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, January 22, 2024 | **7:00 PM** | **Amherst Municipal Building**

I. IN MEMORY

Captain (Ret). John R. Kasmer Jr. US Army, a longtime, devoted and dedicated member of the 9-11 Commemoration Ceremony Committee.

John Sedgwick - member of the Employee Suggestion Review Committee.

II. INVOCATION

Councilmember Berger

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL:

7:00 PM Meeting called to order on January 22, 2024 at Amherst Municipal Building, 5583 Main Street, Williamsville, NY.

Attendee Name	Organization	Title	Status	Arrived
Brian J. Kulpa	Town of Amherst	Supervisor	Present	
Jacqualine Berger	Town of Amherst	Councilmember	Present	
Shawn Lavin	Town of Amherst	Councilmember	Present	
Michael Szukala	Town of Amherst	Councilmember	Present	
Angela Marinucci	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	
Laurie Stillwell	Town of Amherst	Director of Community Development	Present	

V. MINUTES APPROVAL

1. Tuesday, January 02, 2024

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

VI. PROCLAMATIONS AND ANNOUNCEMENTS

VII. PUBLIC HEARINGS

Speakers will be limited to 3 minutes.

1. Resolution 2024-57

The Second of Two Public Hearings Required by the U.S. Department of Housing and Urban Development for the FY 2024 Community Development Action Plan

The second Public Hearing for the FY2024 Community Development Action Plan.

1/22/2024
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 7:04 PM.

James Quinn, Assistant Planner, presented.

Allison Sagraves, 171 Amherstdale Rd. - questioned the administrative costs

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:17 PM.

RESULT:	**HEARING CLOSED**

2. Resolution 2024-58

2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment

Request to amend the Bicentennial Comprehensive Plan for 2280 Wehrle Drive from

Commercial-Office to Mixed Residential.

1/22/2024
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 7:18 PM.

Attorney Jeff Palumbo presented.

Dennis Hoban, 216 California Dr - asked about the size of the townhomes

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the February 5th Town Board meeting, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:25 PM.

RESULT:	**DECISION DATE [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

3. Resolution 2023-775

Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road

Request for a special use permit for a Tier III Solar Energy System at 800 & 850 New Road.

9/18/2023
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 7:10 PM.

Marc Kenward of Erdman Anthony & Leigh McEntire of Sol Source Power LLC, presented.

The following speakers opposed the project:
Sally Blazynski, 905 New Rd
Heidi Wagonblott, 885 New Rd
Christopher Wyles, 861 New Rd

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:50 PM.

10/2/2023
A motion to adjourn was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

1/22/2024

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 7:25 PM.

Marc Kenward of Erdman Anthony & Leigh McEntire of Sol Source Power LLC, presented.

The following speakers addressed the Town Board:
Isabell Posner, 317 Ruskin Rd
Matt Plunkett, 299 Northill Dr
Karen Piazza, 89 San Fernando Ln
Tara Kim, 1315 Dodge Rd
Sally Blazynski, 905 New Rd

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the hearing until the February 5th Town Board meeting, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was adjourned at 7:57 PM.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Shawn Lavin, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

VIII. DEVELOPMENT REVIEW ACTIONS

1. Resolution 2023-957

Adoption of Local Law to Amend the Zoning Map (4774 & 4780 Sheridan Drive, Z-2023-07)

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 October 19, 2023 that the proposed Residential District 4 zoning at 4774 & 4780 Sheridan Drive 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 density of the project site shall not exceed 4.4 units per acre.

2. That the use of the project site to be rezoned from R-3 to R-4 shall be limited to

two (2) unit-attached townhomes only.

3. That the maximum allowable height of any residential building on the project site as measured from finished grade shall be thirty-five (35) feet.

4. That the project site's contaminated soil be remediated to residential standards under the purview of, and in accordance with the NYSDEC's Brownfield Cleanup Program.

5. That the conditions stated above shall be memorialized via the recording of a Declaration of Restrictions at the Erie County Clerk's Office.

12/4/2023
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 8:54 PM.

Sean Hopkins, Esq., presented.

The following speakers spoke in opposition:
Sharon Easterbrook, 80 Tristan Ln
Alicia Schreier, 79 Tristan Ln

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the December 18th Town Board meeting, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was closed at 9:23 PM.

12/18/2023
Councilmember Berger made a motion to adjourn to the second Town Board meeting in January, seconded by Councilmember Szukala and unanimously approved 5-0.

1/22/2024
Supervisor Kulpa made a motion to adjourn, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

2. Resolution 2024-59

SEQR Determination (800 & 850 New Road, SP-2023-01)

DRAFT RESOLUTION
January 22, 2024

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 Special Use Permit at 800 & 850 New 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 Planning Board at their meeting of August 17, 2023 held a public hearing on the site plan application for the proposed use and issued a Determination of Significance by adopting a Negative Declaration pursuant to 6NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Town Code Chapter 104, as amended, 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.

1/22/2024
Supervisor Kulpa made a motion to adjourn, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

3. Resolution 2024-60

Adoption of a Special Use Permit for Solar Energy Project (800 & 850 New Road; SP-2023-01)

DRAFT RESOLUTION
(Januray 22, 2024)

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 August 17, 2023 that the proposed solar energy development to be located at 800 & 850 New Road is consistent with the adopted Bicentennial Comprehensive Plan and §8-6-7 of the Zoning Ordinance as follows:

1. Will be generally consistent with the policies of the Comprehensive Plan;
2. Meets any specific criteria set forth in this Ordinance;

3. Will be compatible with existing uses adjacent to and near the property;
4. Will be in harmony with the general purpose of this Ordinance;
5. Will not tend to depreciate the value of adjacent property;
6. Will not create a hazard to health, safety or the general welfare;
7. Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and
8. Will not otherwise be detrimental to the public convenience and welfare.

as amended, and be it further

RESOLVED, that in accordance with Section 6-10-7B(3)(d) of the Zoning Ordinance, the Planning Board recommended to the Town Board approval of the Special Use Permit for the proposed solar development as stated in their resolution of August 17, 2023; and be it further

RESOLVED, that pursuant with Section 8-6-6 of the Zoning Ordinance, the Town Board **approves** said Special Use Permit subject to the following conditions:

1. That the P.I.L.O.T Agreement and Community Benefit Agreement be finalized, and that a copy of the signed agreements be provided to the Planning Department prior to the issuance of final site plan drawings.

2. That the petitioner provide a wetland habitat restoration plan for the 2.18± acres of tree removal that are proposed within jurisdictional wetland 2.

1/22/2024
Supervisor Kulpa made a motion to adjourn, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

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 (6)

Councilmember Berger appoints Richard J. Herrmann and Dan Howard to the Amherst Veterans Committee for a term to conclude 12/31/2025.

Councilmember Lavin appoints Joe Orzechowski and Thomas F. Hurley, II to the Amherst Veterans Committee for a term to conclude 12/31/2025.

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 (2)

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 (6)

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 Councilmember Berger and unanimously approved 5-0. Public Expression was opened at 7:59 PM.

The following speakers addressed the Town Board:
Andrea Morgante, 253 Woodshire Ct - taxes
Allison Sagraves, 171 Amherstdale Rd - taxes, streetlights & central park
Jina Gentry, 65 Bissell Dr - board budget
Tom Mislin, 32 Joliet Ln - streetlights
Jennifer Darin, 22 Boxelder Ln - taxes
Geri DiCosmo, 278 Meyer Rd - boulevard mall and urban renewal
Shawn Yost, 484 Springville Ave - taxes and streetlights
Alicia Schreier, 79 Tristan Ln - Resolution 2023-957
Sharon Caleca, 88 Tristan Ln - Resolution 2023-957
Karen Howard, 194 Roycroft Blvd - taxes
Kurt Felgemacher, 196 High Park Boulevard - budget
Sabine Kutt, 78 The Village Green - taxes
Beverly Cuviello, 91 Fleetwood Ter - Resolution 2023-957
Shelly Schratz, 1952 Kensington Ave - transparency and listening to residents
Tara Kim, 1315 Dodge Rd - streetlights and taxes
Kimberly Gabel, 41 Presidents Walk - streetlights and taxes

Lisa Galasso, 1442 Wehrle Dr - streetlights, taxes and cost of living
Tom Weisbeck, 48 Drawbridge Ct - streetlights
Dennis Hoban, 216 California Dr - taxes
Brian Rusk, 340 Wellingwood Dr - taxes
Matt Plunkett, 299 Northill Dr - out of control spending
Michelle Coffey, 736 N French Rd - taxes

There were no further speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Councilmember Berger and unanimously approved 5-0. Public Expression was closed at 10:08 PM.

XI. CONSENT AGENDA

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

XII. COUNCILMEMBER RESOLUTIONS

A. SUPERVISOR KULPA:

1. Resolution 2024-61

2024 CIP Amendment

BE IT RESOLVED, the 2024 CIP is hereby amended as follows:

Project ID	Project Title/Description	2024 Original	2024 Amended
YR-12A	Audubon Golf Course Impr.	1,000 LA	500 LA
S-3	Misc. SS Relining & Manhole Rehab.	150 I/M	500 LG, 150 I/M
H-1	Vac Truck	132 LH, 394 F/A	0

1/22/2024
Consent

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

2. Resolution 2024-62

Liaisons to Boards & Committees and Departments 2024

BE IT RESOLVED that Town Board Liaisons to Boards & Committees and Departments be set for 2024 as shown on the attached.

1/22/2024
Consent

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

B. COUNCILMEMBER BERGER:

1. Resolution 2024-63

Arts & Culture in Public Places Board Appointment

WHEREAS, Town of Amherst created the Arts & Culture in Public Places Board to promote public art and culture within the town and to collaborate and cooperate with various and appropriate individuals, groups, associations, organizations and institutions concerned with art and culture; and

WHEREAS, to promote, ensure and enhance the function, object and mission of the visual and performing arts; and

WHEREAS, the Arts & Culture in Public Places Board, also known as Arts & Culture, consists of nine (9) members, each serving a term of two (2) years; and

WHEREAS, the Arts & Culture in Public Places Board currently has a Board of six (6) members, who shall continue to serve until their term of appointment expires, as follows:

Sharon Seamans, Co-Chairperson, with term that expires 12-31-2025
Burton Merriam, Member, with a term that expires12-31-2024
Michael E. Russo, Member, with a term that expires 12-31-2025
Penny Wolfgang, Member, with a term that expires 12-31-2025; and

WHEREAS, Deborah Doucette, Maureen Cilano, Jennifer Colwell, and Mary Jo Kahley-Wolf have served on the Arts & Culture Board and have expressed interest in continuing service on the Arts & Culture Board; and

WHEREAS, Joy Testa Cinquino has expressed interest in serving on the Arts & Culture in Public Places Board;

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board reappoints Deborah Doucette, Maureen Cilano, Jennifer Colwell, and Mary Jo Kahley-Wolf to terms to conclude December 31, 2025; and

BE IT FURTHER RESOLVED that the Amherst Town Board also approves the appointment of Joy Testa Cinquino for a term to conclude on December 31, 2026.

