement of Article 7 Matter - Reist Street Holdings, LP V. Town of Amherst

AGENDA ITEM : JULY 24TH, 2023

TO: **Town Board**

FROM: **Samuel A. Alba, Esq., Senior Deputy Town Attorney**

DATE: **July 18, 2023**

RE: **Settlement of Article 7 Matter**
Reist Street Holdings, LP v. Town of Amherst

Kindly adopt a resolution authorizing the following:

(1) Settlement of the above matter as detailed in the attached Consent Order; and

(2) Authorizing Senior Deputy Town Attorney Samuel A. Alba, Esq. to sign the attached Consent Order as the Attorney for the Respondent, Town of Amherst.

Thank you.

SAA:rms
Attachment
c: Tim Koller, Deputy Town Clerk
(*w/attachment,* **Agenda Item : July 24, 2023**)
Emily Murphy, Town Assessor

7/24/2023
Consent

FINANCIAL IMPACT:

Assessment

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

At a Special Term of the Supreme Court, Erie County, held at Delaware Avenue, Buffalo, New York, on the ____ day of _____, 2023.

PRESENT: HON. RAYMOND W. WALTER, J.S.C
STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION UNDER ARTICLE 7 OF THE REAL PROPERTY TAX LAW
BY

REIST STREET HOLDINGS LP,

Petitioner,

v.

CONSENT ORDER

Index No.: 808010/2022

TOWN OF AMHERST,

Respondent.

FOR REVIEW OF THE TAX ASSESSMENT OF CERTAIN REAL PROPERTY IN THE SAID TOWN OF AMHERST

The above-entitled special proceedings involving real property tax certiorari for the premises owned by Petitioner in the Town of Amherst, New York, known as:

Address	Section/Block/Lot
201 Reist Street	68.04-1-15.112
199 Reist Street	68.20-3-1.2

having progressed for trial, and negotiations for settlement having been conducted, and said settlement having been approved and recommended by the Attorney for the Town of Amherst, Attorney for the Williamsville CSD, Attorney for the County of Erie, and the Attorney for Petitioner, and it further appearing that the assessment of premises in the Town of Amherst provides the basis for the imposition of ad valorem taxes assessed by the Town of Amherst, the Williamsville CSD, and the County of Erie, it is hereby

Attachment: AMH 22003 Consent Order Reist Street (RES-2023-631 : Settlement of Article 7 Matter - Reist Street Holdings, LP V. Town of

Attachment: AMH 22003 Consent Order Reist Street (RES-2023-631 : Settlement of Article 7 Matter - Reist Street Holdings, LP V. Town of

ORDERED, STIPULATED, AND ADJUDGED that the property tax certiorari for the tax year and 2022-2023 for the premises previously listed be discontinued and withdrawn without costs and allowances to either party as against the other, and it is further

ORDERED, STIPULATED, AND ADJUDGED that the real property tax assessment for the tax years 2023-2024, 2024-2025, 2025-2026 and 2026-2027 for the premises be set as follows:

Address	Section/Block/Lot	Assessed Value
201 Reist Street	68.04-1-15.112	$7,316,000
199 Reist Street	68.20-3-1.2	No change,

and it is further

ORDERED, STIPULATED, AND ADJUDGED that the provisions of Section 727 of the Real Property Tax Law shall apply to the aforementioned tax years In the event of a revaluation or update within the period governed by Real Property Tax Law §727, the Assessor shall be permitted to adjust the assessment, but any such adjusted assessment will not exceed $11,800,000 equalized full market value, and it is further

ORDERED, STIPULATED, AND ADJUDGED that said Petitioner in any instrument or agreement transferring any part or all of the subject property or any interest therein shall

covenant with any grantee, transferee, and mortgagee and their respective distributees, successors and/or assigns that they shall be bound by the terms of this Consent Order and that such covenant shall be deemed to run with the land for the tax periods embraced by the terms thereof, and it is further

ORDERED, STIPULATED, AND ADJUDGED that in the event that the assessment is increased for any stated year at a level higher than provided herein when there has been no assessable addition or improvement to the property, Petitioner retains the right to reinstate and reinstitute its Article 7 proceedings herein settled with respect to that parcel only, and it is further

ORDERED, STIPULATED, AND ADJUDGED that the fiscal officers of Erie County, the Town of Amherst, Williamsville CSD, and any other taxing unit affected by the above assessment reductions shall apply such adjusted assessment and determine any overpayment of taxes, and in the event of overpayment, refund the overpayment with statutory interest within 45 days by official check payable to the order of Wolfgang & Weinmann, as attorneys and agents for Petitioner, accompanied by a calculation sheet, such attorneys to hold the proceeds as trust funds for appropriate distribution, and are to remain subject to the further jurisdiction of this Court relative to their attorney's lien pursuant to Judiciary Law Section 475, or in the event that any such tax payment has not been paid, issue corrected tax bills which reflect the proper reduced assessment for the property, with a copy of corrected tax bills sent to the attorneys for

Attachment: AMH 22003 Consent Order Reist Street (RES-2023-631 : Settlement of Article 7 Matter - Reist Street Holdings, LP V. Town of

Petitioner, said corrected tax bills to be paid without interest or penalty if paid within 90 days of receipt of said corrected bills, and it is further

ORDERED, STIPULATED, AND ADJUDGED that this Court shall retain jurisdiction over this proceeding pending the expiration of the periods herein recited, and that all applications to enforce any or all of the terms of this Consent Order shall be brought by motion before this Court, and it is further

ORDERED, STIPULATED, AND ADJUDGED that Petitioner shall have the right to seek specific enforcement of this Order, Stipulation and Judgment by all means provided by law, and it is further

ORDERED, STIPULATED, AND ADJUDGED that this Order, Stipulation and Judgment hereby constitutes and represents the entire understanding and agreement amongst the parties, and the full settlement of the tax certiorari herein; there are no costs or disbursements awarded to, by or against any party, and upon compliance with the terms of this Order,

Attachment: AMH 22003 Consent Order Reist Street (RES-2023-631 : Settlement of Article 7 Matter - Reist Street Holdings, LP V. Town of

Stipulation and Judgment, the proceedings herein shall be, and the same hereby are, settled and discontinued with prejudice.

_____
Hon. Raymond W. Walter, J.S.C.

DATED:

The parties consent to be bound by the terms of this Court Order by subscribing hereunto their names and legal authority:

FOR PETITIONER
Reist Street Holdings LP

By: _____
Trevor P. Duffy, Esq.
Attorney for Petitioner

Date: _____

FOR PETITIONER
Reist Street Holdings LP

By: _____
Nicholas B. Tzetzo
As Agent

Date: _____

FOR RESPONDENT
Town of Amherst

By: _____
Samuel A. Alba, Esq.
Attorney for Respondent

Date: _____

FOR INTERVENOR
Williamsville CSD

By: _____
Michael B. Risman, Esq.
Attorney for Intervenor

Date: _____

FOR INTERVENOR
County of Erie

By: _____
Margaret A. Hurley, Esq.
Attorney for Intervenor

Date: _____

Attachment: AMH 22003 Consent Order Reist Street (RES-2023-631 : Settlement of Article 7 Matter - Reist Street Holdings, LP V. Town of

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
Initiated by: **Francina J. Spoth**
Co-Sponsored by:

DOC ID: 27747 **RESOLUTION 2023-632** **ADOPTED**

GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077

Please authorize the Supervisor to sign the Annual Service Agreement Renewal with Granicus, LLC for the Meeting Management Software for MinuteTraq.

The agreement is valid from 4/17/2023 to 4/16/2024. CRS#4077. The funds will be paid from Trust Account 4011 4002.

Approval is pending successful completion of the Contract Routing System.

7/24/2023
Consent

FINANCIAL IMPACT:

$9,721.80 T 4011 4002

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

GRANICUS

408 St. Peter St, Suite 600
St. Paul, MN 55102

THIS IS NOT AN INVOICE

Order Form
Prepared for
Amherst, NY

Granicus Proposal for Amherst, NY

ORDER DETAILS

Prepared By:	Mark Miller
Phone:	
Email:	mark.miller@granicus.com
Order #:	Q-272645
Prepared On:	16 May 2023
Expires On:	16 Apr 2023

ORDER TERMS

Currency:	USD
Payment Terms:	Net 30 (Payments for subscriptions are due at the beginning of the period of performance.)
Current Subscription End Date:	16 Apr 2023
Period of Performance:	04/17/2023 - 04/16/2024

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

GRANICUS

Order Form
Amherst, N

PRICING SUMMARY

The pricing and terms within this Proposal are specific to the products and volumes contained within this Proposal.

Recurring Subscription Fees			
Solution	**Billing Frequency**	**Quantity/Unit**	**Annual Fee**
IQM2 - Agenda & Minutes	Annual	1 Each	$9,721.80
		SUBTOTAL:	**$9,721.80**

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

GRANICUS

Order Forn
Amherst, N

PRODUCT DESCRIPTIONS

Solution	Description
IQM2 - Agenda & Minutes	Easily prepare for meetings, approve agenda items, generate documents, create meeting packets and capture minutes.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

GRANICUS

Order Form
Amherst, N

TERMS & CONDITIONS

- This quote, and all products and services delivered hereunder are governed by the terms located at https://granicus.com/legal/licensing, including any product-specific terms included therein (the "License Agreement"). If your organization and Granicus has entered into a separate agreement or is utilizing a contract vehicle for this transaction, the terms of the License Agreement are incorporated into such separate agreement or contract vehicle by reference, with any directly conflicting terms and conditions being resolved in favor of the separate agreement or contract vehicle to the extent applicable.
- If submitting a Purchase Order, please include the following language: The pricing, terms and conditions of quote Q-272645 dated 16 May 2023 are incorporated into this Purchase Order by reference and shall take precedence over any terms and conditions included in this Purchase Order.
- This quote is exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is the responsibility of Amherst, NY to provide applicable exemption certificate(s).
- Any lapse in payment may result in suspension of service and will require the payment of a setup fee to reinstate the subscription.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

GRANICUS

Order Form
Amherst, N

BILLING INFORMATION

Billing Contact:		**Purchase Order Required?**	[ ] - No [ ] - Yes
Billing Address:		**PO Number:** *If PO required*	
Billing Email:		**Billing Phone:**	

If submitting a Purchase Order, please include the following language:
The pricing, terms, and conditions of quote Q-272645 dated 16 May 2023 are incorporated into this Purchase Order by reference and shall take precedence over any terms and conditions included in this Purchase Order.

AGREEMENT AND ACCEPTANCE

By signing this document, the undersigned certifies they have authority to enter the agreement. The undersigned also understands the services and terms.

Amherst, NY

Signature:	
Name:	
Title:	
Date:	

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

GRANICUS

Master Subscription Agreement
US/Canada

This Master Subscription Agreement ("**Agreement**") is effective as of the date an Order or SOW (as defined below) commences ("**Effective Date**") between the party procuring Granicus Products and/or Services ("**Client**") and Granicus, LLC, a Minnesota Limited Liability Company ("**Granicus**").

1. Definitions. For the purpose of this Agreement, the following terms have the corresponding definitions:

"Content" means any material or data: (i) displayed or published on Client's website; (ii) provided by Client to Granicus to perform the Services; or (iii) uploaded into Products.

"Products" means the online or cloud subscription services, on premise software, and embedded software licensed to Client, and hardware components purchased by Client under this Agreement;

"IP Rights" means all current and future worldwide statutory or other proprietary rights, whether registered or unregistered, including but not limited to, moral rights, copyright, trademarks, rights in designs, patents, rights in computer software data base rights, rights in know how, mask work, trade secrets, inventions, domain or company names and any application for the foregoing, including registration rights.

"Order" means a binding proposal, written order, or purchasing document setting forth the Products made available to Client pursuant to this Agreement;

"Services" means the consulting, integration, installation, and/or implementation services to be performed by Granicus as described in the SOW;

"SOW" means a statement of work agreed to by the parties that references this Agreement and describes the Services and Deliverables provided as part of a Services engagement pursuant to the Services provisions set forth in this Agreement; and

2. Intellectual Property Ownership and Use Rights.

a) **Intellectual Property Ownership.** Granicus and its licensors own all IP Rights in the Products. Client and its authorized users have no right, title or interest in the Products other than the license rights expressly granted herein. All rights not expressly granted in the Products are reserved by Granicus or its licensors.

b) **License to Products.** Granicus hereby grants Client a non-exclusive, non-transferable license to access and use the Products identified in the Order during the Term set forth therein. In addition to the terms of this Agreement and the Order, product-specific license terms applicable to certain of the Products can be found at granicus.com/legal/licensing and are hereby incorporated into this Agreement by reference. Granicus reserves all right, title and interest in and to all Granicus Products, including all rights not expressly granted to Client under this Agreement.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

c) **Third Party Contractors.** Client may permit its third-party contractors to access and use the Products solely on behalf of and for the benefit of Client, so long as: (i) such contractor agrees to comply with this Agreement as if it were Client; (ii) Client remains responsible for each contractor's compliance with this Agreement and any breach thereof; and (iii) all volume or transaction-based use of the Products includes use by contractors. All rights granted to any contractor terminate immediately upon conclusion of the Services rendered to Client that give rise to such right. Upon termination of such rights, contractor will immediately cease all use of the Products and uninstall and destroy all confidential or proprietary Granicus information in its possession. Client will certify compliance with this section in writing upon Granicus' request.

d) **Data Sources.** Client may only upload data related to individuals that originates with or is owned by Client. Client shall not upload data purchased from third parties without Granicus' prior written consent and list cleansing Services provided by Granicus for an additional fee. Granicus will not sell, use, or disclose any personal information provided by Client for any purpose other than performing Services subject to this Agreement.

e) **Content.** Client can only use Products to share Content that is created by or owned by Client and/or Content for affiliated organizations, provided that use by Client for affiliated organizations is in support only, and not as a primary communication vehicle for such organizations that do not have their own license to the Products. Granicus is not responsible for any Content used, uploaded or migrated by Client or any third party.

f) **Advertising.** Client shall not use Products to promote products or services available for sale through Client or any third party without Granicus' prior written consent.

g) **Restrictions.** Client shall not:

(i) Use or permit any end user to use the Products to store or display adult content, promote illegal or immoral activities, send or store infringing, obscene, threatening or unlawful or tortious material or disrupt others use of the Products, network services or network equipment, including unsolicited advertising or chain letters, propagation of computer worms and viruses, or use of the Products to make unauthorized entry into any other device accessible via the network or Products;

(ii) Use the Products as a door or signpost to another server;

(iii) Disassemble, decompile, reverse engineer or make derivative works of the Products;

(iv) Rent, lease, lend, or host the Products to or for any third party, or disclose the Products to any third party except as otherwise permitted in this Agreement or an Order or SOW;

(v) Use the Products in violation of any applicable law, rule, or regulation, including violation of laws regarding the processing, use, or disclosure of personal information, or violation of any United States export control or regulation, United States embargo, or denied or sanctioned parties prohibitions; or

(vi) Modify, adapt, or use the Products to develop any software application intended for resale which uses or competes with the Products in whole or in part.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

3. Term; Termination.

a) **Agreement Term.** This Agreement begins on the Effective Date and remains in effect for the period set out in the Order ("**Initial Term**"). Thereafter, this Agreement will continue in effect until all Orders or SOWs have expired or been terminated.

b) **Order Term.** Each Order will be effective on the date set out therein and will remain in effect during the Initial Term identified in such Order. Each Order will automatically renew for twelve (12) month terms (each, a "**Renewal Term**") unless either party gives the other party notice of non-renewal at least sixty (60) days prior to the end of the applicable Term of the Order. The Initial Term and all Renewal Terms are collectively, the "**Term**".

c) **SOW Term.** Each SOW will begin on the effective date of the SOW and will remain in effect until the Services are completed, this Agreement is terminated, or the termination date set out in the SOW (the **"Termination Date"**), whichever is later. If no specific Termination Date is designated in the SOW, Client may terminate the SOW upon thirty (30) days written notice to Granicus.

d) **Termination for Default.** Either party may terminate this Agreement or any Order or SOW by written notice if the other party commits a material breach of this Agreement or the applicable Order or SOW and fails to cure such breach within thirty (30) days after receipt of such notice, or an additional period of time as agreed to by the parties.

e) **Effect of Termination.** Upon expiration or termination of an Order or SOW for any reason: (i) Client's right to access and use the Products will immediately cease (except for perpetual licenses granted under an Order, which will continue to be governed by this Agreement for the duration of the license); (ii) Client will promptly remit any fees due to Granicus under all Orders and SOWs; (iii) Granicus will promptly cease performance of any Services; and (iv) the parties will return or destroy any Confidential Information of the other party in its possession, and certify upon request to the other party of compliance with the foregoing. Client will have thirty (30) days from the expiration date of a subscription to extract or download any Content stored in the Products. Granicus has no obligation to retain any Content after such thirty (30)-day period nor is Granicus responsible for extracting the data on Client's behalf absent separate written agreement and the payment of additional fees.

f) **Survival.** Sections 4 (Fees, Payment), 9 (Confidentiality), 10 (Indemnification), 11 (Limitation of Liability), 13 (Governing Law) and any other clause that by its nature is intended to survive will survive termination of this Agreement indefinitely or to the extent set out therein.

4. Fees; Payment.

a) **Fees.** Client will pay all fees, costs and other amounts as specified in each Order or SOW. Annual fees are due upfront at the beginning of each annual term. Services fees and one-time fees are due according to the billing frequency specified in each Order or SOW. Granicus may suspend Client's access to any Products if there is a lapse in payment not remedied promptly upon notice to Client. A lapse in the

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Term of each Order or SOW will require the payment of a setup fee to reinstate the subscription. All fees are exclusive of applicable state, local, and federal taxes, which, if any, will be included in the invoice. It is Client's responsibility to provide applicable exemption certificate(s).

b) **Payment.** Client will remit payment of the fees due within thirty (30) days of receipt of an accurate invoice from Granicus or its authorized reseller, or if Client is subject to different payment terms imposed by applicable regulation, such required payment duration. Any disputed amounts will be identified in writing to Granicus within the payment period or be deemed accurate and payable. With respect to any amount due to Granicus which is not paid within thirty (30) days of an undisputed invoice, ~~Granicus may apply interest at the rate of one and half percent (1.5%) per month, or such lesser amount required by law, assessed from the due date through the date of payment.~~ Client acknowledges and agrees that orders placed by Client for Products and Services will be non-cancellable and the fees paid are non-refundable unless otherwise expressly stated in the Agreement.

DS BS

c) **Purchase Orders.** Upon request, Granicus will reference a purchase order number on its invoices if Client provides the corresponding purchase order information to Granicus prior to generating the invoice. Client agrees that a failure to provide Granicus with purchase order information will not relieve Client of its obligations to provide payment in accordance with this section.

d) **Price Changes.** Subject to any price schedule or pre-negotiated fees to which this Agreement or an Order may be subject, Granicus will provide notice of any price changes at least ninety (90) days prior to the end of the current Term, which will become effective as of the next Renewal Term. Renewals at the same volume amount will not increase more than ten percent (10%) over the prior year's fees. Purchases of additional Products will be at Granicus' then-current price and licenses, subject to volume or transaction metrics, and will be reviewed annually prior to commencement of the Renewal Term, with fees adjusted to cover increases in Client's use.

e) **Cooperative Purchasing.** To the extent permitted by law the terms of this Agreement may be extended for use by other municipalities, school districts and governmental agencies. Orders and SOWs entered into by such third parties are independent agreements between the third party and Granicus and do not affect this Agreement or any Order or SOW between Granicus and Client.

5. Client Responsibilities.

a) **Content.** Client will be solely responsible for the Content submitted to the Products and will comply with all laws, rules and regulations relating to the use, disclosure and transmission of such Content, including providing such to Granicus. Client represents and warrants it has the legal right to provide the Content to Granicus and that such use or disclosure does not violate the intellectual property, privacy or other legal rights of any third party. Client grants Granicus a limited, non-exclusive right during the Term to access and use the Content to provide the Products and Services. Content does not include user feedback related to the Products or Services, which Granicus is free to use without any further permission or consideration to Client. In addition, Content does not include data generated by use of the Products, including system data and data derived from Content in an aggregated and anonymized form, which may be used by Granicus for any and all business purposes including diagnostics and system and product improvements.

b) **Data Backup and Protection.** Client will maintain a back-up of any data or data files provided to Granicus. For certain Products, Granicus offers functionality that requires subscribers to enable password

protection of subscriber profiles and associated data. Client assumes all responsibility for implementing and enforcing this security functionality in its sole discretion.

c) **Passwords.** Sign-on credentials used to access the Products are non-transferable. Client is responsible for keeping all passwords secure and for all use of the Products through Client's sign in credentials.

d) **Cooperation.** Client will provide any assistance reasonably required by Granicus to perform the Services, including timely review of plans and schedules for the Services and reasonable access to Client's offices for Services performed onsite.

e) **Third-Party Technology.** Client will be responsible for securing all licenses for third party technology necessary for Granicus to perform the Services (including the right for Granicus to use such technology) and will be responsible for the performance of any third-party providing goods or services to Client related to the Services, including such third party's cooperation with Granicus.

6. Support. Basic support and maintenance services provided to Client for Products ("Support") is included in the fees paid for the Granicus Product subscription or maintenance during the Term and will be provided in accordance with the Service Level Agreement set forth at granicus.com/legal/licensing. Granicus may update its Support obligations under this Agreement, so long as the level of Support agreed to by the parties is not materially diminished due to such modification.

7. Representations; Warranties; Disclaimers.

a) **Representations.** Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

b) **Warranties:**

(i) Each party warrants that it has the rights necessary to grant to the other party the licenses granted in this Agreement.

(ii) Granicus warrants that it will perform its obligations in a professional and workmanlike manner in accordance with industry standards.

(iii) Client's sole and exclusive remedy and Granicus ' sole obligation for breach of the warranties in this Section are as follows: (i) for a breach of the warranty in Section 7.b.(i), the indemnity in Section 10 of this Agreement; and (ii) for a breach of the warranty in Section 7.b.(ii) reperformance of the non-conforming Services, provided that Client notifies Granicus of a non-conformity in this Section during the thirty (30) day period following Granicus' completion of the applicable Services.

c) **Disclaimers.** EXCEPT AS EXPRESSLY STATED IN THIS THIS SECTION, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND GRANICUS DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. GRANICUS DOES NOT WARRANT THAT PRODUCTS OR SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

8. Services.

a) Granicus will perform Services in accordance with this Agreement and the SOW. Granicus is not obligated to provide any Services unless set out in the SOW. Unless otherwise set out in the SOW or as agreed to by the parties the Services will be performed remotely. Any estimates provided in the SOW, including expected hours to complete the Services and any timeline provided by Granicus, are based on known functional requirements and technical environments as of the effective date of the SOW. Changes or delays in the work schedule originating with Client are subject to the project change procedure and may result in an increase in fees.

b) Granicus grants Client a non-exclusive, non-transferable, royalty-free, perpetual license to use the Deliverables on behalf of and for the benefit of Client independently and with the Products. Granicus retains all right, title and interest to the Deliverables except for those rights expressly granted to Client and reserves all rights not otherwise expressly granted herein. Deliverables and Services are deemed accepted upon delivery unless otherwise set forth in a SOW. **"Deliverable(s)"** means any computer software, written documentation, reports or materials developed by Granicus specifically for Client pursuant to a SOW;

c) Any modifications to the Services must be in writing and signed by authorized representatives of each party. Granicus personnel performing Services at Client's offices will comply with Client's policies and procedures in effect at such location.

d) If agreed to by the Parties in the SOW, Client will also pay for all reasonable travel-related and out-of-pocket expenses incurred by Granicus in the performance of the Services in accordance with Client's travel and expense policy which will be provided to Granicus in writing (or Granicus' policy if none is provided by Client) and which will be billed monthly and due thirty (30) days following date of invoice.

9. Confidentiality. During performance of the Services, each party may receive Confidential Information of the other party.

a) **"Confidential Information"** means all confidential and/or trade secret information of either party (**"Disclosing Party"**), including but not limited to: (i) Granicus' Products; (ii) non-public information if it is clearly and conspicuously marked as "confidential" or with a similar designation at the time of disclosure; (iii) non-public information of the Disclosing Party if it is identified as confidential and/or proprietary before, during, or promptly after presentation or communication; and (iv) any information that should be reasonably understood to be confidential or proprietary given the nature of the information and the context in which disclosed, in each case that is disclosed to the other party (**"Receiving Party"**) or to which the Receiving Party gains access in connection with performance of the Services.

b) Subject to freedom of information, government transparency, or similar applicable law, each Receiving Party will receive and hold any Confidential Information in strict confidence and will: (i) protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; (ii) not reveal, report, publish, disclose, transfer, copy or otherwise use any Confidential Information except as specifically authorized by the Disclosing Party; (iii) not use any Confidential Information for any purpose other than in performance of this Agreement; (iv) restrict access to Confidential Information to those of its advisors, officers, directors, employees, agents, consultants, contractors and lobbyists who have a need to know, who have been advised of the confidential nature thereof, and who are under express written

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obligations of confidentiality or under obligations of confidentiality imposed by law or rule; and (v) exercise at least the same standard of care and security to protect the confidentiality of the Confidential Information received by it as it protects its own confidential information, but no less than a reasonable degree of care.

c) If a Receiving Party is requested or required in a judicial, administrative, or governmental proceeding to disclose any Confidential Information, it will notify the Disclosing Party as promptly as practicable so that the Disclosing Party may seek an appropriate protective order or waiver for that instance, unless such notification is prohibited by law or judicial order.

d) The foregoing obligations do not apply to information that: (i) is already public or becomes available to the public through no breach of this section; (ii) was in the Receiving Party's lawful possession before receipt from the Disclosing Party; (iii) is lawfully received independently from a third party who is not bound by a confidentiality obligation; or (iv) is independently developed by or on behalf of the Receiving Party without use of any Confidential Information.

e) Upon written request of the Disclosing Party, the Receiving Party agrees to promptly return or destroy all Confidential Information in its possession, and certify its destruction in writing, provided that the Receiving Party may retain a copy of the returned or destroyed items for archival purposes in accordance with its records retention policies and subject to this section.

f) Disclosing Party may be irreparably damaged if the obligations under this section are not enforced and as such may not have an adequate remedy in the event of a breach by Receiving Party of its obligations hereunder. The parties agree, therefore, that Disclosing Party is entitled to seek, in addition to other available remedies, an injunction restraining any actual, threatened or further breaches of the Receiving Party's obligations under this section or any other appropriate equitable order or decree.

10. Indemnification.

a) Granicus will defend, indemnify and hold Client harmless from and against all losses, liabilities, damages and expenses including reasonable attorney fees (collectively, "Losses") arising from any claim or suit by an unaffiliated third party that the Products or Deliverables, as delivered to Client and when used in accordance with this Agreement and the applicable Order or SOW, infringes a valid U.S. copyright or U.S. patent issued as of the date of the applicable Order or SOW (a "Claim").

b) To the extent permitted by applicable law, Granicus will have control of the defense and reserves the right to settle any Claim. Client must notify Granicus promptly of any Claim and provide reasonable cooperation to Granicus, upon Granicus' request and at Granicus' cost, to defend such Claim. Granicus will not agree to any settlement which requires acknowledgment of fault or an incurred liability on the part of an indemnified party not otherwise covered by this indemnification without indemnified party's prior consent. Client may elect to participate in the defense of any claim with counsel of its choosing at its own expense.

c) If the Products or Deliverables are subject to a claim of infringement or misappropriation, or if Granicus reasonably believes the Products or Deliverables may be subject to such a Claim, Granicus reserves the right, in its sole discretion, to: (i) replace the affected Products or Deliverable with non-infringing functional equivalents; (ii) modify the affected Products or Deliverable to render it non-infringing; or (iii) terminate this Agreement or the applicable Order or SOW with respect to the affected

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Granicus Product or Deliverable and refund to Client any prepaid fees for the then-remaining portion of the Order or SOW Term.

d) Granicus will have no obligation to indemnify, defend, or hold Client harmless from any Claim to the extent it is based upon: (i) a modification to the Granicus Product or Deliverable by anyone other than Granicus; (ii) a modification made by Granicus pursuant to Client's required instructions or specifications or in reliance on materials or information provided by Client; (iii) combination with the Products or Deliverable with non-Granicus software or data; or (iv) Client's (or any authorized user of Client) use of any Products or Deliverables other than in accordance with this Agreement.

e) This section sets forth Client's sole and exclusive remedy, and Granicus' entire liability, for any Claim that the Products, Deliverables or any other materials provided by Granicus violate or infringe upon the rights of any third party.

11. Limitation of Liability.

a) EXCEPT FOR LIABILITY THAT CANNOT BE LIMITED OR EXCLUDED UNDER APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY: (I) SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR (II) LOSS OR DAMAGE TO DATA, LOST PROFITS, SALES, BUSINESS, GOODWILL OR ANTICIPATED SAVINGS, WHETHER AN ACTION IS IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b) IN NO EVENT, EXCEPT FOR CLIENT'S OBLIGATIONS TO PAY AMOUNTS DUE UNDER THE ORDER OR SOW, OR GRANICUS' INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10 (INDEMNIFICATION), WILL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT (IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE) EXCEED THE AMOUNT OF FEES PAID BY CLIENT TO GRANICUS IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE DATE THE DAMAGED PARTY NOTIFIES THE OTHER PARTY IN WRITING OF THE CLAIM. HOWEVER, IF CLIENT HAS PAID NO FEES UNDER THE TERMS OF AN ORDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INCIDENT GIVING RISE TO THE CLAIM, THE AGGREGATE LIABILITY OF GRANICUS TO CUSTOMER FOR SUCH CLAIM SHALL NOT EXCEED FIVE THOUSAND DOLLARS ($5,000).

12. General.

a) Force Majeure. With the exception of payment obligations, any delay in the performance by either party of its obligations hereunder will be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; any computer virus, worm, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion or strike; provided, that written notice thereof must be given by such Party to the other Party within twenty (20) days after occurrence of such cause or event.

b) **Independent Contractor.** Each party is an independent contractor and employees of each party are not considered to be employees of the other party. No agency, partnership, joint venture or other joint relationship is created by this Agreement. The parties shall not make any commitments binding on the other or make any representation that they are acting for, or on behalf of, the other. Each party assumes full responsibility for the actions of its personnel while performing the Services and such party

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will be solely responsible for the supervision, daily direction, control of its personnel, and for the payment of all of their compensation and any taxes related thereto.

c) **Publicity.** Neither party will use the name of the other party in publicity releases or similar activity without the consent of the other party, except Granicus may include Client's name and logo in client lists and similar communications.

d) **Waiver.** No waiver of any breach of any provision of this Agreement or the SOW by either party or the failure of either party to insist on the exact performance of any provision of this Agreement or the SOW will constitute a waiver of any prior, concurrent or subsequent breach of performance of the same or any other provisions hereof, and no waiver will be effective unless made in writing.

e) **Notices.** Other than routine administrative communications, which may be exchanged by the Parties via email or other means, all notices, consents, and approvals hereunder will be in writing and will be deemed to have been given upon: (i) personal delivery; (ii) the day of receipt, as shown in the applicable carrier's systems, if sent via FedEx, UPS, DHL, or other nationally recognized express carrier; (iii) the third business day after sending by U.S. Postal Service, First Class, postage prepaid, return receipt requested; or (iv) sending by email, with confirmed receipt from the receiving party. Either Party may provide the other with notice of a change in mailing or email address in which case the mailing or email address, as applicable, for that Party will be deemed to have been amended. Client's mailing and email address are as set forth in the Order. The mailing and email address of Granicus is as follows:

Granicus
Contracts
408 St. Peter Street, Suite 600, Saint Paul, MN 55102
(651) 757-4154
contracts@granicus.com

f) **Severability.** If any provision of this Agreement, Order, or SOW, or portion thereof, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, such provision will be severed and the remaining provisions of the Agreement, Order or SOW will remain in full force and effect.

g) **Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party (such consent not to be unreasonably withheld); provided that either Party may assign this Agreement with reasonable notice to the other party to an affiliate or to a successor in interest resulting from acquisition of all, or substantially all, of the assigning party's business by means of merger, stock or asset purchase, or otherwise. Any assignment or attempted assignment in violation of this Agreement will be null and void.

h) **Amendment.** This Agreement may not be amended or modified except by a written instrument signed by authorized representatives of both Parties.

i) **Applicable Law.** Each party will, at all times, exercise its rights and perform its obligations under this Agreement in compliance with all applicable law, rules, and regulations.

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j) **Headings.** The various section headings of this Agreement are inserted only for convenience of reference and are not intended, nor will they be construed to modify, define, limit, or expand the intent of the Parties.

k) **No Third-Party Beneficiaries.** This Agreement is binding upon and insures solely to the benefit of the Parties hereto and their respective permitted successors and assigns; there are no third-party beneficiaries to this Agreement.

13. Governing Law. If Client is a public entity (a state or any agency or authority thereof, or county, city or town, public educational institution or other entity that serves a public purpose), this Agreement will be governed by and construed in accordance with the laws of the state in which the public entity is located, with venue being a court of competent jurisdiction within such state. If Client is the Federal government of the United States or any branch or agency thereof, this Agreement will be governed by the laws of the United States with venue being any Federal district court of competent jurisdiction. If Client is a private or commercial entity, this Agreement will be governed by the laws of the state of New York, without reference to the state's conflict of law principles, with exclusive jurisdiction of the state and federal courts located in the borough of Manhattan, New York, New York. If Client is located in Canada, this Agreement will be governed by the laws of the Province of Ontario with suit brought only in the General Division of the Ontario Court of Justice. No applicable principals of conflicts of laws, imputed terms of the Uniform Commercial Code, or the United Nations Convention on contracts for the international sale of goods will apply to this Agreement.

14. Entire Agreement. This Agreement and Orders and SOWs governed by this Agreement constitutes the entire agreement between Granicus and Client, and supersedes all prior agreements, requests for proposals or pricing and the corresponding responses, understandings, representations or correspondence relevant to the subject matter hereof. Perpetual licenses granted to Client under prior agreements remain in full force and effect. Inconsistencies between documents will be resolved in the following order: (I) this Agreement; (ii) Orders and SOWs; (iii) all other purchase documents executed by the parties (except for any pre-printed or standard terms contained on purchase orders which shall have no force or effect); (iv) Granicus' response to Client's RFI, RFP, RFQ; and (v) Client's RFI, RFP, RFQ. If Client issues a purchase order, Granicus hereby rejects any additional or conflicting terms appearing on the purchase order or any other ordering materials submitted by Client. Client has not been induced to enter into this Agreement or the SOW by any representations or promises not specifically stated herein.

Granicus	[Company]
By: _____ (Authorized Signature)	**By:** _____ (Authorized Signature)
Name: Bernadette Foley (Print or Type Name of Signatory)	**Name:** _____ (Print or Type Name of Signatory)
Title: Manager, Renewals	**Title:** _____

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Click here to enter text.

Date: May 17, 2023	**Date:**
(Execution Date)	(Execution Date)

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Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active or passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant shall name the Town as an additional insured on a primary and non-contributory basis.

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5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Consultant shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations

or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

Granicus, LLC

Print Name of Company

By: _____

Signature

Bernadette Foley

Printed name

Date: May 17, 2023

Agreed to and Accepted by:

Town of Amherst

By: _____

Brian J. Kulpa, Supervisor

Date: _____

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NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (use street address only)	1b. Business Telephone Number of Insured
GRANICUS, LLC 1999 BROADWAY STE 3600 DENVER,CO 80202-5740	1c. NYS Unemployment Insurance Employer Registration Number of Insured 49-695072
Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)*	1d. Federal Employer Identification Number of Insured or Social Security Number 41-1941088
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst Attn: Town Hall 5583 Main Street Williamsville, NY 14221	3a. Name of Insurance Carrier The Continental Insurance Company 3b. Policy Number of Entity Listed in Box "1a" WC 643664067 3c. Policy effective period 10/20/2022 to 10/20/2023 3d. The Proprietor, Partners or Executive Officers are ☐ included. (Only check box if all partners/officers included) ☐ all excluded or certain partners/officers excluded.

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3 on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancele due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) **Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

Please Note: Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: Vanessa Santiago
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: _____ 11/29/2022
(Signature) (Date)

Title: Policy Support Assistant

Telephone Number of authorized representative or licensed agent of insurance carrier: (407) 804 - 6015

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.

C-105.2 (9-17)

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Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue a permit for or in connection with any work involving the employment of employees in a hazardous employment defin by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permi shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herei however, shall be construed as creating any liability on the part of such state or municipal department, boar commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter in any contract for or in connection with any work involving the employment of employees in a hazardous employme defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, sh not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfacto to the chair, that compensation for all employees has been secured as provided by this chapter.

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IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision was added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will develop a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). This list is posted on the OGS website.

By submitting a response to this solicitation, or by assuming the responsibility under a Contract/Lease awarded hereunder, Bidder/Contractor/Vendor (or any assignee) certifies that it will not utilize on such Contract/Lease any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor/Vendor is advised that any Bidder/ Contractor/Vendor seeking to renew or extend a Contract/Lease (or assume responsibility of a Contract/Lease awarded must certify at the time the Contract/Lease is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract/Lease, should the Town of Amherst (Town) receive information that a person is in violation of the above-referenced certification, the Town will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the Town shall take such action as appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor/Vendor in default.

The Town reserves the right to reject any Contract/Lease or request for assignment for an entity that appears on the prohibited entities list prior to the award of a Contract/Lease, and to pursue a responsibility review with respect to any entity that is awarded a Contract/Lease and appears on the prohibited entities list after Contract/Lease award.

Company Name: Granicus, LLC

Signature:

Print Name: Bernadette Foley

Title: Manager, Renewals

Date: May 17, 2023

Sworn To Before Me This

17 Day of May, 2023

Notary Public

TYLER MICHAEL VAUGHN
Notary Public-Minnesota
My Commission Expires Jan. 31, 2028

Revised 4.2017

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
GRANICUS LLC
408 ST PETER ST, STE 600
SAINT PAUL, MN 55102

1b. Business Telephone Number of Insured
(651) 726-7313

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)*

1c. Federal Employer Identification Number of Insured or Social Security Number
411941088

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)
TOWN OF AMHERST
5583 MAIN STREET
WILLIAMSVILLE, NY 14221

3a. Name of Insurance Carrier
New York State Insurance Fund (NYSIF)

3b. Policy Number of Entity Listed in Box "1a"
DBL 6885 24 - 9

3c. Policy effective period
06/29/2022 to 06/29/2023

4. Policy provides the following benefits:
- [x] A. Both disability and paid family leave benefits
- [ ] B. Disability benefits only
- [ ] C. Paid family leave benefits only

5. Policy covers:
- [x] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law
- [ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 9/7/2022 By Kristin Markwica
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (866) 697-4332 Name and Title **Kristin Markwica, Head of Disability Insurance Unit**

IMPORTANT: If Box 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier,this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, DB Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

Certificate Number 703556

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in box "3" on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Worker's Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits, and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/20/2023 | 10/20/202?

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. T CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLIC BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZ REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endors If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC CA License #OF15767 Three Embarcadero Center, Suite 600 San Francisco CA 94111 (415) 568-4000	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED 1418581 Granicus, LLC 1999 Broadway Denver CO 80202	INSURER(S) AFFORDING COVERAGE — NAIC INSURER A : National Fire Insurance Co of Hartford — 20 INSURER B : Valley Forge Insurance Company — 20 INSURER C : The Continental Insurance Company — 352 INSURER D : American Casualty Company of Reading, PA — 204 INSURER E : INSURER F :

COVERAGES GRAIN01 **CERTIFICATE NUMBER:** 15978533 **REVISION NUMBER:** XXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERI INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH TH CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERM EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:	Y	N	6043664103	10/20/2022	10/20/2023	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY X HIRED AUTOS ONLY SCHEDULED AUTOS X NON-OWNED AUTOS ONLY X Comp $100 Ded X Coll $1,000 Ded	N	N	6043664084	10/20/2022	10/20/2023	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ XXXXXXX $ XXXXXXX $ XXXXXXX
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			NOT APPLICABLE			EACH OCCURRENCE AGGREGATE	$ XXXXXXX $ XXXXXXX
C D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	N	6043664067 6043664070	10/20/2022 10/20/2022	10/20/2023 10/20/2023	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Town of Amherst, its officers, officials, employees, agents and volunteers is/are an Additional Insured with respect to liability arising out of the operations of the insured and to the extent provided by the policy language or endorsement issued or approved by the insurance carrier.

CERTIFICATE HOLDER

15978533
Town of Amherst
Attn: Town Hall
5583 Main Street
Williamsville, NY 14221

CANCELLATION See Attachments

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE Adam D. McDonough

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Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)



To whom it may concern:

In our continuing effort to provide timely certificate delivery, Lockton Companies is transitioning to paperless delivery of Certificates of Insurance.

To ensure electronic delivery for future renewals of this certificate, we need your email address. Please contact us via one of the methods below, referencing Certificate ID **15978533.**

- Email: PacificeDelivery@lockton.com
- Phone: (213) 689-2300

If you received this certificate through an internet link where the current certificate is viewable, we have your email and no further action is needed.

In the event your mailing address has changed, will change in the future, or you no longer require this certificate, please let us know using one of the methods above.

The above inbox is for automating electronic delivery of certificates only. Please do NOT send future certificate requests to this inbox.

Thank you for your cooperation and willingness in reducing our environmental footprint.

Lockton Insurance Brokers, LLC – Pacific Series

Lockton Insurance Brokers, LLC
License #0F15767
777 S. Figueroa Street, 52nd Fl. Los Angeles, CA 90017-5524
213-689-0065 . FAX: 213-689-0550
lockton.com

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Attachment Code: D524693 Certificate ID: 15978533

Policy Number: 6043664103

G-00000-A
(Ed.)

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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20. Unintentional Failure To Disclose Hazards
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Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Attachment Code: D524693 Certificate ID: 15978533

Policy Number: 6043664103

G-00000-A
(Ed.)

1. ADDITIONAL INSUREDS

a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **K.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **K.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or
2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Grantor of Franchise

Any person or organization that has granted a franchise to a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** as grantor of a franchise to the **Named Insured**.

D. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

E. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

F. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury** or **property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured.**

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

H. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
   a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
   b. the construction, erection, or removal of elevators; or
   c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

   The coverage granted by this paragraph does not apply to:
   a. **Bodily injury**, **property damage** or **personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
   b. **Bodily injury** or **property damage** included within the **products-completed operations hazard.**

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

I. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** caused by:
   a. the **Named Insured's** acts or omissions; or
   b. the acts or omissions of those acting on the **Named Insured's** behalf,

   in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.
2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard.**

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

J. Vendor

Any person or organization but only with respect to such person or organization's liability for **bodily injury** or **property damage** arising out of **your products** which are distributed or sold in the regular course of such person or organization's business, provided that:

1. The coverage granted by this paragraph does not apply to:
   a. **bodily injury** or **property damage** for which such person or organization is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement unless such liability exists in the absence of the contract or agreement;
   b. any express warranty unauthorized by the **Named Insured**;
   c. any physical or chemical change in any product made intentionally by such person or organization;
   d. repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
   e. any failure to make any inspections, adjustments, tests or servicing that such person or organization has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
   f. demonstration, installation, servicing or repair operations, except such operations performed at such person or organization's premises in connection with the sale of a product;
   g. products which, after distribution or sale by the **Named Insured**, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for such person or organization; or
   h. **bodily injury** or **property damage** arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
      (1) the exceptions contained in Subparagraphs **d.** or **f.** above; or
      (2) such inspections, adjustments, tests or servicing as such person or organization has agreed with the **Named Insured** to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
2. This Paragraph **J.** does not apply to any insured person or organization, from whom the **Named Insured** has acquired such products, nor to any ingredient, part or container, entering into, accompanying or containing such products.
3. This Paragraph **J.** also does not apply:
   a. to any vendor specifically scheduled as an additional insured by endorsement to this **Coverage Part**;
   b. to any of **your products** for which coverage is excluded by endorsement to this **Coverage Part**; nor
   c. if **bodily injury** or **property damage** included within the **products-completed operations hazard** is excluded by endorsement to this **Coverage Part**.

K. Other Person Or Organization / Your Work

Any person or organization who is not an additional insured under Paragraphs **A.** through **J.** above. Such additional insured is an **Insured** solely for **bodily injury**, **property damage** or **personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

1. who is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**; nor

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2. for **bodily injury** or **property damage** included within the **products-completed operations hazard** except to the extent all of the following apply:

   a. this **Coverage Part** provides such coverage;

   b. the written contract or agreement described in the opening paragraph of this **ADDITIONAL INSUREDS** Provision requires the **Named Insured** to provide the additional insured such coverage; and

   c. the **bodily injury** or **property damage** results from **your work** that is the subject of the written contract or agreement, and such work has not been excluded by endorsement to this **Coverage Part.**

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision **2.**, the additional insured's own insurance means insurance on which the additional insured is a named insured.

B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph **1.K.** of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** Condition is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim.**

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph **3.** in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph **4.** below, any organization in which a **Named Insured** has management control:

   a. on the effective date of this **Coverage Part**; or

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,

qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

(a) any partnership or joint venture; or

(b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, and of this endorsement's **JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES** provision, management control means:

A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, or the members of the management board of a limited liability company; or

B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.

4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph **3.** above, this insurance does not apply to:

a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor

b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.

5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

7. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES**, **Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

8. IN REM ACTIONS

A quasi *in rem* action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured.**

9. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES**, **Coverage A – Bodily Injury And Property Damage Liability**, the **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory.**

(2) the **bodily injury** first occurs during the **policy period.** All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES**, **Coverage A – Bodily Injury And Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions.

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, that includes but shall not be limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement

Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

a. **professional health care services** on behalf of the **Named Insured** or

b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

a. Physician;

b. Nurse;

c. Nurse practitioner;

d. Emergency medical technician;

e. Paramedic;

f. Dentist;

g. Physical therapist;

h. Psychologist;

i. Speech therapist;

j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **Insured** to:

a. add the following:

- the **Named Insured's employees** are **Insureds** with respect to:

  (1) **bodily injury** to a co-**employee** while in the course of the co-**employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and

  (2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;

  when such **bodily injury** arises out of a **health care incident.**

- the **Named Insured's volunteer workers** are **Insureds** with respect to:

  (1) **bodily injury** to a co-**volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and

  (2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

  when such **bodily injury** arises out of a **health care incident.**

b. delete Subparagraphs **(a), (b), (c) and (d)** of Paragraph **2.a.(1)** of **WHO IS AN INSURED.**

c. add the following:

Insured does not include any physician while acting in his or her capacity as such.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

(1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

10. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to:

- the conduct of any current or past partnership or joint venture that is not shown as a **Named Insured** in the Declarations; nor
- the conduct of a current or past limited liability company in which a **Named Insured's** interest does/did not rise to the level of management control;

except that if the **Named Insured** was a joint venturer, partner, or member of such a limited liability company, and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, then such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense, first occurred after such termination date;

b. the **bodily injury** or **property damage** first occurred after such termination date; and

c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company.

11. LEGAL LIABILITY – DAMAGE TO PREMISES

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the first paragraph immediately following subparagraph **(6)** of the **Damage to Property** exclusion and replace it with the following:

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to **property damage** (other than damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protective systems to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in the **LIMITS OF INSURANCE** Section.

C. **LIMITS OF INSURANCE** is amended to delete Paragraph **6.** (the Damage To Premises Rented To You Limit) and replace it with the following:

6. Subject to Paragraph **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **COVERAGE A** for **damages** because of **property damage** to:

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

a. any one premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with the permission of the owner; and

b. contents of such premises if the premises is rented to the **Named Insured** for a period of 7 or fewer consecutive days.

The Damage To Premises Rented To You Limit is $500,000. unless a higher Damage to Premises Rented to You Limit is shown in the Declarations.

D. The **Other Insurance** Condition is amended to delete Paragraph **b.(1)(a)(ii)**, and replace it with the following:

(ii) That is property insurance for premises rented to a **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

E. This Provision **11.** does not apply if liability for damage to premises rented to a **Named Insured** is excluded by another endorsement attached to this **Coverage Part**.

12. MEDICAL PAYMENTS

A. LIMITS OF INSURANCE is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

(1) $15,000 unless a different amount is shown here: @@@@@@@@@@@@@@ ; or

(2) the amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, the **Insuring Agreement** of **Coverage C – Medical Payments** is amended to replace Paragraph **1.a.(3)(b)** with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and

13. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;

2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and

3. the aircraft is not being used to carry persons or property for a charge.

14. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph **(2)** of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

(a) less than 75 feet long; and

(b) not being used to carry persons or property for a charge.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Policy Number: 6043664103

G-00000-A
(Ed.)

15. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES**, **Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

(a) the **Named Insured**; or

(b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured.**

2. add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured.**

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured.**

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision **1. ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part.**

16. PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY

A. Under **COVERAGES**, **Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

Personal and advertising injury for which the **Insured** has assumed liability in a contract or agreement.