1/22/2024
Consent

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

2. Resolution 2024-64

Self-Contained Breathing Apparatus

WHEREAS, the Amherst Fire Safety Division responds to various types of Emergency related incidents and provides a high level of safety and professionalism in performing our duties as Fire Inspectors; and

WHEREAS, the Amherst Town Fire Safety Division has the need to increase personal protection for the Amherst Fire Inspectors and to raise the level of protection with respect to the harmful effects of a fire/emergency incidents and the potential increased risk of cancer; and

WHEREAS, the Amherst Town Fire Safety Division also has the need to inspect and maintain SCBA equipment utilized in performing the Fire Inspector's duties.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the purchase of personal protective equipment and various equipment from Avoidable Alarm Fund T-2999.4002.

1/22/2024
Consent

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

3. Resolution 2024-65

Annual Knox Maintenance

WHEREAS, the Town of Amherst has over 1000 KNOX locks to increase access to properties for emergencies without causing additional property damage; and

WHEREAS, maintenance to existing locks is important in confirming the correct access keys are up-to-date in the event of an emergency; and

WHEREAS, the Amherst Fire Safety Division administers the KNOX program in an effort to ensure safety and security for properties in the Town of Amherst; and

WHEREAS, the locks are necessary to provide safety and ease of access to the site for the Fire Departments after a fire or other emergencies of fire and/or life safety for the Town of Amherst; and

WHEREAS, having an employee of the Fire Safety Division of the Amherst Building Department assigned to maintain said locks would be consistent and efficient.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the transfer of funds from Avoidable Alarm Fun T-2999.4002 to the Building Department Personal Services Account B 3620-1000.

1/22/2024
Consent

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

4. Resolution 2024-66

Art on Signal Cabinets – Yr. 2024

WHEREAS, in 2019 the Town of Amherst Arts and Culture in Public Places Board spearheaded an initiative that converted six (6) traffic signal cabinets in the Town of Amherst into public artworks; and

WHEREAS, an additional twenty (20) traffic signal cabinets were painted in subsequent years for a total of twenty-six (26) painted to date; and

WHEREAS, the Decorative Treatment for Traffic Signal Cabinets Initiative has been a success and there is desire to continue with the project; and

WHEREAS, signal cabinet artwork beautifies public spaces, builds community, and offers a more attractive and interesting streetscape environment; and

WHEREAS, an additional eight (8) traffic signal boxes have been selected by the Arts and Culture in Public Places Board to be painted by qualified and trusted artists; and

WHEREAS, the following seven (7) locations require NYSDOT permits:

Main Street & Campus Drive,
Main Street & Kensington Avenue,
Main Street & Spindrift Drive,

Millersport Highway & North Forest Road,
North Forest Road & Union Road,
Sweet Home Road & Rensch Road,
Sheridan Drive & Youngs Road; and

WHEREAS, the NYSDOT allows for Decorative Treatment for Traffic Signals by TSMI 16-04 where a PERM-33 Highway Work Permit is required to paint or wrap a traffic signal cabinet;

THEREFORE BE IT RESOLVED, the Town Board supports the initiative to paint artwork on signal cabinets by the Arts and Culture in Public Places Board in the selected locations; and

THEREFORE BE IT FURTHER RESOLVED, the Supervisor of the Town of Amherst is hereby authorized to sign all NYSDOT permits and applications in connection with the Signal Cabinet Artwork; and

THEREFORE BE IT FURTHER RESOLVED, that the NYSDOT work permit and necessary applications be reviewed by the Town Attorney prior to execution;

THEREFORE BE IT FURTHER RESOLVED, that a certified copy of this Resolution be provided to the New York State Department of Transportation as part of the PERM-33 Highway Work Permit.

1/22/2024
Consent

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

C. COUNCILMEMBER LAVIN:

D. COUNCILMEMBER SZUKALA:

1. Resolution 2024-67

Amherst Traffic Safety Board Appointments

WHEREAS, the Amherst Traffic Safety Board, also known as ATSB or Traffic Safety Board, advises the Town Board on matters affecting traffic safety on all existing and proposed roadways, subdivisions, commercial areas, and wherever cars, bicycles, recreational vehicles and pedestrians are involved; and

WHEREAS, the ATSB has a maximum roster of 10 members, with the Amherst Town Board majority appointing members, who shall serve a three (3) year term; and

WHEREAS, the ATSB currently has a Board of 7 members, who shall continue to serve until their term of appointment expires, as follows:

Eric Fraas, Chairperson, term expires 12/31/2025

Gregory Dionne, Vice Chairperson, term expires 12/31/2025
Maxwell Kahn, Member, term expires 12/31/2025
Jennifer L. Minchniewicz, Member, term expires 12/31/2024
Michelle Nagel, Member, term expires 12/31/2024
Kenneth A. Smith, Member, term expires 12/31/2024
Patrick Wanamaker, Member, term expires 12/31/2024; and

WHEREAS, the members of the Amherst Traffic Safety Board shall, by majority vote, elect a Chairperson from among the members and such officers as may be deemed necessary from time to time; and

WHEREAS, Kevin Cantwell and Daniel Rider have served on the Amherst Traffic Safety Board and have expressed interest in serving another term; and

WHERESAS, Helaine Sanders has expressed an interest in serving on the ATSB;

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the re-appointments of Kevin Cantwell and Daniel Rider for a term to conclude on December 31, 2026; and

BE IT FURTHER RESOLVED that the Amherst Town Board also approves the appointment of Helaine Sanders for a term to conclude on December 31, 2026.

1/22/2024
Consent

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

2. Resolution 2024-68

Resolution Supporting New York State Extended Producer Responsibility Legislation

WHEREAS, that Town of Amherst intends to encourage the State of New York to transfer responsibility for the costs of managing certain products at end-of-life to producers (brand owners and first importers); and be it

THEREFORE, the Town of Amherst urges the New York State Legislature to enact framework EPR legislation which will give producers the incentive to design products to make them less toxic and easier to repair, reuse and recycle; and be it

FURTHER RESOLVED, that the Senior Refuse Control Officer of the Town of Amherst Office of Refuse Control is requested to send letters to the State Legislature and State associations and to use other advocacy methods to urge support for EPR legislation; and be it

FURTHER RESOLVED, the State of New York and its member agencies are urged to include EPR language, such as specifying product and packaging collection and recycling requirements, in contracts for commodities.

1/22/2024
Consent

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

3. Resolution 2024-69

Set Public Hearing Date – 59 Kaymar Drive Parking Restriction

Please schedule a public hearing on March 11, 2024 to restrict parking on the inside of a curve along Kaymar Drive along 59 Kaymar Drive:

> "Parking is hereby restricted on the inside curve of Kaymar Drive along 59 Kaymar Drive beginning at the curb's point of curvature on the north side of 59 Kaymar Drive, along the curve and ending at a point that is approximately 20 feet beyond the point of tangency for a total distance of 125 feet."

1/22/2024
Consent

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

E. COUNCILMEMBER MARINUCCI:

XIII. DEPARTMENT HEAD RESOLUTIONS AND REPORTS

A. TOWN ATTORNEY:

1. Resolution 2024-70

PILOT Agreement - Amherst Senior Apartments, LP and TOA (CRS #4539)

AGENDA ITEM - JANUARY 22nd, 2024

TO: **Town Board**

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

DATE: **January 17, 2024**

RE: **PILOT Agreement:**
Amherst Senior Apartments LP and the Town of Amherst, et al.
(CRS #4539)

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

WHEREAS, Amherst Senior Apartments LP has requested that the Town Board approve a PILOT Agreement with a term of fifteen (15) years for the Property; and

WHEREAS, the content and form of the proposed PILOT Agreement have been reviewed and approved by the Town Assessor's Office and the Town Attorney's Office and a copy of the approved form of the proposed PILOT Agreement is attached hereto; and

WHEREAS, the PILOT Agreement must be approved by Erie County and the Williamsville Central School District;

NOW THEREFORE BE IT RESOLVED, that approval and execution of the Agreement for the Project be subject to the three (3) conditions set forth below and that the Supervisor of the Town of Amherst, Deputy Town Attorney Samuel A. Alba, Esq., and Emily Murphy, Town Assessor, are hereby authorized to sign the PILOT Agreement between Amherst Senior Apartments LP and the Town of Amherst, Erie County, and the Williamsville Central School District upon satisfaction of the following three (3) conditions:

1. The PILOT Agreement is subject to review and approval by Erie County;

2. The PILOT Agreement is subject to review and approval by the Williamsville Central School District; and

3. Approval of the PILOT Agreement is subject to successful completion of the Town's contract routing system (CRS).

SAA:nmb
Attachment
c: Tim Koller, Deputy Town Clerk (*w/attachment*, **Agenda Item - January 22, 2024**)
Emily Murphy, Town Assessor (*w/attachment*)

1/22/2024
Consent

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

2. Resolution 2024-71

Authorization to Pay Outside Counsel from Trust and Agency Account - Jurek Post Purchase

AGENDA ITEM - JANUARY 22nd, 2024

TO: **Town Board**

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

DATE: **January 17, 2024**

RE: **Authorization To Pay Outside Counsel Invoice From Trust and Agency Account For Services Related To Jurek Post**

Kindly adopt a resolution authorizing the Comptroller and/or Finance Director to issue payment to Bengart & DeMarco, LLP in the amount of $1,035.00 from the established Trust and Agency Account (T2107.4001) for legal services performed relative to the Jurek Post.

Thank you.

MAP:nmb:hs
c: Timothy Koller, Deputy Town Clerk
(**Agenda Item : January 22, 2024**)
Daryl C. Bramer, Town Comptroller
Lynda Juul, Director of Finance

1/22/2024
Consent

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

B. TOWN CLERK:

1. Resolution 2024-72

New Firefighter for Swormville Fire Company

New firefighter for the Swormville Fire Company lives in the Town of Amherst and resides within the Swormville Fire District.

Daniel Girzone
86 Bramhill Ct
East Amherst, NY 14051

1/22/2024
Consent

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

2. Resolution 2024-73

Edmunds GovTech Tax Software Support Contract CRS #4545

Please authorize the Supervisor to sign the Annual Software & Support Agreement with Edmunds GovTech (CRS #4545) for the Tax Collection System subject to the contracting routing process. This agreement is valid from 1/1/24 -12/31/24.