This exclusion does not apply to liability for **damages**:

(1) that the **Insured** would have in the absence of the contract or agreement; or

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

(2) assumed in a contract or agreement that is an **insured contract** provided the offense that caused such **personal or advertising injury** first occurred subsequent to the execution of such **insured contract.** Solely for the purpose of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **Insured** are deemed to be **damages** because of **personal and advertising injury** provided:

(a) liability to such party for, or for the cost of, that party's defense has also been assumed in such **insured contract**; and

(b) such attorney fees and litigation expenses are for defense of such party against a civil or alternative dispute resolution proceeding in which covered **damages** are alleged.

B. Solely for the purpose of the coverage provided by this paragraph, **DEFINITIONS** is amended to delete the definition of **insured contract** in its entirety, and replace it with the following:

Insured contract means that part of a written contract or written agreement pertaining to the **Named Insured's** business under which the **Named Insured** assumes the tort liability of another party to pay for **personal or advertising injury** arising out of the offense of false arrest, detention or imprisonment. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

C. Solely for the purpose of the coverage provided by this paragraph, the following changes are made to the Section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B:**

1. Paragraph **2.d.** is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph **2.f.(2)(b)** is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Notwithstanding the provisions of Paragraph **e.(2)** of the Contractual Liability exclusion (as amended by this Endorsement), such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

D. This **PERSONAL AND ADVERTISING INJURY - LIMITED CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part.**

17. PROPERTY DAMAGE – ELEVATORS

A. Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs **(3)**, **(4)** and **(6)** of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.

18. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

A. Paragraph **1.b.** is amended to delete the $250 limit shown for the cost of bail bonds and replace it with a $5,000. limit; and

B. Paragraph **1.d.** is amended to delete the limit of $250 shown for daily loss of earnings and replace it with a $1,000. limit.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Policy Number: 6043664103

G-00000-A
(Ed.)

19. PROPERTY DAMAGE - PATTERNS MOLDS AND DIES

Under **COVERAGES**, **Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraphs **(3)** and **(4)** of the Exclusion entitled **Damage to Property**, but only with respect to patterns, molds or dies that are in the care, custody or control of the **Insured**, and only if such patterns, molds or dies are not being used to perform operations at the time of loss. A limit of insurance of $25,000 per **policy period** applies to this **PROPERTY DAMAGE - PATTERNS MOLDS AND DIES** coverage, and this limit:

A. is included within the General Aggregate Limit as described in **LIMITS OF INSURANCE**; and

B. applies excess over any valid and collectible property insurance available to the **Insured**, including any deductible applicable to such insurance; the **Other Insurance** condition is changed accordingly.

20. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

21. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard.**

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury**, **property damage** or **personal and advertising injury** giving rise to the **claim**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

Attachment: Granicus 2023 Minute Traq Renewal (RES-2023-632 : GRANICUS, LLC Meeting Management Software for MinuteTraq CRS #4077)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Building/Building Maintenance
Initiated by: **Mark S. Berke**
Co-Sponsored by:

DOC ID: 27549 **RESOLUTION 2023-466** **WITHDRAWN**

Demolition of 88 Smallwood Drive

WHEREAS, the property at 88 Smallwood Drive has been deteriorating for a significant period of time; and

WHEREAS, the Commissioner of Building has determined that in accordance with Section 151-56A of the Property Maintenance Code of the Town of Amherst, the dwelling has become so out of repair as to be dangerous, unsafe, insanitary, or otherwise unfit for human habitation or occupancy; and

WHEREAS, the Commissioner of Building has determined that in accordance with Section 151-56A of the Property Maintenance Code of the Town of Amherst that it is unreasonable to repair the structure and that the dwelling should be demolished; and

WHEREAS, by Resolution 2023-235 approved by the Amherst Town Board at its March 6, 2023 meeting, the Commissioner of Building further recommended that in accordance with Section 151-53 of the Property Maintenance Code, the appropriate persons and entities should be put on notice that the dwelling and accessory structures must be either demolished or brought into compliance with all applicable codes by the Town Board meeting held on May 22. 2023, otherwise the Town of Amherst will proceed with demolition and that the cost of demolition and related activities, but not limited to asbestos abatement and monitoring, rodent control, and appropriate restoration of the property, shall be placed on the tax bill for the owner of 88 Smallwood Drive, Amherst, New York 14226.

5/22/2023
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:04 PM.

Mark Berke, Commissioner of Building and Bill Prenevau, Asst. Code Enforcement Officer presented.

Jessica Black, 79 Fruehauf Ave spoke in support of rehabbing the house.

Supervisor Kulpa stated three conditions that the purchaser prepare in advance and present:

1. A mold remediation plan
2. An active rodent control plan
3. A structural shoring plan

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the July 24th Town Board meeting, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was closed at 7:22 PM.

FINANCIAL IMPACT:

NA

RESULT:	**WITHDRAWN**

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Building/Building Maintenance
Initiated by: **Mark S. Berke**
Co-Sponsored by:

DOC ID: 27745 **RESOLUTION 2023-633** **ADOPTED**

Intermunicipal Agreement with Vow for CEO's CRS #4145

Please authorize the Supervisor to sign the agreement between the Village of Williamsville and the Town of Amherst for the Code Enforcement Officers to inspect permits pending a successful completion of the CRS ID #4145.

7/24/2023
Consent

FINANCIAL IMPACT:

n/a

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Attachment: Intermunicipal Agreement with VOW for CEO's (RES-2023-633 : Intermunicipal Agreement with Vow for CEO's CRS ID# 4145)

INTERMUNICIPAL AGREEMENT

Between

The Village of Williamsville, New York and

The Town of Amherst, New York

AGREEMENT between the Village of Williamsville, a municipal corporation of the State of New York with offices at 5565 Main Street in the Village of Williamsville, Town of Amherst, Erie County, New York and Town of Amherst, a municipal corporation of the State of New York with offices at 5583 Main Street in the Village of Williamsville, Town of Amherst, Erie County, New York.

WHEREAS, the Village of Williamsville (hereinafter the "Village") has enacted local laws to administer and enforce the New York State Fire Prevention and Building Code (hereinafter the "Code") and their local Zoning and Building Codes, which Codes require the appointment of a Code Enforcement Office (hereinafter "CEO") to enforce the provisions of said Codes (hereinafter "Code Services"); and

WHEREAS, the Village previously employed the services of one full-time CEO; and

WHEREAS, the Town of Amherst (hereinafter the "Town") employs multiple CEO's duly qualified and trained to provide the required Code Services; and

WHEREAS, the Village wishes to engage the Town to perform CEO services on behalf of the Village for the term of this Intermunicipal Agreement (hereinafter "IMA");

NOW THEREFORE, it is hereby agreed as follows:

1. The Town shall provide a New York State qualified CEO, on a regular basis, for the purpose of providing Code Services to the Village.

2. The Commissioner of Building of the Town of Amherst (hereinafter "Commissioner") shall act as a replacement or acting CEO under the Village's local Code and be responsible for interpreting the Code as well as the Local Zoning and Building Codes. The Commissioner shall be responsible for making determinations on all Certificates of Occupancy, Certificates of Compliance and issuing such certificates as appropriate. In addition, the Commissioner shall act as the Floodplain Administrator for the Village and shall be responsible for reviewing such and making determinations on Floodplain Development Permits and issuing such permits as appropriate. All plan review, certificate or permit requests shall be filed with the Village and the Village Building and Zoning Clerk shall forward such plan review, and certificate and permit requests to the Town for processing.

3. Services required pursuant to this IMA are to be performed by employees of the Town, the cost of said services shall be reimbursed by the Village to the Town at applicable hourly rates (plus FICA, retirement and insurance), billable in half-hour increments, as per the appropriate employment contract or salary schedule as determined by the Commissioner of Building of the Town of Amherst. In

addition the Village shall provide an annual lump sum payment of $20,000 (plus FICA) annually on the 1st of January. The first lump sum payment shall be prorated to March 1, 2023 and in the amount of $15,000 (plus FICA) payable upon full execution of this IMA. Said payments shall be deemed a fee payable by the Village to the Town.

4. The Village will maintain suitable liability insurance to cover the Town for claims arising out of the activities of Town employees performed pursuant to this IMA. The Town will maintain the customary workers' compensation insurance coverage, unemployment insurance coverage and health insurance coverage ordinarily provided to its employees, while its employees are providing services under this IMA. It will not be the responsibility of the Village to provide workers' compensation insurance coverage, unemployment insurance coverage or health insurance coverage for any of the Town employees nor will the Village be responsible for any portion of the premiums paid by the Town for said coverage.

5. The Village will reimburse the Town with regard to all reasonable and necessary "out-of-pocket" expenses, including but not limited to mileage at the then current IRS rate, printing and equipment costs, incurred by the Town or the Town employee in the course of performing services pursuant to this IMA and reimburse the Town for all out-of-pocket expenses expended in connection with a subject incident.

6. The initial term of this IMA shall expire December 31, 2027 and this IMA shall be automatically renewed for five year periods. Either party may cancel this IMA on ninety (90) days advance written notice. Such notice is to be served by regular mail or personal service upon the Village Administrator of the Village in the case of the notice being served on the Village and upon the Supervisor of the Town in the case of the notice being served on the Town.

7. That all services required to be performed by a New York State certified CEO pursuant to this IMA shall be performed by a New York State certified CEO of the Town

8. That the services to be performed hereunder will be performed by persons who are employees of the Town, and that this is not an arrangement between a contractor and sub-contractor.

9. Any violations issued pursuant to this IMA shall be enforced by the Town and prosecuted by the Village.

10. This IMA shall become effective upon the last day of execution thereof by either the Mayor of the Village or the Supervisor of the Town upon authorization from the respective legislative bodies.

11. Should any disputes arise as to the terms of this IMA, such disputes shall be referred for settlement to the Town Attorney and the Village Attorney. In the event the respective Town and Village officials are not able to resolve the dispute, it shall be referred to the Mayor of the Village and the Supervisor of the Town for settlement.

12. This IMA shall be governed by the laws of the State of New York. All claims, disputes and other matters arising out of or relating to this IMA or any breach thereof, if such are not resolved by the procedure set forth herein, shall be decided by the courts and the laws of the State of New York.

13. This IMA may be amended only by written instruments executed by the Mayor of the Village and the Supervisor of the Town upon authorization from the respective legislative bodies.

Attachment: Intermunicipal Agreement with VOW for CEO's (RES-2023-633 : Intermunicipal Agreement with Vow for CEO's CRS ID# 4145)

14. This IMA is the entire agreement between the parties hereto and, except as expressly provided herein, supersedes all prior negotiations, representations or agreements either written or oral.

15. In the event any covenant, condition or provisions herein contained is held to be invalid, unconstitutional or illegal by any court of competent jurisdiction, the invalidity of any such covenant, condition or provisions shall in no way effect any other covenant, condition or provision herein contained provided that the invalidity of such covenant, condition or provision does not materially prejudice either the Village or the Town in its respective rights or obligations contained in the valid covenants, conditions or provisions of this IMA and provided that this paragraph does not apply to any of the conditions precedent to this IMA.

16. The parties agree to abide by all applicable federal and state laws and regulations pertaining to development, operation and maintenance of public facilities wherein federal or state monies have been provided.

IN WITNESS WHEREOF, the parties hereto have caused this IMA to be executed on the ____ of _____, 2023.

Village of Williamsville

By: _____
[Mayor/Administrator]

Town of Amherst

By: _____
Supervisor

Village of Williamsville

STATE OF NEW YORK }
COUNTY OF ERIE }SS. VILLAGE OF WILLIAMSVILLE }

I,..... ....., Administrator/Village Clerk-Treasurer of the Village of
Williamsville, Erie County, New York, do hereby certify that at the regular meeting of the Board of Trustees of the aforesaid village, on the .....day of..... 2023, at the Village Hall,
Williamsville, New York, the following resolution was adopted, every member present voting therefore; and

ON MOTION by Trustee _____, seconded by Trustee _____, the following resolution was adopted:

Attachment: Intermunicipal Agreement with VOW for CEO's (RES-2023-633 : Intermunicipal Agreement with Vow for CEO's CRS ID# 4145)

RESOLVED, that the Administrator is hereby authorized to sign an Intermunicipal Agreement between the Village of Williamsville and the Town of Amherst for Code Enforcement services.

(See Following Pages)

Unanimously carried.

I do further certify that I compared the above with the original minutes of the regular meeting of the Board of Trustees of said Village held on the.....day of ..... 2023, and that the above is a true and correct transcript from said original minutes and the whole thereof, and that the resolution duly adopted by said Board of Trustees is on file in my office.

I do further certify that the following members of the Board of Trustees of the Village of Williamsville were present at such meeting, namely: _____, _____, _____, _____- Trustees and _____, Mayor.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the said Village of Williamsville, Erie County, New York, this..... day of ..... 2023.

_____
[NAME]
Administrator/Clerk-Treasurer
Village of Williamsville, New York

Attachment: Intermunicipal Agreement with VOW for CEO's (RES-2023-633 : Intermunicipal Agreement with Vow for CEO's CRS ID# 4145)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Building/Building Maintenance
Initiated by: **Daniel Rizzo**
Co-Sponsored by:

DOC ID: 27765 **RESOLUTION 2023-634** **ADOPTED**

Emergency Purchase of HVAC Parts for Williamsville Library CRS #4210

Upon successful completion of CRS routing, please authorize the Supervisor to approve emergency purchase of HVAC parts for Williamsville Library. Library was without air conditioning and needed to be fixed.

7/24/2023
Consent

FINANCIAL IMPACT:

A1622 4380

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Town of Amherst
Emergency Purchase Documentation Form

This form is to be completed for all emergency purchases made that contravene the Town's Purchasing Policy. You must contact the Supervisor (or Deputy Supervisor in the Supervisors absence) to obtain his/her approval prior to making the purchase. This form must be completed and submitted to the Town Board at the first work session following the Emergency purchase. A copy should also be submitted to the Town Attorney and Contract Compliance & Administration Department.

An exception to the competitive bidding requirements exists for emergency situations (GML §103[4]). There are three basic statutory criteria to be met in order to fall within this exception. These are that (1) the situation arises out of an accident or other unforeseen occurrence or condition; (2) the circumstances affect public buildings, public property, or life, health, safety or property of the political subdivision's residents; and (3) the situation requires immediate action which cannot await competitive bidding.

Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements is so detrimental to the public interest that it overcomes the strong public policy in favor of bidding. Further, because the emergency must arrive out of an accident or unforeseen occurrence, it is doubtful a local government may invoke the emergency exception in a situation which the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.

Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

1. Date of Emergency Purchase: 7/17/23
2. Date you received approval from the Supervisor: DBB Deputy 7/17/23 Supervisor's Initials: DBB
3. Date of Town Board work session where Board is notified: 7/24/23
4. Amount of Emergency Purchase. Please provide a detailed listing of items purchased and the cost of each (attach additional detail if necessary): Purchase of parts for HVAC at Library which is not working
5. Is there adequate funding in your current operating budget to cover this purchase? yes
   Identify budget Org/Object: _____
6. Please describe the circumstances that resulted in the need to make an emergency purchase without following the Town's Purchasing Policy: There has not been air conditioning due to break down
7. Please describe what steps were taken to ensure the lowest cost for the Emergency Purchase. If none, please explain why your department was prevented from doing so: this is the sole source due to make of HVAC
8. Department Head Signature: _____ Date: 7/17/23

CC: Town Board, Town Attorney, Contract Compliance & Administration

For Contract Compliance & Administration Use Only
Date of Town Board Resolution: Emergency Purchase Tracking/Res #:

Attachment: Emergency Purchase Form (RES-2023-634 : Emergency Purchase of HVAC Parts for Williamsville Library CRS #4210)

UPSTATE SYSTEMS
3277 BRIGHTON-HENRIETTA TL RD

ROCHESTER, NY 14623

QUOTES ARE VALID FOR 30 DAYS
APPLICABLE FREIGHT CHARGES MAY APPLY

Quote No. 336539
Date:
Page No. 1

Sold To UPSTATE SYSTEMS- BUFFALO
BUFFALO CASH SALES

BUFFALO, NY 14206

Ship To UPSTATE SYSTEMS- BUFFALO
BUFFALO CASH SALES

BUFFALO, NY 14206

ORDER TAKEN BY: ERIC OSBORNE

Cust 1111 Ship date 07/17/23 Ship via PICK UP Ord No. 33653
Salesman BUF PO No. TWN OF AMH Terms COD Ord date 07/17/2

Quantity	Unit	Item Number	Description	Price	Unit	Extensio
			M-D1CG180N24025A S-NEYM027199			
1	EACH	*EO	ERIC OSBORNE	.00	EACH	.0
1	EACH	026-25529-704	WHEEL, BLOWER 15X15 REV 1" BORE	333.29	EACH	333.2
1	EACH	001-07117-000	SHAFT, BLOWER 1" X 23.75"	99.03	EACH	99.0
2	EACH	029-20424-700	BEARING,PILLOW BLOCK 1"	142.14	EACH	284.2
1	EACH	028-04761-700	Sheave, Vari. 1VP56 1-1/8	143.70	EACH	143.7
1	EACH	028-12026-700	PULLEY, BK90 X 1	173.39	EACH	173.3
1	EACH	BX-70	COGGED V-BELT	17.79	EACH	17.7

Sale Amt	1,051.4
Freight	.0
Sales Tax	.0
Total	1,051.4

Attachment: Emergency Purchase Form (RES-2023-634 : Emergency Purchase of HVAC Parts for Williamsville Library CRS #4210)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 27766 **RESOLUTION 2023-635** **ADOPTED**

Budget Transfers and Amendments

For July 24, 2023 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 7/19/2023
Re: Various Department Budget Transfers / Amendments

I have received the following request(s) requiring budget transfers and / or amendments. Based on my review, I ask that the Town Board approve the following list;

BUDGET TRANSFERS - 2023

FROM:	***TO:***
A1410.4020 Town Clerk - Postage $5,500.00	A1620.1200 OT $3,500.00
A1410.4010 Town Clerk - Office Supplies $3,000.00	A1620.8030 FICA $267.75
A1410.4026 Town Clerk - Microfilm $2,000.00	A1620.4220 Buildings & grounds $6,732.25

To transfer funds from Town Clerk to Building Maintenance to cover constructions costs for work being done for Archives / Records Center at BNHV.

A7450.4220 Museum - Building & Grounds $4,000.00 A7450.2150 Buildings Improvements $4,000.00
To transfer funds back to buildings improvements and equipment for tree removal that came in under budget.

G9000.2600 Sewer Maint. - Other Equipment $2,286.03 G9000.9000 Interfund Transfers $2,286.03
To transfer funds into KP2218 Engineering Vehicles for Sewer Maintenance.

BUDGET AMENDMENTS - 2023

INCREASE:	***INCREASE:***
N2223.02785 CDBG & Vg. - PI $170.00	N2223.4000 Contractual $170.00

To recognize Community Development program income from 169 Hillcrest, Amherst.

N2250.02785 Tonawanda Rehab- PI $19,909.80	N2250.4000 Contractual $19,909.80
N2253.02785 Tonawanda Admin- PI $2,212.20	N2253.4000 10% Admin $2,212.20

To recognize Community Development program income from 226 Coventry, Kenmore.

N2244.02785 Cheektowaga Housing Rehab - PI $4,500.00	N2244.4000 Contractual $4,500.00
N2249.02785 Cheektowaga Home Admin - PI $500.00	N2249.4003 10% Admin $500.00

To recognize Community Development program income from 20 Crisfield, Cheektowaga.

KP2218.05031 Interfund Transfers - $2,286.03 KP2218.2250 Trucks, Tractors, Trailers $2,286.03
To setup budget for transfer from G9000 for Engineering Vehicles for Sewer Maintenance.

N2223.02401 CDBG & Vg. - Interest Income $495.78	N2223.4000 Contractual $495.78
N2240.02401 Amh HOME- Interest Income $7,830.76	N2240.4000 Contractual $7,830.76

To recognize Community Development interest income through June 2023.

A3122.02410 Bailey Ave- Rentals $12,900.00	A3122.4220 Buildings & Grounds 12,900.00
A3120.02680 Police- Insurance Reimb $7,895.69	A3120.4230 Passenger Vehicles $7,895.69

A3120.05001 Police- Refund of CY Exp $337.09 A3120.4430 Miscellaneous $337.09
A3120.02720 Police- Copies, Donations, Reimb $250.00 A3120.4430 Miscellaneous $250.00
To recognize revenue received by the police department in the 2nd quarter.

7/24/2023
Consent

FINANCIAL IMPACT:

See Descriptions.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 27735 **RESOLUTION 2023-636** **ADOPTED**

Award Bid #2023025 Sewer Jet Water Tank Coatings - CRS #4187

WHEREAS, the Contract Compliance and Administration Department received bids on June 22, 2023 for Sewer Jet Water Tank Coatings; and

WHEREAS, the bid process resulted in responses from two (2) vendors as per the attached bid tabulation form;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award this bid to Eastern Tank Services Division of Cyril and Sons Contractors, Inc.; and

BE IT FURTHER RESOLVED, The Town Board authorizes the Supervisor to sign the contract with Eastern Tank Services Division of Cyril and Sons Contractors, Inc.

7/24/2023
Consent

FINANCIAL IMPACT:

G9000-4300; Amount TBD

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Bid #2023025 Sewer Jet Water Tank Coatings					
Low Bidder				Eastern Tank Services	Sierra Contractors Corp.
			Vendor Name:		
Item #	QTY	U/M		Total Price	Total Price
			SEWER JET WATER TANK INTERIOR REPAIR & COATING		
1	1	EA	**2,000 Gallon Tank (Nominal)**	$5,349.00	$15,000.00
			Total lump sum cost to abrasive blast clean interior tank walls & baffles to a near white blast clean, vacuum tank and apply Carboline Plasite 9133 (or equivalent) as per the attached specifications.		
2	1	EA	**2,300 Gallon Tank (Nominal)**	$5,601.00	$15,000.00
			Total lump sum cost to abrasive blast clean interior tank walls & baffles to a near white blast clean, vacuum tank and apply Carboline Plasite 9133 (or equivalent) as per the attached specifications.		
			SEWER JET WATER TANK INTERIOR EPOXY CAULK COATING		
3	1	EA	**2,000 Gallon Tank**	$1,335.00	$20,000.00
			Total lump sum cost to apply Plasite/Carboline Carboguard 501 epoxy caulking material (or equivalent) in between coats of Plasite 9133 (or equivalent).		
4	1	EA	**2,300 Gallon Tank**	$1,539.00	$25,000.00
			Total lump sum cost to apply Plasite/Carboline Carboguard 501 epoxy caulking material (or equivalent) in between coats of Plasite 9133 (or equivalent).	$13,824.00	$75,000.00
			If an alternative product is being proposed, specifications for that product must be included with your bid.		
			Additional Charges will not be accepted.		

Attachment: Bid Tab 2023025 Sewer Jet Water Tank Coatings (RES-2023-636 : Award Bid #2023025 Sewer Jet Water Tank Coatings - CRS

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 27769 **RESOLUTION 2023-637** **ADOPTED**

Approve Piggyback Contract for Office Supplies - CRS #4212

WHEREAS, the Contract Compliance and Administration Department is requesting approval to piggyback on OMNIA Contract #R190301 EPIC Business Essentials, with Eaton Office Supply as the local dealer, for office supply products; and

WHEREAS, the contract term will be from date of Town Board approval through May 31, 2024;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Supervisor to sign the contract with Eaton Office Supply; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System, due to the fact that the Town is currently without an office supply contract.

7/24/2023
Consent

FINANCIAL IMPACT:

Town Wide; Various Accouonts; Amount TBD

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

TOWN OF AMHERST

Erie County, New York

SUPERVISOR
Brian J. Kulpa
716-631-7032

DEPUTY SUPERVISOR/COUNCILMEMBER
Deborah Bruch Bucki, RN, PhD

COUNCILMEMBERS
Shawn Lavin
Michael Szukala
Jacqualine Berger

AGREEMENT

Let this document stand as an Agreement between Eaton Office Supply and the Town of Amherst permitting the Town to participate in the OMNIA Partners Contract number R190301 – Office Supplies, Related Products and Services, for the period from July 24th, 2023 – May 31, 2024.

Agreed to and Accepted by:

Eaton Office Supply

By: _____
Signature

_____
Printed name

_____
Title

Date: _____

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: Eaton Piggyback Agreement (RES-2023-637 : Approve Piggyback Contract for Office Supplies - CRS #4212)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 27781 **RESOLUTION 2023-638** **ADOPTED**

Award of Special Inspections & Testing – Whitestone Associates Engineering & Geology NY, PLLC Rebid of Mathewson McCarthy Little League Fieldhouse Improvments CRS No. 4189

Subsequent to receiving four (4) proposals for the above referenced professional services and upon review, we recommend that Whitestone Associates Engineering & Geology NY, PLLC, 500 Canal View Boulevard Rochester, NY 14623, be awarded the attached unit prices as per the proposal summary and cost estimate in an amount not to exceed $7,670.50. New York State Building Code requires that an approved inspection and testing program be carried out throughout construction and documented by qualified "special inspectors".

Funds are available for this contract from KP2207.4971. Thank you for considering this request.

This request is pending successful completion of the contract review process.

Thank you.

7/24/2023
Consent

FINANCIAL IMPACT:

KP2207-4971; NTE $7,670.50

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

WHITESTONE

500 CANAL VIEW BOULEVARD
ROCHESTER, NY 14623
585.252.6879
whitestoneassoc.com

REVISED PROPOSAL

July 3, 2023

via email

TOWN OF AMHERST
Engineering Department
1100 North Forest Road
Williamsville, New York 14221

Attention: Michael Hitzel, AIA, LEED AP
Architect

Regarding: CONSTRUCTION PHASE TESTING & INSPECTION SERVICES
PROPOSED MATHEWSON-McCARTHY LITTLE LEAGUE FIELDHOUSE
1995 WEHRLE DRIVE
WILLIAMSVILLE, AMHERST, ERIE COUNTY, NEW YORK
WHITESTONE PROPOSAL NO.: PRY29377G.R23

Dear Mr. Hitzel:

Whitestone Associates Engineering & Geology NY, PLLC (Whitestone) is pleased to submit this revised proposal to provide construction phase testing and inspection (CPT&I) services in support of the proposed project referenced above. This revised proposal is based on the June 26, 2023 request from the Town of Amherst, experience with similar projects, and available aerial photography and replaces Whitestone's June 29, 2023 proposal to include updated quantities provided by the client.

PROJECT DESCRIPTION

The site located at 1995 Wehrle Drive in the Village of Williamsville, Town of Amherst, Erie County, New York will be developed with a single-story, wood-framed fieldhouse supported on conventional shallow foundations with a concrete floor slab-on-grade.

SCOPE OF SERVICES

Whitestone's proposed CPT&I services may include the following, to the extent requested and scheduled by the client or the client's authorized agent:

- monitoring proofroll inspections of proposed subgrade surfaces, determining depths of overexcavation, as necessary, and reviewing subgrade conditions prior to structural fill and/or backfill placement;
- monitoring foundation subgrade excavations conducting and footing bottom testing for compliance with regard to soil bearing capacity requirements, as determined by comparison to the geotechnical report and/or project specifications;

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

- conducting laboratory analyses of soils including moisture density relationships, and engineering soil classifications, as required to classify and monitor fill and subgrade material;
- inspecting structural backfill placement for conformance to project specifications with regard to material, lift thickness, and compaction, including in-place density testing during fill placement;
- inspecting concrete reinforcing steel for size, type, placement, support, splice and cleanliness;
- testing and inspecting concrete including slump, temperature, air content, batch-to-placement time monitoring, concrete cylinder fabrication, and compressive strength testing;
- inspecting wood framing for general conformance to project specifications with regard to size, type, placement, bolt and nail patterns, spacing, and plumbness; and
- providing construction phase engineering services including coordination and management of reviews, attending project meetings, preparing and reviewing reports, and providing consultation and project management as required.

PLANNING ASSUMPTIONS

Whitestone proposes to conduct the above-referenced services as requested by the client and as scheduled by the contractor, engineer or other client authorized representatives. Whitestone requires a minimum of one business day advance notice for all field services.

Services will be provided with respect to project plans and specifications and as authorized by the client. Whitestone will be responsible only for conducting tests and inspections and reporting results as requested by the client or client's authorized agent(s). The client is responsible for ensuring that local requirements are satisfied. Whitestone will not be authorized to stop construction related work, issue change orders or approve such work.

The contractor will be responsible for all workmanship and for conducting work in accordance with the plans and specifications. Whitestone's testing and inspection activities shall in no way relieve the contractor of this duty.

The results of Whitestone's inspections will be reported in field and laboratory reports. Whitestone's professional opinion will be offered on a consulting basis for approval by the site architect or engineer as required by the owner.

COST PROPOSAL

Whitestone will provide the CPT&I services outlined above on a unit rate basis with the unit price schedules below. Whitestone recommends an allotment of **$7,670.50**. Whitestone assumes services will be provided part-time Monday through Friday with a work schedule of up to eight hours per day, however, based on the actual construction schedule, additional technicians may be needed on any given day. *The actual total cost of inspections will depend on the testing scheduled, retesting and consultation/project management required, which will depend primarily on the contractor's schedule and performance.*

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

CPT&I SERVICES (Unit Rate)	½ - Day[1]	Full Day[2]	Overtime[3]
Materials Testing			
Soil Compaction Testing:	$ 180.00	$ 360.00	$ 65.00/hr
Concrete Technician:	$ 180.00	$ 360.00	$ 75.00/hr
Senior Inspector/Geologist/Engineer:	$ 300.00	$ 600.00	$ 85.00/hr
Wood Framing:	$ 300.00	$ 600.00	$ 85.00/hr

Project Management, Engineering & Reporting	Hourly Rate
Staff Engineer:	$ 85.00/hr

Related Expenses	Unit Rate
Laboratory Proctor Test:	$ 145.00 each
Concrete Compressive Strength Test:	$ 14.00 each
Sieve Analysis (Dry):	$ 65.00 each
Moisture Content:	$ 20.00 each
Specific Gravity:	$ 25.00 each
Mileage:	IRS rate/mile[4]
Equipment Fee:	$ 35.00/day

1 Minimum half-day rates are considered up to four hours on site.
2 Full day rates are considered from four hours to eight hours on site during normal hours of 5:00 AM to 6:00 PM.
3 Overtime rates apply for hours billed in excess of eight hours per day or on weekends and holidays. Nightwork conducted between 6:00 PM and 5:00 AM will be billed at overtime rates.
4 Mileage – IRS rate/mile plus tolls and hourly travel time.

CPT&I SERVICES (Estimated budget based on RFP provided quantities)

Description	Unit Rate	Quantity	Estimated Total
Concrete Testing – Technician:	$360.00/day	four days	$1,440.00
Subgrade and Subbase Testing:	$360.00/day	five days	$1,800.00
Geotechnical Engineer PE for foundation subgrade approval or technician:	$600.00/day	two days	$1,200.00
Rebar Inspection:	$360.00/day	two days	$ 720.00
Wood Framing Inspection:	$600.00/day	two days	$1,200.00
Fabricated Trusses Inspection:	$600.00/day	two days	$1,200.00
Mileage (assume 10 miles/trip)	$0.65/mile	170 miles	$110.50
			Total $7,670.50

Additional consultation or engineering services including attending meetings, participating in conference calls, preparing supplemental correspondence and/or budgetary cost projections or other activities not specified will be billed in addition to the pricing above.

This proposal is subject to the *Terms and Conditions* outlined above, as attached hereto, and costs are exclusive of reimbursable expenses not specified above. Any additional services or out-of-scope work items will be confirmed in writing and invoiced in accordance with Whitestone's *Professional Services*

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

Rate Schedule (copy attached) or a supplemental quotation. Please acknowledge your acceptance of this proposal by signing where indicated below.

Whitestone appreciates the opportunity to present a revised proposal for this project and looks forward to being of service to the Town of Amherst. Please contact us with any questions regarding this proposal.

Sincerely,

WHITESTONE

Charles B. Guzzetta, P.G.
Regional Manager, Upstate New York

Ryan R. Roy, P.E.
Vice President

CBG/rs P:\Proposal Folders\2023\PRY29377G.R23\Proposals and Contracts\AmherstNY-CPTI (PRY29377G.R23) Rev.1.doc
Enclosures

ACCEPTED:

TOWN OF AMHERST

By: _____
(Signature)

_____
(Print Name)

Title: _____

Date: _____

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

WHITESTONE

July 3, 2023 (the “Effective Date”)

STANDARD TERMS AND CONDITIONS (the “Terms and Conditions”)

These Terms and Conditions form a part of the proposal of **WHITESTONE ASSOCIATES ENGINEERING & GEOLOGY NY, PLLC** and/or **WHITESTONE ASSOCIATES, INC.** (collectively, the "Firm"), and **TOWN OF AMHERST** (the "Client"):

I. INTERPRETATION AND CONSTRUCTION.

A. The Firm is involved in the business of providing professional engineering and professional geologist services, which may include environmental, geotechnical and construction support services. Client seeks to engage the Firm, and the Firm accepts such engagement, to provide various types of services on Client’s projects (each a “Project”) pursuant to the terms hereof and each separate proposal (each a “Proposal”) to be executed by the parties.

B. The parties desire for these Terms and Conditions to govern the relationship between the parties. Unless otherwise specifically set forth in a Proposal, in the event of a conflict or inconsistency between the Terms and Conditions and a Proposal, the Terms and Conditions shall take precedence, govern and control. The parties hereby acknowledge that these Terms and Conditions shall be incorporated by reference into each Proposal, as if fully set forth at length therein. The Terms and Conditions, collectively with the Proposal shall be referred to herein as the “Agreement”.

II. THE SERVICES.

A. Client hereby retains the Firm to provide the services as set forth in one or more Proposals (hereinafter the “Services”). The “Services” shall also include any additional or different services requested by the Client and the provision of which is agreed-upon by the Firm.

B. In the event that the Proposal includes the provision of Services to be provided by one or more Licensed Site Remediation Professionals (“LSRP”), the LSRP Rider shall be incorporated herein and made a part hereof.

C. In the event that the Proposal includes the provision of underground storage tank services, the Underground Storage Tank Services Rider shall be incorporated herein and made a part hereof.

III. PROFESSIONAL RESPONSIBILITY. The Firm represents that the Services shall be performed within the limits described in accordance with the “Scope of Services” contained in the Proposal, and in a manner consistent with that level of care and skill ordinarily exercised by comparable professional firms under similar circumstances at the time the Services are performed. No other representations to the Client, expressed or implied, and no warranty or guarantee is included or intended hereunder, or in any report, opinion, document or otherwise. The Firm does not guarantee the ultimate approval or success of the Client's Project. The Firm is not liable for consequential punitive, compensatory, incidental, liquidated or delay damages caused by the ultimate approval or success of the Client's Project or time lines of the completion of the Services. The Firm's Services cannot be construed to be, and are not, a guarantee or assurance Client will have no or any reduced level of environmental liabilities or that undetected environmental problems do not exist or will not arise in the future.

IV. CLIENT RESPONSIBILITY. Client will provide to the Firm all available information material, data, and assistance for performance of the Services in compliance with all applicable laws, including and without limitation, previous reports and any other data affecting the site upon which the Services are to be performed (the “Site"). In the event that Client does not own the Site, Client represents and warrants that Client, Client’s agents, employees, staff, consultants, contractors and subcontractors, have been granted a right of entry to the Site as is necessary for the Firm’s performance of the Services. Client will ensure that access to the Site is available to the Firm at all reasonable times, and Client will make available to the Firm’s representatives those of Client’s employees, if any, who are knowledgeable concerning the Site. Client will designate in writing the person to act as Client’s representative with respect to the Services to be performed, and such person will have complete authority to transmit instructions, receive information, and interpret and define Client’s policies and decisions with respect to the Services. The Firm shall be entitled to rely upon all information obtained from Client. The Firm does not assume control of or responsibility for the Site or the person in charge of the Site, or undertake any responsibility other than that required by law, for reporting to any federal, state, or local agencies any conditions at the Site that may present an actual or potential danger to public health, safety, or the environment.

V. PAYMENT TERMS. Invoices for Professional Services and expenses incurred shall be generated on a monthly basis, and are due and payable within 30 days of receipt. If an invoice becomes delinquent, the Firm reserves the right to cease all services and pursue all remedies upon three (3) days prior written notice to Client. Client shall release, indemnify and hold the Firm harmless from and against any and all damages of any kind whatsoever resulting from a cessation of the Services for Client’s failure to make payment in accordance with this Agreement. In the event the Firm seeks legal action against Client in connection with Client’s payment obligations under this Agreement, the Client shall reimburse the Firm for all costs of collection, including but not limited to, all costs an expenses (including reasonable attorneys’ fees) and any other related expenses in connection with such action. Further, the Client agrees to pay the Firm the full portion of any and all unpaid amounts ~~plus an interest charge equal to 1.5% per month of all monies thirty (30) days past due~~, up to and including the time of payment. In the event a retainer is requested by the Firm, those monies will be applied to the final invoice generated by the Firm. Any excess amount will be refunded to the Client within 14 days after the Firm’s receipt of payment.

VI. NOTIFICATION OF HAZARDS. Client shall inform the Firm of any known potentially hazardous substance, environmental contamination, or condition that presents or could present a potential danger to human health or the environment, which exists in, at, or near the Site (collectively, “Hazards”). Client releases and shall indemnify, defend and hold harmless the Firm and each Firm Covered Person from and against any and all Losses (as defined in Section XII hereof), including Losses for personal injury, disease, initial and ongoing medical expenses, including, but not limited to, continued health monitoring, death, property damage and economic-based claims that arise out of (a) Client’s failure to advise the Firm of Known Hazards, or (b) unanticipated occurrence of Hazards discovered during the provision of the Services.

VII. JOB SITE HEALTH AND SAFETY. The Firm’s sole responsibility for maintaining compliance with the Occupational Safety and Health Act of 1970, as amended, and the rules, standards and regulations promulgated thereunder (collectively, “OSHA”) is to ensure compliance with such OSHA rules and regulations by Firm employees and Subcontractors. The Firm shall not be responsible for OSHA compliance as it applies to any other party not under Firm’s control. Without limiting the generality of the foregoing, the Firm shall have no responsibility for OSHA compliance by or relating to Client or any party providing services on the Site, or any employee, agent, representative, officer, director, owner, or independent contractor of any of the foregoing parties.

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

WHITESTONE

VIII. BURIED UTILITIES; SITE DISTURBANCE. Client shall notify the Firm of the location of all known private subsurface utility lines, man-made objects and underground structures located beneath the Site. Prior to conducting any subsurface work, the Firm will call the local utility "One Call" services and engage an underground marking and utility locator service (if authorized by Client) in an attempt to locate subsurface utility lines and other man-made objects that may exist beneath the Site. Client recognizes that the Firm's research may not identify all subsurface utility lines, man-made objects and underground structures. The Firm will take commercially reasonable precautions to avoid damage or injury to any subsurface utilities or structures known to the Firm. Client further recognizes that subsurface conditions may vary from those encountered at the location of the Site where, and at the time when, borings, sampling, or testing are performed by the Firm in connection with its Site research, and that the data provided by the Firm are based solely on the information available to the Firm. Client acknowledges that the equipment used to perform the Services may affect, alter, or damage the terrain, vegetation, buildings, structures, and equipment in, at, or on the Site.

Firm shall backfill each test location once with soil excavated from the Site and shall patch the upper surface of paved areas above the location from which the test boring was obtained with cold-patch asphalt and/or grout. Such patches and the location and surrounding proximate surface, subsurface, horizontal and vertical area will require ongoing and continuous supervision, inspection, maintenance and repair. Firm assumes no responsibility for damage resulting from future settlement at any or all of the test areas and/or patches and the surrounding proximate surface, subsurface, horizontal and vertical area thereof.

IX. PUBLICATIONS. Client agrees that the Firm may use and publish a general description of the Services performed by the Firm in advertising and qualifications, which advertising may include, without limitation, brochures and other promotional material (including print and electronic media). Client's covenants contained in this Section IX will survive the termination of this Agreement.

X. OWNERSHIP OF DOCUMENTS. All reports, field data, notes, calculations, estimates, drawing documents and other items prepared by the Firm are instruments of service and shall remain the joint property of the Firm and the Client. Client agrees that all reports and other work furnished to the Client or its agents, which are not paid for will be returned upon demand, and will not be used for any other purposes whatsoever. The Firm will retain all pertinent records related to the Services performed during which period, the records will be made available to the Client at reasonable times, providing no outstanding account balances exist. Items prepared by the Firm are not intended for use other than for the above Project. Use in any other Project or reuse by the Client for other Projects will be at Client's sole risk. Any electronic media and documents on computer disk prepared by the Firm are subject to use only by express written permission by the Firm, and are not considered the Client's property. In the event the Client utilizes this information without written permission, or utilizes any of the Firm's work product in any fashion specifically not authorized by the Firm, the Client does so at their own risk and shall defend, indemnify and hold the Firm harmless for any damages or claims that may arise as a result of such utilization.

XI. DISCLOSURE TO THIRD PARTIES. Client acknowledges that the Services may be subject to State, Regional or Federal reporting requirements and the reporting and notification requirements thereof. The Firm's technical and pricing information are confidential and proprietary information of the Firm and Client may not disclose such information without the Firm's express prior written consent.

XII. INDEMNIFICATION. Client and Firm release and agree to indemnify and hold harmless each other and each of their officers, directors, agents, employees, consultants and each of their respective successors and assigns (collectively, the "Covered Persons") from and against any and all claims, liabilities, losses, proceedings, suits, actions, damages or expenses of any kind (under any theory under contract, tort, statue alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentations, or any other theory), including consequential, incidental, special, exemplary and punitive damages, and also including court costs and reasonable attorneys' fees (collectively "Losses") which arise out of any (i) negligent or willful acts or omissions by the Client's or Firm's owners, agents, directors, officers and employees, (ii) breach of this Agreement by the Client's or Firm's owners, agents, directors, officers and employees, (iii) personal injury or property injury claims relating to the Services, the Site or any Hazards, (iv) violations by the Client's or Firm's owners, agents, directors, officers and employees, of any federal, state or local law, regulation or rule, whether or not such violations arise out of, or occur in connection with, the Services.

XIII. TERM AND TERMINATION.

A. Term. This Agreement shall be in effect as of the Effective Date and shall remain in effect until the anniversary thereof (the "Term") or until such later date as may be set forth in a Proposal (it being understood that this Agreement will not terminate in the event the term set forth in a Proposal is longer than the term set forth herein). ~~Thereafter, this Agreement will automatically renew for additional periods of one year each (each an "Additional Term"), unless either party notifies the other party in writing at least sixty (60) days prior to the end of the Term or applicable Additional Term of its intent not to renew.~~

B. Termination.

1. This Agreement may be terminated by either party upon fourteen (14) days' written notice, should any terms not be performed in accordance with this Proposal. In the event of termination, the Firm shall be paid in full for (i) the Services rendered through the actual date of termination (ii) for any unpaid expenses, and (iii) reasonable expenses incurred by the Firm from such termination, including, but not limited to, reasonable winding down expenses.

2. Termination by Client shall be by written notice to Thomas K. Uzzo, Whitestone Associates, Inc., 30 Independence Boulevard, Suite 250, Warren, New Jersey 07059, tuzzo@whitestoneassoc.com. Termination by the Firm shall be made by written notice to the addressee of this Agreement. Such notice of termination will become effective when received by the non-terminating party unless a later date is specified therein.

XIV. LIMITATION OF LIABILITY; DISCLAIMER OF WARRANTIES.

A. The Firm shall only be responsible for delivering the Services to Client. The Firm, acting in good faith, shall not be liable for any action, omission, or loss in connection with the Agreement.

B. DISCLAIMER OF WARRANTIES. EXCEPT AS SET FORTH IN SECTION III ("PROFESSIONAL RESPONSIBILITY") OF THESE TERMS AND CONDITIONS, THE FIRM MAKES NO OTHER WARRANTIES, GUARANTEES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES OR OTHERWISE AND THE FIRM HEREBY DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

C. LIMITATION OF LIABILITY. THE FIRM'S ENTIRE LIABILITY TO CLIENT FOR DAMAGES CONCERNING PERFORMANCE OR NONPERFORMANCE BY THE FIRM, OR IN ANY WAY RELATED TO A PROJECT, AND REGARDLESS OF WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), SHALL NOT EXCEED THE TOTAL FEES ACTUALLY PAID TO THE FIRM BY CLIENT UNDER THE TERMS OF THE PROPOSAL THAT COVERS THE PROJECT THAT SERVES AS THE BASIS FOR THE CLAIM. IN NO EVENT SHALL ANY FIRM COVERED PERSON BE LIABLE FOR ANY

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

WHITESTONE

INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, COSTS, EXPENSES, OR LOSSES OF ANY KIND WHATSOEVER. IN ADDITION, IN NO EVENT SHALL ANY FIRM COVERED PERSON BE LIABLE FOR ANY ACTIONS, DAMAGES, CLAIMS, LIABILITIES, COSTS, EXPENSES, OR LOSSES OF ANY KIND WHATSOEVER IN ANY WAY ARISING OUT OF OR RELATING TO ANY OR ALL ACTS OR OMISSIONS OF CLIENT AND/OR ANY THIRD PARTY, ANY DAMAGE CAUSED BY CLIENT AND/OR ANY THIRD PARTY, OR ANY INJURY TO CLIENT, AND/OR ANY THIRD PARTY, IN CONNECTION WITH OR RELATED TO THE SERVICES, OR THE FIRM'S PERFORMANCE HEREUNDER. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE, OR LOSS, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE).

XV. TESTIMONY. Client shall compensate the Firm at the Firm's applicable hourly rate in the event that the Firm or any of its personnel agrees or is compelled to testify and/or provide documents in any lawsuit or legal action related to this Agreement, the Services or the Site. In addition, Client shall reimburse the Firm for all reasonable actual out-of-pocket expenses incurred by the Firm in connection with responses to subpoenas and other similar legal orders issued to the Firm in respect to the Services performed under this Agreement. This provision shall survive the termination or expiration of this Agreement.

XVI. NON-SOLICITATION OF FIRM PERSONNEL. Firm and Client will not solicit the employees or independent contractors of the other to become employees or consultants during the Term and for a one (1) year period following the termination or expiration thereof.

XVII. REVOCATION OF CERTIFICATION OR STATEMENTS. The Firm shall have the right to revoke any certification, statements, or professionally sealed documents or plans in the event the Firm is made aware of unauthorized, prohibited use by the Client. The Client assumes the risk of any damages and any and all claims that may occur as a result of the unauthorized use of the Firm's documents.

XVIII. LIMITATION PERIOD. No lawsuit shall be brought by Client against the Firm for damages for any negligent professional acts, errors, or omissions, or breach of contract unless commenced within twenty-four (24) months from the last date of services provided under this Agreement.

XIX. INTEGRATION. This Agreement constitutes the entire understanding and agreement between Client and the Firm and shall not be altered or modified except by an agreement, in writing, signed by both Client and the Firm. This Agreement shall supersede all prior negotiations, understandings, and agreements, whether oral or written, and such prior agreements shall thereupon be null and void and without legal effect.

XX. ASSIGNMENT. This Agreement shall be binding upon the parties, their successors, representatives, and assigns. Client shall not assign or transfer this Agreement or any interest herein without the prior written consent of the Firm. The Firm may not assign or transfer this Agreement to any party without the prior written consent of Client, which consent shall not be unreasonably withheld. Further Firm may, without the consent of Client, subcontract any portion of the Services hereunder.

XXI. SEVERABILITY. The provisions of this Agreement shall be severable, and if any provision hereof shall be determined by any court or competent jurisdiction to be invalid, such determination shall not affect or invalidate the remainder hereof.

XXII. ENTIRE AGREEMENT. Each party hereto acknowledges its full understanding of this Agreement, that there are no verbal promises, understandings or agreements in connection herewith. This Agreement may be modified by the written consent of the parties hereto.

XXIII. GOVERNING LAW; VENUE; ALTERNATIVE DISPUTE RESOLUTION. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any dispute, controversy or claim arising out of or in connection with this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, binding arbitration and shall be privately administered by a single arbitrator who shall administer the arbitration pursuant to the commercial arbitration rules then in effect of the American Arbitration Association that are applicable to a privately administered arbitration.

XXIV. WASTE MATERIAL. Where waste materials are to be handled, transported, treated, and/or disposed of by the Firm, Client agrees to accurately and completely describe said waste in writing to the Firm and warrants to the Firm that the waste material conforms to the specification and description set forth on the descriptions thereof. Legal responsibility and liability for waste material not reasonably conforming to the specifications and descriptions set forth in the written description shall at all times remain with the waste generator. The Client shall review documentation for accuracy upon receipt and notify the Firm immediately of any inaccuracies.

XXV. SAMPLE RETENTION/DISPOSAL. All samples of uncontaminated soil, rock, and water may be discarded thirty (30) days after submission of the Firm's final report unless Client advises the Firm to deliver to the samples to Client at Client's sole expense, or to store them for an agreed upon charge. In the event that samples and/or materials contain or are suspected to contain substances or constituents hazardous or detrimental to health, safety, or the environment, as defined by federal, state, or local statutes, regulations, or ordinances the Firm will, after completion of testing and at Client's expense, return such samples and materials to Client, or (using a manifest signed by Client as generator and transporter) transport such samples and materials to a location selected by Client for final disposal. Client agrees to pay all costs associated with the storage, transport, and disposal of samples and materials. Client recognizes and agrees that the Firm is acting as a bailee and at no time assumes title to said waste.

XXVI. DURATION OF FEE SCHEDULE. The fee schedule included in a Proposal shall remain in full force and effect for a period of ninety (90) days from the date of the proposal. If the Proposal is accepted and executed within such ninety (90) day period, then the fee schedule included in that Proposal shall remain in full force and effect for a period of one year from the date of that Proposal. If the Proposal is not accepted and executed within such ninety (90) day period, the Firm shall have the right to revise the fee scheduled in its discretion, which may include, but not be limited to, revising the fee schedule included in that Proposal, increase its fees for Services, and adjusting the time for and scheduling of performance of services.

XXVII. COMPLIANCE WITH LAW. In the performance of each party's obligations under this Agreement, each of the Firm and Client agree to comply with all applicable federal, state, and local laws, rules, regulations, and orders of any duly constituted authority.

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

WHITESTONE

Attachment: Whitestone Proposal (RES-2023-638 : Award of Special Inspections & Testing - Whitestone Associates)

PROFESSIONAL SERVICES RATE SCHEDULE - 2023

Executive (President or Vice President)	$ 295.00/hour
Senior Associate	$ 275.00/hour
Associate	$ 250.00/hour
Expert Witness Testimony	$ 350.00/hour
Senior Professional Engineering Manager	$ 225.00/hour
LSRP/LSP/LEP	$ 215.00/hour
Project Manager	$ 195.00/hour
Professional Engineer	$ 195.00/hour
PCA Manager	$ 195.00/hour
Senior Professional Geologist	$ 195.00/hour
Associate Project Manager	$ 175.00/hour
Professional Geologist	$ 175.00/hour
Environmental Engineer	$ 165.00/hour
Geotechnical Engineer	$ 165.00/hour
Environmental Specialist/Scientist	$ 150.00/hour
Geologist	$ 130.00/hour
Project Engineer	$ 130.00/hour
Asbestos or Lead Paint Inspector	$ 130.00/hour
Wetlands Scientist	$ 125.00/hour
ICC/DCA Inspector	$ 115.00/hour
Environmental Technician	$ 95.00/hour
Staff Engineer/Inspector	$ 95.00/hour
Technical Assistant	$ 90.00/hour
CADD Operator/Draftsman	$ 90.00/hour
Project Coordinator	$ 85.00/hour
Administrative Assistant	$ 65.00/hour
Clerical Assistant	$ 55.00/hour
Travel/Mileage	$ 0.655/mile + tolls

Notes:

1. Mileage reimbursement subject to change based upon IRS standard mileage reimbursement rate.
2. Additional project-specific equipment, materials, and/or laboratory analyses or subcontracted services will be quoted on a case-by-case basis.
3. All rates are billed portal-to-portal.
4. Projects located greater than 100 miles from a Whitestone office may be subject to per diem expenses.
5. Construction phase testing and inspection services are subject to a four-hour minimum charge per day.

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 27782 **RESOLUTION 2023-639** **ADOPTED**

Canalway Trail & Hopkins Road Trail Safety Enhancements - Change Order No. 1 McLaughlin Construction Corp CRS No. 4205

We are requesting the Town Board to approve the above referenced Change Order No. 1, which calls for a $12,937.87 increase in the contract amount. This Change Order is necessary to properly dispose material at a Part 360 recycling facility as required by a Canal Corporation permit. Additionally, the change order includes a tree removal and fence location intended to improve pathway user safety along the Canalway Trail.

May we please have approval for Change Order No. 1 for an increase in the contract price? This change order increase of $12,937.87 is available from account KP2235-4972. This request is pending successful completion of the contract routing system.

7/24/2023
Consent

FINANCIAL IMPACT:

$12,937.87; KP2235-4972

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

			AMOUNT
CHANGE ORDER NO:	1	INCREASE/(DECREASE), THIS CHANGE ORDER:	$ 12,937.87
		INCREASE/(DECREASE), PREVIOUS CHANGE ORDERS:	$ 0.00
		INCREASE/(DECREASE), ALL CHANGE ORDERS:	$ 12,937.87

TOWN JOB NO: 2015.033A

CONTRACT AWARD AMOUNT: $ 297,800.00
AMENDED CONTRACT TOTAL: $ 310,737.87

Job Designation: Canalway Trail & Hopkins Road Trail Safety Enhancements

Contractor: McLaughlin Construction Corp.

DESCRIPTION OF WORK:

1. Dispose of materials along Tonawanda Creek Road in a Part 360 disposal facility.
2. Tree removal and fence alteration along Tonawanda Creek Road

REASONS FOR THE WORK:

1. Requirement of a Canal Corporation Permit that all surplus material generated must be removed by the Contractor and properly disposed of off-site at a 6 NYCRR Part 360 (Part 360) registered facility or permitted Construction and Demolition (C&D) recycling facility. Requirement was unknown at time of bidding.
2. Pathway user safety as the tree and fence are narrowing the pathway.

COST OF THE WORK:

	Unit	Unit Cost	Cost
Part 360 Disposal	**250 CY**	**$ 37.75/CY**	**$ 9,437.87**
Tree & Fence Work	**1 LS**	**$ 3,500**	**$ 3,500.00**
		TOTAL, CHANGE ORDER NO. 1:	**$ 12,937.87**

ACCEPTED BY CONTRACTOR, McLaughlin Construction Corp. DBA Edbauer Construction, 2790 Clinton Street, West Seneca, NY, 14224

Signature DATE: 7/13/23

Stephanie Torgalski, Contract Administrator
Edbauer Construction

APPROVED BY TOWN OF AMHERST:

Signature DATE:

Brian Kulpa
Town Supervisor

Attachment: Canalway Change Order (RES-2023-639 : Canalway Trail & Hopkins Road Trail Safety Enhancements - Change Order No. 1)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 27783 **RESOLUTION 2023-640** **ADOPTED**

Emergency Purchase Authorization for Streetlighting Utility Mark-Out Services USIC Locating Services, LLC CRS No. 4214

Since the Town's acquisition of the street lighting system, it is now necessary for the Town to respond to UDIG one call ticket requests to locate and mark the underground wiring associated with the newly acquired street lighting asset. The Engineering Department obtained the Deputy Supervisor's authorization of an emergency contract on July 18, 2023, to enter into an agreement with a 3rd party utility locating company to perform services related to underground mark-out of the Town's street lighting wiring.

We are in receipt of a proposal from USIC Locating Services, LLC to begin mark-out as soon as possible. The Town is responsible for damages of unmarked street light wiring once a UDIG ticket is requested. Failure to mark out underground electric may also lead to live wiring being accidently encountered or severed during digs near or at the Town's underground street lighting wiring system. As such, an emergency purchase is necessary to begin mark-outs according to the following rate pricing:

$ 17.00	Per Ticket Received from the One Call
$ 40.50	Per Normal Business Hour Emergency Call Out Ticket
$ 58.00	Per After Hour Emergency Call Out Ticket
$ 17.00	Project Price Per Quarter Hour for Tickets that Exceed 30 Minutes
$ 348.00	Damage Investigation Fee

This contract will be effective from July 31, 2023 through July 30, 2024.

This request is pending successful completion of the contract review process specific to emergency purchases. Funding is available from account A5182-4070. Thank you for considering this request.

7/24/2023
Consent

FINANCIAL IMPACT:

A5182-4070; TBD

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Town of Amherst
Emergency Purchase Documentation Form

This form is to be completed for all emergency purchases made that contravene the Town's Purchasing Policy. You must contact the Supervisor (or Deputy Supervisor in the Supervisors absence) to obtain his/her approval prior to making the purchase. This form must be completed and submitted to the Town Board at the first work session following the Emergency purchase. A copy should also be submitted to the Town Attorney and Contract Compliance & Administration Department.

An exception to the competitive bidding requirements exists for emergency situations (GML §103[4]). There are three basic statutory criteria to be met in order to fall within this exception. These are that (1) the situation arises out of an accident or other unforeseen occurrence or condition; (2) the circumstances affect public buildings, public property, or life, health, safety or property of the political subdivision's residents; and (3) the situation requires immediate action which cannot await competitive bidding.

Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements is so detrimental to the public interest that it overcomes the strong public policy in favor of bidding. Further, because the emergency must arrive out of an accident or unforeseen occurrence, it is doubtful a local government may invoke the emergency exception in a situation which the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.

Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

1. Date of Emergency Purchase: 7/18/23

2. Date you received approval from the Supervisor: _____ Supervisor's Initials: _____

3. Date of Town Board work session where Board is notified: 7/24/23

4. Amount of Emergency Purchase. Please provide a detailed listing of items purchased and the cost of each (attach additional detail if necessary): See Attached

5. Is there adequate funding in your current operating budget to cover this purchase? Yes
   Identify budget Org/Object: A 5182-4070

6. Please describe the circumstances that resulted in the need to make an emergency purchase without following the Town's Purchasing Policy: Immediate mark-out of underground wires (live) at dig sites townwide, in response to UDIG ONE CALL utility requests.

7. Please describe what steps were taken to ensure the lowest cost for the Emergency Purchase. If none, please explain why your department was prevented from doing so: 2 quotes obtained from 3rd party mark-out companies.

8. Department Head Signature: _____ Date: 7/18/23

CC: Town Board, Town Attorney, Contract Compliance & Administration

For Contract Compliance & Administration Use Only	
Date of Town Board Resolution:	Emergency Purchase Tracking/Res #:

Rev. 1/3/2023

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

Town of Amherst

Request For Proposal

"Utility Locating & Marking Services"

April 24, 2023

Prepared By
USIC Locating Services, LLC
Jason Weigel
Business Development Manager
317-575-7904

USIC

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

USIC PROTECTING INFRASTRUCTURE

USIC PRICING PROPOSAL FOR TOWN OF AMHERST

Pricing

• Per One Call Ticket	$17.00
• Project	$17.00 Per ¼ Hour
• Business Hour Emergency Ticket	$40.50 Flat Fee
• After Hour Emergency Ticket	$58.00 Flat Fee
• Non-At Fault Damage Investigation	$348.00

NOTE: USIC does not charge for any drive time

Above pricing will have a restoration cap of $2,500.00 per occurrence

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Pricing Definitions

Per One Call Ticket – All tickets received from State One Call.

Project Rate – If locating the Town of Amherst utility exceeds thirty minutes, the ticket will then be billed the proposed per ¼ hour Project Rate starting after the first thirty minutes of locating time.

Business Hour Emergency Ticket – Any Emergency Tickets that are received between the hours 7:00 A.M - 5:00 P.M, Monday – Friday. This fee is a flat fee and no hourly fees will be charged.

After Hour Emergency Ticket – Any After Hour Emergency Tickets that is received between the hours 5:00 P.M - 7:00 A.M, Monday – Friday, all day Saturday & Sunday including Holidays. This fee is a flat fee and no hourly fees will be charged.

Non-At Fault Damage Investigation – USIC will respond and investigate all damages to the Town of Amherst utility. Should the final findings by both parties prove that USIC is clearly not the party causing the damage, USIC will be compensated $275.00 for the time to perform the Damage Investigation and provide report to Town of Amherst.
PLEASE NOTE: This fee is typically a roll through fee that Town of Amherst can charge back to the damaging party.

Restoration Cap – In the event a damage was to occur where USIC is at fault, USIC will pay up to $2,500.00 per incident to repair the damaged utility.

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

USIC PROTECTING INFRASTRUCTURE

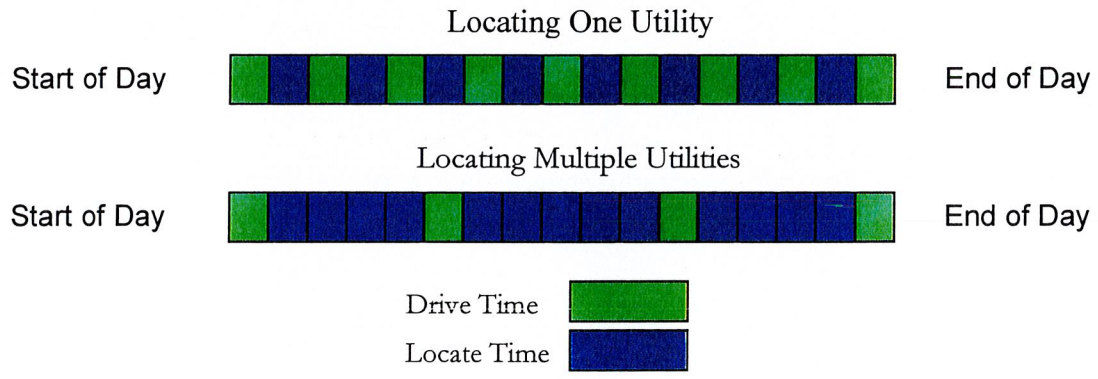
In addition to saving money on locating expense, Town of Amherst will experience the added value of using our Professional Damage Prevention Services.

OUR VALUE PROPOSITION INCLUDES:

- Basic Economic Value Summary
- Risk Management Summary
- Advanced Technology Summary
- Professional Services Summary

BASIC ECONOMIC VALUE

- USIC currently visits every job site already for other utility clients creating ***economies of scale that cannot be matched*** internally or by any other vendor.



RISK MANAGEMENT

- USIC ***investigates every damage occurrence. Reports Upon Request***
- USIC uses a CDI (Certified Damage Investigator) to investigate and prepare reports.
- Each report includes pre and post dig photos and all pertinent documentation.
  All reports are prepared electronically and uploaded through wireless technology.
- All damage reports made available for use in claims recovery efforts
  - Damage reports enables you to recover all damage expense from either the locate vendor or from the excavator.

ADVANCED TECHNOLOGY

- USIC utilizes an in-house proprietary 'real time' ticket management system (TicketPro) that reflects 30 plus years of locating experience. The depth of TicketPro cannot be matched by any 'off the shelf' ticket management system.

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

USIC ★ PROTECTING INFRASTRUCTURE

- USIC technicians work their ticket load in a real time, paperless environment (creating even more labor related efficiencies).
- ***Town of Amherst will have direct, real-time access*** to our ticket management system (***Customer Portal***). Town of Amherst will have ability to:

  - View tickets as they come in from the State One Call service "Real-Time"
  - Quickly identify when ticket is due and if completed, time it was completed and what was located.
  - Query any ticket-by-ticket number.
  - View all post locate photos attributed to that located.
  - Additional information package available upon request.

PROFESSIONAL SERVICES

- Town of Amherst increases labor support.
- Town of Amherst increases labor management in terms of Supervisors, District Managers, Senior Directors and VP of Operations.
- Technician support also includes a Claims Manager, a Quality Manager, a HR Specialist and a Key Accounts Manager
- Accurate and timely locates to include pre-dig photographs to assist in damage recovery.
- USIC uses the latest technology and works 'real time' in a paperless environment to ensure data integrity.
- USIC encourages regular performance meetings with Town of Amherst
- USIC is engaged nationally in the prominent industry association and legislation (to include the Common Ground Alliance (CGA) and National
- Utility Locating Contractors Association (NULCA). We also track and invest in the latest locating technology.
- USIC provides all labor and materials to include all after hours emergencies, weekends and holidays. We manage the work, you manage us.
- USIC provides Town of Amherst all data and tools necessary to professionally manage their damage prevention program.

Town of Amherst

In partnership with

USIC Locating Services, LLC

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

Town of Amherst
Emergency Purchase Documentation Form

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Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements is so detrimental to the public interest that it overcomes the strong public policy in favor of bidding. Further, because the emergency must arrive out of an accident or unforeseen occurrence, it is doubtful a local government may invoke the emergency exception in a situation which the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.

Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

1. Date of Emergency Purchase: 7/18/23
2. Date you received approval from the Supervisor: DBB Deputy 7/18/23 Supervisor's Initials: DBB
3. Date of Town Board work session where Board is notified: 7/24/23
4. Amount of Emergency Purchase. Please provide a detailed listing of items purchased and the cost of each (attach additional detail if necessary): See Attached
5. Is there adequate funding in your current operating budget to cover this purchase? Yes
   Identify budget Org/Object: A 5182-4070
6. Please describe the circumstances that resulted in the need to make an emergency purchase without following the Town's Purchasing Policy: Immediate mark-out of underground wires (live) at dig sites townwide, in response to UDIG ONE CALL utility requests.
7. Please describe what steps were taken to ensure the lowest cost for the Emergency Purchase. If none, please explain why your department was prevented from doing so: 2 quotes obtained from 3rd party mark-out companies.
8. Department Head Signature: _____ Date: 7/18/23

CC: Town Board, Town Attorney, Contract Compliance & Administration

For Contract Compliance & Administration Use Only	
Date of Town Board Resolution:	Emergency Purchase Tracking/Res #:

Rev. 1/3/2023

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

Town of Amherst

Request For Proposal

"Utility Locating & Marking Services"

April 24, 2023

Prepared By
USIC Locating Services, LLC
Jason Weigel
Business Development Manager
317-575-7904

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

USIC ★ PROTECTING INFRASTRUCTURE

USIC PRICING PROPOSAL FOR TOWN OF AMHERST

Pricing

• Per One Call Ticket	$17.00
• Project	$17.00 Per ¼ Hour
• Business Hour Emergency Ticket	$40.50 Flat Fee
• After Hour Emergency Ticket	$58.00 Flat Fee
• Non-At Fault Damage Investigation	$348.00

NOTE: USIC does not charge for any drive time

Above pricing will have a restoration cap of $2,500.00 per occurrence

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Pricing Definitions

Per One Call Ticket – All tickets received from State One Call.

Project Rate – If locating the Town of Amherst utility exceeds thirty minutes, the ticket will then be billed the proposed per ¼ hour Project Rate starting after the first thirty minutes of locating time.

Business Hour Emergency Ticket – Any Emergency Tickets that are received between the hours 7:00 A.M - 5:00 P.M, Monday – Friday. This fee is a flat fee and no hourly fees will be charged.

After Hour Emergency Ticket – Any After Hour Emergency Tickets that is received between the hours 5:00 P.M - 7:00 A.M, Monday – Friday, all day Saturday & Sunday including Holidays. This fee is a flat fee and no hourly fees will be charged.

Non-At Fault Damage Investigation – USIC will respond and investigate all damages to the Town of Amherst utility. Should the final findings by both parties prove that USIC is clearly not the party causing the damage, USIC will be compensated $275.00 for the time to perform the Damage Investigation and provide report to Town of Amherst.
PLEASE NOTE: This fee is typically a roll through fee that Town of Amherst can charge back to the damaging party.

Restoration Cap – In the event a damage was to occur where USIC is at fault, USIC will pay up to $2,500.00 per incident to repair the damaged utility.

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

USIC PROTECTING INFRASTRUCTURE

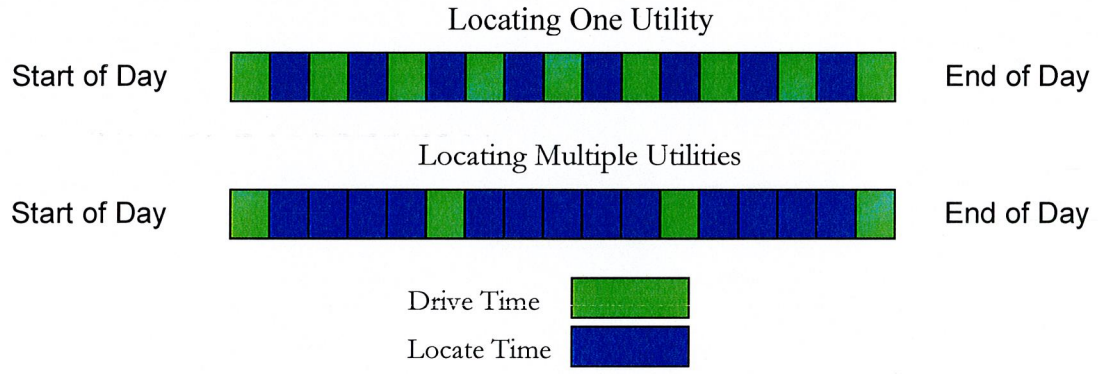
In addition to saving money on locating expense, Town of Amherst will experience the added value of using our Professional Damage Prevention Services.

OUR VALUE PROPOSITION INCLUDES:

- Basic Economic Value Summary
- Risk Management Summary
- Advanced Technology Summary
- Professional Services Summary

BASIC ECONOMIC VALUE

- USIC currently visits every job site already for other utility clients creating ***economies of scale that cannot be matched*** internally or by any other vendor.



RISK MANAGEMENT

- USIC ***investigates every damage occurrence. Reports Upon Request***
- USIC uses a CDI (Certified Damage Investigator) to investigate and prepare reports.
- Each report includes pre and post dig photos and all pertinent documentation.
  All reports are prepared electronically and uploaded through wireless technology.
- All damage reports made available for use in claims recovery efforts
  - Damage reports enables you to recover all damage expense from either the locate vendor or from the excavator.

ADVANCED TECHNOLOGY

- USIC utilizes an in-house proprietary 'real time' ticket management system (TicketPro) that reflects 30 plus years of locating experience. The depth of TicketPro cannot be matched by any 'off the shelf' ticket management system.

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

USIC ★ PROTECTING INFRASTRUCTURE

- USIC technicians work their ticket load in a real time, paperless environment (creating even more labor related efficiencies).
- ***Town of Amherst will have direct, real-time access*** to our ticket management system (***Customer Portal***). Town of Amherst will have ability to:

  - View tickets as they come in from the State One Call service "Real-Time"
  - Quickly identify when ticket is due and if completed, time it was completed and what was located.
  - Query any ticket-by-ticket number.
  - View all post locate photos attributed to that located.
  - Additional information package available upon request.

PROFESSIONAL SERVICES

- Town of Amherst increases labor support.
- Town of Amherst increases labor management in terms of Supervisors, District Managers, Senior Directors and VP of Operations.
- Technician support also includes a Claims Manager, a Quality Manager, a HR Specialist and a Key Accounts Manager
- Accurate and timely locates to include pre-dig photographs to assist in damage recovery.
- USIC uses the latest technology and works 'real time' in a paperless environment to ensure data integrity.
- USIC encourages regular performance meetings with Town of Amherst
- USIC is engaged nationally in the prominent industry association and legislation (to include the Common Ground Alliance (CGA) and National
- Utility Locating Contractors Association (NULCA). We also track and invest in the latest locating technology.
- USIC provides all labor and materials to include all after hours emergencies, weekends and holidays. We manage the work, you manage us.
- USIC provides Town of Amherst all data and tools necessary to professionally manage their damage prevention program.

Town of Amherst

In partnership with

USIC Locating Services, LLC

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

FACILITIES LOCATING AND MARKING SERVICE CONTRACT

THIS CONTRACT ("Contract") is entered into as of July 10, 2023, and is by and between USIC Locating Services, LLC, an Indiana limited liability company, (**USIC**), and Town of Amherst (**Customer**), each individually a party, and collectively, the parties.

BACKGROUND

A. Customer owns and operates Facilities (hereinafter defined) in the geographic area described on Exhibit A to this Contract.

B. Customer desires to have USIC provide the necessary labor and equipment to offer certain services relative to locating and marking Customer's Facilities listed in Exhibit A.

CONTRACT

Based on the Background set forth above and in consideration of the mutual covenants, terms and conditions set forth below, USIC and Customer agree as follows:

1. Definitions. In addition to the terms defined above the following capitalized terms when used in this Contract shall have the following meanings:

1.1 **Advanced Locate Service** means conductive, inductive, and map-based measurement locating methods which may include hand digging and/or vacuum excavation to accurately complete a Locate.

1.2 **Annual Contract Value** means the aggregate of the last twelve months' Contract revenue.

1.3 **Atypical Condition (AC)** means any unusual condition, exigency, or occurrence at a given worksite that requires USIC's use of extra resources (including but not limited to Telecommunication Vault or Manhole Entry, Unlocatable Facilities, Work Zone Protection aka "Temporary Traffic Control Services" or "Flaggers", labor, time, and equipment) outside of those routinely expended by USIC to accurately and safely complete a Locate.

1.4 **Contract Year** means the 365 (366 if period includes February during a leap year) days beginning with the date this Contract begins and the anniversary date each year after.

1.5 **Customer's Facilities** means any Facilities owned or operated by Customer.

1.6 **Damage Investigation Fee** means the fee charged to Customer when chargeable pursuant to this Contract, for a damage investigation performed by USIC (to include Site photographs, measurements and/or other applicable forensic data).

1.7 **Damage to Customer's Facilities** means the penetration or destruction of any protective coating, sheath, housing or other protective facility of underground plant, the partial or complete severance of underground plant, or the rendering of any underground plant partially or completely inoperable.

1.8 **Digital Locating** means the process by which a Locate is completed using maps, records, historical Ticket records, Locate technician expertise, and other industry knowledge to positively respond to a Ticket without Visual Examination.

1.9 **Emergency Normal Hours Locate** means a request for a Locate that arises from a condition that threatens life, health, or property as defined by applicable state law and are transmitted during USIC's normal, non-holiday business hours Monday through Friday (7:00 am – 5:00 pm).

1.10 **Emergency After Hours Locate** means a request for a Locate that arises from a condition as defined by applicable state law and One Call Center ticket types and is transmitted on weekends, weekdays, and

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holidays, as defined by appliable federal and state statute and/or One Call Center holidays, outside of the USIC's normal business hours (7:00 am – 5:00 pm).

1.11 **Excavator(s)** means any person or entity which engages directly in excavation.

1.12 **Facility(ies)** means any item used in connection with the storage or conveyance of water, sewage, electronic telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, Hazardous Materials or other substances including, but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors, either above or below ground.

1.13 **Gridding** means the geographic boundary area, maps, facility records, and/or other facility documentation identified by Customer and the One Call Center and provided to the applicable state One Call Center which is used to determine whether a request for Locate will generate a Ticket for Customer after receipt of an Excavator's notification of intent to excavate (i.e., receipt of a Locate Ticket).

1.14 **Hazardous Materials** means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

1.15 **Interruption of Service** means an interruption in the services provided by Customer to its customers arising from a Damage to Customer's Facilities.

1.16 **Locatable Facilities** means Customer's Facilities that can be located with Reasonable Accuracy by using devices designed to respond to the presence of Customer's Facilities, together with records and facility prints, drawings, and maps of sufficient accuracy, but shall specifically not include Unidentifiable Facilities and Unlocatable/Untonable Facilities.

1.17 **Locate(s)** means the process of providing Locate Services in response to an Excavator's notice of intent to excavate, and such Locate Services provided by USIC in accordance with this Contract. As used in this Contract, Locate(s) include(s) "Project Locate", as defined hereinafter, where applicable in accordance with the definition of "Project Locate" hereunder.

1.18 **Locate Service(s)** means the services, of any type of ticket, to be provided by USIC under this Contract consisting of the process of verifying if Customer's Facilities are present at a location where an Excavator intends to or conducts excavation; when applicable, detection of Customer's Facilities through the use of electronic locating equipment; and, when applicable, Marking to identify the existence and location of Customer's Facilities.

1.19 **Locator At Fault Damage** means Damage to Customer's Facilities caused by an Excavator that occurs as a direct result of USIC not performing the Locate with Reasonable Accuracy. Locator At Fault Damage does not include alleged Damage to Customer's Facilities arising from USIC's late or untimely Locates that were performed with Reasonable Accuracy prior to the damage occurring.

1.20 **Locator Not At Fault Damage** means Damage to Customer's Facilities that occurs for any reason other than USIC not performing the Locate with Reasonable Accuracy.

1.21 **Mark(s)(ed)(ing)** means the use of stakes and flags, paint or other clearly identifiable materials at appropriately distanced intervals and at each divergence from a straight line in accordance with the current marking standards of the American Public Works Association.

1.22 **One Call Center or 811** means each state's Ticket issuing system for all excavation notices.

1.23 **Positive Response** is an 811 notification that communicates to facility owners and operators, and Excavators the status of dig/excavation notices issued by 811.

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1.24 **Project Locate or Long Scope Ticket(s)** is any Locate that, for any reason, requires USIC technicians to spend more than thirty (30) minutes to execute the Locate Services requested by the subject Ticket. Project Locate or Long Scope Ticket(s) time is tracked using USIC's system thresholds and may include any Ticket type (including but not limited to Tickets designated as routine, normal, and/or emergency). Any portion or increment of work above a time threshold shall be rounded up to the next whole unit.

1.25 **Reasonable Accuracy** means the placement of appropriate Markings within the applicable state's tolerance zone.

1.26 **Repair Costs** means the actual costs incurred by Customer to repair Damage to Customer's Facilities arising from Locator At Fault Damages (so long as Customer's actual costs are reasonable and customary), subject to the exclusions below. "Repair Costs" is equal to only the reasonable and customary value of the actual labor, equipment, and material costs incurred by Customer to repair the Damage to Customer's Facilities as supported by actual invoice and/or receipts for work completed by each repair contractor. This shall include reasonable and customary costs incurred by Customer's in-house labor and third-party contractor(s), where an itemized breakdown for all parties included in the repair is submitted. Repair Costs specifically excludes, except where prohibited by law: administrative charges; third party administrative ("TPA") fees; overhead charges; costs arising from betterment of plant (which shall include, among other things, any upgrade, improvement, reinforcement, enlargement, replacement or extension of Customer's Facilities); invoice markups (whether percentage-based, fixed-amount, or otherwise-calculated; costs arising out of collection actions, whether incurred by the Customer or collection agencies; any other costs or expenses excluded by Section 7 of this Contract or any other provision of this Contract. USIC reserves the right to dispute the reasonableness of any of Customer's actual costs; in the event of such a dispute the parties shall attempt to resolve such dispute in accordance with Section 13.

1.27 **Site** means the premises where Locate Services are performed, and Customer has ownership or exercises control.

1.28 **Telecommunications Vault or Manhole Entry,** as stated 29 CFR 1910.269(x), is defined as an "enclosed space" or as a working space, such as a manhole, vault, tunnel, or shaft, that has limited means of egress or entry, that is designed for periodic employee entry under normal conditions, and that does not contain a hazardous atmosphere, but that may contain a hazardous atmosphere under abnormal conditions. "Manhole vaults" are confined spaces where a person's entire body can enter as opposed to "handhole vaults" where a person can reach in only.

1.29 **Third Party Claims** means any claims for losses, fines, penalties, damages, costs, fees, or expenses made by a person or entity not a party to this Contract arising from or related to Damages to Customer's Facilities, including but not limited to, claims as a result of (a) injury to or death of any person, or (b) damage to or loss or destruction of any property.

1.30 **Ticket(s)** means the document generated at and transmitted by the One Call Center to USIC containing each request for Locate. A Ticket may require more than one Locate.

1.31 **Unidentifiable Facilities** means Customer's Facilities that are not apparent at the Site as based on the records, facility prints, drawings, or maps provided by Customer.

1.32 **Unlocatable/Untonable Facilities,** means Customer's Facilities, including abandoned Facilities, whose general presence is known either from records provided by Customer or from a Visual Examination, but which cannot be Marked with Reasonable Accuracy by employing standard Locate Services, typically consisting of using one conductive hook up point on either side of the Facility being targeted for Locating.

1.33 **USIC Work Product** means all materials, data, works of authorship, concepts, presentation, inventions, discovery, processes, know-how, reduction of information, including without limitation, all intellectual

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property rights, including trade secrets, data, copyrights, and trademarks related to USIC's Locate Services, which is conceived or reduced to practice as a result of the performance of the Locate Services.

1.34 **Visual Examination** means an attempt to determine the existence of Customer's Facilities at an excavation site by a reasonable visual inspection of the dig site rather than from Customer's maps and records.

1.35 **Watch and Protect** means to oversee Customer's Facilities during unusual or extensive excavation projects (i.e. road widening projects, sewer projects, etc.) and providing appropriate Locate Services as may be dictated by the nature and scope of the excavations. Service requires preauthorization or prior agreement by the parties regarding criteria to be applied.

1.36 **White-Lining** means the Excavator designates the route and/or area to be excavated using white pre-marking either onsite or electronically (when available through the One Call Center), prior to or during the request for the Locate. The route of the excavation is marked with white paint, flags, stakes, lines, polygons, or a combination of these to outline the dig site prior to or during notification to the One Call Center and before the Locate technician arrives on the job.

1.37 **Work Zone Protection** means the activities necessary by USIC to achieve compliance with federal, state, county, and local laws for the safety of motorists and USIC workers alike. This includes but is not limited to following the rules prescribed by the Manual on Uniform Traffic Control Devices (MUTCD) and contracting services to achieve Temporary Traffic Control commonly referred to as "Flaggers."

2. Responsibilities of USIC

2.1 USIC shall furnish all labor, materials (except maps, prints, and records to be provided by Customer under Section 3), and equipment necessary to perform Locate Services including Locates, Project Locates or Long Scope Ticket(s), Emergency Normal Hours Locate, Watch and Protect, and Emergency After Hours Locate for Customer within the Contract service area detailed in Exhibit A. All Ticket transmittals to USIC shall come directly from each state's One Call Center for the service area detailed in Exhibit A.

2.2 Upon receipt of a request for a Locate, USIC will assess whether a conflict exists between the Customer's Facilities and the proposed excavation Site based on the maps, prints, and records provided by the Customer (commonly called Digital Locating). In its discretion, USIC may perform a Visual Inspection for any Locate request, but USIC is not required to do so if Customer's maps, prints, and records indicate that there is no conflict between Customer's Facilities and the excavation Site.

2.3 If USIC determines that Customer Facilities are present at the excavation Site, USIC will Mark Customer's Facilities at the Site, except for Unlocatable/Untonable Facilities and send Positive Response documentation that may consist of photographs, drawings, or notes. Photographs shall only be required in situations where taking photographs are permitted by law.

2.4 If USIC determines that Customer's Facilities are not present at the excavation Site, USIC will mark the site or note in the Ticket response that Customer's Facilities are not present or in conflict with the proposed excavation site.

2.5 Customer agrees that USIC will have the right to screen Tickets via maps, prints, records, and other technology which eliminates the requirement for a Visual Examination, or an in-person visit to the Site. Customer also agrees that USIC will not be liable for any damages that occur because of incomplete and/or inaccurate maps, prints, or records provided by Customer.

2.6 In the event USIC recognizes that there are Unlocatable/Untonable Facilities at the excavation site, Customer will be responsible for determining what course of action should be followed to assure that the Unlocatable/Untonable Facilities are not damaged by Excavator. USIC will not be liable for any damages associated with an Unlocatable/Untonable Facility. If any Atypical Condition (AC) is found at the excavation site and USIC is aware of the Atypical Condition, USIC shall notify Customer, and USIC shall

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employ Advanced Locate Services or other procedures described in Section 1.1 at direction of Customer and with additional pricing when necessary.

2.7 Any maps and records furnished by Customer as required by the Contract shall remain the property of Customer. USIC agrees to return or destroy all copies of such maps and records to Customer upon Customer's written request or at the termination of this Contract. This obligation of confidentiality shall survive the termination of this Contract for a period of five (5) years. All of Customer's maps and records shall be kept confidential by USIC unless 1) such maps and records were previously known to USIC free of any obligation to keep them confidential; 2) such maps and records are given to USIC by a third party not obligated to keep them confidential; 3) such maps and records become public without any act or omission of USIC; or 4) otherwise, as required by law.

2.8 USIC shall perform the Locate Services as an independent contractor and as such, USIC has the right to exercise control and supervision of the work and full control over the employment, direction, compensation and discharge of all persons assisting it in performing the Locate Services. Further, USIC agrees that it will be solely responsible for the payment of its employees and for the payment of all federal, state, county and municipal taxes and contributions pertaining thereto.

2.9 USIC shall comply with the provisions of all applicable permits and licenses relative to the Locate Services to be performed hereunder.

3. Responsibilities of Customer

3.1 Customer shall not suppress or screen any Tickets in the areas where USIC will provide Locate Services as defined in Exhibit A that would otherwise come to USIC from the state One Call Center. All Customer Tickets shall be transmitted directly to USIC from the state One Call Center.

3.2 Customer shall not change existing Gridding such that the volume of Tickets received by USIC is reduced with the applicable state One Call Center on or after the Contract effective date.

3.3 Customer agrees to provide USIC with updates (at least monthly, or more often as needed) to its prints, maps, and any other Facility location records in a standard GIS/ESRI format (.shp, .mdb, or .gdb) with proposed Facility layers, if available, and One Call Center Ticket information (One Call Center format for the applicable state) via e-mail or web services to USIC's Ticket management system, so as to permit USIC to provide the Locate Services. Customer acknowledges that it is Customer's responsibility to keep all applicable maps, records, and prints up-to-date and provide such mapping and records to USIC in a timely manner via a secure customer portal provided by USIC or Secure File Transfer Protocol (SFTP). Customer acknowledges that USIC does rely in part on such records, and USIC bears no liability for Customer's failure to provide accurate maps, records, and/or prints, or any damage which arises from incomplete and/or inaccurate maps, records, and/or prints.

3.4 Customer agrees that it will reasonably cooperate with USIC regarding receipt and resolution of Third-Party Claims, which cooperation shall include but not be limited to reasonable information sharing.

3.5 Customer will pay USIC for the Locate Services in accordance with the charges set forth on Exhibit A. USIC shall bill for all Tickets received from each state's One Call Center, on behalf of Customer. USIC will not be responsible for the accuracy, updates to or the completeness of the definition of the Contract service area that Customer has provided to the state's One Call Center.

3.6 Customer agrees to provide USIC with all state-issued 811 codes ("CDC codes") and a comprehensive Customer point of contact list within twenty-four (24) hours of Contract execution.

3.7 Customer recognizes White-Lining as a best practice for safe excavations. Customer agrees to use its best efforts to promote proper "White-Lining" by Excavators.

3.8 For Locates involving subsurface electric transmission of voltages greater than 33kV: (1) Customer will provide a qualified electric worker to identify the utility locating equipment connection point(s), via

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Customer's transmission engineering and system expertise; (2) Customer will make the connection(s) safely without requiring entry inside the Minimum Approach Distance for such hazards; and (3) Markings will be provided outside the Minimum Approach Distance which shall be defined in OSHA's standard for Electric Power Generation, Transmission and Distribution. The Locate may require the Customer to make multiple connections to safely reach the full scope of the Ticket. Customer will be notified via the Positive Response in the Ticket system of any Locates with an electric transmission line on the Site and once the Marking is complete.

4. Invoicing and Payment Terms

4.1 USIC will remit monthly invoices to Customer via an email address or uploaded to a required Customer portal specified by Customer. In the states of Maine, Nevada, New Mexico, Ohio, Oregon, South Dakota, and Washington, and/or as otherwise may arise from state or federal taxing authorities from time to time, USIC shall invoice the Customer for the following applicable taxes levied on USIC:

4.1.1 Sales Tax
4.1.2 Use Tax
4.1.3 Services Provider Tax
4.1.4 Value Added Tax
4.1.5 Gross Receipts Tax
4.1.6 Commercial Activities Tax
4.1.7 Business Tax
4.1.8 Occupation Tax
4.1.9 Or similarly constructed state or local taxation

Where tax exempt status exists, Customer will provide USIC with the tax-exempt certificate or like document.

4.2 All amounts payable under this Contract shall be paid on a net thirty (30) days basis, following the date of invoice. In the event Customer disputes any portion of an invoice received from USIC, Customer shall provide written notice to USIC no less than fifteen (15) days before the invoice is due. If USIC cannot correct the invoice prior to the due date, Customer shall pay all undisputed charges in accordance with Section 4.2. If proper and sufficient notice of a dispute is not given to USIC, Customer shall pay the entire invoice and proceed with dispute resolution in Section 13.

4.3 Should USIC have to pursue collection actions or retain counsel to pursue payment, USIC will invoice Customer for all such costs and Customer is responsible for payment.

4.4 If Customer fails to pay any invoice pursuant to the payment terms set out in this section, USIC may give written notice describing such breach ("Notice of Default"). If the breach set forth in the Notice of Default is not curable or if the Customer fails to pay USIC's invoices within ten (10) days following receipt of the Notice of Default, USIC shall have the right and option to immediately terminate this Contract pursuant to Section 5, in addition to all the other rights and remedies available to the non-breaching party under this Contract and at law and in equity.

4.5 If Customer fails to pay any Invoice according to the provisions of this Contract and (a) such failure continues for a period of ten (10) days following Customer's receipt of a Notice of Default from USIC or (b) USIC has reasonable grounds for insecurity regarding the performance by Customer of any obligation under this Contract, then USIC, by delivery of written notice to Customer, may demand Adequate Assurance by Customer. "Adequate Assurance" means, at the option of Customer, (i) advance payment in cash by Customer to USIC for Locate Services or (ii) delivery to USIC by Customer of a letter of credit in an amount equal to not less than the aggregate amounts owed from Customer to USIC hereunder for the prior two-month period. If Customer fails to provide Adequate Assurance to USIC within 72 hours of USIC's request, USIC shall have the right to, at its sole option, (i) renegotiate payment terms under the Contract; (ii) terminate this Contract upon written notice to Customer, and/or (iii) suspend or reduce all Locate Services under this Contract without prior notice to Customer, in each case, without limiting any other rights or remedies available to USIC under this Contract or otherwise. If USIC exercises the right to terminate this Contract or suspend or reduce any Locate Services, then Customer shall not be entitled

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to take, or cause to be taken, any action hereunder or otherwise against USIC for such termination, suspension, or reduction.

4.6 In the event Customer claims to be owed money from USIC pursuant to Section 6 of this Contract or for any other reason, such disputes shall be handled independently in accordance with Section 13, and Customer shall have no right to withhold, setoff, or otherwise reduce the amounts due to USIC for Locate Services under Section 4.

5. Term, Termination, Changes and Exclusive Nature of Contract

5.1 This Contract shall be effective as of July 31st, 2023 ("Effective Date") and continue for a period of one (1) year, with automatic renewal for consecutive periods of one (1) year on each expiration date, unless sooner terminated pursuant to Section 5.3.

5.2 Customer shall use USIC as its exclusive provider of Locate Services within the service area as identified in Exhibit A.

5.3 Either party to this Contract may terminate this Contract for convenience upon sixty (60) days' prior written notice to the other. Upon such termination, Customer shall only be liable for payment for any tickets transmitted to USIC through the effective date of termination. If Customer fails to provide the required sixty (60) day notice under this provision, Customer will pay USIC an amount equal to 60 days average billing as calculated based on the twelve-month period immediately preceding the termination [or such shorter period if the Contract has been in effect for less than twelve (12) months], which the parties agree is a reasonable estimate of the damages to be incurred by USIC as a result of Customer's termination without notice. This provision is not intended to and shall not eliminate or reduce any other remedies to which USIC may be entitled, all of which are reserved.

5.4 Without prejudice to any other right or remedy USIC may have under this Contract, at law and/or in equity, USIC may terminate this Contract effective immediately upon providing written notice of such termination to Customer, in the event of the occurrence of any of the following:

5.4.1 insolvency of Customer;
5.4.2 filing of a voluntary petition in bankruptcy by Customer;
5.4.3 filing of an involuntary petition in bankruptcy against Customer;
5.4.4 appointment of a receiver or trustee for Customer;
5.4.5 execution by Customer of an assignment or any general assignment (other than an assignment undertaken in connection with a financing) for the benefit of creditors;
5.4.6 commencement of any legal proceeding against Customer that, in USIC's opinion, may interfere with USIC's ability to perform in accordance with the Contract;
5.4.7 Customer consolidates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and/or sells, assigns or otherwise transfers the Contract; in each case without USIC's advance written consent; or
5.4.8. Failure by Customer to timely cure any breach for which Customer has received a Notice of Breach under Section 4.

6. Investigations of Damage to Customer's Facilities

6.1 Should Customer become aware of any Damage to Customer's Facilities that occurs after USIC has been asked to perform a Locate for Customer, the Customer shall as promptly as possible, and not later than twelve (12) hours from becoming aware of the damage, notify USIC. This notification must be made by calling USIC at 1-800-778-9140 or sending an email to USICDispatch@usicllc.com and should include the street address of the damage location, damage date and size/type of facility. Both parties to this Contract reserve the right and shall be entitled to investigate any reports of Damage to Customer's Facilities. Any such phone or email notification by Customer, Excavator, Third-Party Administrator, or any other party shall commence USIC's damage investigation process. Upon USIC's request, Customer will provide list of contacts by division for claims of Damage to Company's Facilities.

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6.2 USIC will investigate all incidents of Damage to Customer's Facilities for which it has been notified and provide, a written report of its findings to Customer via the Customer portal. Such report will contain USIC's determination as to whether the Damage to Customer's Facilities constitutes a Locator At Fault Damage or a Locator Not At Fault Damage. Customer shall have thirty (30) days after notification of USIC's completion of the investigation to contest USIC's conclusion. Unless Customer notifies USIC in writing within such time period that it disputes USIC's conclusion as to a fault determination,, USIC's conclusion with regard to that issue shall be deemed final and binding with respect to this Contract and any liability between Customer and USIC. If Customer disputes USIC's conclusion, the parties will make all reasonable efforts to mutually resolve such dispute and if they cannot, such dispute will be resolved in accordance with Section 13.

6.3 All potential Damage to Customer's Facilities shall be investigated, and USIC shall be entitled to collect a Damage Investigation Fee for each such investigation it performs unless: (1) it is determined by USIC's investigation that the damage was Locator At Fault Damage; or (2) the parties ultimately agree that the damage was Locator At Fault Damage. USIC shall be entitled to collect a Damage Investigation Fee from Customer regardless of how USIC receives notice of the Damage to Customer's Facilities.

6.4 Customer agrees that if: (1) Customer fails to timely notify USIC as required by Section 6 of any Damage to Customer's Facilities; or (2) if damage is repaired or site is covered before USIC can conduct a timely investigation with full access to damage site, then USIC shall not be liable to Customer for any Repair Costs or any other liabilities arising from that Damage to Customers' Facilities, and Customer shall indemnify USIC against Third Party Claims as applicable, in accordance with Section 7. In such situation, Customer hereby agrees that it is prohibited from asserting that any such Damage to Customer's Facilities constitutes a Locator At Fault Damage.

6.5 When damages are determined to be Locator At Fault Damage, Customer agrees that USIC will be invoiced for Repair Costs only with supporting documentation provided with the invoice.

6.6 USIC will be responsible for paying Customer's Repair Costs for any Damage to Customer's Facilities only if: (1) USIC received a request to provide Locate Services with respect to a Customer's Facilities at the location of the damage; (2) the Damage to Customer's Facilities constitutes a Locator At Fault Damage; and (3) Customer sends USIC an invoice as required herein.

6.7 Customer agrees to provide any supporting documentation and detail requested by USIC that relates to Damage to Customer's Facilities for which Customer submits an invoice to USIC. If Customer does not provide USIC with all requested documentation and detail within six (6) months of invoicing USIC for such damages, USIC shall have no further obligation to participate in the pre-litigation and/or pre-arbitration portions of the Dispute Resolution of Section 13. This provision does not preclude Customer from seeking remedies in arbitration or in a court of competent jurisdiction, as applicable.

6.8 If Customer fails to present an invoice to USIC for any Damage to Customer's Facilities within twelve (12) months of the date Customer notifies USIC of the damage pursuant to Section 6.1, Customer irrevocably waives and releases any right to seek or demand payment from USIC for such damages, whether in litigation, arbitration, mediation, or any other forum, formal or informal.

6.9 To the extent permitted by law and to the extent of and directly corresponding to the Locate Services and related to the accuracy or timeliness of Locate penalties, USIC shall be entitled to participate in any investigation or appeal by any administrative, regulatory, or other governing authority involving any Damage to Customer's Facilities, and Customer shall make any and all reasonable accommodations to allow USIC to do so. Should any administrative, regulatory, or other governing authority impose a penalty or fine, USIC shall reimburse the Customer to the proportion and extent of its fault for such penalties or fines upon receiving an invoice from the Customer.

7. Limitation of Liability and Indemnification

7.1 **REPAIR COSTS PAYABLE BY USIC SHALL NOT EXCEED $2,500 FOR ANY SINGLE INCIDENT OR OCCURRENCE OF DAMAGE TO CUSTOMER'S FACILITIES, REGARDLESS OF THE ALLEGED**

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CAUSE OF THE DAMAGE, REGARDLESS OF THE NUMBER OF FACILITIES DAMAGED IN THE INCIDENT, AND REGARDLESS OF THE ALLEGED SCOPE OR AMOUNT OF THE DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS PROVISION IS NOT INTENDED TO EXPAND OR OTHERWISE IMPOSE LIABILITY ON USIC BUT, RATHER, IS INTENDED TO BE AN ABSOLUTE LIMIT ON USIC'S LIABILITY TO CUSTOMER FOR ANY INCIDENT INVOLVING DAMAGE TO CUSTOMER'S FACILITIES, REGARDLESS OF CAUSE.