1/22/2024
Consent

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

C. ASSESSOR:

D. BUILDING/BUILDING MAINTENANCE:

1. Resolution 2024-74

2024 Building Permit Fee Schedule

Please adopt the proposed 2024 Building Permit Fee Schedule as attached. The proposed Fee Schedule includes a change to a number of fees throughout the schedule. The following fees have been added to the Fee Schedule:

1) Residential - Multiple Dwellings
    a. Fee will be determined by cost of construction in lieu of dwelling units.
2) Swimming Pools
    a. Fee for Above Ground Pool
    b. Fee for In-Ground Pool
3) Roofing
    a. Commercial Minimum Fee
4) Siding
    a. Commercial Minimum Fee
5) Certificates
    a. New Fee for Residential Certificate of Occupancy
    b. New Fee for Commercial Certificate of Occupancy
    c. New Fee for Certificate of Completion
    d. Updated Certificate of Occupancy
        i. No Changes to Building or Tenant Space
        ii. Change of Use
6) Fire Permit Fees
    a. New Fire Residential Solar Permit
    b. New Fire Residential Sprinkler Permit
    c. New Fire Emergency Radio Responder Permit
7) Electrical Permit Fees
    a. Low Voltage Permit
    b. Car Charging Stations Permit
8) Large Format printing for Electronic Plan Submission

1/22/2024
Consent

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

E. CENTRAL ALARM:

F. COMPTROLLER:

1. Resolution 2024-75

Budget Transfers and Amendments

For January 22 2024 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 01/17/2024
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:***
N2238.4000 Parachute Credit- Contractual $3,200.00	N2221.4000 CDBG Rehab- Contractual $3,200.00

Requested per department.

BUDGET TRANSFERS - 2024

FROM:	***TO:***
A7253.4220 Ice Facility - Buildings & Grounds $1,633.52	A7253.9000 Interfund Transfer $1,633.52

To transfer funds for KP2220 Youth & Recreation Equipment purchase.

BUDGET AMENDMENTS - 2023

INCREASE:	***INCREASE:***
N2344.02785 Cheek HOME- PI $21,155.99	N2344.4000 Contractual $21,155.99
N2349.02785 Cheek Admin- PI $2,350.66	N2349.4003 10% Admin. $2,350.66

To recognize Community Development program income from 106 St. Felix, 35 Shanley, 238 Straley, 1328 Cleveland, Cheektowaga.

N2344.02785 Cheek HOME- PI $3,728.25	N2344.4000 Contractual $3,728.25
N2349.02785 Cheek Admin- PI $414.25	N2349.4003 10% Admin. $414.25

To recognize Community Development program income from 1168 Maryvale, Cheektowaga.

N2340.02785 AMH HOME- PI $22,174.20	N2340.4000 Contractual $22,174.20
N2354.02785 HOME Admin- PI $2,463.80	N2354.4003 10% Admin $2,463.80

To recognize Community Development program income from 17 Montbleu, Amherst.

BUDGET AMENDMENTS - 2024

INCREASE:	***INCREASE:***
KP2220.05031 Interfund Transfer $1,633.52	KP2220.2250 Truck, Tractors, Trailers $1,633.52

To increase budget for transfer from A7253.9000 into KP2220 Youth & Recreation Equipment purchase.

N2340.02401 AMH HOME- Interest Income $5,519.01	N2340.4000 Contractual $5,519.01

To recognize Community Development interest HOME income through Dec 2023.

N2323.02785 CDBG & VG- PI $170.00	N2323.4000 Contractual $170.00

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

A7256.1000 Personal Services $27,225.00
A7256.8030 FICA $2,764.00
A7256.4040 Travel $10,115.00
A7256.4010 Supplies $12,110.00
A7256.4110 Contractual $51,000.00
A7256.2600 Other $650.00
A7256.04389 Federal Revenue $103,864.00
To set up budget for year 4 of the Task Force Grant CRS #4457.

N2344.02785 Cheek HOME- PI $138,758.77
N2349.02785 Cheek Admin- PI $15,417.64
N2344.02785 Cheek HOME- PI $63,000.00
N2344.4000 Contractual $138,758.77
N2349.4003 10% Admin. $15,417.64
N2344.4000 Contractual $63,000.00
To recognize Community Development program income from 89 Gardenvale, Cheektowaga.

N2344.02785 Cheek HOME- PI $145,884.37
N2349.02785 Cheek Admin- PI $16,209.38
N2344.02785 Cheek HOME- PI $39,000.00
N2344.4000 Contractual $145,884.37
N2349.4003 10% Admin. $16,209.38
N2344.4000 Contractual $39,000.00
To recognize Community Development program income from 36 Peachrow, Cheektowaga.

1/22/2024
Consent

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

2. Resolution 2024-76

Travel Request to the 2024 Annual New York Government Finance Officer's Association Conference

Please approve the travel request to the 2024 New York Government Finance Officer's Association (NYGFOA) Annual Conference from April 17 to April 19, 2024 for Daryl Bramer, CPA for a total estimated cost not to exceed $1,257.16.

Conference training provides core functional areas of governmental financial management and accounting and Continuing Professional Education (CPE) credits.

1/22/2024
Consent

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

3. Resolution 2024-77

Tyler Technologies (MUNIS) Licensing and Support Agreement CRS #4521

Please approve the annual licensing and data base support agreement that covers general ledger, budgeting, accounts payable, MUNIS Office, payroll, purchase orders, Tyler Forms processing, GUI and Tyler system management services support for MUNIS for the period 1/1/2024 - 12/31/2024. The annual cost is $91,132.21.

Contract #4521 has successfully completed the contract routing process.

1/22/2024
Consent

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

4. Resolution 2024-78

Formax Pressure Sealer with Integrated Conveyor Purchase CRS #4533

Please approve the purchase of Formax Pressure Sealer with Integrated Conveyor FD1506plus (payroll and accounts payable checks, direct deposit advices, W2's, and 1099's folding machine) and annual maintenance agreement under New York State Office of General Services Contract PM70059.

Contract #4533 has successfully completed the contract routing system.

1/22/2024
Consent

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

G. CONTRACT COMPLIANCE:

1. Resolution 2024-79

Award Bid #2023053 Miscellaneous Small Equipment and Parts - CRS #4497, 4498, 4499, 4500 & 4501

WHEREAS, bids were received on November 16, 2023 for Bid #2023053 Miscellaneous Small Equipment and Parts; and

WHEREAS, seven (7) bids were received 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 as per the attached bid tabulation form to Admar Supply, Niagara Lawn & Garden Equipment, Land Pro Equipment, Fleet Maintenance and MTE Equipment Solutions; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contracts with Admar Supply, Niagara Lawn & Garden Equipment, Land Pro Equipment, Fleet Maintenance and MTE Equipment Solutions; 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 a contract for some of the items included in this bid.

1/22/2024
Consent

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

2. Resolution 2024-80

Award RFP #202308 Medicare Advantage Plan - CRS #4523

WHEREAS, proposals were received on November 20, 2023 for RFP #202308 Medicare Advantage Plan; and

WHEREAS, four (4) proposals were received and evaluated by Town representatives in consultation with the Town's Employee Benefits Consultant;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award this RFP to United Healthcare Insurance Co.; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contract with United Healthcare Insurance Co.; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System due to the need to have a new contract in place by April 1, 2024.

1/22/2024
Consent

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

3. Resolution 2024-81

Award Bid #2023052 Town Wide Fire Alarm Inspection, Service & Security Monitoring - CRS #4524

WHEREAS, the Contract Compliance and Administration Department received bids on November 16, 2023 for Bid #2023052 for Town Wide Fire Alarm Inspection, Service & Security Monitoring; and

WHEREAS, the bid process resulted in responses from five (5) vendors, as per the attached bid analysis form;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award the bid to Davis-Ulmer Sprinkler Company, Inc. dba All State Fire & Security; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contract with Davis-Ulmer Sprinkler Company, Inc. dba All State Fire & Security.

1/22/2024
Consent

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

4. Resolution 2024-82

Award of Bid #2024004 NYS OGS Mini-Bid for (1) 2024 Chevy Silverado 3500 - CRS #4520

WHEREAS, Contract Compliance issued Mini-Bid #2024004 through NYS OGS for one (1) 2024 Chevy Silverado 3500; and

WHEREAS, bids were received 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 Dept. to award the Mini-Bid to Joe Basil Chevrolet for their low bid of $75,868,55; and

BE IT FURTHER RESOLVED, The Town Board authorizes the Supervisor to sign the contract with Joe Basil Chevrolet; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System due to the need to place the order with the vendor as soon as possible as the vehicle is the only one in stock.

1/22/2024
Consent

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

5. Resolution 2024-83

Award Bid #2024003 Refrigerant for Northtown Center at Amherst - CRS #4556

WHEREAS, the Contract Compliance and Administration Department received bids on January 11, 2024 for Bid #2024003 Refrigerant for the Northtown Center at Amherst; and

WHEREAS, the bid process resulted in responses from four (4) 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 the bid contract to Perfect Resource Group LLC; and

BE IT FURTHER RESOLVED, The Town Board authorizes the Supervisor to sign the

contract with Perfect Resource Group LLC; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System due to the fact that product is needed as soon as possible.

1/22/2024
Consent

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

6. Resolution 2024-84

Extension of Town Wide Towing Contracts - CRS #4535 (Original CRS/CMS #3791/3529); CRS #4538 (Original CRS/CMS #3790/3528)

WHEREAS, 9180 Transit Road, DBA Becker's Towing and Rusiniak's Service, Inc. have both agreed to extend their contracts for Town Wide Towing; and

WHEREAS, the Contract Compliance & Administration Dept. recommends extending these contracts;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Supervisor to sign the one-year contract extensions with 9180 Transit Road Inc. DBA Becker's Towing and Rusiniaks Service, Inc..

1/22/2024
Consent

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

H. COURT:

I. ECONOMIC DEVELOPMENT:

1. Resolution 2024-85

Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676

WHEREAS, kindly authorize the Supervisor to sign a contract with the New York State Department of Environmental Conservation (NYSDEC) to receive grant funds for the Amherst Organics Management Plan, CRS #3676, and;

WHEREAS, the awarded grant is $150,000 and the designated matching funds are $50,000, and;

NOW THEREFORE BE IT RESOLVED, the Town Board authorizes the Supervisor to sign the contract with the NYSDEC for the Amherst Organics Management Plan, CRS #3676.

1/22/2024
Consent

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

J. EMERGENCY SERVICES:

K. ENGINEERING SERVICES:

L. FINANCE:

M. HIGHWAY

1. Resolution 2024-86

Noco Organic Composting Agreement CRS #4463

NOW THEREFORE, BE IT RESOLVED, that the Town of Amherst is approved to enter into a Partnership with NOCO Enterprises LLC (DBA Buffalo River Compost), 2440 Sheridan Drive, Tonawanda, NY 14150 for Organics Management Partnership.