USIC'S TOTAL REPAIR COST LIABILITY TO CUSTOMER UNDER THIS CONTRACT SHALL NOT EXCEED ONE TIMES THE ANNUAL CONTRACT VALUE DETERMINED BY THE TRAILING TWELVE-MONTH PERIOD.

7.2 If Damage to Customer's Facilities is not Locator At Fault Damage or if Customer's Facilities are Unidentifiable Facilities or Unlocatable/Untonable Facilities, USIC's only responsibility will be to provide whatever support to Customer it can reasonably provide to establish whether the Excavator or another third party is liable for such Damage to Customer's Facilities. If USIC provides such support at the request of Customer or any representative of Customer (including but not limited to informal requests for assistance and formal litigation requests including document and testimony subpoenas from Customer's attorneys or third party claims administrators): (1) such support shall be provided by USIC at no additional cost if Customer has already paid a Damage Investigation Fee related to the incident; (2) Customer shall be invoiced for and agrees to pay a Damage Investigation Fee if one has not already been paid relating to the incident.

7.3 Customer agrees not to add USIC as a defendant or otherwise as a party to any litigation or arbitration Customer is pursuing against an Excavator or any other third party for any Damage to Customer's Facilities that was not, prior to initiation of such proceeding, determined to be a Locator At Fault Damage in accordance with this Contract. If Customer violates this provision and adds USIC in any such proceeding, Customer agrees that this provision gives USIC the right to the seek immediate dismissal from such proceeding and indemnification for any fees and expenses associated with seeking such dismissal.

7.4 To the fullest extent allowed under applicable law, USIC shall not be liable for loss of profit or revenues, loss of use of equipment or systems, Interruption of Service, cost of replacement power, cost of capital, downtime costs, increased operating costs, administrative costs including TPA fees, and any special, consequential, incidental, indirect or punitive damages.

7.5 Each Customer and USIC (as an "Indemnifying Party") shall defend and indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, only to the extent caused by the fault of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint negligence, concurrent negligence, or otherwise by the fault of both Customer and USIC, the loss or expense shall be borne by each party in proportion to its degree of fault. The Indemnifying Party may retain counsel of its choosing, at its own expense. The Indemnified Party may retain separate or additional counsel as well, but the cost of such counsel shall be borne by the Indemnified Party. USIC has no obligation to defend or indemnify Customer for Third Party Claims resulting from Damages that are not caused by USIC's negligence fault nor shall USIC be required to defend or indemnify Customer for damages or Third Party Claims relating to Unidentifiable Facilities, Unlocatable/Untonable Facilities or Third Party Claims that arise from the sole or partial fault, negligence, or willful misconduct of Customer, its agents or employees. Any party seeking defense and/or indemnity under this Section must provide notice to the other party as promptly as possible upon becoming aware of the incident for which defense and/or indemnity is being sought; failure to provide prompt notice waives the party's right to be an Indemnified Party under this Contract.

8. Price Revisions

8.1 At the beginning of each year subsequent to the Effective Date, the charges for Locate Services set forth on Exhibit A shall be increased annually by 5%.

8.2 Fuel Surcharge

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8.2.1 USIC will assess and invoice a monthly fuel surcharge per the schedule below, measured each calendar month. The Average Fuel Price per Gallon will be based on "U.S. Regular All Formulations Retail Gasoline Prices" (Monthly View) at https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPMR_PTE_NUS_DPG&f=M. The corresponding surcharge amount will be multiplied by the quantity of billed Tickets ("Initial Charges" only, defined hereinafter) in the month. For example, if the average fuel price per gallon for a given month warranted a fuel surcharge, USIC would invoice the respective fuel surcharge against billable Tickets for that same month (1,000 Billable Tickets X $0.30 Fuel Surcharge = $300 total).

Average Fuel Price per Gallon	**Fuel Surcharge per Billed Ticket (Initial Charges)**
< $4.00	No Surcharge
$4.000 - $4.499	$0.15
$4.500 - $4.999	$0.30
$5.000 - $5.499	$0.45
$5.500 - $5.999	$0.60
For each additional $0.50 tier	Add $0.15 from previous tier's surcharge amount

8.2.2 "Initial Charges" include but are not limited to Per Ticket, Emergency Normal Hours, Emergency After Hours, etc. Fuel surcharges will not be applied to incremental billed units that result from extended time spent on a Ticket.

8.2.3 If surcharges are assessed, USIC reserves the right to include the fuel surcharges on Customer's standard invoice or on a separate invoice in a period following the close of the month.

8.2.4 Standard payment terms apply to stand-alone fuel surcharge invoices.

8.3 Labor Escalation

8.3.1 USIC will assess supplemental quarterly price increases related to the cost of labor per the U.S. Bureau of Labor Statistics Employment Cost Index: Total Compensation for Private Industry Workers in Service Occupations. If the most recent quarter over quarter percent change in the cost of labor reaches 1.000%, then USIC will assess a price increase per the table below.

Change from Prior Quarter (%)	**Additional Price Increase**
<1.000%	No Additional Price Increase
1.000% - 1.249%	0.15%
1.250% - 1.499%	0.30%
1.500% - 1.749%	0.45%
1.750% - 1.999%	0.60%

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2.000% - 2.249%	0.75%
2.250% - 2.499%	0.90%
For each additional 0.25% tier	Add 0.15% from previous tier's increase

8.3.2 USIC will use the most recent quarterly data available for each quarterly assessment, which happens every 3 months after the contract effective date.

8.3.3 To calculate the quarterly percent change in labor:

a. Go to https://fred.stlouisfed.org/series/CIU2010000300000I
b. Click Edit Graph
c. Change Units to "Percent Change"
d. Close sidebar
e. Hover over the applicable quarter on the chart or export the data by clicking download
f. For example, the cost of labor in Q3 of 2022 increased by 1.727% over Q2 of 2022, which would result in a supplemental price increase of 0.45%.

8.3.4 On the anniversary of the contract effective date, the supplemental labor price increase (if applicable) will be combined with the standard annual price increase outlined in this contract.

8.4 Notwithstanding Section 8.1, USIC may, following the first Contract Year, adjust the prices for Locate Services set forth on Exhibit A upon reasonable justification and thirty (30) days' written notice to Customer. Unless Customer contests, in writing within the thirty (30) day notice period, the price increase will become effective on the date identified in USIC's notice. If Customer contests the basis for the price increase as provided above, the parties shall either negotiate a mutually agreeable resolution or resolve the dispute as provided in section 13.1.

8.5 Additionally, USIC shall notify Customer if USIC becomes aware of any regulatory, judicial, or 811 process-related changes that affects the amount of time it takes USIC to provide Locate Services in response to Ticket(s), including but not limited to adjustment of the Ticket parameters or make-up. Subsequent to notification, USIC shall make an equitable adjustment to the prices for Locate Services set forth on Exhibit A upon reasonable justification and thirty (30) days' written notice to Customer. Unless Customer contests, in writing within the thirty (30) day notice period, the price increase will become effective on the date identified in USIC's notice. If Customer contests the basis for the price increase as provided above, the parties shall either negotiate a mutually agreeable resolution or resolve the dispute as provided in section 13.1.

8.6 Significant Volume and Ticket Type Changes

8.6.1 The prices offered to Customer by USIC are based upon historical ticket volume data, and Customer acknowledges that USIC needs adequate time to adjust and re-allocate staffing and resources in the event of significant changes in total ticket volume and/or changes in ticket type. Thus, in the event of a Significant Ticket Volume Change and/or a Significant Ticket Type Change, Customer and USIC will renegotiate the pricing set forth in Exhibit A to mutually agreeable prices with an equitable adjustment in favor of USIC to reflect USIC's additional costs and revenue impacts. If USIC and Customer are unable to reach an agreement on renegotiated pricing, USIC will be permitted to decline to accept Excess Tickets and will not be responsible for Marking any declined Excess Tickets.

"Significant Ticket Volume Change" is defined as an increase or decrease of ten percent (10%) or more in total ticket volume for the territory being serviced by USIC, as compared to total ticket volume for the same month of the prior year (for example, July 2023 as compared to July 2022).

"Significant Ticket Type Change" is defined as an increase of ten percent (10%) or more in the percentage of tickets that require 30 minutes or more of Marking by USIC, as compared to the average percentage of such tickets for the trailing twelve (12) month period.

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"Excess Tickets" is a percentage of Tickets equal to the percentage change that triggered the Significant Ticket Volume Change or the Significant Ticket Type Change. For example, in the event of a 20% change in total ticket volume as compared to the total ticket for the same month of the prior year or a 20% change in the percentage of tickets that require 30 minutes or more of Marking as compared to the average percentage of such tickets for the trailing twelve (12) month period, 20% of total ticket volume shall be considered Excess Tickets that may be declined by USIC until pricing is renegotiated.

9. Environmental Health and Safety Matters

9.1 Customer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.

9.2 Customer shall timely advise USIC, in writing, of all applicable Site-specific health, safety, security, and environmental requirements and procedures, which shall include any instructions to USIC's personnel regarding Customer's safety practices. Without limiting Customer's obligations pursuant to Article 3 USIC may, from time-to-time, review and inspect applicable health, safety, security and environmental documentation, requirements and/or procedures at the Site.

9.3 Customer shall procure upon USIC's request regarding any high speed and/or high-density roadways which will require underground Locate Services to be performed, Work Zone Protection and/or Lane Closures as defined in the Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration. These notifications shall result in specific joint Customer and USIC plans to achieve work zone protection. These situations may result in the Customer or USIC subcontracting such services in a timely manner such that USIC's workforce will be able to accomplish all other Statement of Work requirements for those notification Tickets, with no penalties for late completion. If USIC procures traffic control services, any such traffic services shall be billed as direct costs to the Customer.

9.4 Telecommunications Vault or Manhole Entry shall only be utilized for cable, fiber, and telecommunications Locating Services. USIC personnel are authorized to enter telecommunications manhole vaults only when a second person is onsite, but not inside the manhole vault, in a supporting safety role. No other type of Manhole Entry for any other utility shall be performed by USIC.

9.5 If, in USIC's reasonable opinion, the health, safety, or security of personnel at a Site may be imperiled by security risks, terrorist threats/acts, potential exposure to Hazardous Materials, or unsafe working conditions; USIC may: (1) evacuate some or all of its personnel from Site; (2) suspend performance of all or any part of the Contract; (3) remotely perform or supervise work; and/or (4) take any other action necessary to protect such personnel. Any such occurrence shall be considered an excusable event. Customer shall reasonably assist in any such evacuation.

9.6 Operation of Customer's equipment is the responsibility of Customer. Customer shall not require or permit USIC's personnel to operate Customer's equipment at Site.

9.7 Customer will make its Site medical facilities and resources available to USIC personnel who need medical attention.

9.8 USIC has no responsibility or liability for the pre-existing condition of Customer's equipment or the Site. Prior to USIC starting any work at Site, Customer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Customer's equipment or the Site that USIC may encounter while performing under this Contract. Customer shall disclose to USIC industrial hygiene and environmental monitoring data regarding conditions that may affect USIC's work or personnel at the Site. Customer shall keep USIC informed of changes in any such conditions.

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9.9 USIC shall notify Customer if USIC becomes aware of: (i) conditions at the Site differing materially from those disclosed by Customer, (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in USIC's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule shall be made by USIC, with thirty (30) days' written notification to Customer of such adjustment.

9.10 Information Transfer: As referenced in OSHA 1910.269(a)(3) and (a)(4), before work begins, the appropriate Customer's Representative shall provide USIC access to the following information:

9.10.1 Existing characteristics and conditions of the Customer's installations that are related to the safety of the work to be performed;
9.10.2 Information about the design and operation of the Customer's installations that USIC needs;
9.10.3 Arc flash studies;
9.10.4 Ground fault studies;
9.10.5 Hand hole, manhole, and utility vault details; and
9.10.6 Danger poles tagging

9.11 As referenced in OSHA 1910.269(a)(3), USIC shall ensure that each of its employees is instructed in hazardous conditions relevant to the work, and USIC shall advise the Customer of any hazardous conditions found before and during the work.

9.12 If USIC encounters Hazardous Materials in Customer's equipment or at the Site that require special handling or disposal, USIC is not obligated to continue work affected by the hazardous conditions. In such an event, Customer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that USIC's work under the Contract may safely proceed, and USIC shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in USIC's cost of, or time required for, performance of any part of the work. Customer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of USIC's work at the Site.

9.13 Customer shall indemnify USIC for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (i) present in or about Customer's equipment or the Site prior to the commencement of USIC's work, (ii) improperly handled or disposed of by Customer or Customer's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on Site by parties other than USIC.

10. Employment

10.1 USIC is an equal opportunity employer. We are committed to ensuring equal employment opportunities for all applicants and employees, and do not to discriminate on the basis of sex, race, religion, color, national origin, age, disability, pregnancy, childbirth and related medical conditions, genetic information, military service, citizenship, veteran status, or any other basis protected by applicable federal, state or local law.

11. Insurance

11.1 USIC provides the following insurance coverage and agrees to name the Town of Amherst as additional insured:

INSURANCE COVERAGE		**LIMITS**
Workers Compensation		Statutory Limit
Employers' Liability		
	Each Accident	$1,000,000
	Disease, Policy Limit	$1,000,000
	Disease, Each Employee	$1,000,000

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Comprehensive General Liability		
	Each Occurrence	$2,000,000
	(bodily injury, advertising injury, personal injury and advertising injury)	
	General Aggregate	$8,000,000
	Products Completed Operations Aggregate	$8,000,000
	Medical Limits	Not Covered
	Damages to Premises Rented to You Limit	$1,000,000
Automobile Liability CSL		$5,000,000
Cyber		$5,000,000

12. USIC Work Product

12.1 Notwithstanding any other clause of this Contract, Customer shall have no rights or interests in USIC Work Product. All right, title and interest in and to USIC Work Product shall be and shall remain the sole property of USIC or [its third-party vendors or subcontractors

13. Dispute Resolution

13.1 The parties agree that any dispute, controversy, or claim arising out of or related to this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Section 13.

13.2 Prior to initiating litigation of a dispute under this Contract, the party will first informally attempt to resolve the dispute with the other party by seeking a meeting with the appropriate higher management representative(s) of the other party via written notice. Such meeting shall be held within twenty (20) business days after the giving of notice. All negotiations and resolutions pursuant to this Section 13.1 are confidential and shall be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. If the dispute is not resolved within thirty (30) business days after such meeting is requested, or such later date as may be mutually agreed, either party may pursue formal resolution as set forth below.

13.3 If a dispute has not been resolved by negotiation pursuant to Section 13.2 or if the Parties failed to meet for the first time within twenty (20) days of a party requesting a negotiation meeting pursuant to Section 13.2, then either Party may initiate an action in State Supreme Court in the County of Erie or United States District Court for the Western District of New York. Either Party shall have the right, in its discretion, to include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in any litigation.

14. Non-Solicitation

14.1 Customer agrees that during the term of this Contract and for a period of twelve (12) months thereafter, Customer will not hire or solicit for hire any employee of USIC who has been employed by USIC within the last six (6) months. The only exception to this provision shall be a publicly posted position by Customer, to which a USIC employee responds seeking employment without first having been solicited by Customer.

15. Force Majeure

15.1 Neither party shall be deemed to be in default of this Contract to the extent that any failure, delay, or substantial hindrance to perform its obligations, other than the payment of money, results from any cause beyond its reasonable control and without its fault or negligence, such as:

15.1.1 strikes, lock-outs or other industrial disputes at a national level or by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the works;

15.1.2 embargoes, riot, war, hostilities, acts of terrorism, civil war, rebellion, requisition or compulsory acquisition by any governmental or competent authority;

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15.1.3 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
15.1.4 acts of God, earthquakes, flood, storm, hurricane, fire, sinkholes, unusually severe weather conditions or strikes or other physical natural disaster;
15.1.5 pandemics, epidemics and quarantine or governmental action related to such;
15.1.6 compliance with any law or governmental order, rule, regulation or direction;
15.1.7 theft, burglary or malicious acts of third parties; and
15.1.8 any other events including emergencies and non-emergencies that meet the above-stated standards or force majeure as defined by applicable state law.

15.2 If USIC claims that it is prevented, delayed, or substantially hindered from performing its obligations delayed by such a cause, it shall promptly notify Customer, and Customer shall be entitled to obtain replacement Locate Services from any other person until such cause terminates as evidenced by a notice from USIC that such cause has ended.

16. Contract Choice of Law, Modification, and Assignment

16.1 With respect to any dispute regarding liability for or the scope of Repair Costs associated with a Damage to Customer's Facilities, both parties agree to utilize the laws and venue of the state where the Locate Services are performed.

16.2 With respect to any dispute regarding the interpretation or enforceability of this Agreement or any provision(s) of this Agreement, the parties agree that: (1) New York law shall apply, regardless of any state's law on choice of law; and (2) such disputes shall be litigated exclusively in state court in Erie County, New York or, if jurisdiction permits, in the United States District Court for the Western District of New York, and the parties waive any objection to litigating in such venues.

16.3 This Contract may only be modified or amended by a written instrument signed by an authorized representative of USIC and Customer. The term "Contract" shall include any such future amendments or modifications.

16.4 Customer may not assign, delegate, or otherwise transfer its rights or obligations under this Contract, voluntarily or involuntarily, whether by merger, consolidation, dissolution, affiliation, operation of law, or any other manner, without at least sixty (60) days' advance notice and the prior written consent of USIC.

17. Contract Entirety

17.1 This Contract shall constitute the entire contract between the parties with respect to the subject matter of this Contract. Customer and USIC each represent that it has read this Contract, agrees to be bound by all terms and conditions contained in this Contract, and acknowledge receipt of a signed, true exact copy of this Contract.

18. Severability Clause

18.1 The parties expressly agree that if any provision of this Contract is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Contract shall remain in full force and effect.

19. Acknowledgement of Understanding

19.1 Customer and USIC each hereby certify and represent that they have carefully read and fully understand all of the provisions and effects of this Contract, and that they each have consulted or had the opportunity to consult with an attorney with respect to all aspects of this Contract and the meaning and effect hereof. Customer and USIC each acknowledge that they are entering into this Contract knowingly and voluntarily, and that the other party has not made any representations concerning the terms and effects of this Contract other than those contained herein.

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19.2 In any construction of the Contract, the provisions shall be considered joint work product and shall not be construed for, or against, any party, but shall be construed according to their plain meaning without any presumptions against a drafter in the event of any ambiguity. Each party represents and warrants that is has such knowledge, sophistication, and experience in business and financial matters as to be capable of evaluating the merits and risks of, and protecting such party's own interests in connection with, the transactions contemplated by this Contract.

20. Counterparts

20.1 This Contract may be executed in several counterparts, each of which shall be an original and facsimile/pdf as against any party that signed it, and all of which shall constitute one and the same document. Further, a facsimile and/or pdf shall be an original as and against any party that signed it.

21. Contract Notification

21.1 Any notice, consent or other communication given under this Contract shall be in writing (unless otherwise specified in this Contract as permitting oral or verbal communication) and delivered to the below authorized representative of each party, specifying the subject matter and any other persons at USIC or Customer who should be notified of the notice, consent, or other communication. Notice shall be effective on the date when sent via email or, if delivered via certified mail, such notice shall be effective five (5) days after the date of mailing thereof.

21.1.1 USIC authorized representative:
USIC Locating Services, LLC
Attn: Contracts
9045 River Road, Suite 200
Indianapolis, IN 46240
contracts@usicllc.com

21.1.2 Customer authorized representative:
Attn: Chris Schregel
1100 N. Forest Road
Williamsville, NY 14221cschregel@amherst.ny.us

with a copy to

Town Attorney
5583 Main Street
Williamsville, NY 14221

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives.

Town of Amherst	USIC Locating Services, LLC
By: Deborah Bruch Bucki (Signature)	By: (Signature)
Deborah Bruch Bucki (Please print)	Sean Lepsky (Please print)
Title: Amherst Deputy Supervisor	Title: Vice President of Regional Sales

Date 7/10/2023

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Exhibit A

USIC Locating Services, LLC shall provide Services: **Streetlights**

In the State of **New York**
Member Codes (state One Call CDC or Customer Description Codes): **TWN AMHERST**

USIC Locating Services, LLC Pricing:

$ 17.00	**Per Ticket Received from the One Call**
$ 40.50	**Per Normal Business Hour Emergency Call Out Ticket**
$ 58.00	**Per After Hour Emergency Call Out Ticket**
$ 17.00	**Project Price Per Quarter Hour for Tickets that Exceed 30 Minutes**
$ 348.00	**Damage Investigation Fee**

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Consultant Major Exposure Addendum to Contract - USIC

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of the Contract are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. [INTENTIONALLY OMITTED]

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate. Umbrella coverage shall be in an amount of at least $5,000,000.00.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-

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Consultant or sub-sub Consultant shall name the Town as an additional insured on a primary and non-contributory basis.

5. Any accident shall be reported to the Office of the Town Attorney or the Town's Contract Notification as provided within Section 21.1.2 of the Contract as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Consultant shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Utility Locator employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) If applicable, Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

USIC Locating Services, LLC

By: _____
Signature

Sean Lepsky

Date: July 10, 2023

Agreed to and Accepted by:

Town of Amherst

By: Deborah Bruch Bucki, Deputy Supervisor
Deborah Bruch Bucki
~~Brian J. Kulpa, Supervisor~~

Date: July 18, 2023

Attachment: Emerg. Purchase Attachments (RES-2023-640 : Emergency Purchase Authorization)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Finance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 27752 **RESOLUTION 2023-641** **ADOPTED**

Authorize Pre-Payments to NYPA for Street Lighting Purchase & Upgrade Project

Please authorize pre-payments to the NY Power Authority (NYPA) for the duration of the Street Lighting Purchase & Upgrade project (CRS #3199 & 3606). Interest charges from NYPA are a part of the approved budget, but pre-payments will allow the Town to avoid/minimize those charges. Prepayment amounts and timing will be determined by the Director of Finance and Comptroller.

7/24/2023
Consent

FINANCIAL IMPACT:

N/A

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 27737 **RESOLUTION 2023-642** **ADOPTED**

Extension of Garbage/Recycling Totes/Parts Contract - CRS #4188

WHEREAS, Rehrig Pacific Company, has agreed to extend their contract for Garbage and Recycling Totes and Parts (BID # 2018043); and

WHEREAS, the Contract allows for a three (3) year additional extension;

NOW, THEREFORE, BE IT RESOLVED, the Town Board approves the extension of the contract with Rehrig Pacific Company for the period March 27, 2022 through March 26, 2025.

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the 3 (three) year contract extension with Rehrig Pacific Company; and

BE IT FURTHER RESOLVED, approval is subject to successful completion of the Contract Routing System CRS #4188 and approval of the Town Attorney.

7/24/2023
Consent

FINANCIAL IMPACT:

C8161-4531

TBD

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

REHRIG PACIFIC COMPANY CONTRACT EXTENSION

Let this document stand as a Contract Extension between REHRIG PACIFIC CO and the Town of Amherst. REHRIG PACIFIC CO agrees to hold prices and extend the current contract with the Town of Amherst for: BID #2018043 and Resolution 2019-205 for

Garbage and Recycling Totes and Parts.

ITEMS NUMBER 4 through 12

This contract will be extended for one (1) additional three (3) year period from 3/27/2022 to 3/26/25 upon Town Board approval.

Agreed to and Accepted by:

REHRIG PACIFIC COMPANY

By: R. Vara
Signature

Rebecca Vara
Print Name

VP of Sales
Title

Date: 7/5/2023.

Agreed to and Accepted By:

TOWN OF AMHERST

BY:_____
BRIAN J. KULPA
SUPERVISOR

Date:_____

Attachment: DOC071023-07102023083217 (RES-2023-642 : Extension of Garbage/Recycling Totes/Parts Contract - CRS # 4188)

= Low Bidder

Bid #2018043 Garbage and Recyling Totes and Parts

			Vendor Name:	Cascade Engineering		Rehrig Pacific		Schaefer Systems	
Item #	Quantity	U/M		Unit Price	Total	Unit Price	Total	Unit Price	Total
PART I									
1	2500	EA	95 Gallon Garbage Totes as specified or equivalent. The Town may use up to 2,500 95 Gallon Garbage Totes with lids over a three year period. Estimated quantities only and are not guaranteed	$48.61	$121,525.00	$47.00	$117,500.00	$46.92	$117,300.0(
2	2500	EA	65 Gallon Garbage Totes as specified or equivalent. The Town may use up to 2,500 65 Gallon Garbage Totes with lids over a three year period. Estimated quantities only and are not guaranteed	$42.19	$105,475.00	$42.75	$106,875.00	$43.17	$107,925.0(
3	1000	EA	35 Gallon Garbage Totes as specified or equivalent. The Town may use up to 1,000 35 Gallon Garbage Totes with lids over a three year period. Estimated quantities only and are not guaranteed	$36.44	$36,440.00	$36.75	$36,750.00	$35.42	$35,420.0(
			PART II - PARTS PRICING MUST BE LISTED BELOW, attach additional pages in the same format if necessary.						
PART II									
4	1000	EA	Rehrig 95 gallon lids as specified or equivalent	$11.20	$11,200.00	$12.00	$12,000.00	$12.00	$12,000.0(
5	1000	EA	Rehrig 95 gallon axle as specified or equivalent	$3.00	$3,000.00	$4.00	$4,000.00	$6.50	$6,500.0(
6	1000	EA	Rehrig 95 gallon wheels as specified or equivalent	$3.60	$3,600.00	$4.00	$4,000.00	$5.00	$5,000.0(

Attachment: DOC071023-07102023083217 (RES-2023-642 : Extension of Garbage/Recycling Totes/Parts Contract - CRS # 4188)

7	1000	EA	Rehrig 65 gallon lids as specified or equivalent	$10.50	$10,500.00	$10.00	$10,000.00	$11.00	$11,000.0(
8	1000	EA	Rehrig 65 gallon axle as specified or equivalent	$2.50	$2,500.00	$4.00	$4,000.00	$6.50	$6,500.0(
9	1000	EA	Rehrig 65 gallon wheels as specified or equivalent	$3.60	$3,600.00	$4.00	$4,000.00	$5.00	$5,000.0(
10	500	EA	Rehrig 35 gallon lids as specified or equivalent	$8.50	$4,250.00	$8.00	$4,000.00	$11.00	$5,500.0(
11	500	EA	Rehrig 35 gallon axle as specified or equivalent	$2.40	$1,200.00	$4.00	$2,000.00	$6.00	$3,000.0(
12	500	EA	Rehrig 35 gallon wheels as specified or equivalent	$2.20	$1,100.00	$4.00	$2,000.00	$5.00	$2,500.0(
Sub-Total - Part 1					$263,440.00		$261,125.00		$260,645.0(
Sub-Total - Part 2					$40,950.00		$46,000.00		$57,000.0(
TOTAL					$304,390.00		$307,125.00		$317,645.0(

NOTES:

Cascade: Part I: Pricing is based on minimum truck load quantities of 522 carts; mixed size loads are acceptable.
Part II: Parts pricing below is for Cascade Cart parts.
See Attached payment & Discount terms. Additional/subsequent container orders that require in-mold labels on the lids will be priced at the time of order a

Rehrig Pacific: Cart pricing is based on truckload orders. Part I: Minimum orders of 112 per size are required and require an additional freight charge of 350.
Part II: pricing does ot include freight costs.

Schaefer Systems: Items #4-12 Rehrig is crossed off. Replaced with the following:
Item #4: Schaefer USD95M Lid; Item #5: Schaefer #USD95M Wheel Axle; Item #6: Schaefer USD95M Wheels; Item #7: Schaefer USD65M Lid; Item #8:
Item #9: Schaefer USD65M Wheels; Item #10: Schaefer USD35B Lid; Item #11: Schaefer USD35B Wheel Axle; Item #12: Schaefer USD35B Wheels

Award Total Bid Package to Cascade Engineering as low total Bidder

Secondary award to Rehrig for PARTS only Items 4-12 as these are the only available parts that will fit our existing Rehrig totes.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 3/29/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. TH CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICI BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZ REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorse If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
SullivanCurtisMonroe Insurance Services (LA)
1920 Main Street
Suite 600
Irvine, CA 92614

www.SullivanCurtisMonroe.com License # 0E83670

CONTACT NAME: Olivia Barajas
PHONE (A/C, No, Ext): 949 852-4836 FAX (A/C, No): 949 250-71
E-MAIL ADDRESS: obarajas@sullicurt.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Hartford Fire Insurance Company	19682
INSURER B : Federal Insurance Company	20281
INSURER C : Property and Casualty Ins Co of Hartford	34690
INSURER D : Twin City Fire Insurance Company	29459
INSURER E : Everest Indemnity Insurance Company	10851
INSURER F : Hiscox Insurance Company Inc.	10200

INSURED
Rehrig Pacific Company, Inc.
4010 East 26th Street
Vernon CA 90058-4401

COVERAGES **CERTIFICATE NUMBER:** 73632994 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIC INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH TH CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERM EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	✓ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ✓ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ✓ LOC ✓ OTHER: $100,000 Ded per Occ.			72CSES44004	3/31/2023	3/31/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG Max Annual Aggregate	$2,000,000 $1,000,000 $10,000 $2,000,000 $4,000,000 $4,000,000 $8,000,000
A	AUTOMOBILE LIABILITY ✓ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY ✓ $100k Hired Physical Damage			72CSES44002 Comp.& Coll. Deductibles: $2000 Medium Truck $3000 Heavy Truck/Tractor $3000 Extra Heavy Truck $1000 All Other/Trailers	3/31/2023	3/31/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Auto Liab (BI/PD) Ded:	$2,000,000 $ $ $ $100,000
B	✓ UMBRELLA LIAB ✓ OCCUR EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $			78198810	3/31/2023	3/31/2024	EACH OCCURRENCE AGGREGATE $	$25,000,000 $25,000,000
C D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N ☐ (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		72WNS44000 72WBRS44001 (WI only)	3/31/2023 3/31/2023	3/31/2024 3/31/2024	✓ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $1,000,000 $1,000,000 $1,000,000
E F	Motor Truck Cargo Technology Professional Liability Claims Made & Reported Retro Date: 09/27/2016			IM4CM00109231 MPL197376023	3/31/2023 3/31/2023	3/31/2024 3/31/2024	$100,000 / $5,000 Ded $3,000,000 Each Claim / $3,000,000 Agg. $5,000 Retention	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Town of Amherst is named as additional insured per attached form

CERTIFICATE HOLDER

Town of Amherst
5583 Main Street
Williamsville NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Kathy Roberge
Kathy Roberge

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Attachment: DOC071023-07102023083217 (RES-2023-642 : Extension of Garbage/Recycling Totes/Parts Contract - CRS # 4188)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Highway
Initiated by: **Patrick G. Lucey**
Co-Sponsored by:

DOC ID: 27740 **RESOLUTION 2023-643** **ADOPTED**

Authorize Emergency Repair - 167 Wyeth-Highway Department

WHEREAS, Funding/Emergency purchase will be needed for required piping and welded 22.5 degree elbows. Required elbows are not on contract Resolution 2023-357, Section 2 and Section 6.

WHEREAS, NIAGARA PRECAST INC, 367 Fillmore Avenue, Tonawanda, NY 14150, is the primary vendor for Section 2 projects and one of several vendors for Section 6 projects,

THEREFORE BE IT RESOLVED that the Town Board authorizes the emergency repair of 167 Wyeth and purchase of all parts needed at the Highway Department by Niagara Precast Inc.

7/24/2023
Consent

FINANCIAL IMPACT:

H8000: 4110 $8,768.80

H8000 4430 $8,060.00

Total=$16,828.80

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Schreck, Craig

From: Armstrong, Brian
Sent: Tuesday, May 9, 2023 3:06 PM
To: Lucey, Tim; Polowy, Martin; Lucey, Patrick G.
Cc: Schregel, Chris; Bellacose, Marc; Burroughs, Nicole; Burroughs, Jeffrey; Reberholt,Vaishali; Schreck, Craig; O'Neil, Jessica; Boudreau, Jessica; Juul, Lynda
Subject: RE: 167 Wyeth

Marty,

Jeff, Chris, Marc and I had a productive impromptu meeting this morning with Tim Lucey and will be making revisions to the options that we previously discussed and that version
will represent the preferred option to be constructed by the Highway Dept. I should be able to provide that plan versio to this group tomorrow.
Once that version is on the table, the following issues will need to be resolved in order for Highway to move forward into construction:

Adjacent Homeowner Fencing: While it has been Highway's assertion that the existing fence of 175 Wyeth Drive is located within a Town easement, Engineering has confirmed
via the below screen grab of sub-lot 90 from the filed plat map and our in-field survey, that the adjacent fence MAY encroach slightly into the
rear-yard public easement, but there is in fact, no easements along the southern parcel boundary and therefore the vast majority of the fence is not
within any easement as such, we don't believe that the owner can be instructed to move the fence at their cost.
This topic needs to be discussed further as it may represent an impediment that the Highway union cannot overcome, rendering this work
impossible for them to complete due to their available equipment and proximity to the fence.

Required Additional Easements: The preferred design improvement to be constructed by Highway will include 2 easements on 167 Wyeth Dr. that the new homeowner must agree to in order
to allow for the new construction and future maintenance of the storm line.

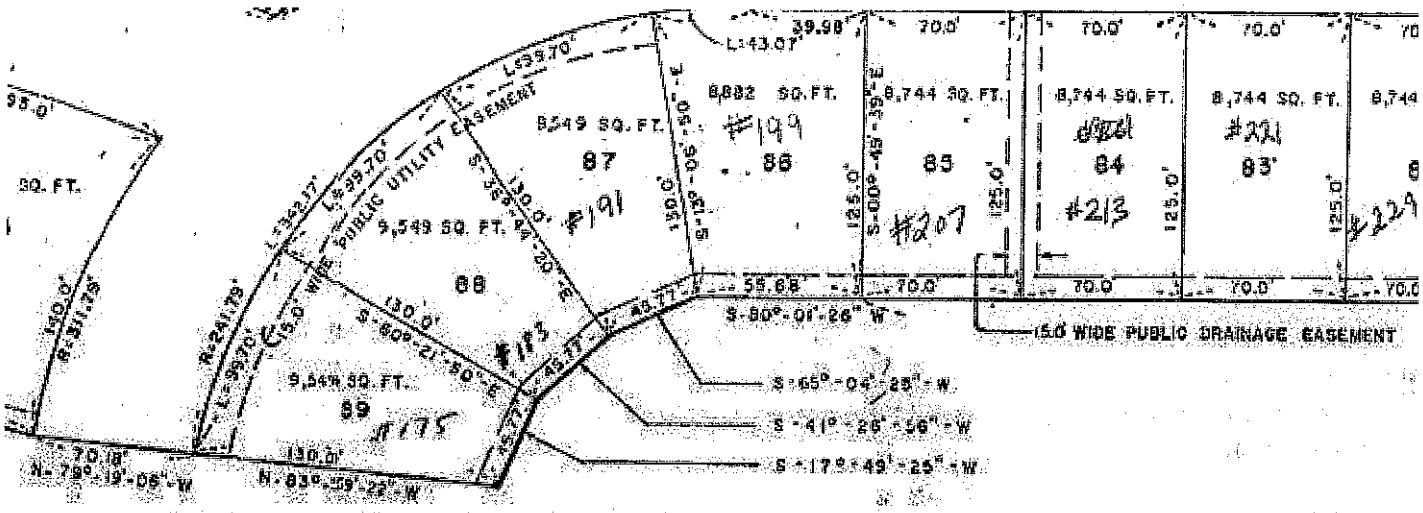
Reduced Storm Pipe Diameter: Highway has requested that we provide some hydraulic analysis to see if 30-inch smooth-walled pipe could be used in place of the original corrugated metal pipe CMP.
This reduction will allow for more streamlined construction as well as some pipe cost savings. We will run those calculations and provide our thoughts to this group.

Funding / Emergency Purchase: Funding will need to be provided for all of the required piping and welded 22.5 degree elbows. The required elbows are not on Town Contract and as
such we are recommending that the Highway Department spec the pipe and elbows and prepare a Supervisor's request for Emergency Purchase
as this work needs to be done asap to avoid residential flooding as opposed to waiting to bid new materials.
With respect to funding, we are recommending that existing Storm District funding be utilized to accommodate all material purchases and due to budget limitations,

Attachment: DOC071323-07132023123818 (RES-2023-643 : Authorize Emergency Repair - 167 Wyeth-Highway Department)

this project funding total should then be reimbursed to the Storm District by Town general fund surplus funding.

BJA



From: Armstrong, Brian
Sent: Tuesday, May 9, 2023 10:00 AM
To: Lucey, Tim <tlucey@amherst.ny.us>; Polowy, Martin <mpolowy@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole <NBurroughs@amherst.ny.us>; Burroughs, Jeffrey <jburroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: RE: 167 Wyeth

Why don't you swing in today between 11:00 and 12:00 and Chris and I can hear your idea and make the drawing tweak you may need
as an added option for Jeff to consider for his stamp of the final design.

Thanks,

BJA

From: Lucey, Tim
Sent: Tuesday, May 9, 2023 9:38 AM
To: Polowy, Martin <mpolowy@amherst.ny.us>; Armstrong, Brian <BArmstrong@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole <NBurroughs@amherst.ny.us>; Burroughs, Jeffrey <jburroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: RE: 167 Wyeth

Attachment: DOC071323-07132023123818 (RES-2023-643 : Authorize Emergency Repair - 167 Wyeth-Highway Department)

Brian,
If we can meet I would like to run by an idea I have. All week is good except Wednesday 8:00 a.m. to 9:30 a.m.

Thanks

Tim Lucey
General Crew Chief
Town of Amherst
Highway department
1042 N.Forest Rd.
Williamsville, N.Y. 14221
tlucey@amherst.ny.us
Phone (716) 631-7117 ext. 5949
Fax: (716) 631-7265

From: Polowy, Martin <mpolowy@amherst.ny.us>
Sent: Tuesday, May 9, 2023 8:31 AM
To: Armstrong, Brian <BArmstrong@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>; Lucey, Tim <tlucey@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole <NBurroughs@amherst.ny.us>; Burroughs, Jeffrey <jburroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: RE: 167 Wyeth

Thank you Brian.

Please let me know what option is chosen. To me Option 3, looks like a good option.

Martin A. Polowy
Town Attorney
Town of Amherst Town Attorney's Office
5583 Main Street
Williamsville, New York 14221
(716) 631-7030 (p)
(716) 631-7101 (f)
E-Mail : mpolowy@amherst.ny.us

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From: Armstrong, Brian <BArmstrong@amherst.ny.us>
Sent: Friday, May 5, 2023 11:26 AM
To: Lucey, Patrick G. <plucey@amherst.ny.us>; Lucey, Tim <tlucey@amherst.ny.us>; Polowy, Martin <mpolowy@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole

Attachment: DOC071323-07132023123818 (RES-2023-643 : Authorize Emergency Repair - 167 Wyeth-Highway Department)

<NBurroughs@amherst.ny.us>; Burroughs, Jeffrey <jburroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: FW: 167 Wyeth

Copying the email below to this group so that everyone in on the same page.

BJA

From: Schregel, Chris
Sent: Friday, May 5, 2023 11:04 AM
To: Burroughs, Jeffrey <jburroughs@amherst.ny.us>
Cc: Armstrong, Brian <BArmstrong@amherst.ny.us>
Subject: FW: 167 Wyeth

Jeff,

Per below, the field work is complete on Wyeth. The CAD and utility / location map is complete. We prepared three (3) options to get you started on making a departmental recommendation for a solution to Hwy. Let me know if you have tweaks or a completely different idea to address. I can do CAD work if you mark up. See attached.

Pros/Cons

Option 1
Pros: cleaning structures, minimum pipe replacement, avoids gas, water, san, and water crossings
Cons: Requires easements, three new structures, partial fence removal

Option 2
Pros: cleaning structures, keep pipe in existing easement
Cons: disturbance outside of easement during construction, two new structures, must cross gas, water, and go over san. Expose and protect water street side. Most pipe work of all three options. Sidewalk disturbance. Partial fence removal.

Option 3
Pros: No new structures, 4 pipe bends only. Keeps pipe centered in existing easement. No fence removal.
Cons: Must cross gas, water, and go over san. Expose and protect water street side. Bend part purchase?

Highway has not seen this yet as it has remained internal.

Thanks,
Chris S.

From: Lucey, Tim
Sent: Wednesday, April 26, 2023 1:48 PM
To: Burroughs, Jeffrey <jburroughs@amherst.ny.us>; Polowy, Martin <mpolowy@amherst.ny.us>; Armstrong, Brian <BArmstrong@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole <NBurroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: RE: 167 Wyeth

Attachment: DOC071323-07132023123818 (RES-2023-643 : Authorize Emergency Repair - 167 Wyeth-Highway Department)

Jeff,
I will supply some people to assist in shooting the inverts on Wyeth and behind 83 Huntwood Ct. Let me know when yc will need them.

Tim Lucey
General Crew Chief
Town Of Amherst
Highway Department
1042 N.Forest Rd.
Williamsville, NY 14221
tlucey@amherst.ny.us
Phone (716) 631-7117 ext. 5949
Fax (716) 631-7265

From: Burroughs, Jeffrey <jburroughs@amherst.ny.us>
Sent: Wednesday, April 26, 2023 1:38 PM
To: Polowy, Martin <mpolowy@amherst.ny.us>; Lucey, Tim <tlucey@amherst.ny.us>; Armstrong, Brian <BArmstrong@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole <NBurroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: RE: 167 Wyeth

All-

A few items:

1. I stopped by the property yesterday. We will need to coordinate with Highway to remove the manhole cover across the street to get invert information. We will need someone to prepare a good base drawing. That base drawing will locate (as best as we can) the property line, easement, location of pipe, fences, sheds, storm pipe structures and inverts, other utility locations, proposed foundation, etc, I suggest you start with the record PIP plans and then field modify.
2. The fence and shed will have to be removed and reinstalled at the owner's cost.
3. As far as a cost estimate, that is probably irrelevant until we determine how we are flexing the pipe back into the easement.

Jeff Burroughs, PE
Town Engineer
Town of Amherst Engineering Department
455 Tonawanda Creek Road
Amherst, NY 14228

(p) (716) 691-9771 x 8027

From: Polowy, Martin
Sent: Wednesday, April 26, 2023 12:23 PM
To: Lucey, Tim <tlucey@amherst.ny.us>; Armstrong, Brian <BArmstrong@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole

Attachment: DOC071323-07132023123818 (RES-2023-643 : Authorize Emergency Repair - 167 Wyeth-Highway Department)

<NBurroughs@amherst.ny.us>; Burroughs, Jeffrey <jburroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: RE: 167 Wyeth

As far as cost estimate, who will draw up the plans, and the time frame of completion – you should treat this as you should treat this as you would other Highway projects but with a completion as soon as possible so that we may avoid litigation on this matter.

As noted by Brian Armstrong the Engineering Services is willing to play a role and Jeff Burroughs would need to be approached for the design of this work as he has the Storm Water Management personnel under his control.

Martin A. Polowy
Town Attorney
Town of Amherst Town Attorney's Office
5583 Main Street
Williamsville, New York 14221
(716) 631-7030 (p)
(716) 631-7101 (f)
E-Mail : mpolowy@amherst.ny.us
Confidentiality Notice: This electronic mail transmission is intended for the use of the individual or entity to which it is addressed and may contain confidential information belonging to the sender which is protected by the attorney-client privilege. No confidentiality or privilege i waived or lost by any error in transmission. If you are not the intended recipient, you are strictly prohibited from disclosing, copying, distributing or using any of this information and are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by e-mail and delete the original message. Thank you for your cooperation.

From: Lucey, Tim <tlucey@amherst.ny.us>
Sent: Tuesday, April 25, 2023 9:36 AM
To: Polowy, Martin <mpolowy@amherst.ny.us>; Armstrong, Brian <BArmstrong@amherst.ny.us>
Cc: Schregel, Chris <CSchregel@amherst.ny.us>; Bellacose, Marc <Marc.Bellacose@amherst.ny.us>; Burroughs, Nicole <NBurroughs@amherst.ny.us>; Burroughs, Jeffrey <jburroughs@amherst.ny.us>; Reberholt,Vaishali <VReberholt@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>; Schreck, Craig <cschreck@amherst.ny.us>
Subject: RE: 167 Wyeth

Marty,
The E.H.E.A. would like to take this project on. The questions I have is the cost estimate, who will draw up the plans, and the time frame of completion. As I have mentioned earlier, the fence at 175 Wyeth is currently in both the drainage and sanitary easements, and will have to be removed along with a shed during the relocation. If you need any more from me, please let me know.

Thanks

Tim Lucey
General Crew Chief
Town Of Amherst
Highway Department
1042 N.Forest Rd.
Williamsville, NY 14221
tlucey@amherst.ny.us
Phone (716) 631-7117 ext. 5949
Fax (716) 631-7265

Attachment: DOC071323-07132023123818 (RES-2023-643 : Authorize Emergency Repair - 167 Wyeth-Highway Department)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 27742 **RESOLUTION 2023-644** **ADOPTED**

Contract Extension - Valley Tire Company - CRS #4198

WHEREAS, Bid #2022020A, Highway Department, Tire Road Service, Retreading and Wheel finishing allows for the contract to be extended for a period of one (1) year at the same terms and conditions and;

WHEREAS, the Highway Department is requesting approval for the extension of the contract under Resolution 2022-819 and;

NOW THEREFORE BE IT RESOLVED, the contract extension term will be dated from 8/22/23 through 8/21/24 and;

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the one year contract extension with Valley Tire Company Inc, 300 French Road, Cheektowaga, NY 14227, subject to the Contract Routing System, CRS# 4198 and the approval of the Town Attorney.

7/24/2023
Consent

FINANCIAL IMPACT:

TOWN WIDE

VARIOUS

TBD

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

CONTRACT EXTENSION

Let this document stand as a Contract Extension between VALLEY TIRE CO. and the Town of Amherst. VALLEY TIRE CO. agrees to hold prices and extend the current contract with the Town of Amherst for: BID #2022020A and Resolution 2022-819

tire road service; retreading and wheel finishing

This contract will be extended for one (1) year period from the date of Town of Amherst Town Board approval., 8/22/2023 through 8/21/2024

Agreed to and Accepted by:

VALLEY TIRE CO.

By: _____
Signature

James J. Sala
Print Name

Fleet Dev. Mgr
Title

Date: 7/13/23

Agreed to and Accepted By:

TOWN OF AMHERST

BY: _____
BRIAN KULPA
SUPERVISOR

Date: _____

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

TOWN OF AMHERST
AMHERST, NEW YORK 14221

Town of Amherst

Contract Compliance & Administration Department

INVITATION TO BID # 2022020A

Tire Road Service

Bid Instructions:

- **Four (4) copies of the proposal are required.**
- **All four (4) bid packets may be placed in one sealed envelope.**
- **In each of the four (4) bid packets being submitted, EACH page requiring a signature, must be an original signature, and must be signed in BLUE INK.**
- **If you are submitting bids for more than one job, please put in separate envelopes, marked with the Bid number.**

Please submit to:
Town of Amherst
Contract Compliance & Administration – 2nd Floor
5583 Main Street
Williamsville, New York 14221

NOTE: Lower left hand corner of envelope MUST indicate the following:

BID NUMBER: 2022020A

OPENING DATE July 28, 2022 TIME: 12:00 PM

FOR: Tire Road Service

NAME OF BIDDER: VALLEY TIRE CO., INC

If you are submitting other Invitations to Bid, each bid must be enclosed in a separate envelope.
Following EXHIBITS are attached to and made a part of the bid specifications, and part of any agreement entered into pursuant to this Invitation to Bid:

X	EXHIBIT "A"	- Assignment of Public Contracts
N/A	EXHIBIT "D"	- Bid Bond (Formal Bid) 5%
X	EXHIBIT "F"	- Agreement Addendum
X	EXHIBIT "G"	- Non-Collusive Bidding Certification
X	EXHIBIT "I"	- Certification of Compliance with the Iran Divestment Act
N/A	EXHIBIT "P"	- Prevailing Wage Schedule

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

NOTICE TO BIDDERS

Town of Amherst
Contract Compliance & Administration Department

Bid #2022020A
Tire Road Service

Sealed proposals for the above mentioned project in the Town of Amherst, NY will be received by the Contract Compliance & Administration Office in the Municipal Building, Williamsville, NY 14221 on or before 12:00 PM local time on July 28, 2022.

Specifications may be obtained via e-mail to khalton@amherst.ny.us or examined at the Contract Compliance & Administration Office of the Town of Amherst between the hours of 8:00 AM and 4:00 PM through the bid opening date, excluding Saturdays, Sundays and Holidays.