WHEREAS, the Town of Amherst agrees that the contract includes Composting Services for the capability and experience with habitat restoration, environmental consulting and remediation from 1/1/24 through 12/31/24.

BE IT FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this one (1) year contract subject to the Contract Routing System (CRS #4463) and the approval of the Town Attorney.

1/22/2024
Consent

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

2. Resolution 2024-87

NYS-OGS Contract Piggyback Public Safety Communications Equip/Svc-FM COMMUNICATIONS - CRS #4534

The Highway Department requests the Town Board give the Supervisor permission to sign a contract with FM Communications, Inc and the Town of Amherst. Purchases are for parts and service for Public Safety Communications Equipment (2-way radios) bases on NYS-OGS Award 23141, Group 77200, Contract PT68713 from 08/27/2019 through 08/26/2024.

FM Communications, Inc. is located at 1914 Colvin Blvd, Tonawanda, NY 14150.

BE IT FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this contract subject to the Contract Routing System (CRS#4534) and the approval of the Town Attorney.

1/22/2024
Consent

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

3. Resolution 2024-88

Authorize Supervisor to Sign LACAL EQUIPMENT INC Contract Extension - CRS #4540

Whereas, BID #2022035 Highway Department allows for the contract to be extended for a period of one (1) year at the same terms and conditions; and

WHERE AS, THE HIGHWAY DEPARTMENT IS REQUESTING APPROVAL FOR THE EXTENSION OF THE contract under Resolution 2023-47 from 1/2/24 through 1/2/25.

This contract is subject to the Contract Routing System (CRS #4540) extension and the approval of the Town Attorney.

1/22/2024
Consent

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

4. Resolution 2024-89

Funding - Sidewalk Snow Plowing Program - 2024

Please approve authorization to spend up to $10,000.00 for maintenance and repairs to the sidewalk snow plowing equipment from T4024:4002. Thank you for your time and consideration!

1/22/2024
Consent

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

5. Resolution 2024-90

Approval to Spend Funds - Veterans Memorial - 2024

The Veterans Memorial Fountain is in need of various maintenance and repairs to the filtration system, i.e. to include: various filter replacement and repair, pumps, chlorine, etc.

We are respectfully requesting the authorization of spending up to $4,000.00 from the Trust Account T4017:4002 for the various supplies and repairs.

Thank you for your time and consideration.

1/22/2024
Consent

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

6. Resolution 2024-91

Tree Planting - Escrow Funds from Agency Account - 2024

Please approve authorization to spend up to $100,000.00 from the Agency Account AG2022-0699 for the Spring and Fall 2024 season for various trees planted for new builds 2023-24.

Thank you for your time and consideration!

1/22/2024
Consent

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

7. Resolution 2024-92

Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal Fab - (Viking CRS # 4554/Valley Fab CRS #4555)

WHEREAS. BID #2019038, Highway Department, Dump Box, Plow Parts and Custom Metal Fabrication allows the contract to be extended for a period of (12) twelve months at the same terms and conditions; and

WHEREAS, the Highway Department is requesting approval for the extension of the contract under Resolution 2019-1302 from 12/13/2021 to 12/12/2023 to 12/12/2024 and

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Highway Department

to extend as follows the contracts with Valley Fab & Equipment, Inc. (CRS #1753/3114/4555) and Viking Cives, Inc (1755/3115/4554), and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the extension for the two (2) vendors subject to the Contract Routing System and the approval of the Town Attorney.

1/22/2024
Consent

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

N. HUMAN RESOURCES:

1. Resolution 2024-93

Supervising Fire Dispatcher/Central Fire Alarm

Please designate a Supervising Fire Dispatcher to head the Central Fire Alarm Office. Effective January 27, 2024 at an annual salary of $102,159.98, Grade 6, Step M of the Exempt Department Head Salary Schedule for Thomas Merrill.

Replacing an employee who retired.

1/22/2024
Consent

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

2. Resolution 2024-94

Public Safety Dispatcher/Police Department (2 Positions)

Please appoint two (2) Public Safety Dispatchers to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil

Service Rule XIII. Effective January 23, 2024 at an annual salary of $49,206, Grade 13, Step A for Jennifer Green and Nicholas White.

Contingent upon completing all pre-employment requirements and Erie County Rules and Regulations.

1/22/2024
Consent

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

3. Resolution 2024-95

Maintenance Worker/Building Maintenance/Facilities

Please appoint a Maintenance Worker to the Building Maintenance/Facilities Department. Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an hourly rate of $20.05, Grade 4, Step C for Matthew Yorko.

This is a promotion for an employee currently serving as Laborer.
Replacing an employee who retired.

1/22/2024
Consent

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

4. Resolution 2024-96

Senior Laboratory Technician (Environmental Chemistry)/Engineering

Please appoint a Senior Laboratory Technician (Environmental Chemistry) to the Engineering Department/Plant #16. Permanent from list, pending satisfactory completion of

a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an annual salary of $65,269, Grade 12, Step J for Andrew Szymanski.

This is a Permanent appointment for a current employee who has been serving Provisionally.

1/22/2024
Consent

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

5. Resolution 2024-97

Electronics Technician Wastewater Facilities-Eng./Plant #16

Please appoint an Electronics Technicians Wastewater Facilities to the Engineering Department/Plant #16. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an annual salary of $63,088, Grade 14, Step E for Joseph Abramo.

Contingent upon completing all employment requirements and Erie County Rules and Regulations.

This is a Permanent appointment for a current employee who has been serving Provisionally.

1/22/2024
Consent

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

6. Resolution 2024-98

Electronics Technician Wastewater Facilities-Eng./Plant #16

Please appoint an Electronics Technician Wastewater Facilities to the Engineering Department/Plant #16. Permanent, from list, pending satisfactory completion of a

probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an annual salary of $67,348, Grade 14, Step G for Richard Hoose.

This is a Permanent appointment for a current employee who has been serving Provisionally.

1/22/2024
Consent

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

O. INFORMATION TECHNOLOGY:

1. Resolution 2024-99

Disposal of Obsolete Equipment

According to the Town's Property Disposition Policy (Res. 2011-1032), the Information Technology Department is requesting approval from the Town Board to dispose of an HP DL380 Server which is no longer in service and a battery backup UPS which is also no longer is service.

1/22/2024
Consent

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

P. PLANNING:

1. Resolution 2024-100

Scheduling a Public Hearing Regarding Designation of 22 Chateau Terrace as a Local Historic Landmark

WHEREAS, The Town of Amherst has many significant historic, architectural and cultural landmarks within its borders; and

WHEREAS, On March 21, 2023 the Town of Amherst Historic Preservation Commission heard a resident petition for a landmark designation application for 22 Chateau Terrace; and

WHEREAS, The Amherst Historic Preservation Commission held a public hearing on August 8, 2023 on the designation of the 22 Chateau Terrace as a Town historic landmark; and

WHEREAS, Finding that it is associated with the lives of individuals or of people or of events significant in national, state or local history and embodies the distinctive characteristics of the Craftsman-style architecture and represents an established and familiar visual feature of the neighborhood as the first residential structure for the gateway of the Chateau neighborhood, and the HPC voted at its September 12, 2023 meeting to recommend historic designation of the 22 Chateau Terrace to the Town Board; now therefore be it

RESOLVED, In accordance with the Historic Preservation Commission Rules of Order, the Amherst Town Board schedules a public hearing on the date of February 5, 2024 on the matter of designation of 22 Chateau Terrace as a local historic landmark.

1/22/2024
Consent

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

2. Resolution 2024-101

Town Acceptance of a Land Donation at 75 Tupelo Lane

WHEREAS, Cimato Enterprises, owner of land identified as 75 Tupelo Lane (SBL: 26.06-8-33), has offered to donate a 1.6± acre vacant parcel of land located on the west end of Tupelo Lane, east of its intersection with Cherry Laurel Lane to the Town; and

WHEREAS, the Bicentennial Comprehensive Plan supports the acquisition of property to preserve wetlands and open space; and

WHEREAS, 75 Tupelo Lane would provide both a new open park space, and preserve the sensitive environmental features of open wetlands; and

WHEREAS, the land donation request was distributed to Town Departments for review, following Cimato Enterprises' agreement to remove a condition that it retain an access easement, and no objections were expressed to the Town accepting the land donation, and

NOW THERFORE BE IT RESOLVED, that the acquisition of this property is an unlisted action pursuant to Part 617 of State Environment Quality Review (SEQR); and pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that the Town accepts the land donation of 75 Tupelo Lane (SBL: 26.06-8-33)and directs the Town Attorney's Office to work with Cimato Enterprises to complete the land transfer; and be it further

RESOLVED, the Town Supervisor is authorized to execute all necessary agreements and documents to complete the land donation acceptance.

1/22/2024
Consent

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

Q. POLICE:

1. Resolution 2024-102

Request for Additional Funds 2023 Asset Forfeiture Trust Account

Town Board Agenda Item: January 22, 2024

TO: **Town Board**

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

RE: **Request for Additional Funds**
2023 Asset Forfeiture Trust Account

Kindly adopt a resolution authorizing the approval to spend up to an additional $10,000.00 from T2917 Asset Forfeiture Trust Account. This account is federally regulated by instituted guidelines regarding the expenditure of funds.

Thank you.

SPC: msl
C: Tim Koller, Deputy Town Clerk **(Agenda Item: January 22, 2024)**

1/22/2024
Consent

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

2. Resolution 2024-103

Amendment to the "APD Safety Education" Trust & Agency Account

WHEREAS, on March 2, 2009 under Resolution 2009-233, the Town Board created the "APD Safety Education" Trust and Agency account for the Police Department to utilize for its Safety Education Program to promote important services and programs throughout the community; and

WHEREAS, this account and its funds are to be used solely for the use of Safety Education programs; and

WHEREAS, over the past few years the efforts of the Community Policing Unit of the Police Department has grown exponentially bringing additional services, initiatives and events to the community; and

WHEREAS, the Safety Education program and the Community Policing program are working hand in hand educating, promoting and building a healthy relationship with the community through various types of community events and initiatives; and

WHEREAS, there are no budgeted funds dedicated to the Department's Community Policing program in the Town of Amherst and majority of its events are largely funded by community donations; and

WHEREAS, the Department does receive monetary donations from local businesses and residents which the department utilizes for both its Safety Education and Community Policing efforts; and

NOW THEREFORE BE IT RESOLVED, that the "APD Safety Education" Trust and Agency account be amended to allow the use of funds within that account to be used for the Department's Community Policing initiatives; and

BE IT FURTHER RESOLVED, that this amended account is authorized to accept donations for the continuation of the Safety Education and Community Policing Programs;

BE IT FURTHER RESOLVED, that the "APD Safety Education" Trust and Agency account be renamed the "APD Safety Education & Community Policing" Trust and Agency account.