By Order of the Town Board
Town of Amherst, New York

Lynda L. Juul
Director of Finance

July 13, 2022

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

TOWN OF AMHERST
AMHERST, NEW YORK 14221

Town of Amherst

Contract Compliance & Administration Department

BID SPECIFICATIONS

ITEM NO	QTY	U/M	CATALOG NO/DESCRIPTION	TOTAL COST
			Price Per NYS Contract if Applicable	
			NYS Contract #	
				Initial
			ROAD SERVICE	
1	1	HR	Road Service – Monday thru Friday	$120
1A	1	HR	Road Service – Nights/Weekends/Holidays (2 Hour Minimum)	$160 120
1B	1	HR	Scheduled Service – Monday thru Friday	$120 160
1C	1	HR	Scheduled Service – After Hours & Saturdays	$160 120
1D	1	HR	Over the Road Service – Monday thru Friday	$120 160
1E	1	HR	Over the Road Service – After Hours & Saturdays	$175 175
1F	1	EA	Over the Road Mileage – Per Mile NO MILEAGE CHARGE FUEL SURCHARGE	$175
1G	1	EA	Parts/Supplies – Valve Stems, Passenger	$2
1H	1	EA	Parts/Supplies – Valve Stems, Light	$3
1I	1	EA	Parts/Supplies – Valve Stems, Medium/Heavy	$3
1J	1	EA	Misc. Hardware/Supplies – Plugs	$2.95
1K	1	EA	Misc. Hardware/Supplies – Patches	$4.95
1L	1	EA	Misc. Hardware/Supplies – O-Rings	$2.95
1M	1	EA	Misc. Hardware/Supplies – Calcium	$25.50
1N	1	EA	Misc. Hardware/Supplies – Tubes	$24.00
1O	1	EA	Misc. Hardware/Supplies – Lock Rings	NA
1P	1	EA	Misc. Hardware/Supplies – Flaps	NA
				$20.00
			RETREADING	
2	1	EA	Size 11R22.6 MMT	$125
2A	1	EA	Size 11R24.5 MMT	$105
2B	1	EA	Size 315/80R22.5 XDS2	$253
2C	1	EA	Size 11R22.5 Highway LP	$139
2D	1	EA	Size 20.5R25	$1350
2E	1	EA	Repairs needed for Nail Hole	$18
2F	1	EA	Repairs needed for Spot	$12
2G	1	EA	Repairs needed for Section Repairs	$35
			WHEEL REFINISHING	
3	1	EA	Light	$35
3A	1	EA	Medium	$55
3B	1	EA	Duplex	$45
3C	1	EA	25" Loader Wheel	NA
			NO ADDITIONAL CHARGES WILL BE CONSIDERED	

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

BID SPECIFICATIONS

Road Service

Service Rates – Port to Port

Mileage and any fuel charges must be included in hourly rates for all service work, except OTR.

Road Service: Monday thru Friday, 7:00 AM - 4.30 PM
Nights/Weekends/Holidays - **2 Hour Minimum**

Scheduled Service: Monday thru Friday, 7:00 AM - 4:30 PM
After hours & Saturdays

Service to include mounting, dismounting, and flat repair for all passenger, light and medium sizes.

OTR Road Service: Monday thru Friday, 7:00 AM - 4:30 PM
After Hours
OTR Mileage per mile

Parts & Supplies

Note: OTR Shall include all truck, trailer, paver, AG tractor, sweeper, loader, and specialty Highway equipment.

Retreading

SIZE	CAP MANUFACTURER	DESCRIPTION	PLY
11R22.5	Oliver/Bandag or Michelin or equiv.	MDII/Ultra Drive or MM Traction or equiv.	
11R24.5	Oliver/Bandag or Michelin or equiv.	MD II/Ultra Drive or MM Traction or equiv.	
315/80R22.5	Oliver/Bandag or Michelin	MDII/Ultra Drive or XDS-2 OR Equivalent	
11R22.5	Oliver/Bandag or Michelin	Orco RIB Trailer / T4100 or Highway LP 4100 or Equivalent	
20.5R5	Retread	MCC	E/L3

Approx. # of casings submitted for retreading per year - 10 to 15.
Approx. # of wheels submitted for refinishing per year - 10 to 15.

Quantities are estimated and are not guaranteed.

All original casings, both retreaded and rejected, must be returned to the Amherst Highway Department. Contractor must provide an ISO 9001 certified retread facility that all Amherst Highway tires would pass through to ensure they are of the highest quality. **No Exceptions.**

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

TOWN OF AMHERST
AMHERST, NEW YORK 14221

Town of Amherst

Contract Compliance & Administration Department

To facilitate correct drawing and execution of contract, bidder shall supply full information concerning legal status:

FIRM NAME Valley Tire Co., Inc

ADDRESS OF PRINCIPAL OFFICE:

STREET 300 French Road

CITY Cheektowaga STATE N.Y.

ZIP 14227 AREA CODE 716 PHONE 668-2046

Check one: CORPORATION X PARTNERSHIP ____ INDIVIDUAL ____

FEDERAL ID NUMBER: 25-1370485

E-MAIL ADDRESS: JSickler@ValleyTire.com

INCORPORATED UNDER THE LAWS OF THE STATE OF NY.

If foreign corporation, state if authorized to do business in the State of New York:

YES ____ NO X

TRADE NAMES: Valley Tire Co., Inc

ADDRESS OF LOCAL OFFICE:

STREET 300 French Rd.

CITY Cheektowaga STATE NY

ZIP 14227 AREA CODE 716 PHONE 668-2046

NAMES AND ADDRESSES OF PARTNERS:

(Rev. 7/2017)

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

ACORD

VALLTIR-01

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/13/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THI CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIE BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZEI REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement o this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Eber & Associates, Inc. 55 Old Clairton Road Pittsburgh, PA 15236	CONTACT NAME: Amy Truzzi PHONE (A/C, No, Ext): (412) 872-2054 105 FAX (A/C, No): (412) 653-6169 E-MAIL ADDRESS: amy@eberinsurance.com
INSURED Valley Tire Company Inc. 1002 Arentzen Blvd Charleroi, PA 15022	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Erie Insurance Exchange — 26271 INSURER B : Synergy Comp Insurance Company — 12593 INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOI INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY [ ] PRO-JECT [ ] LOC OTHER:	X		Q03-0480207	3/4/2023	3/4/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,($ 1,000,($ 5,($ 1,000,($ 1,000,($ 1,000,(
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY X Garage Liability	X		Q03-0480203	3/4/2023	3/4/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,($ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $	X		Q27-0470342	3/4/2023	3/4/2024	EACH OCCURRENCE AGGREGATE	$ 4,000,0 $ 4,000,0
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		1169SG-02	1/18/2023	1/18/2024	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 500,($ 500,($ 500,(
A	Garage Keepers			Q03-0480203	3/4/2023	3/4/2024	COLLISION LIMIT	100,(
A	Direct Primary			Q03-0480203	3/4/2023	3/4/2024	COMPREHENSIVE LIMIT	100,(

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Other WC : NY State Insurance Fund 1/18/23-1/18/2024 Policy #FLNIC00000400 Policy Limits 500,000/500,000/500,000

Town of Amherst is included as an additional insured. Coverage applies on a Primary and Non-Contributory Basis for all ongoing and completed operations.

CERTIFICATE HOLDER

Town of Amherst
5583 Main Street
Williamsville, NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

AGENCY CUSTOMER ID: VALLTIR-01
LOC #: 1

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Eber & Associates, Inc.	Valley Tire Co. 1002 Arentzen Blvd Charleroi, PA 15022
POLICY NUMBER SEE PAGE 1	
CARRIER: SEE PAGE 1 / NAIC CODE: SEE P 1	EFFECTIVE DATE: SEE PAGE 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
Business Auto Liability contains a Waiver of Subrogation in favor of the Certificate Holder subject to the conditions of the Blanket Waiver of Transfer of Rights of Recovery Endorsement.
Commercial Umbrella follows form according to the terms, conditions, and endorsements found in the Commercial Umbrella Polic

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

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NYSIF
New York State Insurance Fund

PO Box 66699, Albany, NY 12206
| nysif.com

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE (RENEWED)

^^^^^ 251370485
VALLEY TIRE CO INC
1002 ARENTZEN BLD
CHARLEROI PA 15022

SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER	CERTIFICATE HOLDER
VALLEY TIRE CO INC 1002 ARENTZEN BLD CHARLEROI PA 15022	TOWN OF AMHERST CONTRACT COMPLIANCE & ADMINIST 2ND FLOOR, 5583 MAIN STREET WILLIAMSVILLE NY 14221

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
B2498 474-2	760895	01/18/2023 TO 01/18/2024	2/1/2023

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2498 474-2, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW, AND, WITH RESPECT TO OPERATIONS OUTSIDE OF NEW YORK, TO THE POLICYHOLDER'S REGULAR NEW YORK STATE EMPLOYEES ONLY.

THIS POLICY DOES NOT COVER CLAIMS OR SUITS THAT ARISE FROM BODILY INJURY SUFFERED BY THE OFFICERS OF THE INSURED CORPORATION.

PRESIDENT
JAMES F STANKIEWICZ
VALLEY TIRE CO INC
1 PERSON CORP

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

THIS POLICY IS CANCELLED EFFECTIVE 02/16/2023.

NEW YORK STATE INSURANCE FUND

DIRECTOR, INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 289008438

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by NYS disability and Paid Family Leave benefits carrier or licensed insurance agent of that carrier

1a. Legal Name & Address of Insured (use street address only) Valley Tire Co., Inc. 1002 Arentzen Blvd. Charleroi, PA 15022 Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*	1b. Business Telephone Number of Insured (724) 483-4718 1c. Federal Employer Identification Number of Insured or Social Security Number 25-1370485
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst Contract Compliance & Administration - 2nd Floor 5583 Main Street Williamsville, NY 14221	3a. Name of Insurance Carrier Mutual of Omaha Insurance Company 3b. Policy Number of Entity Listed in Box 1a GMNY6X008N15-0001 3c. Policy Effective Period 10/01/2022 to 10/01/2023

4. Policy provides the following benefits:
   - [X] A. Both disability and Paid Family Leave benefits.
   - [ ] B. Disability benefits only.
   - [ ] C. Paid Family Leave benefits only.
5. Policy covers:
   - [X] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
   - [ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS disability and/or Paid Family Leave benefits insurance coverage as described above.

Date Signed 10/7/2022 By Hana Rubin
(Signature of insurance carrier's authorized representative or NYS licensed insurance agent of that insurance carrier)

Telephone Number (800) 826-2966 Name and Title Hana Rubin, Disability Administrator

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be emailed to PAU@wcb.ny.gov or it can be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4B, 4C or 5B have been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law(Article 9 of the Workers' Compensation Law) with respect to all of their employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and Paid Family Leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

Attachment: DOC071423-07142023083627 (RES-2023-644 : Contract Extension -Valley Tire Company - CRS# 4198)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 27743 **RESOLUTION 2023-645** **ADOPTED**

Accountant/Comptroller's Office

Please appoint an Accountant to the Comptroller's Office. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023 at an annual salary of $57,713, Grade 14, Step C for Elizabeth Moon.

This is a Permanent appointment for an employee currently serving Provisionally.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 27744 **RESOLUTION 2023-646** **ADOPTED**

Assistant Accountant/Youth & Recreation

Please appoint an Assistant Accountant to the Youth & Recreation Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023 at an annual salary of $62,427, Grade 11, Step J for Patrice Fischer.

This is a Permanent appointment for an employee currently serving Provisionally.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 27770 **RESOLUTION 2023-647** **ADOPTED**

Assistant Food Service Manager/Senior Services

Please appoint an Assistant Food Service Manager to the Senior Services Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023 at an annual salary of $46,326, Grade 9, Step C for Jamie Sullivan.

This is a Permanent appointment for an employee currently serving Provisionally.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 27772 **RESOLUTION 2023-648** **ADOPTED**

Assistant Plumber/Engineering/Plant #16

Please appoint an Assistant Plumber to the Engineering Department/Plant #16. Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective July 25, 2023, at an annual salary of $55,288, Grade 12, Step D.

Contingent upon completing all pre-employment requirements.

Please authorize a six (6) month residency waiver.

Replacing an employee who was separated from service.

7/24/2023
Consent

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Police
Initiated by: **Scott Chamberlin**
Co-Sponsored by:

DOC ID: 27764 **RESOLUTION 2023-649** **ADOPTED**

Grant Agreement Emergency Operations Center: Bathroom/Kitchen Renovations & Communications Systems Upgrades (CRS#3928) New York State Department of Homeland Security and Emergency Services

TOWN BOARD AGENDA ITEM: JULY 24, 2023

TO: **Town Board**

FROM: **Scott P. Chamberlin, Chief of Police**

RE: **Grant Agreement**
Emergency Operations Center: Bathroom/Kitchen Renovations & Communications Systems Upgrades (CRS#3928)
New York State Department of Homeland Security and Emergency Services

Kindly adopt a resolution authorizing the Supervisor to adopt and execute the attached grant agreement between the Town of Amherst (Police) and the New York State Department of Homeland Security and Emergency Services with regard to the above-entitled matter. This grant agreement has successfully completed the Contract Routing Process.

Thank you.

SPC: msl
Attachment
C: Tim Koller, Deputy Town Clerk **(Agenda Item: July 24, 2023)**

7/24/2023
Consent

FINANCIAL IMPACT:

KP 2102 .04389: $297,750.00

A 3122 .04389: $202,250.00

KP 2102 .4972: $99,250.00

A 3122 .4099: $67,417.00 (2024 Budget)

Amount

Grant Funds: $500,000.00 & Matching Funds: $166,667.00 (Total: $666,667.00)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

STATE AGENCY New York State Division of Homeland Security and Emergency Services 1220 Washington Avenue Building 7A Suite 710 Albany, NY 12242	**NYS COMPTROLLER'S NUMBER:** C155004 (Contract Number) **ORIGINATING AGENCY CODE:** 01077
GRANTEE/CONTRACTOR:(Name & Address) Amherst, Town of 5583 Main St Williamsville NY 14221	**TYPE OF PROGRAMS:** WM2022 EOC **CFDA NUMBER:** 97.052 **DHSES NUMBERS:** WM22155004
FEDERAL TAX IDENTIFICATION NO: 16-6002157 **MUNICIPALITY NO:** (if applicable) **SFS VENDER NO:** 1000003949 **DUN & BRADSTREET NO:** 030212336	**INITIAL CONTRACT PERIOD:** FROM 09/01/2022 TO 08/31/2025 **FUNDING AMOUNT FOR INITIAL PERIOD:** $500,000.00
STATUS: Contractor is not a sectarian entry. Contractor is not a not-for-profit organization.	**MULTI-YEAR TERM:** (if applicable)
CHARITIES REGISTRATION NUMBER: N/A (Enter number or Exempt) if Exempt is entered above, reason for exemption. Contractor has ____ has not ____ timely filed with the Attorney General's Charities Bureau all required periodic or annual written reports.	APPENDIX ATTACHED AND PART OF THIS AGREEMENT __ APPENDIX A Standard Clauses required by the Attorney General for all State contracts x APPENDIX A1 Agency-specific Clauses x APPENDIX B Budget x APPENDIX C Payment and Reporting Schedule x APPENDIX D Program Workplan and Special Conditions __ APPENDIX X Modification Agreement Form (to accompany modified appendices for changes in terms or considerations on an existing period or for renewal periods) __ DHSES-55 Budget Amendment/Grant Extension Request __ Other - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion _____. _____.
IN WITNESS THEREOF, the parties hereto have electronically executed or approved this AGREEMENT on the dates of their signatures.	
NYS Division of Homeland Security and Emergency Services BY: Eric Abramson , Director of Grants Program Administration Date: 02/27/2023 State Agency Certification: In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract. GRANTEE: BY: Mr. Brian J Kulpa Supervisor Date: 02/24/2023	
ATTORNEY GENERAL'S SIGNATURE _____. Title: _____. Date: _____.	**COMPTROLLER'S SIGNATURE** _____. Title: _____. Date: _____.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Award Contract Project No.	Grantee Name	Emergency Operations Center	
EC22-1000-D00	Amherst, Town of		02/27/2023

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Project No.	Grantee Name	
EC22-1000-D00	Amherst, Town of	02/27/2023

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Project No.	Grantee Name	
EC22-1000-D00	Amherst, Town of	02/27/2023

NEW YORK STATE

DIVISION OF HOMELAND SECURITY AND EMERGENCY SERVICES

GRANT CONTRACT

APPENDIX A-1

The Contract is hereby made by and between the State of New York, acting by and through the New York State Division of Homeland Security and Emergency Services (DHSES or State Agency) and the public or private entity ('Contractor' or 'Subrecipient') identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL TERMS AND CONDITIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Contract exceeds $50,000 (or $85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Budget Changes: An amendment that would result in a transfer of funds among program activities or budget categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the Offices of the State Comptroller and Attorney General where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Appendix C (Payment and Reporting Schedule).

C. Contract Parts: This Contract incorporates the face pages attached, this Appendix and all of the marked Appendices identified on the face page hereof.

D. Order of Precedence: In the event of a conflict among (i) the terms of the Contract (including any and all Appendices and amendments) or (ii) between the terms of the Contract and the original request for proposal, the program application or other Appendix that was completed and executed by the Contractor in connection with the Contract, the order of precedence is as follows:

1. Appendix A-1¹

2. Modifications to the Face Page

3. Modifications to Appendices B, C and D

4. The Face Page

5. Appendices B, C and D

6. Other attachments, including, but not limited to, the request for proposal or program application

E. Governing Law: This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

F. Funding: Funding for the entire Contract Period shall not exceed the funding amount specified as 'Funding Amount for the Initial Period' on the Face Page hereof or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Contract shall not exceed the applicable amounts specified in the applicable Appendix B form (Budget).

G. Contract Period: The period of this Contract shall be as specified on the face page hereof.

H. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Appendix D (Work Plan and Special Conditions) in accordance with the provisions of the Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program. For federally-funded grants, DHSES will conduct an evaluation to determine risks posed by Contractors in managing federal awards. Consistent with 2 CFR §200.332, the results of the evaluation may result in the imposition special conditions to this Contract including but not limited to increased monitoring, suspension of reimbursements and cancellation of the Contract.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

I. Modifications: To modify the Contract, the parties shall revise or complete the appropriate appendix form(s). Any change in the amount of consideration to be paid, change in scope, or change in the term, is subject to the approval of the NYS Office of the State Comptroller. Any other modifications shall be processed in accordance with DHSES guidelines as stated in this Contract.

J. Severability: Any provision of the Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Contract shall attempt in good faith to reform the Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

K. Interpretation: The headings in the Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

L. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:

a. by certified or registered United States mail, return receipt requested;

b. by facsimile transmission;

c. by personal delivery;

d. by expedited delivery service; or

e. by e-mail.

2. Notices to the State shall be addressed to the Program Office.

3. Notices to the Contractor shall be addressed to the Contractor's designee.

4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery services or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

M. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

N. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Contract up to any amounts due and owing to the State with regard to the Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of setoff pursuant to an audit, the finalization of such audit by DHSES, its representatives, or OSC.

O. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Contract.

P. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of DHSES and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

Q. Legal Action: No litigation or regulatory action shall be brought against the federal government, the State of New York, DHSES or against any county or other local government entity with the funds provided under the Contract. The term 'litigation' shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from any of the federal government, the State of New York, DHSES or any county or other local government entity. The term 'regulatory action' shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

R. No Arbitration: Disputes involving the Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

S. Secular Purpose: Services performed pursuant to the Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

T. Partisan Political Activity and Lobbying: Funds provided pursuant to the Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

U. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.²

V. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the federal False Claims Act, the New York State False Claims Act and whistleblower protections.

W. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

X. Federally Funded Grants: All of the specific federal requirements that are applicable to the Contract are identified in Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix. To the extent that the Contract is funded in whole or part with federal funds, (i) the provisions of the Contract that conflict with federal rules, federal regulations, or federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix. To the extent that section V (FEDERALLY FUNDED GRANT REQUIREMENTS) conflict with any other provisions of the Contract, the federal requirements of Section V shall supersede all other provisions of the Contract where required.

Y. The Contractor must meet the program objectives summarized in the Program Work Plan and Special Conditions (Appendix D) to the satisfaction of DHSES in accordance with provisions of the Contract, relevant laws, rules and regulations, administrative and fiscal guidelines and, where applicable, operating certificates for facilities or license for an activity or program.

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. General Renewal: The Contract may consist of successive periods on the same terms and conditions, as specified within the Contract

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

(a 'Simplified Renewal Contract'). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Contract.

2. Renewal Notice to Not-for-Profit Contractors:

a. Pursuant to State Finance Law §179-t, if the Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract no later than ninety (90) calendar days prior to the end of the term of the Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ('Unusual Circumstances'), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, 'Unusual Circumstances' shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b. Notification to the not-for-profit Contractor of the State's intent to not renew the Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Contract as required in this Section and State Finance Law §179-t, the Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Contract.

C. Termination:

1. Grounds:

a. Mutual Consent: The Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b. Cause: The State may terminate the Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Contract.

c. Non-Responsibility: In accordance with the provisions of this Contract, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d. Convenience: The State may terminate the Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e. Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Contract, the Contract may be terminated or reduced at DHSES's discretion, provided that no such reduction or termination shall

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

apply to allowable costs already incurred by the Contractor where funds are available to DHSES for payment of such costs. Upon termination or reduction of the Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to DHSES. In any event, no liability shall be incurred by the State (including DHSES) beyond monies available for the purposes of the Contract. The Contractor acknowledges that any funds due to DHSES or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f. Force Majeure: The State may terminate or suspend its performance under the Contract immediately upon the occurrence of a 'force majeure.' For purposes of the Contract, 'Force majeure' shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. Notice of Termination:

a. Service of notice: Written notice of termination shall be sent by:

i. personal messenger service; or

ii. certified mail, return receipt requested and first class mail.

b. Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

i. if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

ii. if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. Effect of Notice and Termination on State's Payment Obligations:

a. Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b. The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Contract after its termination date.

4. Effect of Termination Based on Misuse or Conversion of State or Federal Property:

Where the Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

pursuant to the Contract for the purposes set forth herein, the State may, at its option, require:

a. the repayment to the State of any monies previously paid to the Contractor; or

b. the return of any real property or equipment purchased under the terms of the Contract; or

c. an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Contract.

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, DHSES agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.

2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Contract shall not be reimbursed.

3. The Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Appendix C (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.

4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of DHSES, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments. Authorization for electronic payment must be made through the Statewide Financial System's (SFS) Vendor Portal: https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login. For assistance to access the SFS Vendor Portal, please contact the SFS Help Desk at 518-457-7717 or 855-233-8363 or email HelpDesk@sfs.ny.gov. Contractor acknowledges that it will not receive payment on any vouchers submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

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5. If travel expenses are an approved expenditure under this Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.

6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.

7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, 'Full Execution' shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Appendix C (Payment and Reporting Schedule).

2. Advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page.

3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Appendix C) will be modified as part of the renewal process.

4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Appendix C (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Contract in accordance with this Section and the applicable claiming schedule in Appendix C (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Appendix B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund

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appropriation.

2. Consistent with the selected reimbursement claiming schedule in Appendix C (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a. Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

b. Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

c. Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Appendix D (Work Plan and Special Conditions). The Contractor shall submit to DHSES biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to DHSES in accordance with the procedures set forth in Section III(A)(3) herein.

d. Milestone/Performance Reimbursement:³ Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event. Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Appendix C (Payment and Reporting Schedule). DHSES shall make milestone payments subject to the Contractor's satisfactory performance.

e. Fee for Service Reimbursement:⁴ Payment shall be limited to only those fees specifically agreed upon in the Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f. Rate Based Reimbursement:⁵ Payment shall be limited to rate(s) established in the Contract. Payment may be requested no more frequently than monthly.

g. Scheduled Reimbursement: ⁶ DHSES shall generate vouchers at the frequencies and amounts as set forth in Appendix C(Payment and Reporting Schedule).

h. Interim Reimbursement: DHSES may generate vouchers on an interim basis and the amounts requested by the Contract as set forth in Attachment C (Payment and Reporting Schedule).

i. Fifth Quarter Payments: ⁷ Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. DHSES shall use a written directive for fifth quarter financing. DHSES shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

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3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.

4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Contract as security for the faithful completion of services or work, as applicable, under the Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.

5. The State shall not be liable for payments on the Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.

6. All vouchers submitted by the Contractor pursuant to the Contract shall be submitted to DHSES no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by DHSES, and, if actual expenditures by the Contractor are less than such sum, the amount payable by DHSES to the Contractor shall not exceed the amount of actual expenditures.

7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to thirty (30) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number, (ii) the Contractor's Federal social security number, and/or (iii) unique entity identifier . Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of DHSES contracting to purchase the goods or services or lease the real or personal property covered by the Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

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1. In the event that the Contractor must make a refund to the State for Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in this Appendix. The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Office address listed in Appendix C.

2. If at the end or termination of the Contract, there remains any unexpended balance of the monies advanced under the Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Appendix C (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to DHSES in order for the Contractor to be eligible for payment.

2. Consistent with the selected reporting options in Appendix C (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a. If the Expenditure Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with one or more of the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:

i. Narrative/Qualitative Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Appendix D (Work Plan and Special Conditions). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

ii. Statistical/Quantitative Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

iii. Expenditure Report: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Appendix C (Payment and

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Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

iv. Final Report: The Contractor shall submit a final report as required by the Contract, not later than the time period listed in Appendix C (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Appendix D (Work Plan and Special Conditions).

v. Consolidated Fiscal Report (CFR): The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Appendix C (Payment and Reporting Schedule).

b. If the Performance-Based Reports option is indicated in Appendix C (Payment and Reporting Schedule), the Contractor shall provide DHSES with the following reports as required by the following provisions and Appendix C (Payment and Reporting Schedule) as applicable:

i. Progress Report: The Contractor shall provide DHSES with a written progress report using the forms and formats as provided by DHSES, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Appendix D (Work Plan and Special Conditions). Progress reports shall be submitted in a format prescribed in the Contract.

ii. Final Progress Report: Final scheduled payment is due during the time period set forth in Appendix C (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Appendix C (Payment and Reporting Schedule). DHSES shall complete its audit and notify the Contractor of the results no later than the date set forth in Appendix C (Payment and Reporting Schedule). Payment shall be adjusted by DHSES to reflect only those services/expenditures that were made in accordance with the Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Appendix C (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Appendix C (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Appendix C (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to DHSES within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could

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impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Contract, and all applicable Federal and State laws and regulations.

2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Contract and/or any subcontract entered into under the Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of $100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of $100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Contract, and (3) that nothing contained in the subcontract, nor under the Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

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4. If requested by the State, when a subcontract equals or exceeds $100,000, the subcontractor must submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, when a subcontract is executed, the Contractor must provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to DHSES, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Appendix C (Payment and Reporting Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use of Material, Equipment, or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Contract for any activity other than those provided for under the Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit.

a. If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b. If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Contract.

c. In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d. The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to DHSES naming DHSES as an additional insured, covering the loss, theft or destruction of such equipment.

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e. A rental charge to the Contract for a piece of Property owned by the Contractor shall not be allowed.

f. The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g. No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Contract:

a. For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b. For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Contract shall be governed by the terms and conditions of Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) contained herein.

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. General:

a. The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Contract (collectively, Records).

b. The Contractor agrees to produce and retain for the balance of the term of the Contract, and for a period of six years from the later of the date of (i) the Contract and (ii) the most recent renewal of the Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

i. personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash

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and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders, detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

ii. payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

iii. non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, cost allocation plans, and bid and procurement documentation, such as quotes, proposals and selection records, if applicable.

iv. receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c. The OSC, AG and any other person or entity authorized to conduct an examination, as well as DHSES or State Agencies involved in the Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d. The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e. Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. Cost Allocation:

a. For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of 2 CFR Part 200. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b. For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. Federal Funds: For records and audit provisions governing Federal funds, please see Section V (FEDERALLY FUNDED GRANT REQUIREMENTS) of this Appendix A-1.

F. Confidentiality: The Contractor agrees that it shall use and maintain information relating to individuals who may receive services, and

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their families pursuant to the Contract, or any other information, data or records deemed confidential by the State (Confidential Information) only for the limited purposes of the Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a. Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b. State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractors performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall

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be conducted by DHSES and the results of such testing must be satisfactory to DHSES before web content shall be considered a qualified deliverable under the Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional nondiscrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Contract. The Contractor shall be subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;

3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and

5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

6. The Contractor shall have institutional policies or practices that address harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability, or other protected basis.

The Contractor shall include the provisions of subclauses 1 6 of this Section (IV)(J), in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Contract is greater than $1 million, the Omnibus Procurement Act of 1992 requires that by signing the Contract, the Contractor certifies the following:

a. The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

b. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c. The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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d. The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to DHSES staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;

2. any debts owed for UI contributions, interest, and/or penalties;

3. the history and results of any audit or investigation; and

4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may obtain a paper form from the OSC prior to execution of the Contract. The Contractor further covenants and represents that as of the date of execution of the Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

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3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Contract:

a. to require updates or clarifications to the Questionnaire upon written request;

b. to inquire about information included in or required information omitted from the Questionnaire;

c. to require the Contractor to provide such information to the State within a reasonable timeframe; and

d. to require as a condition precedent to entering into the Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and

e. to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Contract based on:

a. any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b. the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non- responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish DHSES with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Contract by the State and (iii) remain in

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compliance with the OAG charities registration requirements throughout the term of the Contract.

P. Consultant Disclosure Law:⁸ If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

R. Participation By Minority Group Members And Women With Respect To Grant Contracts: Requirements And Procedures (state-funded grants only)

1. General Provisions

a. The Division of Homeland Security and Emergency Services (DHSES) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ('MWBE Regulations') for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

b. The Contractor to the subject contract (the 'Contractor' and the 'Contract,' respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the DHSES, to fully comply and cooperate with the DHSES in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ('EEO') and contracting opportunities for certified minority and women-owned business enterprises ('MWBEs'). Contractor's demonstration of 'good faith efforts' pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the 'Human Rights Law') or other applicable federal, state or local laws.

c. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

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2. Contract Goals

a. For purposes of this contract, DHSES has established overall goals for Minority and Women-Owned Business Enterprises ('MWBE') participation which are specified in the contract work plan.

b. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in the contract work plan hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp. Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

c. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document 'good faith efforts' to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the DHSES for liquidated or other appropriate damages, as set forth herein.

3. Equal Employment Opportunity (EEO)

a. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the 'Division'). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

b. Contractor shall comply with the following provisions of Article 15-A:

i. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

ii. The Contractor shall maintain an EEO policy statement and submit it to the DHSES if requested.

iii. If Contractor or Subcontractor does not have an existing EEO policy statement, Section 4 below may be used to develop one.

iv. The Contractor's EEO policy statement shall include the following, or similar, language:

a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

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b) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

c) The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

d) The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection (iv) and Paragraph 'e' of this Section 3, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

c. Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Local Assistance MWBE Equal Employment Opportunity Staffing Plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

d. Workforce Employment Utilization Report

i. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the DHSES of any changes to the previously submitted Local Assistance MWBE Equal Employment Opportunity Staffing Plan. This information is to be submitted annually or as otherwise required by the DHSES during the term of the contract, for the purpose of reporting the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Local Assistance MWBE Workforce Employment Utilization Report form must be used to report this information.

ii. Separate forms shall be completed by Contractor and any Subcontractor performing work on the Contract.

iii. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Local Assistance MWBE Workforce Employment Utilization Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

e. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic

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characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

4. MWBE Utilization Plan

a. The Contractor represents and warrants that Contractor has submitted a Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form either prior to, or at the time of, the execution of the contract.

b. Contractor agrees to use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in the contract workplan.

c. Contractor further agrees that a failure to submit and/or use such Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, DHSES shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

5. Waivers

If the DHSES, upon review of the Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Plan, the Detailed Itemization Forms or the Local Assistance MWBE Workforce Employment Utilization Report determines that a Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the DHSES may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

6. MWBE Subcontractor Utilization Quarterly Report

Contractor is required to report MWBE Subcontractor utilization, as part of the quarterly claim process, to the DHSES by the last day of the month following the end of each calendar quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

7. Liquidated Damages - MWBE Participation

a. Where DHSES determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, such finding constitutes a breach of Contract and DHSES may withhold payment from the Contractor as liquidated damages and/or provide for other appropriate remedies.

b. Such liquidated damages shall be calculated as an amount equaling the difference between:

1) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
2) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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c. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DHSES, Contractor shall pay such liquidated damages to the DHSES within sixty (60) days after they are assessed by the DHSES unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the DHSES.

8. M/WBE AND EEO Policy Statement

a. The Contractor agrees to adopt the following policies or similar policies with respect to the project being developed or services rendered in this contract with the Division of Homeland Security and Emergency Services:

M/WBE

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

(1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

(2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

(4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b)This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national

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origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Contractor agrees to comply with all MWBE and EEO contract goals reflected on the MWBE Utilization Plan and Staffing Plan respectively, that have been submitted with the application for this contract.

S. Additional Terms

1. The Contractor agrees that if the project is not operational within 60 days of the execution date of the Contract, it will report by letter to DHSES the steps taken to initiate the project, the reasons for delay, and the expected starting date. If the project is not operational within 90 days of the execution date of the Contract, the Contractor will submit a second statement to DHSES explaining the delay. DHSES may either cancel the project and redistribute the funds or extend the implementation date of the project beyond the 90-day period when warranted by extenuating circumstances.

2. The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of DHSES, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability prior performance, and financial capacity.

a. The DHSES Commissioner, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when DHSES discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of the notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DHSES, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.

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b. Upon written notice to the Contractor, and a reasonable opportunity to be heard with the appropriate DHSES officials or staff, the Contract may be terminated by the DHSES Commissioner, or his or her designee at the Contractor's expense where the Contractor is determined by the DHSES Commissioner, or his or her designee, to be non-responsible. In such event, the Commissioner, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

3. DHSES shall make payments and any reconciliation in accordance with the Payment and Reporting Schedule (Appendix C). DHSES shall pay the Contractor for completed, approved projects, a sum not to exceed the amount noted on the Face Page hereof. The Contractor must not request payments or reimbursements that duplicate funding or reimbursement from any other source for Contractor costs and services pursuant to this Contract.

4. The Contractor shall submit detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures with any voucher and fiscal cost report requesting reimbursement. Grant-related expenditures shall be reported on Fiscal Cost Reports approved by DHSES. For Federally-funded awards, the detailed Itemization forms shall include the required certifications pursuant to 2 CFR §200.415. These reports must be prepared periodically and as defined in Appendix C of this Contract. All reported expenditures must reconcile to the program accounting records and the approved budget. Prior period adjustments shall be reported in the same accounting period that the correction is made.

5. The Contractor's request for travel, meals or lodging reimbursement shall be in accordance with Appendix B, Budget, and, unless written authorization has been received from DHSES, shall not exceed rates authorized by the NYS Office Of State Comptroller (Audit and Control). Rates may be viewed online at: http://www.osc.state.ny.us/state-agencies/travel.

6. The Contractor's employment of a consultant must be supported by a written Contract executed by the Contractor and the consultant. A consultant is defined as an individual or organization hired by the Contractor for the stated purpose of accomplishing a specific task relative to the funded project. All consultant services must be obtained in a manner that provides for fair and open competition. The Contractor shall retain copies of all solicitations seeking a consultant, written Contracts and documentation justifying the cost and selection of the consultant, and make them available to DHSES upon request. The Contractor further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Contract and the Contractor must guarantee the work of the consultant as if it were its own. Failure to follow these guidelines may result in a disallowance of costs.

7. Additionally, Contractor must adhere to the following guidelines at a minimum when making all procurements, including consultant services. Failure to follow these guidelines may result in a disallowance of costs.

a. A Contractor who proposes to purchase goods or services from a particular vendor without competitive bidding must obtain the prior written approval of DHSES. The request for approval must be in writing and set forth, at a minimum, a detailed justification for selection and the basis upon which the price was determined to be reasonable. Further, such procurement must be in accordance with the guidelines, bulletins and regulations of the Office of the State Comptroller, State Procurement Council, and the U.S. Department of Homeland Security. For Federally-funded awards, contractor must comply with 2 CFR §200.320(c). A copy of DHSES' approval must also be submitted with the voucher for payment.

b. The rate for consultant services, and cost of equipment or goods, shall be reasonable and consistent with the amount paid for similar

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services or goods and equipment in the marketplace. Time and effort reports are required for consultants.

c. Written justification and documentation for all procurements must be maintained on file, and made available to DHSES upon request. All procurements must be made in a fair and open manner and in accordance with the pre-determined methodology established for evaluating bids (e.g., lowest responsible bidder or best value).

d. A Contractor that is a State entity must make all procurements in accordance with State Finance Law Article 11 and any other applicable regulations.

e. A Contractor that is a local government must make all procurements in accordance with General Municipal Law Article 5-A, and any other applicable regulations.

f. A Contractor that is a not-for-profit and all other entities that do not meet the descriptions in Section III(S)(7)(d) or (e) herein must make all procurements as noted below:

i. If the Contractor is eligible to purchase an item or service from a government contract or is able to purchase such item or service elsewhere at a lower than or equal price, then such purchase may be made immediately.

ii. A Contractor may purchase any single piece of equipment, single service or multiples of each that cost up to $999 at its discretion.

iii. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost between $1,000 and $4,999, a Contractor must secure at least three telephone quotes and create a record for audit of such quotes.

iv. Before purchasing any piece of equipment, service or multiples of each that have an aggregate cost of between $5,000 and $9,999, the Contractor must secure at least three written quotes on a vendor's stationery and maintain a record of the competitive procurement process for audit purposes.

v. A Contractor spending in aggregate of $10,000 and above must use a competitive bidding process. Guidance may be obtained from DHSES. At a minimum, the competitive bidding process must incorporate the following: open, fair advertisement of the opportunity to provide services; equal provision of information to all interested parties; reasonable deadlines; sealed bids opened at one time before a committee who will certify the process; establishment of the methodology for evaluating bids before the bids are opened; and maintenance of a record of competitive procurement process.

g. Acceptance of State support for interoperable and emergency communications projects, including funding through the Interoperable Emergency Communication Grant Program, requires that Contractors must use open-standard/vendor-neutral technologies to allow for other public safety/public service agencies (including State agencies and authorities) and jurisdictions in your region to operate on your radio system(s) when required, regardless of the total percentage of system funding from the State. This access for other agencies must be permitted to support operational and interoperable goals, and without restriction as to specific manufacturers' subscriber equipment. All reasonably compatible subscriber equipment must be permitted to be operated on your system by outside agencies, thus allowing coordinated efforts between local and state public safety/public service agencies and maximizing resources and capabilities.

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h. DHSES reserves the right to suspend program funds if the Contractor is found to be in noncompliance with the provisions of this Contract or other grant Contracts between the Contractor and DHSES or, if the Contractor or principals of the Contractor are under investigation by a New York State or local law enforcement agency for noncompliance with State or federal laws or regulatory provisions or, if in DHSES' judgment, the services provided by the Contractor under the Contract are unsatisfactory or untimely.

i. DHSES shall provide the Contractor with written notice of noncompliance.

ii. Upon the Contractor's failure to correct or comply with the written notice by DHSES, DHSES reserves the right to terminate this Contract, recoup funds and recover any assets purchased with the proceeds of this Contract.

i. DHSES reserves the right to use approved grant related expenditures to offset disallowed expenditures from any grant funded through its offices upon appropriate notification to the Contractor, or upon reasonable assurance that the Contractor is not in compliance with these terms.

j. As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of 'persons' who are engaged in 'investment activities in Iran' (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

i. By entering into this Contract, Contractor (or any assignee) certifies in accordance with State Finance Law §165-a that it is not on the 'Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012' ('Prohibited Entities List') posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf.

ii. Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

iii. During the term of the Contract, should DHSES receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

iv. DHSES reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

V. FEDERALLY FUNDED GRANT REQUIREMENTS

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A. Hatch Act. The Contractor agrees, as a material condition of the Contract, to comply with all applicable provisions of the Hatch Act (5 U.S.C. 1501 et seq.), as amended.

B. Requirement for System of Award Management: Unless you are exempted from this requirement under 2 CFR 25.110, you as the subrecipient must maintain the currency of your information in the System of Award Management (SAM) until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term. Pursuant to section 2 CFR §25.300, Contractors must maintain a current unique entity identifier prior to and during the life of the Contract. Nonprofit organizations that are first-tier subrecipients for Nonprofit Security Grant Program (NSGP) funding must have a unique entity identifier , but are not required to be registered in SAM.

C. In accordance with 2 CFR §§200.112 and 200.113, Contractor understands and agrees that it must: (1) disclose in writing any potential conflict of interest to DHSES; and (2) disclose, in a timely manner, in writing to DHSES all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the grant award. The Contractor shall explain the actual or potential conflict in writing in sufficient detail so that the State contracting agency is able to assess the actual or potential conflict. The Contractor shall provide any additional information necessary for the State contracting agency to fully assess and address the actual or potential conflict of interest. Failure to make required disclosures can result in any remedy available to DHSES for Contractor's noncompliance, including suspension or debarment.

D. The Contractor must ensure that, for all contracts entered into by the Contractor, the contract provisions required by 2 CFR §200.327 (and Appendix II to 2 CFR Part 200) are included in such contracts. The Contractor further agrees to impose and enforce this requirement for any Contractor subaward agreements.

E. Where advance payments are approved by DHSES, the Contractor agrees to expend the advance payments in accordance with the purposes set forth in Appendix D and consistent with Appendix B. The advanced funds must be placed in an interest-bearing account and are subject to the rules outlined in 2 CFR Part 200, (Uniform Administrative Requirements for Grants and Cooperative Contracts to State and Local Governments) which require Contractors to promptly remit back to the federal government, through New York State Division of Homeland Security and Emergency Services, any interest earned on these advanced funds. The Contractor may keep interest earned up to $500 per federal fiscal year for administrative expenses. This maximum limit is not per award; it is inclusive of all interest earned as the result of all federal grant program funds received per year. Interest must be reported on Fiscal Cost Reports and remitted to DHSES quarterly.

F. Audit Requirements. This Contract, and any sub-awards resulting from this Contract, may be subject to fiscal and program audits by DHSES, NYS Office of State Comptroller, pertinent federal agencies, and other designated entities to ascertain financial compliance with federal and/or State laws, regulations, and guidelines applicable to this Contract. The Contractor shall meet all audit requirements of the federal government and State of New York. Such audits may include review of the Contractor's accounting, financial, and reporting practices to determine compliance with the Contract and reporting requirements; maintenance of accurate and reliable original accounting records in accordance with governmental accounting standards as well as generally accepted accounting principles; and specific compliance with allowable cost and expenditure documentation standards prescribed by applicable federal, State, and DHSES guidelines.

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G. Equipment Markings. The Contractor further agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: 'Purchased with funds provided by the U.S. Department of Homeland Security. '

H. Administrative, Cost and Audit Requirements: The Contractor must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements. Failure to do so may result in disallowance of costs upon audit. A list of regulations and guidance applicable to United States Department of Homeland Security (DHS) grants are listed below:

1. General Administrative Requirements:

a. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

2. Cost Principles:

a. 2 CFR Part 200, Subpart E

3. Audit Requirements:

a. 2 CFR Part 200, Subpart F

I. Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

1. Consistent with 2 CFR §200.321, the grantee and any subgrantees will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

2. Affirmative steps must include:

a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subsections (2)(a) through (e) of this section.

J. Compliance with Laws, Regulations and Program Guidance. The Contractor shall ensure it is aware of and complies with all applicable laws, regulations and program guidance. It is the responsibility of the Contractor to become familiar with and comply with all terms and conditions associated with acceptance of funds.

K. Adequate Documentation: The Contractor must ensure full compliance with all cost documentation requirements, including specific

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personal service documentation, as applicable directly to the Contractor, sub-recipient or collaborative agency/organization. The Contractor must maintain specific documentation as support for project related personal service expenditures as this Contract is supported by federal funds. Depending upon the nature or extent of personal service provided under this Contract, the Contractor shall maintain semi-annual (or more frequent) personal service certifications and/or an after-the-fact personnel activity reporting system (or equivalent) which complies with all applicable laws, regulations and program guidance. Failure to do so may result in disallowance of costs.

L. Single Audit Requirements: For audits of fiscal years beginning on or after December 26, 2014, recipients that expend $750,000 or more from all federal funding sources during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of GAO's Government Auditing Standards, located at https://www.gao.gov/topics/auditing-and-financial-management, and the requirements of Subpart F of 2 C.F.R. Part 200, located at http://www.ecfr.gov/cgi-bin/text-idx?SID=63811dc3410c008e2f8e28c325cdc09e&mc=true&node=sp2.1.200.f&rgn=div6. The final report for such audit must be completed within nine months of the end of the Contractor's fiscal year. The Contractor must provide one copy of such audit report to DHSES within nine (9) months of the end of its fiscal year, or communicate in writing to DHSES that Contractor is exempt from such requirement.

M. Program Income: Program income earned by the Contractor during the grant funding Period must be reported in writing to DHSES, in addition to any other statutory reporting requirements. Program income consists of income earned by the grant recipient that is directly generated by a supported activity or earned as a result of the grant program. Program income includes, but is not limited to, income from fees for services performed, the use of rental or real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights and interest on loans made with federal award funds. For example, if the purpose of a grant is to conduct conferences, any training fees that are generated would be considered program income. Interest earned on grant funds is not considered program income unless specified in Appendix D. The Contractor agrees to report the receipt and expenditures of grant program income to DHSES. Program income (not to include interest earned), generated by the use of these grant funds will be used to enhance the grant project.

N. Accounting for Grant Expenditures:

1. Grant funds may be expended only for purposes and activities set forth in this Contract. Accordingly, the most important single requirement of accounting for this grant is the complete and accurate documentation of grant expenditures. If the Contractor receives funding from two or more sources, all necessary steps must be taken to ensure that grant-related transactions are not commingled. This includes, but is not limited to, the establishment of unique budget codes, a separate cost center, or a separate chart of accounts. Expenditures must be cross-referenced to supporting source documents (purchase orders, contracts, real estate leases, invoices, vouchers, timesheets, mileage logs, etc.).

2. Contractor agrees that it shall maintain adequate internal controls and adhere to Generally Accepted Accounting Principles for Government or Generally Accepted Accounting Principles for Not-for-Profit Organizations.

3. None of the goals, objectives or tasks, as set forth in Appendix D, shall be sub-awarded to another organization without specific prior written approval by DHSES. Where the intention to make sub-awards is clearly indicated in the application, DHSES approval is deemed given, if these activities are funded, as proposed.

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4. If this Contract makes provisions for the Contractor to sub-grant funds to other recipients, the Contractor agrees that all sub-Contractors shall be held accountable by the Contractor for all terms and conditions set forth in this Contract in its entirety. The Contractor further agrees that it shall assume sole and complete responsibility for fulfilling all the obligations set forth in the Contract and the Contractor must guarantee the work of any sub-Contractor as if it were its own.

5. The Contractor agrees that all sub-Contractor arrangements shall be formalized in writing between the parties involved. The writing must, at a minimum, include the following information:

Activities to be performed;

Time schedule;

Project policies;

Other policies and procedures to be followed;

Dollar limitation of the Contract;

Appendix A-1, Appendix C, Certified Assurances for Federally Supported Projects, Certification Regarding Lobbying, Debarment and Suspension and any special conditions set forth in the Contract;

Applicable federal and/or State cost principles to be used in determining allowable costs; and

Property Records or Equipment Inventory Reports.

O. The Contractor will not be reimbursed for sub-granted funds unless all expenditures by a sub-Contractor are listed on detailed itemization forms or a form deemed acceptable to DHSES. Backup documentation for such expenditures must be made available to DHSES upon request. All expenditures must be programmatically consistent with the goals and objectives of this Contract and with the Budget set forth in Appendix B.

P. Space rental provided by this Contract must be supported by a written lease, maintained on file and made available by the Contractor upon request.

Q. Equipment and Property:

1. Any equipment, furniture or supplies or other property purchased pursuant to this Contract is deemed to be the property of the State, except as may otherwise be governed by federal or State laws, rules or regulations or stated in this Contract.

2. Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A Contractor may use its own definition of equipment provided that such definition would at least include all equipment defined above. A copy of the property record(s) or equipment inventory report(s) with relevant purchasing and supporting documentation must be made available to DHSES upon request. Property records or equipment inventory reports must be maintained, by award, that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property. The Contractor must document receipt of all applicable equipment purchased with grant funds. A physical inventory of the property must be taken and the results reconciled with the property records at least once every two (2) years.

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3. Upon completion of all contractual requirements by the Contractor, DHSES will consider a request for continued use and possession of the equipment purchased with grant funds provided the equipment continues to be used in connection with a public security program. When disposing of equipment purchased with homeland security grant funding, a State agency must dispose of equipment in accordance with State Laws and procedures. All other Contractors shall dispose of equipment as follows:

a. Items of equipment with a current per unit market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

b. Items of equipment with a current per unit fair market value of $5,000 or more may be retained or sold. If sold, the awarding agency shall have a right to an amount calculated by multiplying the proceeds from the sale by the awarding agency's share of the equipment. If retained, the current market value is to be used in the calculation. To remit payments, award recipients should contact DHSES at 1-866-837-9133 for guidance.

4. Upon completion of all contractual requirements by the Contractor under this Contract, DHSES shall accept a request for continued use and possession of the equipment purchased with grant funds providing the equipment continues to be used in accordance with the contracted activities and guidelines in this Contract.