SPC:msl
C: Tim Koller, Deputy Town Clerk **(Agenda Item: January 22, 2024)**

1/22/2024
Consent

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

R. SENIOR SERVICES:

1. Resolution 2024-104

Request to Use Trust and Agency Funds

We respectfully request Town Board permission to authorize the Supervisor to approve the request to spend up to $5000.00 in Trust and Agency Funds- Account T2100.

1/22/2024
Consent

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

S. SEWER/PLANT 16:

1. Resolution 2024-105

Payment Authorization HACH Company, Inc.

The Engineering Department, WPCF division is requesting that the Town Board authorize the payment of Hach Company invoices 13839207 and 13837436 for $20,490.28. These invoices were generated to purchase suspended solids probes and controllers via Hach (the sole source supplier) and NYSOGS contract PC67243 as noted on the original quote. Unbeknownst to the plant staff and also our Hach sales representative, the contract had expired a couple weeks prior to the provided quote.

The urgency for this order was that the equipment was used provide real time monitoring to assist the operations group with confirmatory data relative to the ongoing plant upset and deployed mitigation measures.

Funds for this request are available in KP1721-4972.

Thank you for considering this request.

1/22/2024
Consent

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

T. YOUTH AND RECREATION:

1. Resolution 2024-106

Advertising Agreement and Trade - CRS #4516

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Bee Publications, Inc. for monthly publication of the Northtown Center at Amherst skate calendar.

1/22/2024
Consent

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

2. Resolution 2024-107

Advertising Agreement (Bee Publications) - CRS #4491

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Bee Publications, Inc. for Amherst Youth & Community Coalition advertising under the Town of Amherst Drug Free Communities grant.

1/22/2024
Consent

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

3. Resolution 2024-108

Authorization to Pay Vendor

WHEREAS, due to a miscommunication between multiple departments working on the same project, Huron Sprinklers was asked to winterize the newly constructed fields at the North Amherst Recreation Center, and

WHEREAS, Huron Sprinklers has performed work for the Town of Amherst in the past, and

WHEREAS, Huron Sprinklers did not at the time have a contract to perform such work, and

WHEREAS, this was not discovered until after the work was completed, and

WHEREAS, the work was completed satisfactorily and without incident, and

WHEREAS, the Youth & Recreation Department is in the process of securing a competitive contract for such work in the future,

NOW THEREFORE BE IT RESOLVED that the Amherst Town Board authorizes the payment of $550.00 via PO 2316642 to Huron Sprinklers.

1/22/2024
Consent

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

4. Resolution 2024-109

NARCE Travel Authorization

Authorize Eric Guzdek, Brian Bush and Linda Groff to travel to the North American Rink Conference & Expo in Milwaukee, WI from 5/20-5/24/2024 to complete training.

1/22/2024
Consent

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

5. Resolution 2024-110

CADCA Travel Authorization

Authorize Anne Rohrer to attend the CADCA National Leadership Forum in National Harbor, MD from 1/29/24-2/2/24 as a requirement of the town's Drug Free Communities grant. Also authorize reimbursement of expenses to non-town employee Sally Yageric who is attending as a member of the town-sponsored Amherst Youth & Community Coalition.

1/22/2024
Consent

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

XIV. UNFINISHED BUSINESS

XV. COMMUNICATIONS

1. Communication 2024-4

Request for Public Hearing - Modification to Amend SEQRA Findings for 1565, 1575-1659 & 1641-1703 Niagara Falls Boulevard

Request from James Boglioli, Esq. for a public hearing regarding a modification to Amend SEQRA Findings for 1565, 1575-1659 & 1641-1703 Niagara Falls Boulevard.

This hearing has been scheduled for February 26th.

1/22/2024
Consent

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

2. Communication 2024-5

Fee Request Waiver - Windermere Boulevard Elementary School

Request from Windermere Boulevard Elementary School seeking a waiver of the fire prevention permit fee for a pancake breakfast to be held on February 3, 2024.

The Building Commissioner response is attached.

1/22/2024
Consent

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

3. Communication 2024-6

Resident Correspondence

Letter submitted by Sabine Kutt.

1/22/2024
Referred to Town Attorney

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

XVI. PUBLIC IMPROVEMENT PERMITS

1. Resolution 2024-111

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4551

The Engineering Department is requesting approval of the contract between the Town of Amherst and Nussbaumer & Clarke, Inc. This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

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

2. Resolution 2024-112

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4553

The Engineering Department is requesting approval of the contract between the Town of Amherst and Marquis Engineering, PC. This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be

paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

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

3. Resolution 2024-113

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4552

The Engineering Department is requesting approval of the contract between the Town of Amherst and Greenman-Pedersen, Inc. (GPI). This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

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

4. Resolution 2024-114

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4550

The Engineering Department is requesting approval of the contract between the Town of Amherst and DiDonato Associates. This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

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

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 10:10 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 10:11 PM.

1. Resolution 2024-115

Firefighter Cancer Benefit Program 2024 CRS ID #4557

Suspension to Town Board Agenda Item January 22, 2024

TO: Town Board

FROM: Michael Szukala, Councilmember

DATE: January 19, 2024

RE: **Firefighter Cancer Benefit Program 2024 CRS ID #4557**

WHEREAS, the New York State legislature mandated cancer coverage for volunteer firefighters effective January 1, 2019,

WHEREAS, the Amherst Town Board adopted on December 10, 2018 Resolution 2018-1292 approving basic mandated cancer coverage from The Hartford Life and Accident Insurance Company,

NOW THEREFORE BE IT RESOLVED, that the Amherst Town Board approves the renewal of the Basic Cancer Coverage through The Hartford Life and Accident Insurance Company Policy Number 681360 administered by AIS Administrators and payment of the total amount of $41,451.43. Approval is pending successful completion of the Contract Routing System process due to the fact that the policy went into effect January 1, 2024.

1/22/2024
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, Berger, Lavin, Szukala, Marinucci

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 Berger and unanimously approved 5-0. Public Expression was opened at 10:12 PM.

The following speakers addressed the Town Board:
Chris Drongosky, Youngs Rd - streetlights, westwood and archive building
Debra Majchrzycki-Kroening, 1221 N French Rd - salaries
Cynthia Seitz, 32 Berehaven Dr - taxes
Fred Lenz, 64 Chateau Ter E - upgrading the sound system, support of Wehrle project

There were no further speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Councilmember Berger and unanimously approved 5-0. Public Expression was closed at 10:30 PM.

XIX. ADJOURNMENT

There being no further business to come before the Town Board, Supervisor Kulpa moved to adjourn, seconded by Councilmember Berger and unanimously approved 5-0. The Town Board meeting of January 22, 2024 was adjourned at 10:30 PM.

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
Initiated by: **Francina J. Spoth**
Co-Sponsored by:

DOC ID: 28495 **RESOLUTION 2024-57** **HEARING CLOSED**

The Second of Two Public Hearings Required by the U.S. Department of Housing and Urban Development for the FY 2024 Community Development Action Plan

The second Public Hearing for the FY2024 Community Development Action Plan.

1/22/2024
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 7:04 PM.

James Quinn, Assistant Planner, presented.

Allison Sagraves, 171 Amherstdale Rd. - questioned the administrative costs

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:17 PM.

RESULT:	**HEARING CLOSED**

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 28496 **RESOLUTION 2024-58** **DECISION DATE**

2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment

Request to amend the Bicentennial Comprehensive Plan for 2280 Wehrle Drive from Commercial-Office to Mixed Residential.

1/22/2024
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 7:18 PM.

Attorney Jeff Palumbo presented.

Dennis Hoban, 216 California Dr - asked about the size of the townhomes

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the February 5th Town Board meeting, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:25 PM.

RESULT:	**DECISION DATE [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

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 Dir

Town Board Agenda of January 22, 2024

January 17, 2024

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

Subject: Request to Amend the Bicentennial Comprehensive Plan for 0.42± acres of land from Commercial-Office to Mixed Residential, BCPA-2023-03; property located at 2280 Wehrle Drive. (BCPA-2023-03)

Honorable Members:

This request is to amend the Bicentennial Comprehensive Plan to change the land use designation on Figure 6 from "Commercial-Office" to "Mixed Residential" to allow for the potential rezoning and construction of a four (4) unit, two (2) story apartment building.

The subject property is a 0.42± acre rectangular shaped parcel located at the northwest corner of Wehrle Drive and Ridge Court South. Wehrle Drive is an Erie County highway, designated as a minor arterial on Figure 9 of the Bicentennial Comprehensive Plan. The subject site is currently vacant, undeveloped land and is located within the noise contour and approach path for primary runway 5-23 at the Buffalo Niagara International Airport.

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

History of previous rezoning requests:

The subject parcel was zoned Residential District Three (R-3) with the adoption of the Town wide Zoning Map and Ordinance on January 19, 1976.

The Planning Board offers the following findings in accordance with New York State Town Law §272-a.

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

Based upon the Planning Department Staff memorandum dated June 29, 2023 (attached) and public input from the hearing held on November 16, 2023 by the Planning Board, the Planning Board finds that:

The proposed request is generally consistent with the following sections of the Comprehensive Plan:

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

- Chapter 2, Plan Concept: Section 2.2 "Vision Statement" and 2.3 "Key Initiatives".
- Chapter 3, Land Use and Development; Section 3.3.1 "Residential Uses".
- Chapter 5, Economic Development.
- Chapter 8, Housing and Neighborhoods, Section 8-3 "Encourage higher density residential uses in mixed-use developments and other appropriate locations".

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The four unit apartment building as illustrated on the concept plan is inconsistent with the allowable uses in the R-3 zoning district. Any future development on the parcel will need to comply with the applicable regulations in the Zoning Ordinance.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

A small mixed residential use at the subject location would be consistent with the scale and character of the existing single-family homes and small-scale commercial-office development that surround the site.

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location.

RECOMMENDATION

The Planning Board at their meeting of November 16, 2023 held a public hearing on the subject Plan amendment and recommended that in accordance with New York State Town Law §272-a Subsection 4, the request to amend the Bicentennial Comprehensive Plan be approved. The Planning Department requests that if the Town Board desires to act on the Plan amendment, 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 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\Bicentennail Comp Plan Amends\2023\BCPA-2023-03_(2280_Wehrle_Dr)\BCPA-2023-03_TB_Letter_01172024.docx
cc: Martin Polowy, Town Attorney

Planning Board Approval November 16, 2023
Ayes 7; Noes 0

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

TOWN OF AMHERST
PLANNING BOARD
COMPREHENSIVE PLAN AMENDMENT
BCPA-2023-03

PETITIONER

Michael Keller
5391 Thompson Road
Clarence, NY 14031

PROPERTY LOCATION

2280 Wehrle Drive

NOV 20 2023 AM

WHEREAS the Town of Amherst Planning Board on Thursday, November 16, 2023 held a public hearing on the proposed amendment to the Bicentennial Comprehensive Plan, and

WHEREAS the Planning Board has reviewed the Town of Amherst Bicentennial Comprehensive Plan, and

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

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

WHEREAS the Planning Board finds that:

A. The proposed request is generally consistent with the Zoning Ordinance and with the following sections of the Comprehensive Plan:
- Chapter 2, Plan Concept: Section 2.2 "Vision Statement" and 2.3 "Key Initiatives".
- Chapter 3, Land Use and Development; Section 3.3.1 "Residential Uses".
- Chapter 5, Economic Development.
- Chapter 8, Housing and Neighborhoods, Section 8-3 "Encourage higher density residential uses in mixed-use developments and other appropriate locations".

B. The subject property is suitable for uses permitted by the current versus the proposed land use designation.

C. The proposed change improves the balance of land uses, and meets a specific demand in the Town.

D. The land surrounding the subject request is comprised of single-family housing to the north, office buildings to the east and west and industrial uses to the south across a minor-arterial roadway developed according to the requirements of the R-3, OB and RD zoning districts.

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

TOWN OF AMHERST
PLANNING BOARD
COMPREHENSIVE PLAN AMENDMENT
BCPA-2023-03

PETITIONER

Michael Keller

PROPERTY LOCATION

2280 Wehrle Drive

NOV 20 2023

NOW THEREFORE BE IT RESOLVED that the Planning Board recommends to the Town Board in accordance with New York State Town Law §272-a Subsection 4, that the request to amend the Bicentennial Comprehensive Plan be approved.

The foregoing resolution was adopted by the Town of Amherst Planning Board, November 16, 2023; moved by Penberthy; seconded by Gill; ayes 7; noes 0.

Robert J. Gilmour, Planning Board Chair

11-18-2023
Date

SM/ac
X:\Current_Planning\Files\Bicentennail Comp Plan Amends\2023\BCPA-2023-03_(2280_Wehrle_Dr)\BCPA-2023-03_resolution_111623.doc-

cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Michael Keller, 5391 Thompson Road, Clarence, NY 14031
Jeffery Palumbo, Block, Longo, LaMarca & Brzezinski, PC, 9276 Main Street, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

TOWN OF AMHERST PLANNING DEPARTMENT

Request for Bicentennial Comprehensive Plan Amendment

For Official Use

File #: _____ **Acreage** _____ **Fee $** _____

Address Verified by Assessor's Office _____
VERIFIED BY DATE

Application Received by Planning Department _____
ACCEPTED BY DATE

Materials & Fee Paid to Town Clerk _____
ACCEPTED BY DATE

		Fill In Applicable Fees
COMPREHENSIVE PLAN AMMENDMENT	**$0***	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$15**	_____

Fee schedule subject to change by future Town Board action

TOTAL FEE: $___

TO BE COMPLETED BY APPLICANT

Petitioner:

Name: Michael Keller

Address: 5391 Thompson Road

Clarence (City) NY (State) 14031 (Zip Code\)

Phone: 716-566-8853 Fax _____

Email: michael55mk@gmail.com

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Owner of Land (if different than above):

Name: James O'Connell

Address: 81 Oakwood Drive

Amherst (City) NY (State) 14221 (Zip Code)

Phone: 716-310-1100 Fax

E Mail: jodhvac@gmail.com

Representative (Architect, Engineer, Landscape Architect, Surveyor or Attorney):

Name: Jeffery D. Palumbo

Address: 9276 Main Street

Clarence (City) NY (State) 14031 (Zip Code)

Phone: 716-308-7211 Fax

E Mail: jpalumbo@blockandlongo.com

Petitioner's interest in property

- ☐ Option to purchase
- ☐ Owner
- ☑ Other (explain) Contingent Contract

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)

N/A

Street address(es) of land subject to Bicentennial Comprehensive Plan Amendment:

2280 Wehrle Drive

SBL #(s): 81.12-3-16

INFORMATION ON REQUEST

1. **The undersigned hereby requests the Honorable Town Board to amend the following text sections of the Bicentennial Comprehensive Plan:**

   Section(s) #/page(s): N/A

Note: If the requested amendment does not involve a map change, skip #2 and #3.

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

2. The undersigned hereby requests the Honorable Town Board to amend the Conceptual Land Use Map (Figure 6) and/or Commercial and Mixed-Use Designations (Figure 6A) as follows:

FROM:

- ☐ 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

*Additional Designations in Figure 6-A:

- ☐ Suburban Center
- ☐ Suburban Corridor
- ☐ Traditional Areas

TO:

- ☐ 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

*Additional Designations in Figure 6A:

- ☐ Suburban Center
- ☐ Suburban Corridor
- ☐ Traditional Areas

3. Other Bicentennial Comprehensive Plan Map Amendments (if applicable):

Figure # or Name: Figure 6 Conceptual Land Use Plan

4. Information on prospective action (*to be provided in separate attachment*):

A. Description of any prospective action:

B. Rationale for request of amendment:

1. How will the requested amendment to the Bicentennial Comprehensive Plan consistent with *Section 2.2 (Vison Statement)*?
2. How will the requested amendment to the Bicentennial Comprehensive Plan consistent with *Section 2.3 (Key Initiatives)*?

C. How is the requested amendment align with the defined policies in Sections;

1. *3.0 Land Use and Development?*
2. *4.0 Natural and Cultural Resources?*
3. *5.0 Economic Development?*
4. *6.0 Transportation?*
5. *7.0 Infrastructure?*
6. *8.0 Housing & Neighborhoods?*
7. *9.0 Community Facilities & Services?*

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

SECTION 809 CERTIFICATION

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 25 *day of* SEPTEMBER, 20 23

Notary Public, Erie County, New York

TRACY A. MURRAY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01MU5077295
Qualified in Genesee County
Commission Expires May 5, 20 27

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.

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.

Town of Amherst Planning Department 5583 Main Street Williamsville New York 14221
(716) 631-7051; Fax: (716) 631-7153; Web: www.amherst.ny.us

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Comprehensive Plan Amendment Analysis 2280 Wehrle Drive

As set forth in the Town of Amherst Bicentennial Comprehensive Plan ("Plan") amendment application form, Petitioner must provide information on the prospective action in relation to the plan. The application form questions are outlined below in bold with Petitioner's response noted.

A. Description of Prospective Actions:

Petitioner's Response: Petitioner is proposing to build four (4) townhomes, each two (2) story in height.

B. Rationale for Request of Amendment:

1. How will the requested amendment be consistent with Section 2.2 (Vision Statement)

Petitioner's Response: The requested amendment to allow four (4) townhouse units provides a diversity of choice of property units in the area. The Wehrle Drive corridor from Transit to Youngs is characterized by a combination of medical and other office buildings, commercial development, recreation facilities, and a sprinkling of residential development. In addition, it will serve to enhance the community character by investing in the revitalization of an area that has not seen new housing in some time. Finally, this is consistent with the Shared Direction as set forth in Section 2.2 as it enhances the diverse economy of the Town, strengthening the tax base and using infill development as set forth as a goal in the comprehensive plan.

2. How will the requested amendment be consistent with Section 2.3 (Key Initiatives)

Petitioner's Response: Regarding "Aesthetic/Community Character" as set forth in the plan, the amendment will only add to the renowned beauty, character and environmental quality of the Town. A first-class townhome development seeks to "raise the bar" by adding a new lifestyle choice in an underserved area.

Regarding the "Revitalization" initiative in the plan, again, this proposal injects new life and new investment into an area of the Town, by providing a diverse choice of living for empty nesters, young professionals, or others seeking limited maintenance obligations.

Finally, the amendment is consistent with the "Governance" initiative as the proposed townhomes do not introduce inconsistency or unfairness in zoning and land use.

C. How is the requested amendment aligned with the defined policies in sections:

1. 3.0. Land Use and Development?

Petitioner's Response: The requested amendment adds new diverse housing and an investment to the established community and does so with a context-sensitive architectural and site design. The current commercial-office designation on the land use map is

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

unworkable in today's environment. There are a multitude of empty offices in the immediate area. Specifically, the requested amendment seeks to have the Properties classified as "Mixed Residential." Mixed Residential is appropriate for residences along roads like Wehrle Drive and as a buffer to more traditional single-family neighborhoods. The Properties and Development perfectly capture Mixed Residential as set forth in the Comprehensive Plan.

2. ***4.0 Natural and Cultural Resources:***

Petitioner's Response: As set forth in the Plan, "best management practices" will be employed to retain stormwater on site, thus reducing downstream flooding and allowing pollutants to filter out over time. Additionally, silt fences and various other techniques will be employed to prevent sediment from leaving this site during construction.

3. ***5.0 Economic Development:***

Petitioner's Response: As stated in the Plan, "A healthy tax and employment base are essential not only to Amherst's economy, but also the Town's quality of life." Further, the amendment, by introducing new housing, meets the town's objective of maintaining Amherst's strong tax base. Additionally, the proposed townhomes will respect the character and quality of life in the area.

4. ***6.0 Transportation:***

Petitioner's Response: The plan defines the area as "Traditional Character" which describes a corridor located within higher intensity centers and other neighborhoods. Traffic from the proposed townhome will not significantly alter any traffic patterns in the area.

5. ***7.0 Infrastructure:***

Petitioner's Response: The proposed amendment will not stress existing storm or waste water service. Other utilities such as water, electric and gas are available on site.

6. ***8.0 Housing and Neighborhoods:***

Petitioner's Response: The proposed amendment furthers the Comprehensive Plan objective to achieve a diversity of housing options. The Petitioner will ensure that the diverse housing option will be well managed and contribute to the surrounding neighborhood's health and stability. While the proposed amendment changes the Comprehensive Plan conceptual land use plan, Figure 6, by making the Properties mixed residential, the change allows Amherst residents to remain in Amherst by downsizing into a maintenance free environment.

7. ***9.0 Community Facilities & Services:***

Petitioner's Response: The proposed townhomes are not far from the Main Street and Transit Road corridors. This will allow the residents to visit nearby businesses, restaurants, movie theaters, etc.

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Progress Drawings - Not For Construction

SUTTON architecture "Design is Guiding"

5405 Main Street (Second Floor) Williamsville, NY 14221 (716) 632-7126 Fax 632-7979

Job Number 23-000

Proposed Project For:

Mike Keller

2280 Wehrle Drive Amherst, NY

Copyright Sutton Architecture® 2023

No.	Description	Date

WARNING: Unauthorized changes and uses of these plans and specifications without the written permission of Sutton Architecture are prohibited and will be prosecuted to the fullest extent of the law.