5. The Contractor must conduct a physical inventory of property records at least once every two years to verify the existence, current utilization and continued need for the property. In the event the property is no longer required by the Contractor, this fact should be reported to DHSES as soon as possible and appropriate guidelines followed, as specified in this Appendix.

6. If Contractor disposes of any equipment purchased under this Contract during the active lifespan of said equipment, Contractor must reinvest any proceeds from the disposal into additional equipment items to continue Contractor's organization's activities subject to the guidelines of this Contract. If the Contractor does not reinvest proceeds to continue activities subject to this Contract, the percentage of the proceeds equal to the proportion of the original purchase price paid by funds for the Contract must be repaid to the State of New York.

R. Remedies.

In the event Contractor fails to observe or perform any term or condition of the agreement, the State may exercise all rights and remedies available to law or in equity.

S. Termination for Cause and Convenience.

Termination rights of the parties shall be as prescribed in Section II(C) of the grant agreement.

T. Equal Employment Opportunity. (Applicable to contracts for construction work)

During the performance of this Agreement the Contractor agrees as follows:

a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national

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origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and skeleton for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

c) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in · which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicant to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor legal duty to furnish information.

d) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees ·and applicants for employment.

e) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

f) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government Agreements or federally assisted construction Agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h) The Contractor will include the portion of the sentence immediately preceding paragraph (l) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering

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agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a sub-contractor or vendor as a result of such direction by the administering agency, the Contractor may request the United State to enter into such litigation to protect the interests of the United States.

The authorized user further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the authorized user so participating is the State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The authorized user agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The authorized user further agrees that it will refrain from entering into any Agreement or Agreement modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government Agreements and federally assisted construction Agreements pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the authorized user agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (Agreement, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

U. Davis-Bacon Act. (Applicable to contracts for construction work)

The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $ 2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

1) Minimum wages.

i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations

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issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii)

A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
2) The classification is utilized in the area by the construction industry; and
3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3) Payrolls and basic records.

i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii)

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A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

B) Each payroll submitted shall be accompanied by a 'Statement of Compliance,' signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the 'Statement of Compliance' required by paragraph (a)(3)(ii)(B) of this section.

D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore,

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failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4) Apprentices and trainees

i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor

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will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10) Certification of eligibility.

i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. Copeland 'Anti-Kickback' Act (Applicable to contracts for construction work greater than $2,000)

Contractor. The contractor shall comply with 18 U.S.C. § 874,40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by

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any subcontractor or lower tier subcontractor with all of these contract clauses. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

W. Contract Work Hours and Safety Standards Act (Applicable to contracts greater than $100,000 and mechanics or laborers)

1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

3) Withholding for unpaid wages and liquidated damages. DHSES shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

X. Clean Air Act and The Federal Water Pollution Control Act. (Applicable to all contracts in excess of $150,000)

Clean Air Act

a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et, seq.

b) The Contractor agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal

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assistance provided by FEMA.

Federal Water Pollution Control Act

a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33u.s.c. 1251 et seq.

b) The Contractor agrees to report each violation to the State of New York and understands and agrees that the State of New York will, in tum, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

Y. Debarment and Suspension. (Applicable to contracts greater than $25,000)

a) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

b) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

c) This certification is a material representation of fact relied upon by the State of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Agreement that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Z. Byrd Anti-Lobbying Amendment. (Applicable to contracts greater than $100,000)

Byrd Anti-Lobbying Amendment, 31 US.C. § 1352 (as amended)

Contractors that apply or bid for an award of $100,000 or more must file the required certifications. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

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AA. Procurement of Recovered Materials. (Applicable where work involves the use of materials and the contract value is over $10,000)

a) In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired --

i. Competitively within a time frame providing for compliance with the Agreement performance schedule

ii. Meeting agreement performance requirements; or

iii. At a reasonable price.

b) Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, https://www.epa.gov/smm/comprehensive- procurement- guideline-cpg-program.

c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

BB. Prohibition on Contracting for Covered Telecommunications Equipment or Services

a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause

b) Prohibitions.

1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

2) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

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c) Exceptions.

1) This clause does not prohibit contractors from providing

i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

d) Reporting requirement.

1) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

CC. Domestic Preferences for Procurements

Domestic Preference for Procurements As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in

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whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

DD. Access to Records/Retention of Records.

a) The Contractor agrees to provide the State of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

c) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.

d) In compliance with the Disaster Recovery Act of 2018, the State of New York and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

e) The Contractor shall establish and maintain complete records, including accurate books, financial records, supporting documents, accounts and other evidence directly pertinent to performance of work performed under this Contract consistent with generally accepted bookkeeping practices. Contractor shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement (collectively, the 'Records') (i) for three (3) years from the time of closeout of FEMA's grant to the State or for the period provided in the FEMA regulations at 2 C.F.R. 200.333-337 or (ii) for six (6) years after the closeout of the Agreement, or, as long as required by state law, whichever may be longer.

EE. Federal Debt.

The Contractor certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

FF. DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

GG. Compliance with Federal Law, Regulations, and Executive Orders.

This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the Agreement. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives, including but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

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HH. No Obligation by Federal Government.

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the Agreement.

II. Program Fraud and False or Fraudulent Statements or Related Acts.

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

JJ. Affirmative Socioeconomic Steps

If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible

KK. Copyright

The Contractor grants to DHSES, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the Contractor will identify such data and grant to the DHSES or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the Contractor will deliver to DHSES data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by DHSES.

LL. U.S. Executive Order 13224.

Contractor, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

MM. Subcontracting.

The Contractor represents to DHSES that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract. The Contractor must include the contract provisions required by 2 CFR §200.327 (and Appendix II to 2 CFR Part 200), in every contract issued by it so that such provisions will be binding upon each of its contractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

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ENDNOTES:

¹ To the extent that section V- Federally Funded Grant Requirements conflict with any other provisions of the Contract, the Federal requirements of Section V shall supersede all other provisions of the Contract.

² As of 2019, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Indiana, Louisiana, Mississippi, North Carolina, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

³ A milestone/performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Contract effort.

⁴ Fee for Service is a rate established by the Contractor for a service or services rendered.

⁵ Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.

⁶ Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

⁷ Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

⁸ Not applicable to not-for-profit entities.

VER 07/2022

Certified by - Brian Kulpa on 02/24/2023

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Award Contract — Emergency Operations Center

Project No. — Grantee Name

EC22-1000-D00 — Amherst, Town of — 02/27/2023

Appendix B - Project Budget

Budget Summary by Participant

Amherst, Town of - Version 1

#	Consultant Services	Number	Unit Cost	Total Cost	Grant Funds	Matching Funds
1	Emergency Operations Center Bathroom and Kitchen Renovations	1	$323,793.75	$323,793.75	$259,035.00	$64,758.75
2	Emergency Operations Center Communications System Upgrades	1	$342,873.25	$342,873.25	$240,965.00	$101,908.25
			Total	$666,667.00	$500,000.00	$166,667.00

Amherst, Town of Total Project Costs	Total Cost	Grant Funds	Matching Funds
	$666,667.00	$500,000.00	$166,667.00

Total Project Costs	Total Cost	Grant Funds	Matching Funds
	$666,667.00	$500,000.00	$166,667.00

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Project No.	Grantee Name	
EC22-1000-D00	Amherst, Town of	02/27/2023

APPENDIX C

PAYMENT AND REPORTING SCHEDULE

For All Contractors:

I. PAYMENT PROVISIONS

1. In full consideration of contract services to be performed, DHSES agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

A. Payment and Recoupment Language

1. Contractor shall provide complete and accurate vouchers to DHSES in order to receive payment. Vouchers submitted to DHSES must contain all information and supporting documentation required by the Agreement, DHSES and the State Comptroller. Payment for vouchers submitted by the Contractor shall only be rendered electronically, unless a paper check is expressly authorized by the Director of DHSES, at the Director's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with the ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization for electronic payment must be made through the Statewide Financial System's (SFS) Vendor Portal: https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login. For assistance to access the SFS Vendor Portal, please contact the SFS Help Desk at 518-457-7717 or 855-233-8363 or email HelpDesk@sfs.ny.gov. Contractor acknowledges that it will not receive payment on any vouchers submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the Director has expressly authorized payment by paper check as set forth above.

2. The Contractor agrees that this is a reimbursement-based contract; an advance may be provided as specified in Appendix D. All requests for reimbursement must reflect actual costs that have been disbursed by the Contractor. Items or services not received are not eligible for reimbursement.

Reimbursement requests need to include the following documents:

Signed Voucher and Fiscal Cost Report

Detailed Itemization Forms or other forms deemed acceptable by DHSES of any budgeted category for which reimbursement is requested

Written documentation of all required DHSES approvals, as appropriate

3. Vouchers shall be submitted in a format acceptable to DHSES and the Office of the State Comptroller. Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the Project Budget (Appendix B) and during the contract period. Such voucher shall also be deemed to certify that: a) the payments requested do not duplicate reimbursement from other sources of funding; and b) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

B. Interim and/or Final Claims for Reimbursement

1. Contractors must submit all required fiscal reports, supporting documentation and program progress reports. Failure to meet these requirements will result in the rejection of associated vouchers. Final vouchers, reimbursement requests and reports must be submitted within 30 days of the end of the grant contract period. Failure to voucher within this period may result in the loss of grant funds. The Contractor must also refund all unexpended advances and interest earned over $500 on the advanced funds pursuant to 2 CFR Part 200, §200.305(b)(9). Property Records or Equipment Inventory Reports as defined in Appendix A-1, Section V, Paragraph R, must be available at the conclusion of the contract period and submitted to DHSES upon request.

2. If at the end of this contract there remain any monies (advanced or interest earned over $500 on the advanced funds) associated with this contract in the possession of the Contractor, the Contractor shall submit a check or money order for that amount payable to the order of the New York State Division of Homeland Security and Emergency Services. Remit the check along with the final fiscal cost report within 30 days of termination of this grant contract to:

NYS Division of Homeland Security and Emergency Services
Federal Fiscal Unit
State Campus - Building 7A
1220 Washington Avenue
Albany, NY 12242

3. For purposes of prompt payment provisions, the Designated Payment Office for the processing of all vouchers is the Contract Unit of DHSES. Payment of grant vouchers shall be made in accordance with the provisions of Article XI-A of the State Finance Law. Payment shall be preceded by an inspection period of 15 business days which shall be excluded from calculations of the payment due date for purposes of determining eligibility for interest payments. The Contractor must notify the Federal Fiscal Unit in writing of a change of address in order to benefit from the prompt payment provision of the State Finance Law. When progress reports are overdue, vouchers will not be eligible for prompt payment.

4. Timely and properly completed New York State vouchers, with supporting documentation when required, shall be submitted to:

NYS Division of Homeland Security and Emergency Services
Attention: Contracts Unit
State Office Building Campus Bldg. 7A
1220 Washington Avenue, Suite 610
Albany, NY 12242

II. REPORTING PROVISIONS

A. Required Reports:

Narrative/Qualitative Report (Progress Report)

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

III(G)(2)(a)(i) of Appendix A-1 of the Contract.

Expenditure Report (Fiscal Cost Report)

The Contractor will submit, on a quarterly basis, not later than 30 days after the end date for which reimbursement is being claimed, the report described in Section III, Paragraph G(2)(a)(iii) of the Appendix A-1 of the Contract.

Final Report

The Contractor will submit the final report as described in Section III, Paragraph G(2)(a)(iv) of Appendix A-1 of the Contract, no later than 30 days after the end of the contract period.

1. Fiscal cost reports must be submitted showing grant expenditures. They must also show the amount of interest earned to date on any advanced funds.

All submitted vouchers will reflect the Contractor's actual expenditures and will be accompanied by supporting detailed itemization forms or a form deemed acceptable to DHSES for personal service, fringe benefit and non-personal service expenditures or other documentation as required, and by a fiscal cost report for the reporting period. In the event that any expenditure for which the Contractor has been reimbursed by grant funds is subsequently disallowed, DHSES, in its sole discretion, may reduce the voucher payment by the amount disallowed. If necessary, the Contractor may be required to submit a final budget reallocation.

DHSES reserves the right not to release subsequent grant awards pending Contractor compliance with this Agreement.

2. The Contractor will submit program progress reports and one final report to DHSES on a prescribed form provided by DHSES as well as any additional information or amended data as required.

Progress reports will be due within 30 days of the last day of each calendar quarter or on an alternate schedule as prescribed in Appendix D. Progress reports will be due within 30 days of the last day of the calendar quarter from the start date of the program and the final report will be due upon completion of the project or termination of this Agreement. The final report, or where applicable interim progress reports, will summarize the project's achievements as well as describe activities for that quarter.

B. Reporting Periods

Programmatic and fiscal reports must be submitted as follows:

Calendar Quarter: January 1 - March 31 -- Report Due: April 30

Calendar Quarter: April 1 - June 30 -- Report Due: July 30

Calendar Quarter: July 1 - September 30 -- Report Due: October 30

Calendar Quarter: October 1 - December 31 -- Report Due: January 30

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Rev. 07/2021

Certified by - Brian Kulpa on 02/24/2023

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Award Contract | Emergency Operations Center

Project No. | Grantee Name

EC22-1000-D00 | Amherst, Town of | 02/27/2023

Appendix D - Program Workplan and Special Conditions

Work Plan

Goal

Enhance/establish emergency operations center capabilities in this jurisdiction.

Objective #1

G & T Workplan Code - 04. Establish/enhance emergency operations center.

Investment Justification - Emergency Operations Center Grant

NYS Critical Capabilities

Primary - Emergency Operations Center Management

The development, sustainment and/or enhancement of emergency operations center capabilities.

Task #1 for Objective #1

Purchase allowable communications and networking equipment. Train appropriate personnel in the proper use of the equipment and place the equipment into service.

#	Performance Measure
1	Identify equipment ordered and received. Provide a brief narrative on the training of personnel and the deployment of equipment. Describe how the project enhanced emergency response capabilities in the jurisdiction. Equipment accountability records are properly maintained. Provide explanation if equipment is received but not deployed, and include deployment plans as appropriate.

Task #2 for Objective #1

Mission critical operational renovation and/or construction of Town of Amherst's Emergency Operation Center to include design and project management, construction, renovation, and upgrades. Requires DHS and EHP prior approval.

#	Performance Measure
1	Renovation and/or construction activities conducted. Provide a brief narrative reporting activities conducted and how the project enhanced the Emergency Operations Center capabilities in the jurisdiction.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Award Contract | Emergency Operations Center

Project No. | Grantee Name

EC22-1000-D00 | Amherst, Town of | 02/27/2023

Special Conditions

I. ALL GRANT FUNDS:

Federal grant funds provided are a subaward of Emergency Operations Center (EOC) Grant Program funds awarded to the New York State Division of Homeland Security and Emergency Services (DHSES) from the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA).

A. Permissible Use of Funding

1. EOC funds must be used in accordance with the guidelines set forth in the EOC Grant Program Notice of Funding Opportunity, which can be located at https://www.fema.gov/grants.

2. All expenditures under this grant must support the Goals and Objectives outlined in the 2022-2025 NYS Homeland Security Strategy and approved investment justifications. New York State's Homeland Security Strategy can be located on the DHSES website at https://www.dhses.ny.gov/new-york-states-homeland-security-strategy.

B. Record Requirements

1. Subrecipients shall keep an agenda and meeting minutes on file for all meetings conducted regarding EOC funded activities.

2. Any documents produced as a result of these meetings such as plans, schedules, or procedures, will also be kept on file and be made available to DHSES, upon request.

C. Equipment Purchases

1. Equipment purchased with grant funds must fall within the allowable equipment categories for EOC as listed on the Authorized Equipment List (AEL) (https://www.fema.gov/grants/tools/authorized-equipment-list).

2. Subrecipients are responsible to request a determination of eligibility from the U.S. Department of Homeland Security (DHS), through DHSES, for any equipment item in question. Unless otherwise stated in the program guidance, equipment must meet all mandatory regulatory and/or DHS adopted standards to be eligible for purchase using HSGP funds.

3. The New York State Communication Interoperability Plan (SCIP), as well as DHS Grant Guidance for grant funding, requires that all interoperable communications equipment must be on the Authorized Equipment List (AEL) and must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

4. Recipients and subrecipients of FEMA federal financial assistance are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115 232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute as it applies to FEMA recipients, subrecipients, and their contractors and subcontractors prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

D. Law Enforcement Requirements

1. Subrecipients that are law enforcement agencies agree that such funding shall be utilized for prevention, preparedness, and response initiatives consistent with the New York State Homeland Security Strategy, and with Counter Terrorism Zone (CTZ) efforts at the State and local level. This will ensure that fiscal resources are used for seamless and effective counter terrorism planning, training, information sharing, investigation, equipment acquisition, and response functions.

2. Particular attention must be paid to equipment and technology acquisitions, and, where similar technology already exists in the State's law enforcement communities, subrecipients will ensure that interoperability between and among existing law enforcement systems, and the New York State Intelligence Center (NYSIC), is accomplished.

3. Subrecipients further agree to consult with the NYSIC to ensure agency participation and inclusion in New York State's Field Intelligence Officer (FIO) Program.

E. EHP Requirements

1. Subrecipients shall comply with all applicable federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

2. Failure of subrecipients to meet federal, State, and local EHP requirements and obtain applicable permits may jeopardize federal funding. Subrecipients shall not undertake any project having the potential to impact EHP resources without the prior approval of FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings. Subrecipients must comply with all conditions placed on the project as the result of the EHP review.

3. Any change to the approved project scope of work will require re evaluation for compliance with these EHP requirements.

4. If ground disturbing activities occur during project implementation, subrecipients must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, such subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office.

5. Any activities requiring environmental and historic preservation review that have been initiated prior to FEMA approval could result in non compliance finding. For your convenience, the screening form is available at: https://www.dhses.ny.gov/environmental-planning-and-historic-preservation-ehp.

F. Equipment Maintenance Requirements

1. Subrecipients must track grant funds used for maintenance contracts, warranties, repair or replacement costs and upgrades, and report such expenditures in fiscal and program reports.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

G. New York State Emergency Management Certification and Training Program

1. Participation in and successful completion of the New York State Emergency Management Certification and Training Program (EMC Training Program) is a mandatory requirement under this Contract and a condition of funding. The EMC Training Program will be made available to, and required for, DHSES specified county and city government officials in order to ensure a consistent emergency management preparedness and response strategy across the State. Attendee substitutions, except as expressly approved by DHSES, shall not be permitted, or deemed to be in compliance with this requirement.

2. To fulfill the EMC Training Program requirement of the Contract and in order to be eligible for funding under this Contract, subrecipients must arrange for DHSES specified subrecipient employees to receive and acknowledge receipt of EMC Training no later than 180 days after execution of this Contract. Copies of the training certificates for each required participant must be submitted to DHSES upon execution of the Contract, or, in the event that training is scheduled, but not yet complete, the subrecipient will be required to submit a signed statement indicating the scheduled future dates of attendance, and no later than thirty (30) days after the training is complete, forward such training certificates to DHSES. Continued compliance with the EMC Training Program also requires an annual refresher training of one day per 365 day cycle from the date of initial training for previously trained individuals if such person remains employed by the subrecipient and fulfilling the same functions as he or she fulfilled during the initial training. Should a new employee be designated to serve in the DHSES specified positions, then he or she must come into compliance with the EMC Training Program requirements not later than 180 days after taking office.

3. Subrecipient must commit to active participation in a DHSES Annual Capabilities Assessment as a condition of funding. Active participation includes making reasonable staff, records, information, and time resources available to DHSES to perform the Annual Capabilities Assessment and meet the objectives and goals of the program. Subrecipients must be aware that the process of conducting a DHSES Annual Capabilities Assessment is an ongoing process and requires a continued commitment on the part of the subrecipient to ensure that it is effective.

4. All subrecipients funded through this program agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: (1) the nature and extent of any threats or hazards that may pose a risk to the subrecipient; and (2) the status of any corresponding subrecipient plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards.

5. Additionally, pursuant to Article 26 of the NYS Executive law, DHSES is authorized to undertake periodic drills and simulations designed to assess and prepare responses to terrorist acts or threats and other natural and man made disasters. Funded subrecipients agree to attend and participate in any DHSES sponsored conferences, training, workshops or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract.

6. Failure to comply with any of the requirements, as listed above, may result in sanctions up to and including the immediate suspension and/or revocation of the grant award.

Attachment: GrantAgreementBaileyBathroomConstruction3.24.2023 (RES-2023-649 : Grant Agreement: EOC Bathroom & Communications

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Police
Initiated by: **Scott Chamberlin**
Co-Sponsored by:

DOC ID: 27778 **RESOLUTION 2023-650** **ADOPTED**

Digital Surveillance Solutions (DSS) (CRS#4203) Highway Department Camera Replacement & Upgrades

TOWN BOARD AGENDA ITEM: JULY 24, 2023

TO: **Town Board**

FROM: **Scott P. Chamberlin, Chief of Police**

RE: **Digital Surveillance Solutions (DSS) (CRS#4203)**
Highway Department Camera Replacement & Upgrades

Kindly adopt a resolution authorizing the Supervisor to adopt and execute the attached contract between the Town of Amherst (Police) and Digital Surveillance Solutions, Inc. (DSS), 485 Cayuga Road, Buffalo New York, 14225 with regard to the above-entitled matter. Approval of this contract is contingent upon the successful completion of the Contract Routing System.

Thank you.

SPC:msl
Attachment
C: Tim Koller, Deputy Town Clerk **(Agenda Item: July 24, 2023)**

7/24/2023
Consent

FINANCIAL IMPACT:

KP 2212 .2150: $3,065.18

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

digital surveillance solutions

Pat Lucey
Highway Superintendent
Town of Amherst Highway Dept.
1042 N Forest Rd
Amherst, NY 14221

6/15/2023

Dear Pat Lucey,

Digital Surveillance Solutions, Inc. (DSS) is pleased to present this proposal. Please find the following scope of work.

Scope of work:

-Replace three cameras:
1.) Outside Door #10
2.) Sign Shop - Near Door #4
3.) Door 1A - lower Camera

-Configure cameras, add to Exacq, set up views.

-APD installed new hard drives. DSS to configure.

Exclusions/Out of Scope:

-DSS assumes any existing cabling to be in working order.
-TOA to provide access to data closet, ceilings, and any other location necessary to perform work.
-TOA to provide network connectivity with PoE.
-This quote does not include any hours from initial troubleshooting on service ticket.

Assumptions:

1. All conduit pathways, cable pathways and critical points of access must be provided and accessible at time of work.
2. All work shall be performed Monday-Friday during normal business hours (7:00am to 5:00pm).
3. Parking on site shall be provided by client at no cost.

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

dss
digital surveillance solutions

4. Town of Amherst Highway Dept. will provide free and clear access to all working areas.
5. A point of contact (POC) and site access to necessary areas must be provided prior to arrival to the jobsite. This includes all areas to be under surveillance, data center(s), wiring closets and mechanical rooms and any other areas that could impact the deployment of the Video Surveillance System. The POC will be the person to whom all DSS communication will be addressed and who has the authority to act for Town of Amherst Highway Dept. in all aspects of the project. POC responsibilities includes:

    a. Serve as the interface between Digital Surveillance Solutions, Inc. and Town of Amherst Highway Dept.
    b. Identify, schedule and confirm availability of support staff and management for onsite meetings (if necessary) and training.
    c. Schedule meeting/training rooms as necessary.
    d. Work with Digital Surveillance Solutions to administer any project change orders.
    e. Obtain and provide information, data, decisions and approvals, within 1 working day of Digital Surveillance Solutions' request, unless both parties agree to an extended response time.
    f. Resolve deviations from project plans that may be caused by Town of Amherst Highway Dept.
    g. Help resolve project issues, and escalate issues within Town of Amherst Highway Dept..

6. Any down time resulting from the lack of access or if customer scope of work not completed will not be the responsibility of Digital Surveillance Solutions and is billable at current hourly labor & travel rates.
7. Any hardware not included in DSS scope of work is to be functional and complete. If any hardware is non-functional or not complete, a change order will be required to add additional hardware of this scope. If change order is not provided to DSS in a timely manner, additional hours will be billed at current hourly labor & travel rates.
8. Installation will conform to all State, County and local codes.
9. All electrical supply to be provided by Town of Amherst Highway Dept..
10. Environmental conditions required by hardware manufacturers will be maintained by Town of Amherst Highway Dept. for the term of the system warranty. If environmental conditions required by manufacture are not maintained, repairing damage to equipment will be at the expense of the Town of Amherst Highway Dept..
11. Town of Amherst Highway Dept. to collaborate with DSS on the creation of the business rules that govern the utilization of the video surveillance system.

Terms:

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

digital surveillance solutions

1. Town of Amherst Highway Dept. to provide an adequate path for loading equipment and materials into the facility. This includes, but not limited to, a loading dock, ramp, freight elevator, etc. Additionally, a secure location will be provided by Town of Amherst Highway Dept. or General Contractor to store material and equipment on site during the installation process.
2. Upon delivery to customer site, Town of Amherst Highway Dept. assumes responsibility for the safeguard and condition of all delivered materials.
3. Any damage or loss to Digital Surveillance Solutions installation by others will be billed to client. DSS will not make any corrections to damage until written approval has been provided to DSS by Town of Amherst Highway Dept. with signature of authorized party. If authorization is not given to DSS in a timely manner, DSS will not be held responsible for any delays.
4. Town of Amherst Highway Dept. is responsible for removal of old product, which may include but not limited to, cameras, cabling, recording equipment i.e. DVRs, servers, etc.

Warranty:

1. Digital Surveillance Solutions provides a sixty (60) day warranty on labor.
2. Warranty will begin upon completion of DSS scope items. Warranty will not be delayed due to system dependencies not in scope for DSS. Multi phased projects will have warranties that commence at completion of each phase.
3. Equipment warranty is established by the manufacturers unless specified otherwise in the scope of work.
4. Should any defects develop during the warranty period due to workmanship or equipment failure, Digital Surveillance Solutions shall repair to original working order at no expense to client.

Warranty exclusions:

1. Customer furnished equipment, cables, or connectors.
2. Modification of system by others without the written consent and approval by Digital Surveillance Solutions. Modification(s) of the system by any vendor without written consent of Digital Surveillance Solutions will render the warranty null and void. Repairs and replacements will be subject to Time & Materials at Digital Surveillance Solutions current labor rates at the time of repairs.
3. System abuse or misuse.
4. Floods, fires, earthquakes, lightning strikes, or other events beyond the control of Digital Surveillance Solutions.
5. Environmental conditions required by hardware manufacturers will be maintained by Town of Amherst Highway Dept. for the term of the system warranty. If environmental conditions required by manufacture are not

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

digital surveillance solutions

maintained, repairing damage to equipment will be at the expense of the Town of Amherst Highway Dept..

I appreciate the opportunity to submit this proposal. If you have any questions, comments, or require further details, feel free to contact me.

Best Regards,

Jessica Pitarresi
Digital Surveillance Solutions
485 Cayuga Road
Buffalo, NY 14225

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

digital surveillance solutions

Camera replacements - service ticket #53044

Prepared For:

Pat Lucey
Town of Amherst Highway Dept.
1042 N Forest Rd
Amherst, NY 14221
United States
plucey@amherst.ny.us

Prepared By:

Jessica Pitarresi
Digital Surveillance Solutions, Inc.
485 Cayuga Road
Buffalo, NY 14225
jessicap@dssvideo.com
716-597-0369

Quote #	Sales Rep	State Contract
DSSQ4667	Jessica Pitarresi	PT68787

Item Number		Description	QTY	Unit Price	Total Price
01997-001	Axis	AXIS P1455-LE	3	$610.06	$1,830.1
CCTV/Surveillance Camera System	DSS Labor	Exterior camera installation. Prevailing wage.	6	$130.00	$780.0
Offsite Integration/Maintenance	DSS Labor	Configure cameras, add to Exacq, set up views. Configure drives.	2.5	$130.00	$325.0
Project/Program Manager	DSS Labor	Oversees all onsite work.	1	$130.00	$130.0

SUBTOTAL	$3,065.
SALES TAX	$0.
Optional Item Total	$0.
TOTAL	$3,065.

Taxes, shipping, handling and other fees may apply. DSS reserves the right to cancel orders arising from pricing or other err

By signing below, I hereby acknowledge and accept all terms set forth by this scope of work and proposal:

Jessica Pitarresi — Signature

7/13/23 — Date

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision was added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will develop a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). This list is posted on the OGS website.

By submitting a response to this solicitation, or by assuming the responsibility under a Contract/Lease awarded hereunder, Bidder/Contractor/Vendor (or any assignee) certifies that it will not utilize on such Contract/Lease any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor/Vendor is advised that any Bidder/ Contractor/Vendor seeking to renew or extend a Contract/Lease (or assume responsibility of a Contract/Lease awarded must certify at the time the Contract/Lease is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract/Lease, should the Town of Amherst (Town) receive information that a person is in violation of the above-referenced certification, the Town will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the Town shall take such action as appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor/Vendor in default.

The Town reserves the right to reject any Contract/Lease or request for assignment for an entity that appears on the prohibited entities list prior to the award of a Contract/Lease, and to pursue a responsibility review with respect to any entity that is awarded a Contract/Lease and appears on the prohibited entities list after Contract/Lease award.

Company Name: Digital Surveillance Solutions

Signature: Jessica Pitarresi

Print Name: Jessica Pitarresi

Title: Account Manager

Date: 7/13/2023

RAEANN J. JAKUBOWSKI
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01JA6309956
Qualified in Erie County
Commission Expires 08/18/20 26

Sworn To Before Me This
13 Day of July, 2023

Notary Public

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

Addendum to Contract Major Exposure

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Contractors or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Contractor shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Contractor its officers, agents, subcontractors, and/or employees as well as the negligence, active or passive, of the Contractor, its officers, agents, subcontractors, and/or employees.

4. Contractor shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same, and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Contractor shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Contractor shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate. Umbrella coverage shall be in an amount of at least $5,000,000.00.

(c) Contractor shall furnish the above insurances, including subcontractors' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Contractor shall ensure all its subcontractors, if any, have obtained all the above insurances and shall also assure that any policy procured by any subcontractor or sub-subcontractor shall name the Town as an additional insured on a primary and non-contributory basis. A failure by Contractor to assure that any policy procured by any subcontractor or sub-subcontractor name the Town as an additional insured on a primary and non-contributory basis, shall be considered a material breach of the underlying contact and subject the Contactor to forfeiture of its performance bond, if any, and to pay liquidated damages to the Town of no less than $2,000,00.00 or the Town's actual expenses, whichever is higher, including, but not limited to all attorney fees and expenses related to the

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

prosecution of a breach of the insurance procurement requirements suit regardless of whether the Town is successful in said suit.

(e) A failure by Contractor to procure the General Liability, Professional Liability and/or Property Damage policies referenced above, or the failure to have the Town of Amherst as an additional insured on a primary, non-contributory basis on said policies, shall be considered a material breach of the underlying contact and subject the Contactor to forfeiture of its performance bond, if any, and to pay liquidated damages to the Town of no less than $2,000,00.00 or the Town's actual expenses, whichever is higher, including, but not limited to all attorney fees and expenses related to the prosecution of a breach of the insurance procurement requirements suit and/or of the indemnification provisions regardless of whether the Town is successful in said suit.

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Contractor, in accordance with its status as an independent Contractor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

Digital Surveillance Solutions
Print Name of Company

By: Jessica Pitarresi
Signature

Jessica Pitarresi
Printed Name

Date: 7/13/2023

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

DIGIT-1

OP ID: AMD

13.Q.2.a

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 02/28/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Gugino Insurance Agency, Inc. 5707 Main Street Williamsville, NY 14221 Alayne M. Donner 716-633-1313	CONTACT NAME: Alayne M. Donner PHONE (A/C, No, Ext): 716-633-1313 FAX (A/C, No): 716-631-5770 E-MAIL ADDRESS: adonner@guginoagency.com
INSURED Digital Surveillance Solutions Inc. 485 Cayuga Road Buffalo, NY 14225	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Philadelphia Indemnity Ins Co — 18058 INSURER B : Merchants Mutual Ins. Co. — 23329 INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC OTHER:	X		PHPK2523677	03/01/2023	03/01/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,00 $ 100,00 $ 10,00 $ 1,000,00 $ 3,000,00 $ 3,000,00
B	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [X] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY			CAP9269147	03/01/2023	03/01/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,00 $ $ $
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10000			PHUB853388	03/01/2023	03/01/2024	EACH OCCURRENCE AGGREGATE	$ 5,000,00 $ 5,000,00
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N [ ] If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
A	Professional			PHSD122602	06/01/2022	06/01/2023	Per Claim Aggregate	2,000,00 2,000,00

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is named as an additonal insured on a Primary-Non Contributory basis under the General Liability, Umbrella follows form, General Liabiity CG000010413 and PI-GLD-SGNY.

CERTIFICATE HOLDER

Town of Amherst
5583 Main Street
Williamsville, NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Alayne M. Donner

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The ACORD name and logo are registered marks of ACORD

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

NYSIF
New York State Insurance Fund

PO Box 66699, Albany, NY 12206
| nysif.com

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE (RENEWED)

SCAN TO VALIDATE
AND SUBSCRIBE

^^^^^^ 200886315
KEEVILY SPERO-WHITELAW INC
500 MAMARONECK AVENUE
HARRISON NY 10528

POLICYHOLDER	CERTIFICATE HOLDER
DIGITAL SURVEILLANCE SOLUTIONS, INC. 485 CAYUGA RD BUFFALO NY 14225	TOWN OF AMHERST 5583 MAIN STREET WILLIAMSVILLE NY 14221

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
B2354 271-5	381321	11/01/2022 TO 11/01/2023	10/7/2022

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2354 271-5, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP. THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUN

DIRECTOR,INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 667481149

U-26.3

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
DIGITAL SURVEILLANCE SOLUTIONS, INC.
485 CAYUGA RD
BUFFALO, NY 14225

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*

1b. Business Telephone Number of Insured
716-597-0369

1c. Federal Employer Identification Number of Insured or Social Security Number
20-0886315

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)
Town of Amherst
5583 Main Street
Williamsville, NY 14221

3a. Name of Insurance Carrier
Standard Security Life Insurance Company of New York

3b. Policy Number of Entity Listed in Box "1a"
34078-01

3c. Policy effective period
5/1/2008 to 8/24/2023

4. Policy provides the following benefits:
- [x] A. Both disability and paid family leave benefits.
- [ ] B. Disability benefits only.
- [ ] C. Paid family leave benefits only.

5. Policy covers:
- [x] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- [ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 8/25/2022 By _____
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (212) 355-4141 Name and Title SUPERVISOR-DBL/POLICY SERVICES

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

DB-120.1 (10-17)

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices my be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and not withstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

Attachment: Signed Contract for Routing 7.17.2023 (RES-2023-650 : DSS: Hwy Dept Camera Replacement (CRS#4203))

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27767 **RESOLUTION 2023-651** **ADOPTED**

Travel Request Operator Training Courses

The Engineering Department is requesting approval to send one (1) employee to attend Basic Laboratory Procedures and Grade 3 Technical Module training courses at the Environmental Training Center at SUNY Morrisville in Morrisville, NY in October and December 2023.

The total cost for the employee to attend each course is estimated to be $1,948.38 and $825.65 respectively, and includes registration, tolls/mileage reimbursement, lodging and per diem. These classes are also known to fill quickly, so we are also requesting the approval to register the employee for the next available course date, if needed.

The Engineering Department is also requesting approval to change the approved dates for another employee to attend the Grade 3 Technical Module and Grade 4 Management training courses. Resolution 2023-319 originally approved the employee to attend in November 2023, so there won't be any additional cost, but the school changed the course dates to October and November 2023.

Funding for this request will be available in accounts G9916-4040 and G9916-4850.

Thank you for considering this request.

7/24/2023
Consent

FINANCIAL IMPACT:

Approximately $2,774.03; G9916-4040 and G9916-4850

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Revised 5.8.2023

TRAVEL EXPENSE APPROVAL / REIMBURSEMENT FORM

☐ Travel in New York State and under $750 - Department Head Approval

☒ Travel in New York State $750 and over - Department Head Approval and Town Board Approval

☐ Travel out of New York State - Department Head Approval and Town Board Approval

NAME	Employee #	Department	Phone Number
[redacted]	[redacted]	Eng. Plant 16	716-691-9771

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
12/3/23	12/9/23	Environmental Training Center, SUNY Morrisville, Morrisville, NY	Basic Laboratory Procedures 12/4-12/8/23

Expenses	Estimated	Budget A/C #	Actual
Transportation:			
Mileage @ $0.655	$232.525	G9916-4040	
Tolls	$18.48	G9916-4040	
Parking			
Local Transportation (bus/taxi)			
Plane/Rail/Bus			
Lodging:			
# nights 6 @ $ 101.00	$606.00	G9916-4040	
Meals:			
IRS Per Diem Per Day: $59.00			
1st & Last Day of Travel @ 75%	$88.50	G9916-4040	
# Breakfasts 5 @ $ 13.00	$65.00	G9916-4040	
# Lunches 5 @ $ 15.00	$75.00	G9916-4040	
# Dinners 5 @ $ 26.00	$130.00	G9916-4040	
# Incidentals 5 @ $ 5.00	$25.00	G9916-4040	
Registration/Conference Fee	$575.00	G9916-4850	
Other			
Subtotal	$1,771.255 -		N/A
Contingency - 10% of subtotal or $200	$177.1255 -		N/A
TOTAL	$1,948.38 -		

Request Approved By:

Department Head Signature

7/18/23

Date

Town Board :

Town Board Resolution & Date

I hereby certify that I have expended the above itemized amounts for business purposes for the Town of Amherst. Required receipts are attached.

Employee Signature Date

Print Employee Name

Reimbursement Approved By:

Department Head Signature Date

Complete Shaded Area
For Expense Reimbursement

X:\Policies and Procedures\Travel\Travel Expense Reimbursement 5.8.2023

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

ENVIRONMENTAL TRAINING CENTER at SUNY MORRISVILLE

Basic Laboratory Procedures

Monday, December 4, 2023 - Friday, December 8, 2023
This event is full. Now accepting wait list registrations.

Register

Registration open through 11/6/2023 11:59 PM Eastern Time (US & Canada)

Register Now

Details

$575.00 - This 30 hour course meets the NYS Department of Environmental Conservation certification requirements for laboratory proficiency. Participants must bring their own simple calculator, lab coat, and goggles. Textbook is provided at no additional charge.

Prerequisites

Basic Operations

Price

Registration is $575.00

Location

Crawford Hall Lab Classroom 339

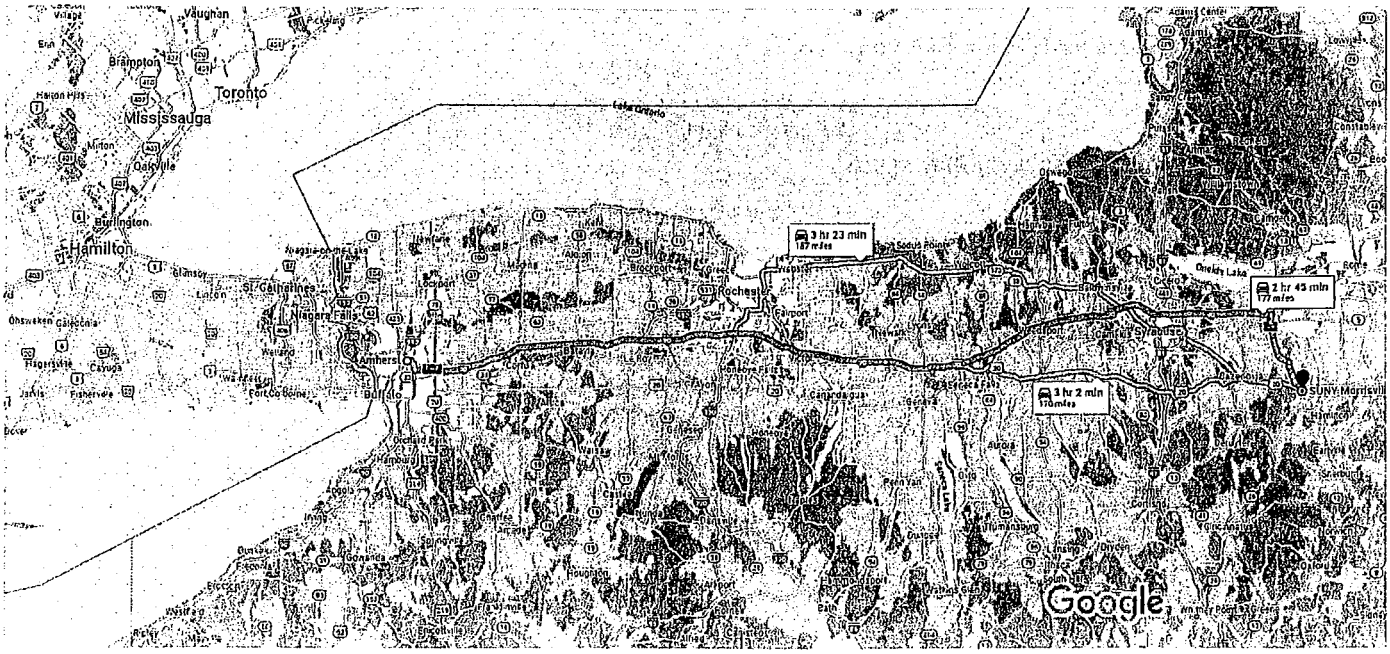
About Us

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

Google Maps

Amherst, New York to SUNY Morrisville, 80 Eaton St, Morrisville, NY 13408

Drive 177 miles, 2 hr 45 min



Map data ©2023 Google 10 mi

Amherst
New York

⚠ This route has tolls.

Get on I-290 E from Campus Dr W

2 min (0.7 mi)

1. Head east on Campus Dr W

0.3 mi

2. Turn right onto Campus Ln

0.1 mi

3. Turn left at the 1st cross street onto NY-240 N

285 ft

4. Turn right to merge onto I-290 E

0.2 mi

Follow I-90 E to NY-13 S/N Peterboro St in Canastota. Take exit 34 from I-90 E

2 hr 22 min (161 mi)

5. Merge onto I-290 E

1.8 mi

6. Take exit 1-49 on the left to merge onto I-90 E toward Albany

⚠ Toll road

159 mi

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

7. Take exit 34 for NY-13 toward Canastota/Oneida
⚠ Toll road

0.5 mi

Take Oxbow Rd and Old County Rd to Chenango St/Suny School District in Morrisville

24 min (15.8 mi)

8. Turn left onto NY-13 S/N Peterboro St

1.3 mi

9. Continue straight onto Oxbow Rd

8.4 mi

10. Continue onto Pleasant Valley Rd

0.7 mi

11. Turn left onto Old County Rd

3.9 mi

12. Turn right onto Swamp Rd

0.3 mi

13. Continue onto Cedar St

0.5 mi

14. Turn left onto Main St

128 ft

15. Turn right onto Eaton St

0.5 mi

16. Turn left onto Madison Rd

0.2 mi

17. Continue onto Chenango St/Suny School District
Destination will be on the right

443 ft

SUNY Morrisville
80 Eaton St, Morrisville, NY 13408

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

Thruway Authority

Toll and Distance Calculator

Tolls from
Exit 50 - (I-90 - NYS Thruway) - Niagara Falls - I-290
to
Exit 34 - (I-90 - NYS Thruway) - Canastota - Oneida - Chittenango - NY Route 13

Additional E-ZPass discount plans are available for commuters, motorcycles, motorhomes And other vehicles. The table below represents your anticipated tolls.

TOLLS FOR A CLASS 2L VEHICLE

TOLL LOCATIONS	NY E-ZPASS TOLLS *	NON-NY E-ZPASS TOLLS *	TOLLS BY MAIL
Williamsville Highway Gantry --> Exit 47 (I-90 - NYS Thruway)	$1.87	$2.15	$2.43
Exit 47 (I-90 - NYS Thruway) --> Exit 46 (I-90 - NYS Thruway)	$0.72	$0.83	$0.94
Exit 46 (I-90 - NYS Thruway) --> Exit 45 (I-90 - NYS Thruway)	$0.51	$0.59	$0.67
Exit 45 (I-90 - NYS Thruway) --> Exit 44 (I-90 - NYS Thruway)	$0.17	$0.20	$0.22
Exit 44 (I-90 - NYS Thruway) --> Exit 39 (I-90 - NYS Thruway)	$2.57	$2.96	$3.35
Exit 39 (I-90 - NYS Thruway) --> Exit 36 (I-90 - NYS Thruway)	$0.30	$0.34	$0.38
Exit 36 (I-90 - NYS Thruway) --> Exit 35 (I-90 - NYS Thruway)	$0.18	$0.21	$0.23
Exit 35 (I-90 - NYS Thruway) --> Exit 34A (I-90 - NYS Thruway)	$0.11	$0.12	$0.14
Exit 34A (I-90 - NYS Thruway) --> Exit 34 (I-90 - NYS Thruway)	$0.67	$0.78	$0.88
Total	**$7.10**	**$8.18**	**$9.24**

NY E-ZPASS CUSTOMERS WILL SAVE $2.14. DISCOUNT APPLIES TO E-ZPASSNY ACCOUNTS ONLY

* **Tolls that post to E-ZPass accounts by license plate will be charged the Tolls by Mail rate.**

Approximate Distance: 158.8 miles

Calculate return tolls for Canastota - Oneida - Chittenango - NY Route 13 to Niagara Falls - I-290

ALONG YOUR TRIP, YOU WILL PASS THE FOLLOWING SERVICE AREAS

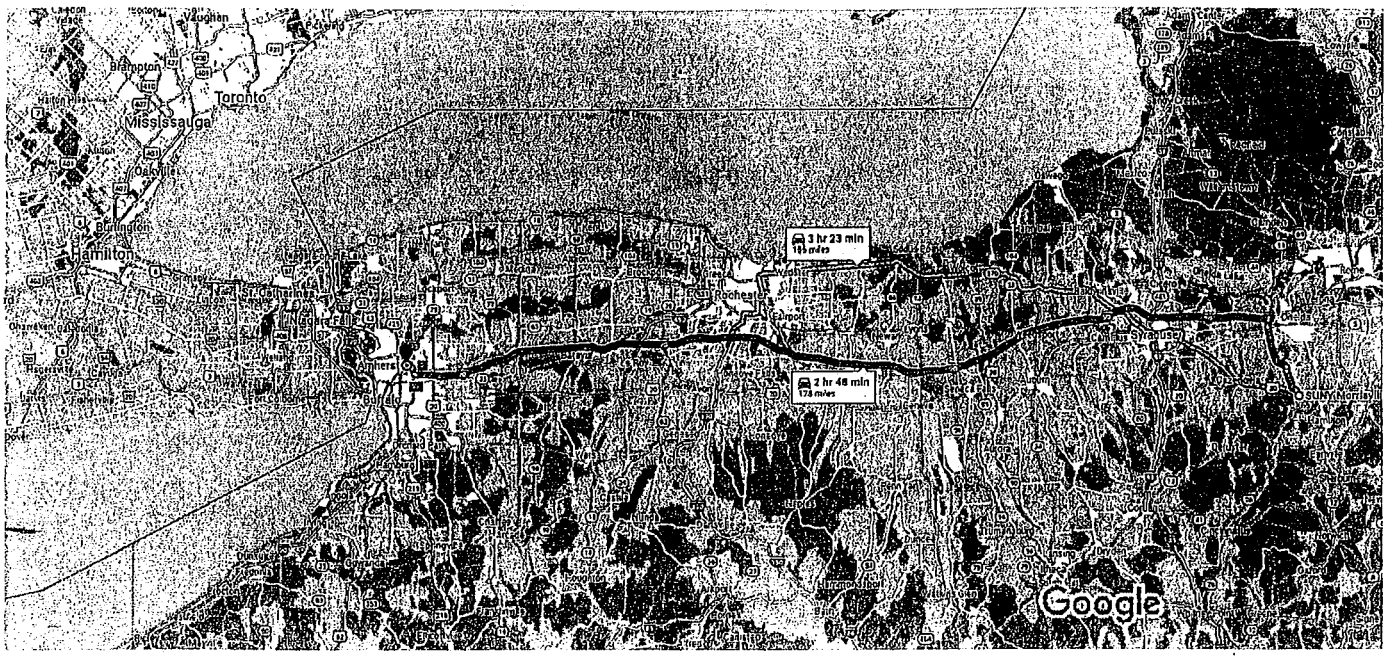
SERVICE AREA	MILEPOST
Pembroke Service Area	Milepost 397
Scottsville Service Area	Milepost 366
Clifton Springs Service Area	Milepost 337
Port Byron Service Area	Milepost 310

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

Google Maps

SUNY Morrisville, 80 Eaton St, Morrisville, NY 13408 to Amherst, New York

Drive 178 miles, 2 hr 48 min



Map data ©2023 Google 10 mi

SUNY Morrisville
80 Eaton St, Morrisville, NY 13408

⚠ This route has tolls.