Site Plan

Drawn By: Jonathan M.
Date: 9-25-23
Checked: D. Sutton
As Noted

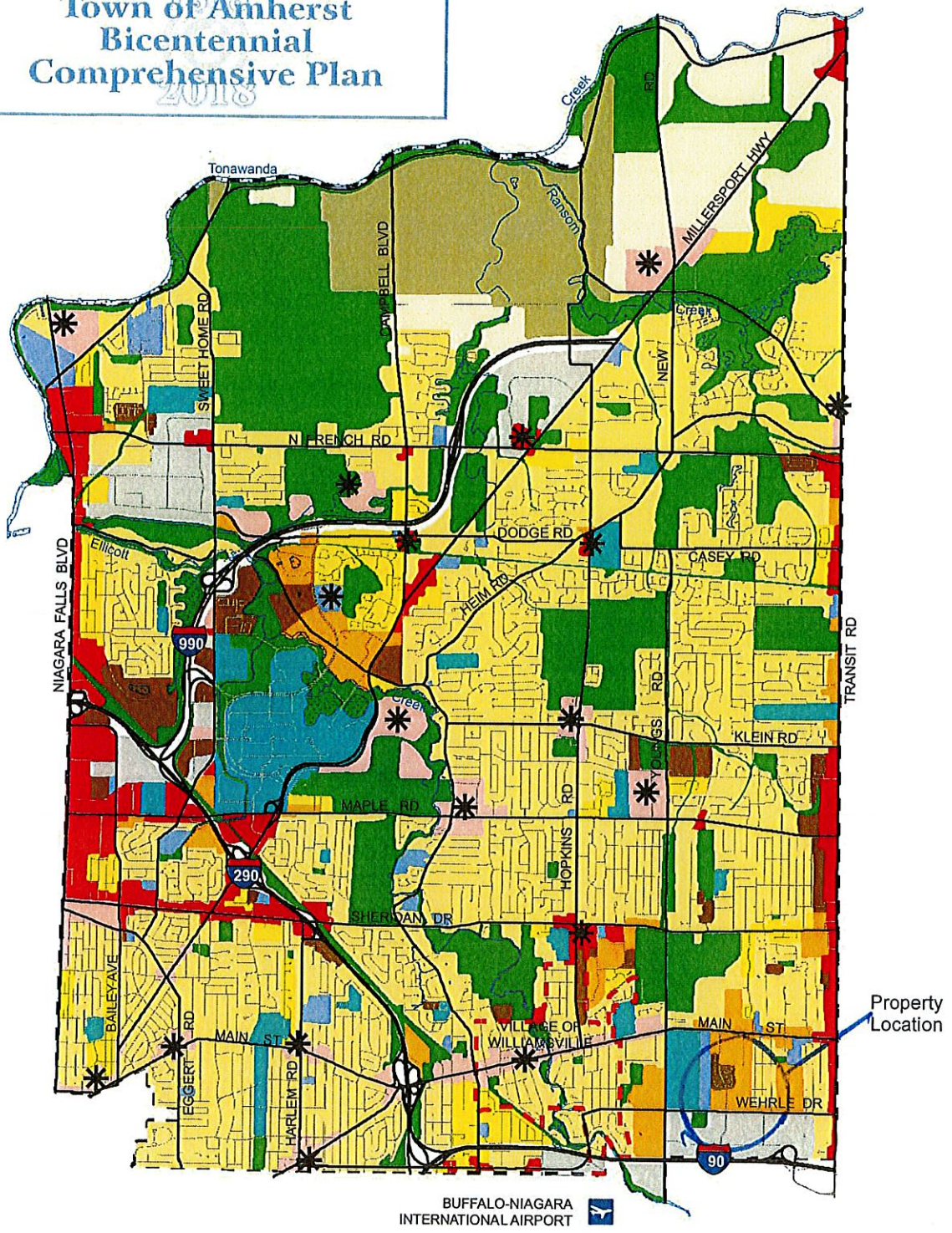
Sheet No.: A-1

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Map Graphic
depicting requested Comprehensive Plan Change

Town of Amherst Bicentennial Comprehensive Plan

1818 2018



Requested Classification

Conceptual Land Use Plan

FIGURE 6

- Rural Residential
- Single Family Residential
- Mixed Residential
- Medium Residential
- Commercial - Retail
- Commercial - Office
- Industrial - Office
- Mixed Use
- Community Facilities
- Educational Campus
- Recreation, Open Space & Greenways
- Agriculture
- Transportation
- Surface Water
- Mixed Use / Activity Centers
- Municipal Boundary
- Village of Williamsville Boundary

SOURCE NOTES:

Original Source Data Provided by the Town of Amherst Information Technology Department, URS Corporation and Wallace Roberts & Todd, LLC

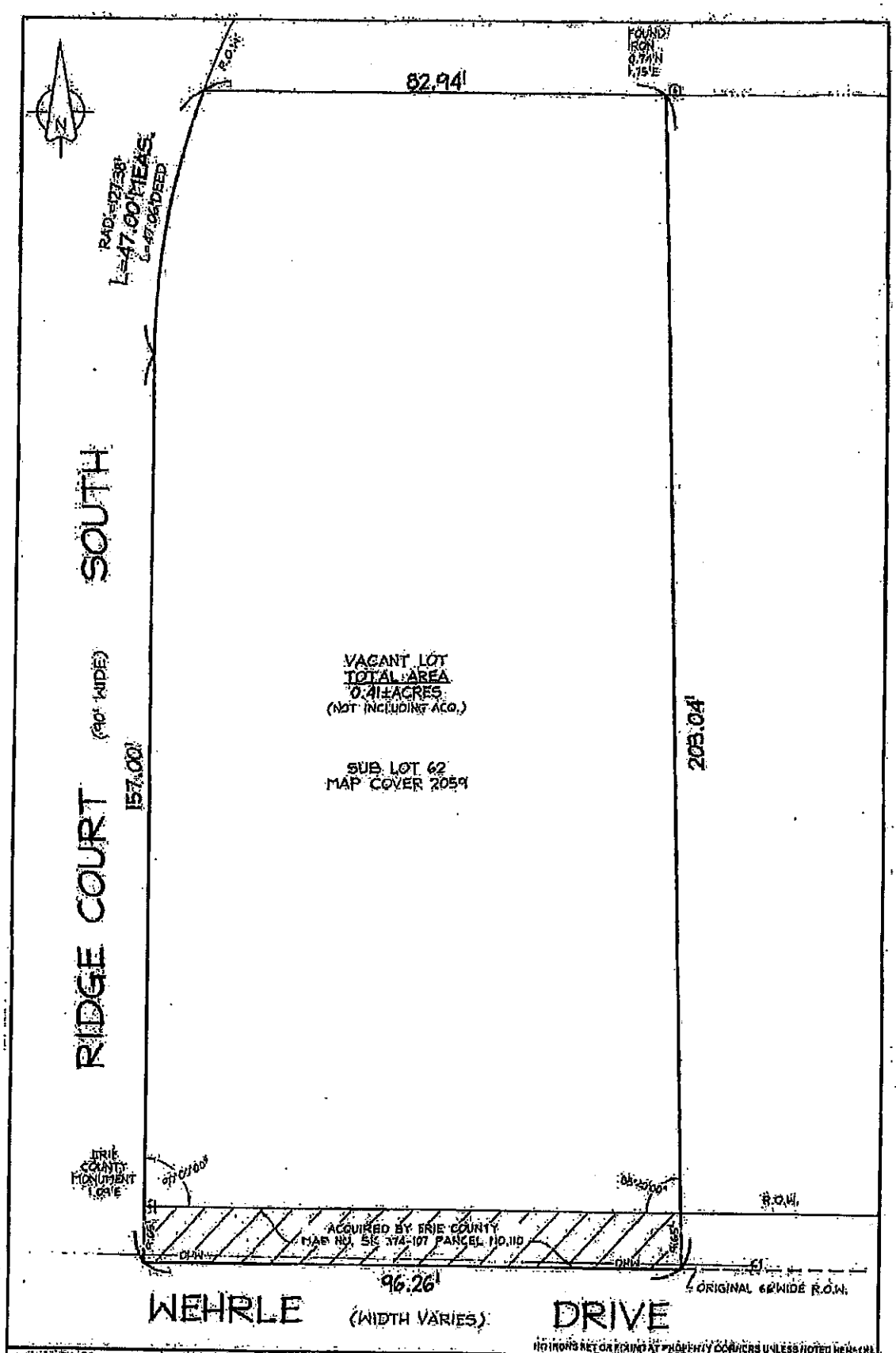
Map Compiled by the Town of Amherst Planning Department

Date: March, 2009

N

0 0.25 0.5 0.75 1 1.25 Miles

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)



NO IRONS SET ON KNOWN AT PROPERTY CORNERS UNLESS NOTED HEREON

3556 Lake Shore Road, Suite 500, Buffalo, NY 14219.
p (716) 827-8000 f (716) 270-6091 www.nussclarke.com

This survey was prepared subject to the limits of an abstract of title and is subject to any state of facts that may be revealed by an examination of such.

Unauthorized alteration or addition to any survey, bearing a certification, plan or report is a violation of section 7209, subdivision 2 of the New York State Education Law.

NUSSBAUMER & CLARKE, INC
ENGINEERS AND SURVEYORS
EST. 1993

BOUNDARY SURVEY
2280 WEHRLE DRIVE
Part of Lot 105, Township 12, Range 7
Holland Land Company's Survey
Town of Amherst
County of Erie, State of New York

Date of Survey: 08/25/2020 Project No.: 20010-1152

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Suggested Legal Description:

All That Tract or Parcel of Land, situate in the Town of Amherst, County of Erie, State of New York, being part of Lot No. 105, 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 Map Cover number 2059 is known as subdivision Lot number 62.

EXCEPTING lands conveyed to the County of Erie for highway purposes filed in the Erie County Clerk's office in Liber 6414 at Page 25.