Get on I-90 W in Canastota from Old County Rd and Oxbow Rd

26 min (16.6 mi)

1. Head south on Chenango St/Suny School District toward Madison Rd

367 ft

2. Continue straight onto Madison Rd

0.2 mi

3. Turn right onto Eaton St

0.5 mi

4. Turn left onto Main St

128 ft

5. Turn right onto Cedar St

0.5 mi

6. Continue onto Swamp Rd

0.3 mi

7. Turn left onto Old County Rd

3.9 mi

8. Turn right onto Pleasant Valley Rd

0.7 mi

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

9. Continue onto Oxbow Rd/Peterboro Rd
Continue to follow Oxbow Rd

8.4 mi

10. Continue onto S Peterboro St

1.3 mi

11. Turn right to merge onto I-90 W
Toll road

0.8 mi

Follow I-90 W to NY-324 W/Sheridan Dr in Amherst. Take exit 6 from I-290 W

2 hr 22 min (160 mi)

12. Merge onto I-90 W
Toll road

158 mi

13. Use the right 2 lanes to take exit 50 toward I-290/Niagara Fls
Toll road

0.4 mi

14. Continue onto I-290 W

1.8 mi

15. Take exit 6 for NY-324/Sheridan Dr toward NY-240/Harlem Rd

0.2 mi

Continue on NY-324 W/Sheridan Dr. Drive to Campus Dr W in Amherst

3 min (0.8 mi)

16. Use the left 2 lanes to turn left onto NY-324 W/Sheridan Dr

0.5 mi

17. Turn left onto Getzville Rd

0.3 mi

18. Turn left onto Campus Dr W

10 ft

Amherst
New York

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

Thruway Authority

Toll and Distance Calculator

Tolls from
Exit 34 - (I-90 - NYS Thruway) - Canastota - Oneida - Chittenango - NY Route 13
to
Exit 50 - (I-90 - NYS Thruway) - Niagara Falls - I-290

Additional E-ZPass discount plans are available for commuters, motorcycles, motorhomes And other vehicles. The table below represents your anticipated tolls.

TOLLS FOR A CLASS 2L VEHICLE

TOLL LOCATIONS	NY E-ZPASS TOLLS *	NON-NY E-ZPASS TOLLS *	TOLLS BY MAIL
Exit 34 (I-90 - NYS Thruway) --> Exit 34A (I-90 - NYS Thruway)	$0.67	$0.78	$0.88
Exit 34A (I-90 - NYS Thruway) --> Exit 35 (I-90 - NYS Thruway)	$0.11	$0.12	$0.14
Exit 35 (I-90 - NYS Thruway) --> Exit 36 (I-90 - NYS Thruway)	$0.18	$0.21	$0.23
Exit 36 (I-90 - NYS Thruway) --> Exit 39 (I-90 - NYS Thruway)	$0.30	$0.34	$0.38
Exit 39 (I-90 - NYS Thruway) --> Exit 44 (I-90 - NYS Thruway)	$2.57	$2.96	$3.35
Exit 44 (I-90 - NYS Thruway) --> Exit 45 (I-90 - NYS Thruway)	$0.17	$0.20	$0.22
Exit 45 (I-90 - NYS Thruway) --> Exit 46 (I-90 - NYS Thruway)	$0.51	$0.59	$0.67
Exit 46 (I-90 - NYS Thruway) --> Exit 47 (I-90 - NYS Thruway)	$0.72	$0.83	$0.94
Exit 47 (I-90 - NYS Thruway) --> Williamsville Highway Gantry	$1.87	$2.15	$2.43
Total	**$7.10**	**$8.18**	**$9.24**

NY E-ZPASS CUSTOMERS WILL SAVE $2.14. DISCOUNT APPLIES TO E-ZPASSNY ACCOUNTS ONLY

*** Tolls that post to E-ZPass accounts by license plate will be charged the Tolls by Mail rate.**

Approximate Distance: 158.8 miles

Calculate return tolls for Niagara Falls - I-290 to Canastota - Oneida - Chittenango - NY Route 13

ALONG YOUR TRIP, YOU WILL PASS THE FOLLOWING SERVICE AREAS

SERVICE AREA	MILEPOST
Chittenango Service Area	Milepost 266
Warners Service Area	Milepost 292
Junius Ponds Service Area	Milepost 324
Seneca Service Area	Milepost 350

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

An official website of the United States government

FY 2023 Per Diem Rates for ZIP 13408

I'm interested in:

Daily lodging rates (excluding taxes) | October 2022 - September 2023

Cities not appearing below may be located within a county for which rates are listed. To determine what county a city is located in, visit the National Association of Counties (NACO) website (a non-federal website).

Primary Destination	County	2022 Oct	Nov	Dec	2023 Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Standard Rate	Applies for all locations without specified rates	$98	$98	$98	$98	$98	$98	$98	$98	$98	$98	$98	$98

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

Meals & Incidentals (M&IE) rates and breakdown

Use this table to find the following information for federal employee travel:

M&IE Total - the full daily amount received for a single calendar day of travel when that day is neither the first nor last day of travel.

Breakfast, lunch, dinner, incidentals - Separate amounts for meals and incidentals. M&IE Total = Breakfast + Lunch + Dinner + Incidentals. Sometimes meal amounts must be deducted from trip voucher. See More Information

First & last day of travel - amount received on the first and last day of travel and equals 75% of total M&IE.

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & Last Day of Travel
Standard Rate	Applies for all locations without specified rates	$59	$13	$15	$26	$5	$44.25

I'm interested in:

Last Reviewed: 2022-10-14

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

Hilton
FOR THE STAY™

Join Sign In

Hampton Inn & Suites Cazenovia

Edit stay

Sun, Dec 3 – Sat, Dec 9, 2023
1 room for 1 adult

Payment and Guest Details **Step 3 of 3**

Total for stay $678.72

Hide price details

Price in $USD

1 King W/fridge Nonsmoke
Us Government on Duty Travel

03 Dec 2023	$101.00
04 Dec 2023	$101.00
05 Dec 2023	$101.00
06 Dec 2023	$101.00
07 Dec 2023	$101.00
08 Dec 2023	$101.00
Total room charge	**$606.00**

8.00 % per room, per night
4.00 % per room, per night

Total taxes **$72.72**

Total for stay: $678.72

Guarantee and Cancellation Policy

There is a Credit Card required for this reservation. **Free cancellation before 11:59 PM local hotel time on 02 Dec 2023.**

All fields are required unless marked optional.

Payment

Attachment: Travel - Basic Lab Procedures (RES-2023-651 : Travel Request)

Revised 5.8.2023

TRAVEL EXPENSE APPROVAL / REIMBURSEMENT FORM

☐ Travel in New York State and under $750 - Department Head Approval

☒ Travel in New York State $750 and over - Department Head Approval and Town Board Approval

☐ Travel out of New York State - Department Head Approval and Town Board Approval

NAME	Employee #	Department	Phone Number
[redacted]	[redacted]	Eng. Plant 16	716-691-9771

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
10/29/23	10/31/23	Environmental Training Center, SUNY Morrisville, Morrisville, NY	Grade 3 One Day Technical Module 10/30/23

Expenses	Estimated	Budget A/C #	Actual
Transportation:			
Mileage @ $0.655	$232.525	G9916-4040	
Tolls	$18.48	G9916-4040	
Parking			
Local Transportation (bus/taxi)			
Plane/Rail/Bus			
Lodging:			
# nights 2 @ $ 101.00	$202.00	G9916-4040	
Meals:			
IRS Per Diem Per Day: $59.00			
1st & Last Day of Travel @ 75%	$88.50	G9916-4040	
# Breakfasts 1 @ $ 13.00	$13.00	G9916-4040	
# Lunches 1 @ $ 15.00	$15.00	G9916-4040	
# Dinners 1 @ $ 26.00	$26.00	G9916-4040	
# Incidentals 1 @ $ 5.00	$5.00	G9916-4040	
Registration/Conference Fee	$150.00	G9916-4850	
Other			
Subtotal	$750.505 -		N/A
Contingency - 10% of subtotal or $200	$75.0505 -		N/A
TOTAL	$825.65 -		

Request Approved By:

Department Head Signature

7/10/23

Date

Town Board :

Town Board Resolution & Date

I hereby certify that I have expended the above itemized amounts for business purposes for the Town of Amherst. Required receipts are attached.

Employee Signature Date

Print Employee Name

Reimbursement Approved By:

Department Head Signature Date

Complete Shaded Area
For Expense Reimbursement

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)



Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

ENVIRONMENTAL TRAINING CENTER at SUNY MORRISVILLE

Grade 3 - ONE DAY Technical Module

Monday, November 13, 2023 - Monday, November 13, 2023

Register

Registration open through 11/13/2023 11:59 PM Eastern Time (US & Canada)

Register Now

Details

$150.00

Prerequisites

Basic Operations

Price

Registration is $150.00

Location

Crawford Hall - Room 106

About Us

ENVIRONMENTAL TRAINING CENTER at SUNY MORRISVILLE

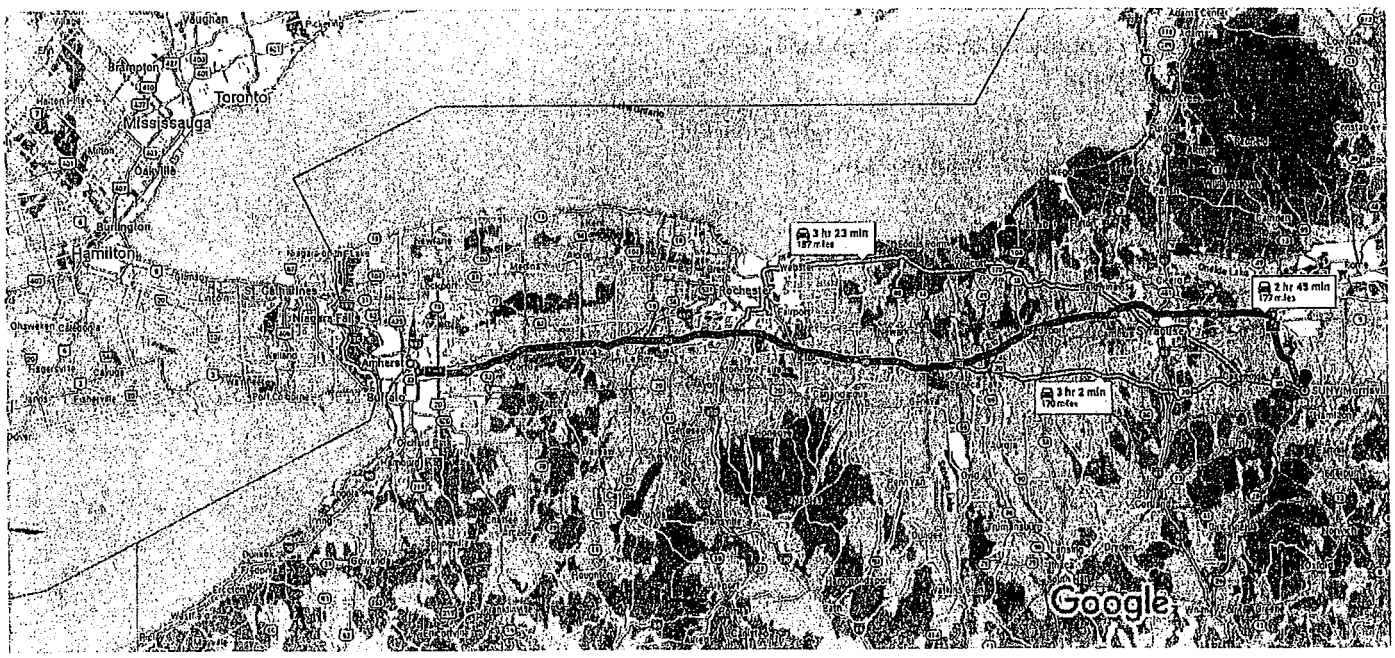
Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

13.S.1.b

Google Maps

Amherst, New York to SUNY Morrisville, 80 Eaton St, Morrisville, NY 13408

Drive 177 miles, 2 hr 45 min



Map data ©2023 Google 10 mi

Amherst
New York

⚠ This route has tolls.

Get on I-290 E from Campus Dr W

2 min (0.7 mi)

1. Head east on Campus Dr W

0.3 mi

2. Turn right onto Campus Ln

0.1 mi

3. Turn left at the 1st cross street onto NY-240 N

285 ft

4. Turn right to merge onto I-290 E

0.2 mi

Follow I-90 E to NY-13 S/N Peterboro St in Canastota. Take exit 34 from I-90 E

2 hr 22 min (161 mi)

5. Merge onto I-290 E

1.8 mi

6. Take exit 1-49 on the left to merge onto I-90 E toward Albany

⚠ Toll road

159 mi

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

7. Take exit 34 for NY-13 toward Canastota/Oneida
⚠ Toll road

0.5 mi

Take Oxbow Rd and Old County Rd to Chenango St/Suny School District in Morrisville

24 min (15.8 mi)

8. Turn left onto NY-13 S/N Peterboro St

1.3 mi

9. Continue straight onto Oxbow Rd

8.4 mi

10. Continue onto Pleasant Valley Rd

0.7 mi

11. Turn left onto Old County Rd

3.9 mi

12. Turn right onto Swamp Rd

0.3 mi

13. Continue onto Cedar St

0.5 mi

14. Turn left onto Main St

128 ft

15. Turn right onto Eaton St

0.5 mi

16. Turn left onto Madison Rd

0.2 mi

17. Continue onto Chenango St/Suny School District
Destination will be on the right

443 ft

SUNY Morrisville
80 Eaton St, Morrisville, NY 13408

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

Thruway Authority

Toll and Distance Calculator

Tolls from
Exit 50 - (I-90 - NYS Thruway) - Niagara Falls - I-290
to
Exit 34 - (I-90 - NYS Thruway) - Canastota - Oneida - Chittenango - NY Route 13

Additional E-ZPass discount plans are available for commuters, motorcycles, motorhomes And other vehicles. The table below represents your anticipated tolls.

TOLLS FOR A CLASS 2L VEHICLE

TOLL LOCATIONS	NY E-ZPASS TOLLS *	NON-NY E-ZPASS TOLLS *	TOLLS BY MAIL
Williamsville Highway Gantry --> Exit 47 (I-90 - NYS Thruway)	$1.87	$2.15	$2.43
Exit 47 (I-90 - NYS Thruway) --> Exit 46 (I-90 - NYS Thruway)	$0.72	$0.83	$0.94
Exit 46 (I-90 - NYS Thruway) --> Exit 45 (I-90 - NYS Thruway)	$0.51	$0.59	$0.67
Exit 45 (I-90 - NYS Thruway) --> Exit 44 (I-90 - NYS Thruway)	$0.17	$0.20	$0.22
Exit 44 (I-90 - NYS Thruway) --> Exit 39 (I-90 - NYS Thruway)	$2.57	$2.96	$3.35
Exit 39 (I-90 - NYS Thruway) --> Exit 36 (I-90 - NYS Thruway)	$0.30	$0.34	$0.38
Exit 36 (I-90 - NYS Thruway) --> Exit 35 (I-90 - NYS Thruway)	$0.18	$0.21	$0.23
Exit 35 (I-90 - NYS Thruway) --> Exit 34A (I-90 - NYS Thruway)	$0.11	$0.12	$0.14
Exit 34A (I-90 - NYS Thruway) --> Exit 34 (I-90 - NYS Thruway)	$0.67	$0.78	$0.88
Total	**$7.10**	**$8.18**	**$9.24**

NY E-ZPASS CUSTOMERS WILL SAVE $2.14. DISCOUNT APPLIES TO E-ZPASSNY ACCOUNTS ONLY

* **Tolls that post to E-ZPass accounts by license plate will be charged the Tolls by Mail rate.**

Approximate Distance: 158.8 miles

Calculate return tolls for Canastota - Oneida - Chittenango - NY Route 13 to Niagara Falls - I-290

ALONG YOUR TRIP, YOU WILL PASS THE FOLLOWING SERVICE AREAS

SERVICE AREA	MILEPOST
Pembroke Service Area	Milepost 397
Scottsville Service Area	Milepost 366
Clifton Springs Service Area	Milepost 337
Port Byron Service Area	Milepost 310

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

SERVICE AREA	MILEPOST
DeWitt Service Area	Milepost 280

Calculate Another Trip Back

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

Thruway Authority

Toll and Distance Calculator

Tolls from
Exit 34 - (I-90 - NYS Thruway) - Canastota - Oneida - Chittenango - NY Route 13
to
Exit 50 - (I-90 - NYS Thruway) - Niagara Falls - I-290

Additional E-ZPass discount plans are available for commuters, motorcycles, motorhomes And other vehicles. The table below represents your anticipated tolls.

TOLLS FOR A CLASS 2L VEHICLE

TOLL LOCATIONS	NY E-ZPASS TOLLS *	NON-NY E-ZPASS TOLLS *	TOLLS BY MAIL
Exit 34 (I-90 - NYS Thruway) --> Exit 34A (I-90 - NYS Thruway)	$0.67	$0.78	$0.88
Exit 34A (I-90 - NYS Thruway) --> Exit 35 (I-90 - NYS Thruway)	$0.11	$0.12	$0.14
Exit 35 (I-90 - NYS Thruway) --> Exit 36 (I-90 - NYS Thruway)	$0.18	$0.21	$0.23
Exit 36 (I-90 - NYS Thruway) --> Exit 39 (I-90 - NYS Thruway)	$0.30	$0.34	$0.38
Exit 39 (I-90 - NYS Thruway) --> Exit 44 (I-90 - NYS Thruway)	$2.57	$2.96	$3.35
Exit 44 (I-90 - NYS Thruway) --> Exit 45 (I-90 - NYS Thruway)	$0.17	$0.20	$0.22
Exit 45 (I-90 - NYS Thruway) --> Exit 46 (I-90 - NYS Thruway)	$0.51	$0.59	$0.67
Exit 46 (I-90 - NYS Thruway) --> Exit 47 (I-90 - NYS Thruway)	$0.72	$0.83	$0.94
Exit 47 (I-90 - NYS Thruway) --> Williamsville Highway Gantry	$1.87	$2.15	$2.43
Total	**$7.10**	**$8.18**	**$9.24**

NY E-ZPASS CUSTOMERS WILL SAVE $2.14. DISCOUNT APPLIES TO E-ZPASSNY ACCOUNTS ONLY

* **Tolls that post to E-ZPass accounts by license plate will be charged the Tolls by Mail rate.**

Approximate Distance: 158.8 miles

Calculate return tolls for Niagara Falls - I-290 to Canastota - Oneida - Chittenango - NY Route 13

ALONG YOUR TRIP, YOU WILL PASS THE FOLLOWING SERVICE AREAS

SERVICE AREA	MILEPOST
Chittenango Service Area	Milepost 266
Warners Service Area	Milepost 292
Junius Ponds Service Area	Milepost 324
Seneca Service Area	Milepost 350

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

SERVICE AREA	MILEPOST
Ontario Service Area	Milepost 376
Clarence Service Area	Milepost 412

Calculate Another Trip Back

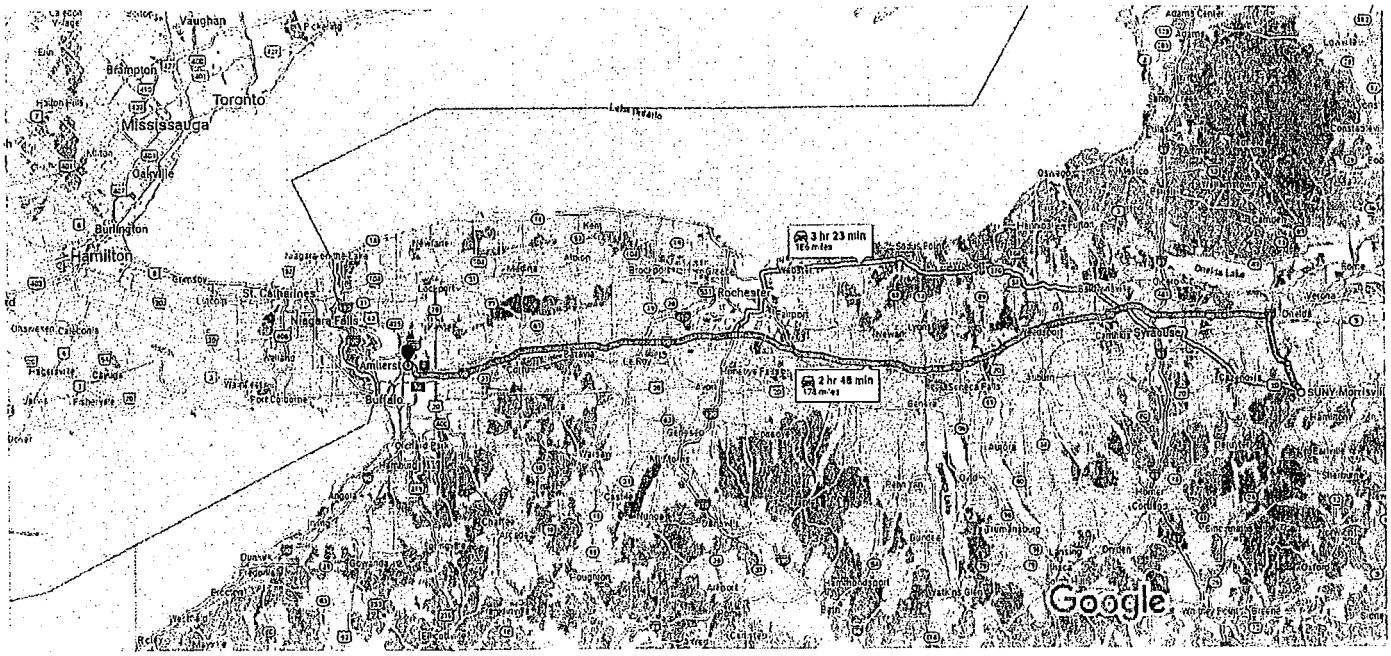
Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

13.S.1.b

Google Maps

SUNY Morrisville, 80 Eaton St, Morrisville, NY 13408 to Amherst, New York

Drive 178 miles, 2 hr 48 min



Map data ©2023 Google 10 mi

SUNY Morrisville
80 Eaton St, Morrisville, NY 13408

⚠ This route has tolls.

Get on I-90 W in Canastota from Old County Rd and Oxbow Rd

26 min (16.6 mi)

1. Head south on Chenango St/Suny School District toward Madison Rd

367 ft

2. Continue straight onto Madison Rd

0.2 mi

3. Turn right onto Eaton St

0.5 mi

4. Turn left onto Main St

128 ft

5. Turn right onto Cedar St

0.5 mi

6. Continue onto Swamp Rd

0.3 mi

7. Turn left onto Old County Rd

3.9 mi

8. Turn right onto Pleasant Valley Rd

0.7 mi

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

9. Continue onto Oxbow Rd/Peterboro Rd
Continue to follow Oxbow Rd

8.4 mi

10. Continue onto S Peterboro St

1.3 mi

11. Turn right to merge onto I-90 W
⚠ Toll road

0.8 mi

Follow I-90 W to NY-324 W/Sheridan Dr in Amherst. Take exit 6 from I-290 W

2 hr 22 min (160 mi)

12. Merge onto I-90 W
⚠ Toll road

158 mi

13. Use the right 2 lanes to take exit 50 toward I-290/Niagara Fls
⚠ Toll road

0.4 mi

14. Continue onto I-290 W

1.8 mi

15. Take exit 6 for NY-324/Sheridan Dr toward NY-240/Harlem Rd

0.2 mi

Continue on NY-324 W/Sheridan Dr. Drive to Campus Dr W in Amherst

3 min (0.8 mi)

16. Use the left 2 lanes to turn left onto NY-324 W/Sheridan Dr

0.5 mi

17. Turn left onto Getzville Rd

0.3 mi

18. Turn left onto Campus Dr W

10 ft

Amherst
New York

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

An official website of the United States government

FY 2023 Per Diem Rates for ZIP 13408

I'm interested in:

Daily lodging rates (excluding taxes) | October 2022 - September 2023

Cities not appearing below may be located within a county for which rates are listed. To determine what county a city is located in, visit the National Association of Counties (NACO) website (a non-federal website).

Primary Destination	County	2022 Oct	Nov	Dec	2023 Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Standard Rate	Applies for all locations without specified rates	$98	$98	$98	$98	$98	$98	$98	$98	$98	$98	$98	$98

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

Meals & Incidentals (M&IE) rates and breakdown

Use this table to find the following information for federal employee travel:

M&IE Total - the full daily amount received for a single calendar day of travel when that day is neither the first nor last day of travel.

Breakfast, lunch, dinner, incidentals - Separate amounts for meals and incidentals. M&IE Total = Breakfast + Lunch + Dinner + Incidentals. Sometimes meal amounts must be deducted from trip voucher. See More Information

First & last day of travel - amount received on the first and last day of travel and equals 75% of total M&IE.

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & Last Day of Travel
Standard Rate	Applies for all locations without specified rates	$59	$13	$15	$26	$5	$44.25

I'm interested in:

Last Reviewed: 2022-10-14

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

Hilton
FOR THE STAY

Join Sign In

Hampton Inn & Suites Cazenovia

Edit stay

Sun, Oct 29 – Tue, Oct 31, 2023
1 room for 1 adult

Payment and Guest Details **Step 3 of 3**

Total for stay

$226.24

Hide price details

Price in $USD

2 Queen W/fridge Nonsmoke	
Us Government on Duty Travel	
29 Oct 2023	$101.00
30 Oct 2023	$101.00
Total room charge	**$202.00**
8.00 % per room, per night	
4.00 % per room, per night	
Total taxes	**$24.24**

Total for stay: $226.24

Guarantee and Cancellation Policy

There is a Credit Card required for this reservation. **Free cancellation before 11:59 PM local hotel time on 28 Oct 2023.**

All fields are required unless marked optional.

Payment

Card number

Attachment: Travel - Grade 3 One Day Tech Module (RES-2023-651 : Travel Request)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27768 **RESOLUTION 2023-652** **ADOPTED**

Moyno Stator & Rotor Procurement Shrier Martin Process Equipment, Inc. CRS No. 4195

The Engineering Department-WPCF Division is requesting the Town Board to authorize the Supervisor to sign an agreement with Shrier-Martin Process Equipment. This agreement is for Moyno™ progressive cavity pump parts. Shrier-Martin Process Equipment is the "sole source" supplier of Moyno™ parts for our territory. The total cost of this procurement as listed on the attached Shrier Martin quote 9793 would be $14,726.26 plus freight. The term of this contract will be from date of execution by the Town of Amherst through October 01, 2023.

Funds will be available in G9916-4921

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

FINANCIAL IMPACT:

$14,726.26 plus freight; G9916-4921

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

AGREEMENT

Let this document stand as an Agreement between Shrier-Martin Process Equipment, Inc. and the Town of Amherst permitting the Town of Amherst to procure the Moyno progressive cavity pump parts listed on the attached quote 9793, dated March 29, 2023. The term of this contract will be from date of execution by the Town of Amherst through September 30, 2023.

Agreed to and Accepted by:

Shrier-Martin Process Equipment, Inc.

By: Brett R. Siewert
Signature

Brett R. Siewert
Printed name

Vice President
Title

Date: 4-27-23

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian J. Kulpa
Supervisor

Date: _____

Attachment: Shrier Martin Agreement (RES-2023-652 : Moyno Stator & Rotor Procurement CRS No. 4195)



2/22/2023

Subject: Authorized Moyno™ Products Representation

To Whom It May Concern:

The Process and Flow Technologies Division of National Oilwell Varco utilizes authorized representatives and distributors through the United States to bring the Moyno™ Product line to market. Shrier-Martin Process Equipment, Inc. is the authorized Representative and Distributor for the Moyno™ Product Lines in the following counties in New York:

Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Duchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates.

In Pennsylvania, Shrier-Martin is the Representative into industries other than municipal for the counties of:

Bradford, Susquehanna, and Tioga

Please contact me directly should there be a questions relating to the above information.

Respectfully yours,

Lindsey Humphrey

Mr. Lindsey Humphrey, PMP
Moyno™ Products Northeast Regional Manager

T 937-454-3200
F 937-454-3379
nov.com

NOV Process and Flow Technologies US, Inc.
Moyno™
5870 Poe Avenue
Dayton, OH 45414

Attachment: Shrier Martin Agreement (RES-2023-652 : Moyno Stator & Rotor Procurement CRS No. 4195)

SHRIER-MARTIN
PROCESS EQUIPMENT

Quote

Date	Quote #
3/29/2023	9793

Name / Address
Town of Amherst WWTP 455 Tonawanda Creek Road Amherst, NY 14228

To:
Tom Dean
Per your request, please see the pricing and availability below. If there are any questions or concerns, please contact us.

Best Regards,
The SMPE Team

Terms	Contact
Net 30 days	BRS

Item	Description	Qty	Cost	Total
4094000402	Moyno Stator 2STG115,RR100-CBST-K	1	4,976.10	4,976.10
4240780015	Moyno Rotor 2H115, 316SS, DBLCHR	1	9,750.16	9,750.16
	If favored with your purchase order, please make it out to: Shrier Martin Process Equipment 1260 Rochester St. Lima, NY 14485 Phone: 585-624-4490 Fax: 585-624-5373 Terms: Net 30 Pricing: 30 Days			

Delivery:6-8 weeks after receipt of order.
Freight:FOB Origin, prepaid and added to invoice.

Total $14,726.26

Attachment: Shrier Martin Agreement (RES-2023-652 : Moyno Stator & Rotor Procurement CRS No. 4195)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27771 **RESOLUTION 2023-653** **ADOPTED**

Payment Authorization for Emergency Oxygen Plant Repairs Mollenberg-Betz, Inc. CRS No. 4199

The Engineering Department, WPCF division is requesting the Town Board authorize the Comptroller's Office to pay Mollenberg-Betz, Inc. a mechanical contractor hired to make an emergency repair to the WPCF O2 plant transfer line. These repairs, as stated on the attached Mollenberg-Betz proposal SD2023-49, have a not to exceed amount of $4,000.00.

Funding for this request is available in G9916-4960.

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

FINANCIAL IMPACT:

G9916-4960; $4,000.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Town of Amherst
Emergency Purchase Documentation Form

This form is to be completed for all emergency purchases made that contravene the Town's Purchasing Policy. You must contact the Supervisor (or Deputy Supervisor in the Supervisors absence) to obtain his/her approval prior to making the purchase. This form must be completed and submitted to the Town Board at the first work session following the Emergency purchase. A copy should also be submitted to the Town Attorney and Contract Compliance & Administration Department.

An exception to the competitive bidding requirements exists for emergency situations (GML §103[4]). There are three basic statutory criteria to be met in order to fall within this exception. These are that (1) the situation arises out of an accident or other unforeseen occurrence or condition; (2) the circumstances affect public buildings, public property, or life, health, safety or property of the political subdivision's residents; and (3) the situation requires immediate action which cannot await competitive bidding.

Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements is so detrimental to the public interest that it overcomes the strong public policy in favor of bidding. Further, because the emergency must arrive out of an accident or unforeseen occurrence, it is doubtful a local government may invoke the emergency exception in a situation which the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.

Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

1. Date of Emergency Purchase: 7-11-2023
2. Date you received approval from the Supervisor: _____ X _____
3. Date of Town Board work session where Board is notified: 7-24-2023
4. Amount of Emergency Purchase. Please provide a detailed listing of items purchased and the cost of each (attach additional detail if necessary): WTE #4000 Mollenberg-Betz Proposal SD 2023-49 is attached
5. Is there adequate funding in your current operating budget to cover this purchase? YES
   Identify budget Org/Object: 6916.4960
6. Please describe the circumstances that resulted in the need to make an emergency purchase without following the Town's Purchasing Policy: WPCF O2 PLANT - A CRITICAL LEAK OCCURED IN OUR TRANSFER LINE FROM THE MAKE TANK CREATING A VERY UNSAFE CONDITION.
7. Please describe what steps were taken to ensure the lowest cost for the Emergency Purchase. If none, please explain why your department was prevented from doing so: Mollenberg-Betz is certified for this type of repair and can accomadate our time frame
8. Department Head Signature: _____ Date: 7-11-2023

CC: Town Board, Town Attorney, Contract Compliance & Administration

For Contract Compliance & Administration Use Only
Date of Town Board Resolution: Emergency Purchase Tracking/Res #:

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

AGREEMENT

Let this document stand as an Agreement between Mollenberg-Betz, Inc. and the Town of Amherst permitting the Town of Amherst to procure the service listed on the attached Mollenberg-Betz proposal SD2023-49 with a NTE cost of $4,000.00. The term of this contract will be from date of execution by the Town of Amherst through October 1, 2023.

Agreed to and Accepted by:

MOLLENBERG-BETZ, INC.

By: _____
Signature

Brandon Camarre
Printed name

CFO
Title

Date: 7/11/23

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian J. Kulpa
Supervisor

Date: 7/12/23

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

MOLLENBERG-BETZ INC
MECHANICAL CONTRACTORS

Date: July 10, 2023	Owner: Town of Amherst
Proposal #: SD2023-49	Project #: 02 Plant Repairs

Mr. Mark Tirone,

We are pleased to submit our T/M NTE proposal for miscellaneous repairs to the 02 plant. Please see below.

Plant Repairs

- Remove and fabricate new 2" copper brazed tank fill line. (pipe through existing 2" Cashco valve if valve cannot be removed and reinstalled). Budget includes replacing the 2" Cashco control valve, if necessary.
- ~~Replace faulty 2" and 1-1/2" brazed unions.~~
- ~~Replace faulty 1-1/2" PTFE gaskets.~~
- ~~Replace 2" Powell flanged check valve and piping.~~
- ~~Replace 1-1/2" REGO cryogenic valve.~~
- ~~Replace 3x4 Anderson-Greenwood piloted check valve.~~
- ~~02 cleaning of piping components.~~

Removed from Scope for Phase 1 WTO 7-11-23

Notes/Clarifications

- Sales or use taxes are not included in our pricing. If applicable, they will be added to the quoted price. If the project is treated as a capital improvement, the quoted price will increase by the cost of use tax incurred by Mollenberg-Betz.
- Current Local 22 labor rates expire on 4/30/24. If project extends past this date under this proposal, a labor rate escalation will be charged accordingly if there is a rate increase.
- Due to the volatility of the commodity markets, quotes for steel (all alloys) from our vendors are subject to change daily. Quotes for stock copper tube, steel pipe (all alloys), and plastic pipe are valid for up to three days from date of quotation. Non-stock/special order pipe material shall be valid for 24 hours from date of quotation. All pricing for orders beyond these periods may be subject to review/requote. Thereafter, Mollenberg-Betz may in good faith adjust such prices to reflect increases in the costs or availabilities of such price components.
- For a period of one year from the date of equipment start-up, Mollenberg-Betz warrants that our work will be free of defects in workmanship. If found, defects will be repaired at no cost to the Customer. Warranty for installed parts and equipment will be provided by the manufacturer for each specific product provided, which is acknowledged and agreed to by Customer.
- No OT or Premium time considered.
- We have assumed (2) mobilizations only.

Total NTE Cost (2" Transfer Line): $4,000.00
~~Total NTE Cost (Replacement Valves & Piping: $21,000.00~~ WTO

300 Scott Street • Buffalo NY 14204
Tel 716.614.PIPE (7473) • Fax 716.614.7465
www.mollenbergbetz.com

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

MOLLENBERG-BETZ INC
MECHANICAL CONTRACTORS

Any contract issued will incorporate and be limited to the above scope of work; additional work items will be priced or performed on a T&M basis as agreed to by both parties.

We appreciate the opportunity to bid this project to you. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

MOLLENBERG BETZ, INC.

Daniel M. Snell
Project Manager

Acceptance of Quote, Conditions, Qualifications, & Exclusions	
Agreed to and Accepted By:	BRIAN KULPA
Signature:	
Title:	TOWN SUPERVISOR
Date:	7/12/23

(Signor posses authority to bind the company)

300 Scott Street • Buffalo NY 14204
Tel 716.614.PIPE (7473) • Fax 716.614.7465
www.mollenbergbetz.com

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

RATES30

MOLLENBERG-BETZ, INC.

STANDARD BILLING RATES

UNION LOCAL 22
EFFECTIVE 5/1/2023 - 4/30/2024

The following rates apply to all work done after May 01, 2023:

	1ST SHIFT	2ND SHIFT	3RD SHIFT
Erection mechanic			
...straight time.....	$121.63	$123.91	$124.23
...time & 1/2.....	$150.89	$154.30	$154.79
...dbl. time.....	$180.14	$184.69	$185.34
Working foreman & welder			
...straight time.....	$139.68	$141.96	$142.28
...time & 1/2.....	$172.93	$176.35	$176.83
...dbl. time.....	$206.18	$211.92	$211.38

Other applicable charges:

Outfitted welding truck.....	$117.00 per day: 4 hour minimum plus $1.60 per mile
Service truck	$51.00 per day: 4 hour minimum plus $1.60 per mile
Stake truck and driver.....	$127.00 per hour
Shopmen(pulling material).....	$50.00 per hour
Consumables-(air,gas, weld rod and small hand tools)	$3.70 per hour
Safety surcharge.....	$1.00 per hour invoiced
HAZMAT certified.....	$ 10% OF BASE RATE per hour additonal if required
Drafting (CAD).....	$115.00 per hour
3D scanning is $1,000 per day if needed or required	
QC Inspector (Code Work)	$110.00 per hour
Room & board outside territorial limits.....	At cost

Material charged at cost plus 12% overhead plus 8% profit
Subcontractors charged at cost plus 10%
Equipment rental @ cost plus 10%

GENERAL COMMENTS:

1.) **PAYMENT TERMS ARE NET 30 DAYS**

2.) The current Local #22 labor agreement, and pricing above, will remain in effect until April 30, 2024.

3.) 40 hours a week, Monday - Friday, shall constitute a week's work.

4.) Three hours of work in excess of the established 8 hour workday, Monday - Friday, plus the first 10 hours on Saturday shall be at time and one half (hours from 8:00AM - 6:30 PM)

5.) Hours worked in excess of 11 per day, Monday - Friday, 10 hours on Saturday,Sunday and holidays will be paid at double time rates.

6.) The above pricing is provided under the assumption we will provide all necessary tools. If a pure labor rate with tool rental added is preferred, it will be provided upon request

All pricing above excludes sales or use taxes. Appropriate taxes will be added if applicable. If a project is determined to be a Capital Improvement, use tax will be added to the cost of material.

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

Addendum to Contract Major Exposure

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Contractors or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Contractor shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Contractor its officers, agents, subcontractors, and/or employees as well as the negligence, active or passive, of the Contractor, its officers, agents, subcontractors, and/or employees.

4. Contractor shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Contractor shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Contractor shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate. Umbrella coverage shall be in an amount of at least $5,000,000.00.

(c) Contractor shall furnish the above insurances, including subcontractors' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Contractor shall ensure all its subcontractors, if any, have obtained all the above insurances and shall also assure that any policy procured by any subcontractor or sub-subcontractor shall name the Town as an additional insured on a primary and non-contributory basis.

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Contractor, in accordance with its status as an independent Contractor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

Mollenberg-Betz, Inc.
Print Name of Company

By: _____
Signature

Brandon Camarre, CFO
Printed name

Date: 7/11/23

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: 7/12/23

Revised 12.30..19

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a provision was added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will develop a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). This list is posted on the OGS website.

By submitting a response to this solicitation, or by assuming the responsibility under a Contract/Lease awarded hereunder, Bidder/Contractor/Vendor (or any assignee) certifies that it will not utilize on such Contract/Lease any subcontractor that is identified on the prohibited entities list.

Additionally, Bidder/Contractor/Vendor is advised that any Bidder/ Contractor/Vendor seeking to renew or extend a Contract/Lease (or assume responsibility of a Contract/Lease awarded must certify at the time the Contract/Lease is renewed, extended or assigned that it is not included on the prohibited entities list.

During the term of the Contract/Lease, should the Town of Amherst (Town) receive information that a person is in violation of the above-referenced certification, the Town will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then the Town shall take such action as appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor/Vendor in default.

The Town reserves the right to reject any Contract/Lease or request for assignment for an entity that appears on the prohibited entities list prior to the award of a Contract/Lease, and to pursue a responsibility review with respect to any entity that is awarded a Contract/Lease and appears on the prohibited entities list after Contract/Lease award.

Company Name: Mollenberg-Betz, Inc.

Signature:

Print Name: Brandon Camarre

Title: CFO

Date: 7/11/23

Sworn To Before Me This

11th Day of July, 2023

Notary Public

DEBORAH MANSON
No. 01MA6168501
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 26, 2027

Revised 4.2017

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

Client#: 1690816 MOLLEINC

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 6/29/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Scott Letina
USI Insurance Services LLC 726 Exchange St. Ste 618 Buffalo, NY 14210 716 314-2000	PHONE (A/C, No, Ext): 716 314-2000 FAX (A/C, No): E-MAIL ADDRESS: Scott.Letina@usi.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Zurich American Insurance Company	16535
INSURER B : Merchants Mutual Insurance Company	23329
INSURER C : Westchester Fire Insurance Company	10030
INSURER D : American Zurich Insurance Company	40142
INSURER E : Travelers Property Cas. Co. of America	25674
INSURER F :	

INSURED
Mollenberg-Betz, Inc
300 Scott St.
Buffalo, NY 14204-2293

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] Contractual [X] XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	X	X	0381378	07/01/2023	07/01/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$2,000,000 $1,000,000 $10,000 $2,000,000 $4,000,000 $4,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY [X] $250 Comp [X] $500 Coll	X	X	0381379	07/01/2023	07/01/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$2,000,000 $ $ $
B C	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $10000	X	X	CUP0002075 N10998414007	07/01/2023 07/01/2023	07/01/2024 07/01/2024	EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [N] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	0381377	07/01/2023	07/01/2024	[X] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$1,000,000 $1,000,000 $1,000,000
E E	Equipment Installation			QT6303S338715 QT6303S338715	07/01/2023 07/01/2023	07/01/2024 07/01/2024	$300,000 $5,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

** Excess Liability Information **

C N10998414007 Eff Date: 07/01/2023 Exp Date: 07/01/2024
Excess Liability Each Occ Limit: $5,000,000
(See Attached Descriptions)

CERTIFICATE HOLDER

Town of Amherst
5583 Main Street
Williamsville, NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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SGSZR

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

DESCRIPTIONS (Continued from Page 1)

Excess Liability Aggregate Limit: $5,000,000

To the extent covered by endorsement form(s)

General Liability:
U-GL-2162-A CW (02/19) Additional Insured - Automatic - Owners, Lessees or Contractors - Includes Primary/Non-Contributory
U-GL-1345-B CW (04/13) General Liability Supplemental Coverage Endorsement - Includes Waiver of Subrogation

CG 25 03 (05/09)Designated Construction Project(s) General Aggregate Limit

Automobile Liability:
CA 20 48 (02/99) Designated Insured
U-CA-424-G NY (04/11) Coverage Extension Endorsement - Includes Primary/Non-contributory and Waiver of Subrogation

Lead Umbrella:
MU 86 22 (05/09) Primary and Non-Contributing Insurance (Third Party)
CU 24 03 (09/00) Waiver of Transfer of Rights of Recovery Against Others to Us

Excess Umbrella:
CX 24 33 (11/16) Noncontributory - Other Insurance Condition
CX 00 01 (04/13) Commercial Excess Liability Coverage Form - Includes Waiver of Subrogation

Workers Compensation:
WC 00 03(04/84) Waiver of Our Right to Recover From Others Endorsement

Town of Amherst is included as an additional insured. Coverage applies on a primary and non-contributory basis for all ongoing and completed operations.

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (use street address only)	1b. Business Telephone Number of Insured 716-614-7450
Mollenberg-Betz Inc. 300 Scott Street Buffalo, NY 14204-2293	1c. NYS Unemployment Insurance Employer Registration Number of Insured
Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)*	1d. Federal Employer Identification Number of Insured or Social Security Number 16-0556950
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst 5583 Main Street Williamsville, NY 14221	3a. Name of Insurance Carrier American Zurich Ins Co 3b. Policy Number of Entity Listed in Box "1a" 0381377 3c. Policy effective period 7/1/2023 to 7/1/2024 3d. The Proprietor, Partners or Executive Officers are ☒ included. (Only check box if all partners/officers included) ☐ all excluded or certain partners/officers excluded.

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

Will the carrier notify the certificate holder within 10 days of a policy being cancelled for non-payment of premium or within 30 days if cancelled for any other reason or if the insured is otherwise eliminated from the coverage indicated on this certificate prior to the end of the policy effective period? ☒ YES ☐ NO

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

Please Note: Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: Michael R. Bonetto
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: _____ 7/1/2023
(Signature) (Date)

Title: Regional President

Telephone Number of authorized representative or licensed agent of insurance carrier: 716-314-2000

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.

C-105.2 (9-15) www.wcb.ny.gov

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by NYS disability and Paid Family Leave benefits carrier or licensed insurance agent of that carrier

1a. Legal Name & Address of Insured (use street address only)
MOLLENBERG-BETZ INC (NON UNION EMPLOYEES)
300 SCOTT STREET
BUFFALO, NY 14204

1b. Business Telephone Number of Insured

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*

1c. Federal Employer Identification Number of Insured or Social Security Number
160556950

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)
Town of Amherst
5583 Main Street
Williamsville, NY 14221

3a. Name of Insurance Carrier
ShelterPoint Life Insurance Company

3b. Policy Number of Entity Listed in Box "1a"
DBL226685NN

3c. Policy effective period
01/01/2023 to 12/31/2024

4. Policy provides the following benefits:
- [X] A. Both disability and paid family leave benefits.
- [ ] B. Disability benefits only.
- [ ] C. Paid family leave benefits only.

5. Policy covers:
- [ ] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- [X] B. Only the following class or classes of employer's employees:
  ALL EMPLOYEES EXCEPT MEMBERS OF PLUMBERS & PIPE FITTERS UNION LOCAL 22 OF BUFFALO

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 7/11/2023 By _____
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 516-829-8100 Name and Title Richard White, Chief Executive Officer

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be emailed to PAU@wcb.ny.gov or it can be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4B, 4C or 5B have been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law(Article 9 of the Workers' Compensation Law) with respect to all of their employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (12-21)

DB-120.1 (12-21)

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in Box 1a for disability and/or Paid Family Leave benefits under the NYS Disability and Paid Family Leave Benefits Law. The insurance carrier or its licensed agent will send this Certificate of Insurance Coverage (Certificate) to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This Certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This Certificate may be used as evidence of a NYS disability and/or Paid Family Leave benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or Paid Family Leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Insurance Coverage for NYS disability and/or Paid Family Leave Benefits or other authorized proof that the business is complying with the mandatory coverage requirements of the NYS Disability and Paid Family Leave Benefits Law.

NYS DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and not withstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

Attachment: Emergency Purchase - Mollenberg-Betz (RES-2023-653 : Payment Authorization for Emergency Oxygen Plant Repairs CRS No.

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27773 **RESOLUTION 2023-654** **ADOPTED**

TOA Bid 2022023 Sodium Bisulfite, Contract Extension PVS Chemical Solutions, Inc. CRS No. 4193

The Engineering Department, WPCF division is requesting the Town Board authorize the Supervisor to sign the attached contract extension agreement with PVS Chemical Solutions, Inc. The terms and conditions within Town of Amherst Bid 2022023 Sodium Bisulfite shall remain the same. This extension would run from September 6, 2023 through March 05, 2024.

Funds for this request are available in G9916-4820.

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

FINANCIAL IMPACT:

G9916-4820; TBD

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

AGREEMENT

Let this document stand as an Agreement between PVS Chemical Solutions, Inc. and the Town of Amherst permitting the Town of Amherst to extend their existing contract with PVS Chemical Solutions, Inc. to supply Sodium Bisulfite as requested. This extension would be for an additional six-month period. Both parties agree that the terms and conditions specified in the executed contract, TOA Bid 2023003A Sodium Bisulfite shall remain the same. The term of this contract extension will be from date of execution by the Town of Amherst through March 5, 2024.

Agreed to and Accepted by:

PVS Chemical Solutions, Inc.

By: _____
Signature

Milisav M. Bulatovic
Printed name

Treasurer
Title

Date: June 13, 2023

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian J. Kulpa
Supervisor

Date: _____

Attachment: TOA - PVS Chemical - Sodium Bisulfite (RES-2023-654 : TOA Bid 2022023 Sodium Bisulfite, Contract Extension CRS No. 4193)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27774 **RESOLUTION 2023-655** **ADOPTED**

WPCF Fixed Gas Detection Systems Dival Safety Equipment, Inc. CRS No. 4194

The Engineering Department-WPCF Division is looking to update some of our fixed gas detection systems. The components listed in the attached quotes would be through the NYSOGS Hires Contract, PC69018, Award 23173, and Group 38232 totaling $14,307.00. The new system commissioning is not part of the NYSOGS contract and quoted by Dival Safety at the total cost of $1,500.00. At this time, the WPCF is asking the Town Board to authorize the Supervisor to sign this agreement with Dival Safety Equipment, Inc. for a total cost of $15,807.00. The term of this contract will be from date of Town Board Approval by the Town of Amherst through September 1, 2023.

Funds are available in G9916-4870 and G9916-4922

This request is pending successful completion of the contract review process.

Thank you for considering this request.

7/24/2023
Consent

FINANCIAL IMPACT:

G9916-4870 and G9916-4922; $15,807.00

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

AGREEMENT

Let this document stand as an Agreement between DiVal Safety Equipment, Inc. and the Town of Amherst permitting the Town of Amherst to procure the items listed on Dival order number VN043, VN169, VN173, and V1908, dated 4/28/2023. These components through the NYSOGS HIRES Contract PC69018, Group 38232, and Award 23173 Dival Safety Equipment, totaling $14,307.00. The new systems commissioning will be in addition to this NYSOGS HIRES Contract at the total cost of $1,500.00. This agreement will run from date of execution by the Town of Amherst through September 01, 2023.

Agreed to and Accepted by:

DIVAL SAFETY EQUIPMENT, INC.

By: _____
Signature

Samuel Noah
Printed name

Assistant Controller
Title

Date: 5/23/23

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian J. Kulpa
Supervisor

Date: _____

Attachment: Dival Safety Agreement (RES-2023-655 : WPCF Fixed Gas Detection Systems)

QUOTE CONFIRMATION * REPRINT * Page 1

1721 Niagara St • Buffalo, NY 14207 • Phone: 800.3431354 • Fax: 716.874.4686 • www.divalsafety.com

Bill to: TOWN OF AMHERST WASTEWATER
TREATMENT FACILITY #16
455 TONAWANDA CREEK ROAD
AMHERST NY 14228

Ship to: TOWN OF AMHERST WASTEWATER
TREATMENT PLANT #16
455 TONAWANDA CREEK ROAD
BLDG. #4
AMHERST NY 14228

CUSTOMER NUMBER	CONTACT	PRINT DATE
10345	SHAWN KILROY OR TERI	4/28/23

ORDER NUMBER	CUSTOMER PURCHASE ORDER	SALES REPRESENTATIVE	INSTRUCTIONS
VN043 00	RKI FIXED QUOTE	167 CON TRANSITION	

Ordered	Shipped	B.O.	U/M	Item and Description	Unit Price	Extended Price
1		1	EA	652331RK RKI S2 fixed transmiiter, H2S 0-100ppm, explosion proof	$665.00000	$665.00 T
1		1	EA	652336RK RKI S2 fixed transmiiter, CO 0-300ppm, explosion proof	$665.00000	$665.00 T
12		12	EA	652405RK RKI S-series fixed transmitter with LEL sensor	$546.25000	$6555.00 T
1	1		EA	SUPPORTENG NEW SYSTEM COMMISSIONING UPON INSTALL FOR BLDG. 4 RECEIVING HOURS: 7AM-2:30PM UPDATED P.O. TO SHOW LEL SENSOR WITHOUT REMOTE MOUNT PRICING PER NYS HIRES PC69018	$900.00000	$900.00 T

Quote Confirmation -
Not an Invoice

Total Line Items 4

* COMPLETE *

Subtotal	Tax Pct	Sales tax	Total
$8785.00	.000		$8785.00

Attachment: Dival Safety Agreement (RES-2023-655 : WPCF Fixed Gas Detection Systems)

QUOTE CONFIRMATION * REPRINT * Page 1

1721 Niagara St • Buffalo, NY 14207 • Phone: 800.3431354 • Fax: 716.874.4686 • www.divalsafety.com

Bill to: TOWN OF AMHERST WASTEWATER
TREATMENT FACILITY #16
455 TONAWANDA CREEK ROAD
AMHERST NY 14228

Ship to: TOWN OF AMHERST WASTEWATER
TREATMENT PLANT #16
455 TONAWANDA CREEK ROAD
BLDG 4 CHEM STORAGE
AMHERST NY 14228

CUSTOMER NUMBER	CONTACT	PRINT DATE
10345	SHAWN KILROY OR TERI	5/01/23

ORDER NUMBER	CUSTOMER PURCHASE ORDER	SALES REPRESENTATIVE	INSTRUCTIONS
VN169 00	RKI FIXED QUOTE	167 CON TRANSITION	

Ordered	Shipped	B.O.	U/M	Item and Description	Unit Price	Extended Price
1		1	EA	652670RKCL210 RKI M2A CT7 sensor/transmitter CL2 0-10ppm, non-exp w/ j-box	$1230.25000	$1230.25 T
1	1		EA	SUPPORTENG NEW SYSTEM COMMISSIONING UPON INSTALL FOR BLDG 4 CHEM. RECEIVING HOURS: 7AM-2:30PM PRICING PER NYS HIRES PC69018	$150.00000	$150.00 T

Quote Confirmation -
Not an Invoice

Total Line Items 2

* COMPLETE *

Subtotal	Tax Pct	Sales tax	Total
$1380.25	.000		$1380.25

Attachment: Dival Safety Agreement (RES-2023-655 : WPCF Fixed Gas Detection Systems)

QUOTE CONFIRMATION * REPRINT * Page 1

1721 Niagara St • Buffalo, NY 14207 • Phone: 800.3431354 • Fax: 716.874.4686 • www.divalsafety.com

Bill to: TOWN OF AMHERST WASTEWATER
TREATMENT FACILITY #16
455 TONAWANDA CREEK ROAD
AMHERST NY 14228

Ship to: TOWN OF AMHERST WASTEWATER
TREATMENT PLANT #16
455 TONAWANDA CREEK ROAD
BLDG. 8
AMHERST NY 14228

CUSTOMER NUMBER	CONTACT	PRINT DATE
10345	SHAWN KILROY OR TERI	5/01/23

ORDER NUMBER	CUSTOMER PURCHASE ORDER	SALES REPRESENTATIVE	INSTRUCTIONS
VN173 00	RKI FIXED QUOTE	167 CON TRANSITION	

Ordered	Shipped	B.O.	U/M	Item and Description	Unit Price	Extended Price
2		2	EA	652670RKCL210 RKI M2A CT7 sensor/transmitter CL2 0-10ppm, non-exp w/ j-box	$1230.25000	$2460.50 T
1	1		EA	SUPPORTENG NEW SYSTEM COMMISSIONING UPON INSTALL FOR BLDG. 9 RECEIVING HOURS: 7AM-2:30PM PRICING PER NYS HIRES PC69018	$150.00000	$150.00 T

Quote Confirmation -
Not an Invoice

Total Line Items 2

* COMPLETE *

Subtotal	Tax Pct	Sales tax	Total
$2610.50	.000		$2610.50

Attachment: Dival Safety Agreement (RES-2023-655 : WPCF Fixed Gas Detection Systems)

DIVAL for Life

QUOTE CONFIRMATION * REPRINT * Page 1

1721 Niagara St • Buffalo, NY 14207 • Phone: 800.3431354 • Fax: 716.874.4686 • www.divalsafety.com

Bill to: TOWN OF AMHERST WASTEWATER
TREATMENT FACILITY #16
455 TONAWANDA CREEK ROAD
AMHERST NY 14228

Ship to: TOWN OF AMHERST WASTEWATER
TREATMENT PLANT #16
455 TONAWANDA CREEK ROAD
BLDG. 5
AMHERST NY 14228

CUSTOMER NUMBER	CONTACT	PRINT DATE
10345	ANDREW VAILLANCOURT	4/28/23

ORDER NUMBER	CUSTOMER PURCHASE ORDER	SALES REPRESENTATIVE	INSTRUCTIONS
V1908 00	RKI FIXED QUOTE	167 CON TRANSITION	

Ordered	Shipped	B.O.	U/M	Item and Description	Unit Price	Extended Price
1	1		EA	SUPPORTENG NEW SYSTEM COMMISSIONING UPON INSTALL FOR BLDG. 5	$300.00000	$300.00 T
5		5	EA	652405RK RKI S-series fixed transmitter with LEL sensor RECEIVING HOURS: 7AM-2:30PM PRICING PER NYS HIRES PC69018	$546.25000	$2731.25 T

Quote Confirmation -
Not an Invoice

Total Line Items 2

* COMPLETE *

Subtotal	Tax Pct	Sales tax	Total
$3031.25	.000		$3031.25

Attachment: Dival Safety Agreement (RES-2023-655 : WPCF Fixed Gas Detection Systems)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27775 **RESOLUTION 2023-656** **ADOPTED**

Purchase of One (1) Ford F-150 Super Cab 4X4 Delacy Ford

The Town of Amherst Engineering - Sewer Maintenance Division is seeking approval to purchase one (1) Ford F-150 Super Cab 4x4 from Delacy Ford in the amount of $48,876.30. They are the low bidder per the attached NYS Mini-Bid solicitation.

Funding for this purchase is available from bond account KP2325-2250.

Thank you for considering our request.

7/24/2023
Consent

FINANCIAL IMPACT:

KP2325-2250; $48,876.30

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Specific call for offers from: 1379 OGS Solicitation 23166: Vehicles, Class 1-8

13700 *3-DAY RESPONSE REQUEST* (1) Ford F-150 Super Cab 4x4 w/6'5 Box or Equal - Town of Amherst

Award phase

Settings | Participants | Schedule | Pricing sheets | Questionnaires | Question & Answer | Offers/Applications | Compare & Select

1 1

Offer phase (1) | Evaluation (1) | Awarding (0)

Combined | Vehicles Built to Specifications Pricing Sheet | Pre-Existing Vehicles Pricing Sheet

Offer | Model Year | Make | Model & Trim Level

Sort on supplier

Rank	Name	Pricing sheet	Model Year	Make	Model & Trim Level	NYS Price for Vehicle	Total Number of Vehicles	Total Price for Mini-Bid	Phase	
1	DELACY FORD	Pre-Existing Vehicles Pricing Sheet	2023	FORD	F150 XL			$48,876.30	Evaluation	

Internal award justification

No comments

Purchase order

This information is required to be entered by all Authorized Users of the NYS Vehicle Marketplace. Departments and agencies MUST provide a screenshot of this "Awarding" page information when requesting a State ID from OGS Fleet Management or NYS DOT. Please enter the purchase order or other ordering document information or if no purchase order was made by clicking on "Edit purchase order" below.

Edit Purchase Order

Attachment: F-150 bidtab (RES-2023-656 : Purchase of One (1) Ford F-150 Super Cab 4X4)

KP2325 **ENG Equip & Vehicle 5 Yr PPU** ACTIVE

Vaishali Reberholt/Jerry Suszynski

				KP2325 5 YR PPU	KP2326 15 YR PPU
		Estimated Date of Completion:	30-Jun-24		
E-1	2023 CIP		275LG	116LG	159LG
E-8	2024 CIP		400LW	110LW	290LW
			675 L G&W	226 L G&W	449 L G&W
	TBA	Resolutions			

2023-393 8-May-23 Call for Public Haring
2023-504 5-Jun-23 Bond Resolution PPU/Bond 5 Yrs/5Yrs Debt Service G9000/G9916

		Map Plan & Report **Budget**		Budget	Encumbered	Budget Balance	Open Encumbrance	MUNIS Balance
KP2325	05031	Interfund Transfer IN		0.00		0.00		0.00
KP2325	05710	Bond		(226,000.00)		(226,000.00)		0.00
KP2325	05731	BANs Redeemed from Approp		0.00		0.00		0.00
KP2325	0626	BAN		0.00		0.00		0.00
KP2325	**2250**	**Trucks, Tractors & Trailers**		**172,870.00**		**172,870.00**		**172,870.00**
KP2325	2250	2 -4x4 Crew Pickups (G9000)	115,420.00		0.00		0.00	
KP2325	2250	F-150 Pickup (G9916)	57,450.00		0.00		0.00	
KP2325	**26000**	**Equipment**		**52,000.00**		**52,000.00**		**52,000.00**
KP2325	2600	Toro Workman HDXD-4WD (G9916)	39,000.00		0.00		0.00	
KP2325	2600	John Deere Snow Blower (G9916)	13,000.00		0.00		0.00	
KP2325	**4970**	**Legal/Bond/Admin Expense**		**1,130.00**		**1,130.00**		**1,130.00**
KP2325	4970	Legal/Bond/Admin Expense (G9000)	580.00		0.00		0.00	
KP2325	4970	Legal/Bond/Admin Expense (G9916)	550.00		0.00		0.00	
KP2325	9000	Interfund Transfer OUT		0.00		0.00		0.00
		Accounts Set up in MUNIS		0.00	0.00	0.00	0.00	226,000.00

	Contracts	Encumbered	Purchase Order	Open Encumbrance	MUNIS Balance
KP2325					

Attachment: KP2325 Summary 07052023 (RES-2023-656 : Purchase of One (1) Ford F-150 Super Cab 4X4)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27776 **RESOLUTION 2023-657** **ADOPTED**

Purchase of One (1) 2023 Dodge Ram 2500 Tradesman Crew Cab 4X4 Falls Dodge Inc.

The Town of Amherst Engineering - Sewer Maintenance Division is seeking approval to purchase one (1) 2023 Dodge Ram 2500 Tradesman 4x4 from Falls Dodge, Inc. in the amount of $52,923.58. They are the low bidder per the attached NYS Mini-Bid solicitation.

Funding for this purchase is available from bond account KP2325-2250.

Thank you for considering our request.

7/24/2023
Consent

FINANCIAL IMPACT:

KP2325-2250; $52,923.58

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Specific call for offers from: 1379 OGS Solicitation 23166: Vehicles, Class 1-8

13130 (1) RAM 2500 Tradesman Crew Cab 4X4 w/ 6'4" Box - Town of Amherst

Award phase

Settings | Participants | Schedule | Pricing sheets | Questionnaires | Question & Answer | Offers/Applications | Compare & Select

Offer phase (3) | Evaluation (3) | Awarding (0)

Combined | Vehicles Built to Specifications Pricing Sheet | Pre-Existing Vehicles Pricing Sheet

Offer | Model Year | Make | Model & Trim Level | Total Number of Vehicles | Sort on supplier

Rank ▲	Name	Pricing sheet	Model Year	Make	Model & Trim Level	NYS Price for Vehicle	Total Number of Vehicles	Total Price for Mini-Bid	Phase	
1	FALLS DODGE INC dba JOE CECCONIS CHRYSLER COMPLEX	Vehicles Built to Specifications Pricing Sheet	2023	ram	2500 tradesman crew	$52,923.58	1	$52,923.58	Evaluation	☐
2	Maguire Motors LLC	Vehicles Built to Specifications Pricing Sheet	2023	Ram	2500 Tradesman	$56,982.78	1	$56,982.78	Evaluation	☐
3	Nielsen of Morristown Inc	Pre-Existing Vehicles Pricing Sheet	2022	Ram	2500 Tradesman			$60,347.79	Evaluation	☐

Internal award justification

No comments

Purchase order

This information is required to be entered by all Authorized Users of the NYS Vehicle Marketplace. Departments and agencies MUST provide a screenshot of this "Awarding" page information when requesting a State ID from OGS Fleet Management or NYS DOT. Please enter the purchase order or other ordering document information or if no purchase order was made by clicking on "Edit purchase order" below.

Edit Purchase Order

Attachment: 2023-2500 RAM-bidtab (RES-2023-657 : Purchase of One (1) 2023 Dodge Ram 2500

KP2325 **ENG Equip & Vehicle 5 Yr PPU** ACTIVE

Vaishali Reberholt/Jerry Suszynski

				KP2325 5 YR PPU	KP2326 15 YR PPU
		Estimated Date of Completion:	30-Jun-24		
E-1		2023 CIP	275LG	116LG	159LG
E-8		2024 CIP	400LW	110LW	290LW
			675 L G&W	226 L G&W	449 L G&W
	TBA	Resolutions			

2023-393 8-May-23 Call for Public Haring
2023-504 5-Jun-23 Bond Resolution PPU/Bond 5 Yrs/5Yrs Debt Service G9000/G9916

		Map Plan & Report **Budget**		Budget	Encumbered	Budget Balance	Open Encumbrance	MUNIS Balance
KP2325	05031	Interfund Transfer IN		0.00		0.00		0.00
KP2325	05710	Bond		(226,000.00)		(226,000.00)		0.00
KP2325	05731	BANs Redeemed from Approp		0.00		0.00		0.00
KP2325	0626	BAN		0.00		0.00		0.00
KP2325	**2250**	**Trucks, Tractors & Trailers**		**172,870.00**		**172,870.00**		**172,870.00**
KP2325	2250	2 -4x4 Crew Pickups (G9000)	115,420.00		0.00		0.00	
KP2325	2250	F-150 Pickup (G9916)	57,450.00		0.00		0.00	
KP2325	**26000**	**Equipment**		**52,000.00**		**52,000.00**		**52,000.00**
KP2325	2600	Toro Workman HDXD-4WD (G9916)	39,000.00		0.00		0.00	
KP2325	2600	John Deere Snow Blower (G9916)	13,000.00		0.00		0.00	
KP2325	**4970**	**Legal/Bond/Admin Expense**		**1,130.00**		**1,130.00**		**1,130.00**
KP2325	4970	Legal/Bond/Admin Expense (G9000)	580.00		0.00		0.00	
KP2325	4970	Legal/Bond/Admin Expense (G9916)	550.00		0.00		0.00	
KP2325	9000	Interfund Transfer OUT		0.00		0.00		0.00
		Accounts Set up in MUNIS		0.00	0.00	0.00	0.00	226,000.00

	Contracts	Encumbered	Purchase Order	Open Encumbrance	MUNIS Balance
KP2325					

Attachment: KP2325 Summary 07052023 (RES-2023-657 : Purchase of One (1) 2023 Dodge Ram 2500

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27777 **RESOLUTION 2023-658** **ADOPTED**

Purchase of One (1) Ford Bronco Sport AWD Delacy Ford

The Town of Amherst Engineering - Sewer Maintenance Division is seeking approval to purchase one (1) Ford Bronco Sport AWD from Delacy Ford in the amount of $33,912.45. They are the low bidder per the attached NYS Mini-Bid solicitation.

Funding for this purchase is available from bond account KP2218-2250.

Thank you for considering our request.

7/24/2023
Consent

FINANCIAL IMPACT:

KP2218-2250; $33,912.45

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Specific call for offers from: 1379 OGS Solicitation 23166: Vehicles, Class 1-8

13588 *3-Day Response Request* (1) Ford Bronco Sport AWD - Town of Amherst

Award phase

Settings | Participants | Schedule | Pricing sheets | Questionnaires | Question & Answer | Offers/Applications | Compare & Select

1 1

Offer phase (2) | Evaluation (2) | Awarding (0)

Combined | Vehicles Built to Specifications Pricing Sheet | Pre-Existing Vehicles Pricing Sheet

Offer | Model Year | Make | Model & Trim Level

Sort on supplier

Rank ▲	Name	Pricing sheet	Model Year	Make	Model & Trim Level	NYS Price for Vehicle	Total Number of Vehicles	Total Price for Mini-Bid	Phase	
1	Nielsen Ford of Morristown Inc	Pre-Existing Vehicles Pricing Sheet	2023	Ford	Bronco Sport Base			$33,624.21	Evaluation	☐
2	DELACY FORD	Pre-Existing Vehicles Pricing Sheet	2023	FORD	BRONCO SPORT BIG BEND			$33,912.45	Evaluation	☐

Internal award justification

No comments

Low Bidder does not meet specifications

Purchase order

This information is required to be entered by all Authorized Users of the NYS Vehicle Marketplace. Departments and agencies MUST provide a screenshot of this "Awarding" page information when requesting a State ID from OGS Fleet Management or NYS DOT. Please enter the purchase order or other ordering document information or if no purchase order was made by clicking on "Edit purchase order" below.

Edit Purchase Order

Attachment: Ford Bronco-bidtab (RES-2023-658 : Purchase of One (1) Ford Bronco Sport AWD)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 27779 **RESOLUTION 2023-659** **ADOPTED**

WNY Stormwater Coalition Cooperating Letter of Support

The Town of Amherst is a voting member of the Western New York Stormwater Coalition. The Engineering Department recommends authorizing the Town Supervisor to sign the attached Cooperating Letter of Support (LOS). The LOS is to support a grant application submission to New York State Department of Environmental Conservation's Non-Agricultural Nonpoint Source Planning and Municipal Separate Storm Sewer System (MS4) Mapping Grant Program. Should the WNY Stormwater Coalition receive funding, the Town would be committing to assist Erie County DEP with identifying the location of all stormwater management practices in their municipality and assist with data collection in the field as needed.

There is no financial impact for this request.

Thank you for considering this request.

7/24/2023
Consent

FINANCIAL IMPACT:

N/A

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

TOWN OF AMHERST

ENGINEERING DEPARTMENT

ERIE COUNTY – NEW YORK

JEFFREY S. BURROUGHS, P.E., TOWN ENGINEER

Attachment: LOS-WNY coalition (RES-2023-659 : WNY Stormwater Coalition Cooperating Letter of Support)

Cooperating MS4 Letter of Support

MS4 Name: Town of Amherst

County of: Erie

General Permit #: NYR20A122

Stormwater Contact: Vaishali Reberholt, P.E., CPESC - SMO

Address: 1100 N. Forest Rd, Williamsville, NY 14221

Telephone Number: 716-631-7154

The Town/~~Village/City~~ of Amherst , in partnership with the Western New York Stormwater Coalition, supports the grant application submitted by the Erie County Department of Environment and Planning to the New York State Department of Environmental Conservation's Non-Agricultural Nonpoint Source Planning and Municipal Separate Storm Sewer System (MS4) Mapping Grant Program.

The primary focus of the proposed project, entitled *Western NY Stormwater Coalition: SMP Mapping Project,* is to map all Stormwater Management Practices in accordance with NYSDEC's required Basic and Intermediate Mapping Elements. In addition, storm sewer system mapping will be completed for areas that are not yet mapped. Should the project receive funding, the Town/~~Village/City~~ of Amherst will assist Erie County DEP with identifying the location of all stormwater management practices in their municipality and assist with data collection in the field as needed.

Signature: Date:

Title: Town Supervisor

ENGINEERING OFFICE – SEWER MAINTENANCE
1100 N. FOREST ROAD
WILLIAMSVILLE, N.Y. 14221
(716) 631-7154 FAX: (716) 631-7222

WASTEWATER TREATMENT FACILITY – ENVIRONMENTAL CONTROL
455 TONAWANDA CREEK ROAD
AMHERST, N.Y. 14228
(716) 691-9771 FAX: (716) 691-4496

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
DOC ID: 27784

COMMUNICATION 2023-87 **REFERRED**

Correspondence from Sean Hopkins

Letter submitted by Sean Hopkins, Esq. regarding the request to amend declaration of restrictions for 2350 & 2360-2372 Sweet Home Road.

7/24/2023
Referred to Town Clerk to include in Resolution 2023-529

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

HSM

July 19, 2023

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Request to Amend Declaration of Restrictions
Location: 2350 & 2360-2372 Sweet Home Road
Applicant/Project Sponsor: Essex Homes of WNY, Inc.
File No. 10065.10

Dear Supervisor Kulpa:

This letter is being submitted on behalf of Essex Homes of WNY, Inc. ("Project Sponsor") for the purpose of submitting the Viewshed Site Plan [Drawing C-100] prepared by Jon Barniak of Carmina Wood Design attached as Exhibit "1" for the purpose of illustrating that the request to modify Condition No. 4 adopted by the Town Board on October 1, 2018 will not result in any adverse impacts on nearby properties to the south of the Project Site. Condition No. 4 as adopted by the Town Board on October 1, 2018 stated as follows:

> "The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space in the front portion of the buildings such that there shall not be any second story windows provided for the second story loft space on the rear portion of the buildings."

Consistent with the discussion during the public hearing held by the Town Board on June 20th, the Project Sponsor is seeking approval of a modification to Condition No. 4 to allow windows within the second-story loft space on the rear sides of buildings to be constructed on interior portion of the Project Site. The updated draft of Condition No.4 as presented to the Town Board during the public hearing held on June 20th stated as follows:

> "The residential buildings to be constructed on the project site shall be limited to single-story residential units with second story loft space. Second story windows are not permitted on the rear side of second story loft space in Buildings Nos. 1, 2, 4, 5, 6, 7, 8 and 14 as depicted on the Site Plan prepared by Carmina Wood Morris dated December 16, 2022."

The distance from the proposed locations of the second-story rear windows as measured to the homes on the parcels to the south of the Project Site at 550, 574 and 620 North Ellicott Creek Road is substantial. Additionally, the sight lines from the second-story loft windows will be obstructed by the residential buildings to be constructed on the southern portion of the Project Site [Buildings No. 4, 5 & 6]. The distances from the location of the second story rear side loft windows to the homes on the parcels to the south of the Project Site ranges from 290 ft. to 710 ft. and the average distance is approximately 500 ft.

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsmlegal.com • www.hsmlegal.com

Attachment: Kulpa-Ltr-07-19-23 (COM-2023-87 : Correspondence from Sean Hopkins)

The Project Sponsor is requesting that the Town Board approve the requested to modify Condition No. 4 during its upcoming meeting on Monday, July 24th at 7:00 p.m.

.

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsmlegal.com with any questions regarding this letter.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

cc: Jacqualine Berger, Councilmember
Deborah Bruch Bucki RN PhD, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember
Francina J. Spoth, Town Clerk
Timothy J. Koller, Deputy Town Clerk
Daniel C. Howard, AICP, Planning Director
Martin A. Polowy, Esq., Town Attorney
Phil Nanula, President, Essex Homes of WNY, Inc. [Via mail]
Kevin Curry, Essex Homes of WNY, Inc. [Via e-mail]
Jon Barniak, Carmina Wood Design [Via e-mail]
Christopher Wood, P.E., Carmina Wood Design [Via e-mail]

Attachment: Kulpa-Ltr-07-19-23 (COM-2023-87 : Correspondence from Sean Hopkins)

Exhibit 1 – Viewshed Site Plan [Drawing C-100]as Prepared by by Carmina Wood Design

Attachment: Kulpa-Ltr-07-19-23 (COM-2023-87 : Correspondence from Sean Hopkins)

Camina Wood Morris PC
467 Main Street - Suite 600
Buffalo, New York 14203
T: 716.842.3165
F: 716.842.0383

REVISIONS:

No.	Description	Date

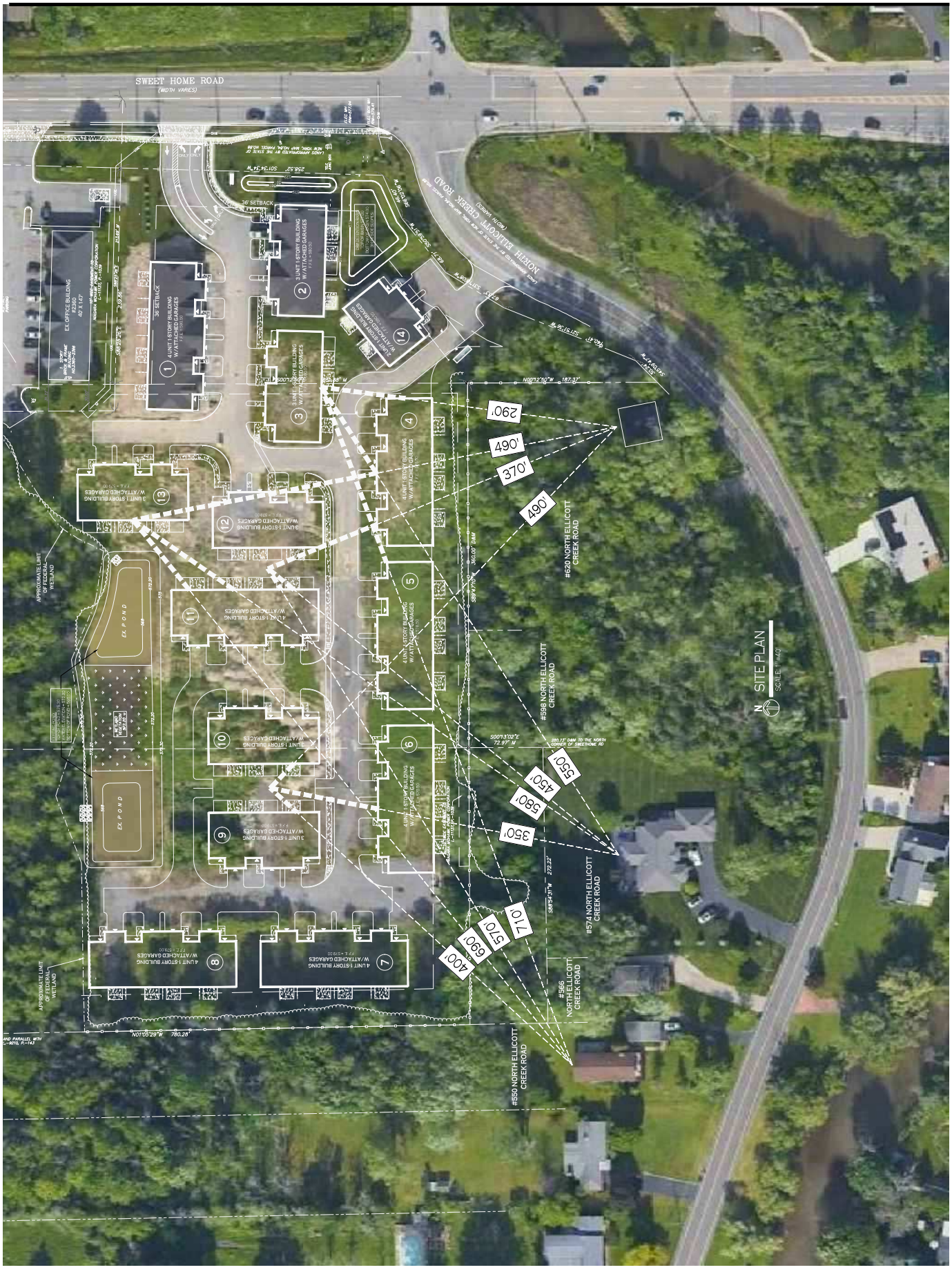
PROJECT NAME:
Civil Plans For
Villas at Essex Woods
2350 Sweet Home Road
Amherst, New York

Date: 7/12/2023
Drawn by: JEB
Scale: As Noted

DRAWING NAME:
"Viewshed"
Site Plan

DRAWING NO.
C-1

Project no.: 1



© Camina Wood Morris PC [All rights reserved. Reuse of these documents without the expressed written permission of Camina Wood Morris PC is prohibited. WARNING: It is violation of article 145 sections 7209A and 7301 of the New York State education law for any person, unless acting under the direction of a registered architect, licensed engineer or land surveyor to alter this drawing. If altered such P.E., P.E. or L.S. shall affix to or her seal, signature, the date, the notation "altered by" and a specific description of the alteration.]

Attachment: Kulpa-Ltr-07-19-23 (COM-2023-87 : Correspondence from Sean Hopkins)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
DOC ID: 27738

COMMUNICATION 2023-88 **APPROVED**

Historic Preservation Commission - Permission for Sign Placement & Fee Waiver

Request from the Historic Preservation Commission to have fees waived and to place eight signs to promote "Preservation Day" on Saturday, August 5th at the Buffalo Niagara Heritage Village.

Please see the response from the Building Commissioner.

7/24/2023
Consent

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

Francina J. Spoth
Town Clerk
Amherst Municipal Building
5583 Main Street
Williamsville, New York 14221

June 27, 2023

Re: Preservation Day Banner Signs

Dear Fran,

The Amherst Historic Preservation Commission (AHPC) respectfully requests to place temporary vinyl horizontal banner signs at the locations listed below to advertise "Preservation Day" on Saturday, August 5, 2022 at the Buffalo Niagara Heritage Village.

The dates of installation would be July 24th through August 7th, to be removed on/after August 7th.

Proposed locations are:

1. 4255 Harlem Road, Harlem Road Community Center (in front of building at Westmorland light)
2. 5583 Main Street, between the Amherst Municipal Building and the parking lot; location similar to the Jolly Boys' "Old Homes Days" sign; to be placed after Old Homes Day has ended
3. 5005 Sheridan Drive, Amherst Youth Foundation Building
4. 370 John James Audubon Parkway, Amherst Senior Center (at street in front of Library)
5. 730 Hopkins Road, Clearfield Recreation Center (by tennis courts; where Amherst Symphony sign is placed)
6. 359 Klein Road, Bassett Park (at corner of Klein and Young)
7. 4415 Millersport Hwy, North Amherst Recreation Center (by NARC sign at building)
8. 435 Maple Road, Amherst Park Maintenance Building (at street by permanent sign)

These are the same locations used last year.

The banner signs are 2' high x 10' long. The reusable banners have grommets to allow zip tie to stake installation. We are again asking if the Town can take ownership of the installation and take down of these signs.

The event is being professionally marketed via the internet and newspapers this year, but we saw success in the banner placement last year and would like to continue to market this Town of Amherst event at municipal buildings/property around Amherst.

I look forward to your response and thank you for your consideration of this request.

Kate Waterman-Kulpa
Amherst Historic Preservation Commission, Vice Chair

Attachment: Letter and response (COM-2023-88 : Historic Preservation Commission - Permission for Sign Placement & Fee Waiver)

cc: Mary-Diana Pouli, Executive Director Town of Amherst Youth & Recreation Department (mpouli@amherst.ny.us)
Pat Lucey, Superintendent Town of Amherst Highways (PLucey@amherst.ny.us)

Attachment: Letter and response (COM-2023-88 : Historic Preservation Commission - Permission for Sign Placement & Fee Waiver)

Koller, Timothy

From: Berke, Mark S.
Sent: Friday, July 7, 2023 12:22 PM
To: Koller, Timothy
Cc: Brownson, Ashley; Gesel, Doug; Princess, Karrie
Subject: RE: Preservation Day, August 5, 2023

Follow Up Flag: Follow up
Flag Status: Flagged

Tim,

The Building Department takes no exception to these signs.

Temporary Sign permits will be required and are approved by the Town board as they are going on town properties. The Town Board must also waive the required fees.

Mark S. Berke, P.E., CFM, C.E.M., GBE
Commissioner of Building
Town of Amherst Building Department
(716) 631-7080
(716) 631-7192 Fax
mberke@amherst.ny.us

From: Koller, Timothy <tkoller@amherst.ny.us>
Sent: Thursday, July 6, 2023 10:04 AM
To: Berke, Mark S. <mberke@amherst.ny.us>
Cc: Brownson, Ashley <abrownson@amherst.ny.us>
Subject: FW: Preservation Day, August 5, 2023

Mark,

Please send me your response to the attached letter. This will be on the agenda for 7/24.

Thank you.

Tim

From: Spoth, Francina <fspoth@amherst.ny.us>
Sent: Tuesday, June 27, 2023 4:14 PM
To: Koller, Timothy <tkoller@amherst.ny.us>
Subject: FW: Preservation Day, August 5, 2023

From: Kate Waterman
Sent: Tuesday, June 27, 2023 2:31 PM
To: Spoth, Francina <fspoth@amherst.ny.us>; Lucey, Patrick G. <plucey@amherst.ny.us>

Attachment: Letter and response (COM-2023-88 : Historic Preservation Commission - Permission for Sign Placement & Fee Waiver)

Cc: Pouli, Mary-Diana <MPouli@amherst.ny.us>; Kate Kulpa
Subject: Preservation Day, August 5, 2023

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello all!
Hope everyone is doing well!
Please see the attached request from the Amherst Historic Preservation Commission to use banner signs again this year for Preservation Day at BNHV.

Pat,
Could Highway install the signs again this year?

Thank you,
Kate Waterman-Kulpa

Sent from Mail for Windows

Attachment: Letter and response (COM-2023-88 : Historic Preservation Commission - Permission for Sign Placement & Fee Waiver)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
DOC ID: 27760

COMMUNICATION 2023-89 **APPROVED**

Congregation Brith Hadoshah Fee Waiver

Request from Congregation Brith Hadoshah seeking a fee waiver of the fire prevention permit for their picnic on August 13.

Response from the Building Commissioner is attached.

7/24/2023
Consent

RESULT:	**APPROVED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

TOWN OF AMHERST

BUILDING DEPARTMENT

ERIE COUNTY, NEW YORK

5583 MAIN STREET

WILLIAMSVILLE, NEW YORK 14221

PHONE: (716) 631-7080
FAX: (716) 631-7192

Mark S. Berke, P.E.
Commissioner of Building

Agenda Item

DATE: July 18, 2023

TO: Town Board

FROM: Mark S. Berke, P.E., Commissioner of Building

RE: Request for Waiver of Fire Prevention Permit Fee for Congregation Brith Hadoshah Picnic

In response to the letter received July 11, 2023, from Rabbi Frank Lowinger regarding a Picnic to be held on August 13, 2023 at 50 Alberta Dr., this memo serves to recommend approval of this request to waive the fee associated with a fire prevention permit. Please be advised the permit is still required.

Please contact me if you have any questions regarding this matter.

Mark S. Berke, P.E.
Commissioner of Building

CC: Bryan Parnell, Sr. Fire Inspector
Francina J. Spoth, Town Clerk

Attachment: Congregation Brith Hadoshah Fire Prevention Permit Fee Waiver_7-18-23 (COM-2023-89 : Congregation Brith Hadoshah Fee

CONGREGATION BRITH HADOSHAH

50 Alberta Dr.

Amherst, NY 14226

873-8986

info@shalombuffalo.org

Brian Kulpa, Supervisor Town of Amherst

Francina Spoth, Town clerk

July 11, 2023

To the Amherst Town Board;

We are planning to have a picnic on our grounds on Sunday, August 13 (with a rain date for August 20) beginning at 2 p.m. We plan to put up a small (20 x 30) tent (without sides) for shade with some tables and chairs. We are asking for a waiver of the fire safety inspection fee as this is a local religious organization and the event is for our congregants and some neighbors. There is no fee to attend and neither will there be any fundraising activity at this event. Thank you.

Sincerely,

Rabbi Frank Lowinger

'23 JUL 14 AM10:02

Attachment: Congregation Brith Hadoshah Fire Prevention Permit Fee Waiver_7-18-23 (COM-2023-89 : Congregation Brith Hadoshah Fee

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
DOC ID: 27739

COMMUNICATION 2023-90 **REFERRED**

Correspondence from Samantha Smith

Pictures from Samantha Smith of the buildings at 4548 & 4564 Main Street.

7/24/2023
Referred to Town Attorney

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala



Attachment: Pictures-07112023151335 (COM-2023-90 : Correspondence from Samantha Smith)



Attachment: Pictures-07112023151335 (COM-2023-90 : Correspondence from Samantha Smith)





Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
DOC ID: 27736

COMMUNICATION 2023-91 **REFERRED**

Notice of Claim: the Uniland Partnership of Delaware L.P. Vs. Town of Amherst Et Al.

7/24/2023
Referred to Town Attorney

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

THE UNILAND PARTNERSHIP OF DELAWARE L.P.
University Corporate Centre
100 Corporate Parkway, Suite 500
Amherst, New York 14226

Claimant,

NOTICE OF CLAIM

v.

TOWN OF AMHERST, NEW YORK,
5583 Main Street
Williamsville, New York 14221

TOWN OF AMHERST TOWN BOARD,
5583 Main Street
Williamsville, New York 14221

TOWN OF AMHERST HIGHWAY SUPERINTENDANT
PATRICK LUCEY
1042 N Forest Rd
Williamsville, New York 14221

Respondents.

STATE OF NEW YORK)
ss:
COUNTY OF ERIE)

TO: THE TOWN OF AMHERST

Town of Amherst Clerk's Office
5583 Main Street
Williamsville, New York 14221

Town of Amherst Highway Department
1042 N Forest Rd
Williamsville, New York 14221

'23 JUL 7 PM2:25

Attachment: DOC071023-07102023084517 (COM-2023-91 : Notice of Claim: the Uniland Partnership of Delaware L.P. Vs. Town of Amherst Et Al.)

PLEASE TAKE NOTICE that pursuant to any and all laws, rules, or regulations as may apply to the circumstances at hand, including but not limited to General Municipal Law § 50-e and § 50-i, and Town Law §65, §65-a and §67, Rupp Pfalzgraf LLC, on behalf of the claimant, The Uniland Partnership of Delaware, hereby submits this verified notice of claim and demand to the Respondents as follows:

1. **The Claimant's Attorneys:**

Marc A. Romanowski, Esq., and
Elizabeth H. Ducharme, Esq. of
Rupp Pfalzgraf LLC
1600 Liberty Building, 424 Main Street
Buffalo, New York 14202.

2. **Nature of the Claim:** The claim includes but is not limited to violations of Town Highway Law § 171, et. seq., commission of common law nuisance and violations of Claimant's Constitutional Rights pursuant to 42 U.S.C. § 1983.

3. **Description of Claim and Time, Place, and Manner:** Claimant is the owner of property located at 1601 Amherst Manor Drive, Amherst, New York 14221 ("Site"). The Site has been operated by Claimant as the Hampton Inn - Amherst since July 2020. The Site is located half a mile from the State University of New York at Buffalo, North Campus, and connects to the SUNY Campus via Millersport Highway, a State thoroughfare. On or about April 11, 2023 Claimant observed that the portion of Amherst Manor Drive that connects the Site to the Campus via Millersport Highway was eliminated in connection with the construction of a medical office and surgery center on a 15-acre parcel located at 2605 Amherst Manor Drive ("Medical Complex"). Termination of that portion of Amherst Manor Drive completely eliminated access to the Site from Millersport Highway, rendering Amherst Manor Drive a dead-end street, and effectively extinguishing the Site's direct connection to the SUNY Campus.

Attachment: DOC071023-07102023084517 (COM-2023-91 : Notice of Claim: the Uniland Partnership of Delaware L.P. Vs. Town of Amherst Et Al.)

Upon investigation into the termination, it was discovered that on July 25, 2022 Respondent Town Board approved an application to rezone the Medical Complex by a resolution that amended the Town of Amherst Bicentennial Comprehensive Plan and Zoning Map. The application included plans to terminate the Amherst Manor Drive connection, but the termination was not mentioned in any of the resolutions approved by the Town Board. Municipalities may close a public street only if acting under proper statutory authority in doing so. The Highway Law provides for the closing of town highways under very limited circumstances. A town may terminate the public's easement over a roadway only if it has become useless (Highway Law § 171 [2]) or abandoned (Highway Law § 205 [1]). Section 171-2 provides that a town highway superintendent may declare part of a highway useless or no longer necessary with the consent of the Town Board provided the superintendent files and records the consent, order and a release from all damages from the owners of lands affected thereby with the Town Clerk.

Upon information and belief, Respondents terminated a portion of Amherst Manor Drive in violation of the Highway Law by failing to issue an order declaring it useless; by failing to procure consent from the Town Board and by failing to obtain releases from damages from the owners of lands affected thereby, including Claimant. Moreover, Respondents cannot substantiate a finding that the terminated portion of Amherst Manor Drive is useless by virtue of the fact that Claimant regularly utilizes and relies on the subject street for direct access to and from Millersport Highway and the SUNY Campus. Additionally, by failing to follow the statutory process for discontinuance of a public highway, Respondents deprived Petitioners of their procedural and substantive due process rights set forth in section 1983 of the U.S. Constitution.

Attachment: DOC071023-07102023084517 (COM-2023-91 : Notice of Claim: the Uniland Partnership of Delaware L.P. Vs. Town of Amherst Et Al.)

4. **Items of Damage or Injuries Sustained:** As a result of the Respondent's improper conduct described in detail above, Respondents have caused harm to the Claimant in the following respects:

a. Respondents have damaged Claimants by discontinuing an active public highway without justification or payment of damages in violation of the common law and section 171 of the Highway Law;

b. Respondents violated Claimant's due process rights when they failed to abide by the statutory requirements for discontinuance of the public's easement over a town highway and improperly terminated said easement without notice or opportunity to be heard; and

c. Respondents violated Claimant's constitutional rights to just compensation for the taking of property by eliminating access to the Site thereby resulting in a substantial depreciation of Claimant's property.

d. Respondent's actions also constitute common law nuisance and have caused monetary damages in an amount to be determined at trial.

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Attachment: DOC071023-07102023084517 (COM-2023-91 : Notice of Claim: the Uniland Partnership of Delaware L.P. Vs. Town of Amherst Et Al.)

WHEREFORE, Claimant requests that the Respondents be held accountable for their improper conduct in connection with this claim. Respondents hereby are notified that unless this claim is addressed within the time provided by law from the date of presentation, Claimant intends to commence a lawsuit and pursue damages in a court of law.

Marc A. Romanowski, Esq.

Sworn to before me this
7th day of July 2023.

Brittany Koehler
Notary Public

BRITTANY KOEHLER
Notary Public, State of New York
Qualified in Niagara County
Reg. #01KO6357895
My Commission Expires 5/1/2025

Attachment: DOC071023-07102023084517 (COM-2023-91 : Notice of Claim: the Uniland Partnership of Delaware L.P. Vs. Town of Amherst Et Al.)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
DOC ID: 27757

COMMUNICATION 2023-92 **REFERRED**

Notice of Claim: NYSIR A/S/O Sweet Home CSD Vs. Town of Amherst

7/24/2023
Referred to Town Attorney

RESULT:	**REFERRED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Deborah Bruch Bucki, Deputy Supervisor
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala

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July 13, 2023

Town of Amherst
Town Clerk
5583 Main Street
Amherst, NY 14221

RE: Request for Payment
OUR INSURED: Sweet Home CSD
OUR CLAIM #: SWH-2022-005-001
Date of Loss: 10/03/2022
YOUR INSURED: Town of Amherst
YOUR FILE: USI 7242698

To Whom it May Concern,

Please take this as a formal notice of subrogation rights with regard to the above captioned claim. We have reimbursed our insured for damages sustained as a result of the referenced loss. This is a notification that we intend to recover the amount we paid.

We have received your offer of 50% and ask that you reconsider. Enclosed is the police accident report which clearly indicates that the Town of Amherst driver is the sole and proximate cause of this loss. Our insured's driver saw your vehicle approaching and came to a complete stop. Your driver proceeded around the curve and struck our insured's stopped vehicle.

Included is a supplemental payment that has been issued to our insured regarding the damage.

We ask that you not settle the claim with our insured without protecting our recovery rights. Please see attached **Payment Summary** for additional details.

'23 JUL 17 PM3:14

NEW YORK SCHOOLS INSURANCE RECIPROCAL
333 EARLE OVINGTON BOULEVARD | SUITE 905 | UNIONDALE, NEW YORK 11553
516.393.2320 | FAX 516.393.2331 | WWW.NYSIR.ORG

Attachment: DOC071823-07182023091322 (COM-2023-92 : Notice of Claim: NYSIR A/S/O Sweet Home CSD Vs. Town of Amherst)

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PAYMENT SUMMARY

Vehicle Damages Paid $4,576.64

Deductible $ 500.00

Total Payment requested $ 5,076.64

- Make your check payable to **New York Schools Insurance Reciprocal as subrogee of Sweet Home CSD**
- Provide claim number **SWH-2022-005-001** on your check
- **TIN #: 11-2971880**
- Send payment to:
  New York Schools Insurance Reciprocal
  P.O. Box 521
  Glenwood Landing, NY 11547

Any payment less than the full amount that has been requested will not satisfy our claim. We will not waive our legal right to enforce collection of the remaining unpaid balance unless we provide you with a written release.

If you have any questions, please contact me at the number below.

Very truly yours,

Stephanie Simmons
Claims Examiner
516-750-3955
SSimmons@nysir.org

cc: USI Insurance
ATTN: Timothy May
File: USI 7242698
726 Exchange Street Suite 618
Buffalo, NY 14210

Attachment: DOC071823-07182023091322 (COM-2023-92 : Notice of Claim: NYSIR A/S/O Sweet Home CSD Vs. Town of Amherst)

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 07/24/23 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 27796 **RESOLUTION 2023-660** **ADOPTED**

Authorization to Utilize Amrex Chemical Corporation, Inc. for Pool Chemicals for Summer 2023

Suspension to Town Board Agenda Item July 24, 2023

TO: **Amherst Town Board**

FROM: **Shawn Lavin, Councilmember liaison to Youth & Recreation Department**

DATE: **July 24, 2023**

RE: **Authorization to Utilize Amrex Chemical Corporation, Inc. for Pool Chemicals for Summer 2023**

Please consider adoption of the following resolution as a suspension item to the July 24, 2023 Town Board agenda.

WHEREAS, the Town of Amherst had a valid contract for pool chemicals with Amrex Chemical Corporation, Inc. as a result of Bid #2022021, and

WHEREAS, the bid included a provision for two (2) six-month extensions, and

WHEREAS, due to inflation, Amrex did not agree to extend the contract and did not notify the Town in time to issue a new bid for the 2023 swim season, and

WHEREAS, chemicals had to be ordered to ensure the safe opening and continued use of town pools, and

WHEREAS, Amrex does have appropriate insurances in place, and

WHEREAS, by the time a new bid is issued and reviewed, the pools will be closed,

NOW THEREFORE, BE IT RESOLVED, that the Amherst Town Board authorizes the payment of invoices to Amrex Chemical Corporation, Inc. until such time as a new bid is issued and a new contract is awarded.

7/24/2023
A motion to approve was made by Deputy Supervisor Bucki, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Deborah Bruch Bucki, Deputy Supervisor
SECONDER:	Jacqualine Berger, Councilmember
AYES:	Kulpa, Bucki, Berger, Lavin, Szukala