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Short Environmental Assessment Form
Part 1 - Project Information

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

2280 Wehrle Drive - Michael Keller

Name of Action or Project:
2280 Wehrle Drive Townhomes

Project Location (describe, and attach a location map):
2280 Wehrle Drive - Corner of Ridge Court South

Brief Description of Proposed Action:
Four - 2 Story Townhomes

Name of Applicant or Sponsor:	Telephone: (716) 566-8853
Michael Keller	E-Mail: michael55@gmail.com

Address:
5391 Thompson Road

City/PO:	State:	Zip Code:
Clarence	NY	14031

	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 government Agency? If Yes, list agency(s) name and permit or approval: Site plan approval - Planning Board - Town Board Rezoning Approval	☐	☑

3. a. Total acreage of the site of the proposed action? .41 acres
   b. Total acreage to be physically disturbed? .41 acres
   c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? .41 acres

4. Check all land uses that occur on, are adjoining or near the proposed action:

☐ Urban ☐ Rural (non-agriculture) ☑ Industrial ☑ Commercial ☑ Residential (suburban)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other(Specify):
☐ Parkland

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

	NO	YES	N/A
5. Is the proposed action,			
a. A permitted use under the zoning regulations?	☑	☐	☐
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 services available at or near the site of the proposed action?	☐	☑	
c. Are any pedestrian accommodations or bicycle routes available on or near the 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 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?	☑	☐	
b. 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?	☑	☐	
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: _____ _____ _____	☑	☐	

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

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?	☑	☐
16. Is the project site located in the 100-year flood plan?	☑	☐
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?	☑	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	☐	☑
If Yes, briefly describe: Directed to existing storm sewers.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	☑	☐
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 CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: Jeffery D. Palumbo - As Attorney Date: 09/25/2023

Signature: Title: Attorney

PRINT FORM

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

JUSTIN S. WHITE
ATTORNEY AT LAW
5662 MAIN STREET
WILLIAMSVILLE, NY 14221

Tel: (716) 631-9100
Fax: (716) 631-7546

e-mail: jsw@sbwattorneys.com

August 20, 2023

TO WHOM IT MAY CONCERN

Re: REZONING APPLICATION 2280 Wehrle Drive, Amherst, NY

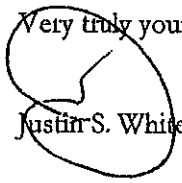
Dear Sir/Madam:

On behalf of my client, Mr. James O'Donnell, Mr. Michael Keller is authorized to submit a rezoning application relative to the above property.

Mr. O'Donnell's address is 81 Oakwood Drive. Williamsville, NY. His telephone # is (716) 310-1100..

Thank you for your attention to this matter.

Very truly yours,



Justin S. White

JSW/ams
enclosure

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)



BCPA-2023-03

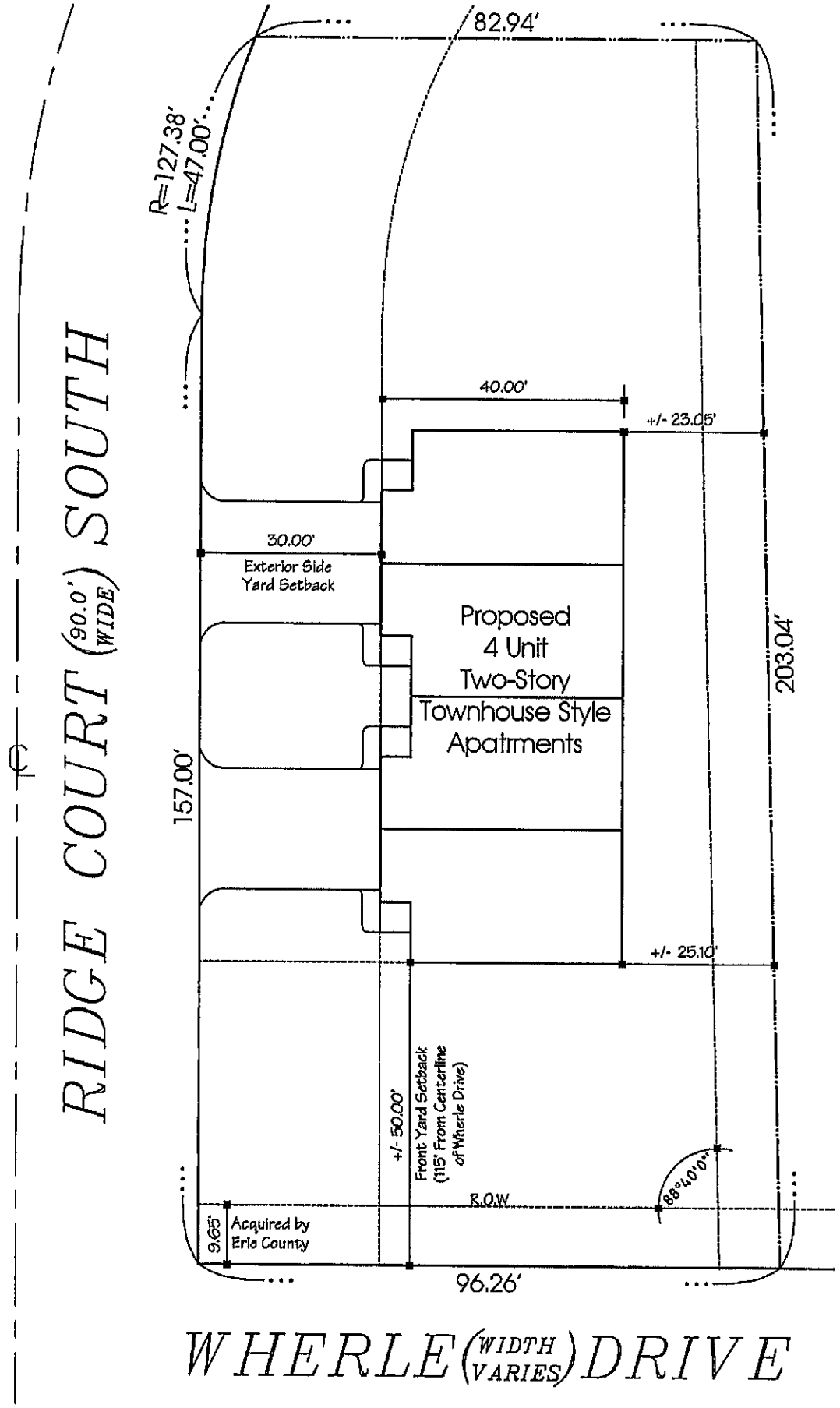
Request to Amend the Bicentennial Comprehensive Plan from Commercial to Mixed Residential
Property Located at 2280 Wehrle Drive

Michael Keller, Petitioner
November 16, 2023

2280 Wehrle Drive

Prepared by the Town of Amherst Planning Department

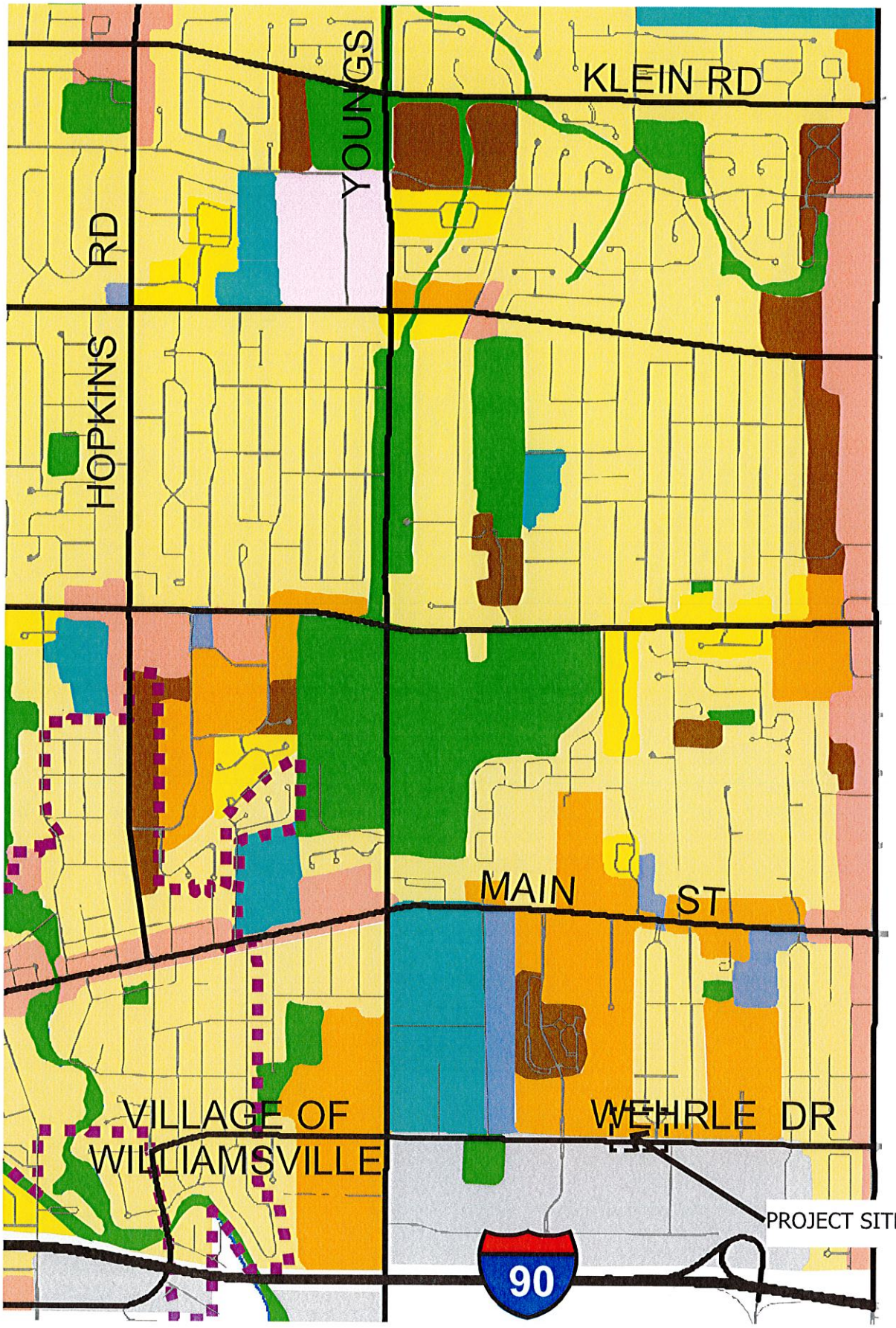
Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)



CONCEPT PLAN

BCPA_03
2280 Wehrle Drive

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)



COMPREHENSIVE PLAN
FIGURE 6

BCPA_03
2280 Wehrle Drive

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)



BCPA-2023-03

Request to Amend the Bicentennial Comprehensive Plan
from Commercial to Mixed Residential
Property Located at 2280 Wehrle Drive

Michael Keller, Petitioner
November 16, 2023

2280 Wehrle Drive

Prepared by the Town of Amherst Planning Department

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Daniel Ulatowski, AICP
Assistant Planning Director

MEMORANDUM

TO: Scott Marshall, Principal Planner
FROM: Roberta Rappoccio, Associate Planner
DATE: October 11, 2023

RE: BCPA-2023-03 Bicentennial Comprehensive Plan Amendment Review

Proposed:	Amend Comprehensive Plan to change land from Commercial-Office to Mixed Residential
Property located at:	2280 Wehrle Drive
Plans received:	September 26, 2023

The subject request has been reviewed by staff with the following findings:

2.0 Vision Statement – "Characteristics of Community"
Staff concurs with the petitioner's response that the proposed use "will serve to enhance the community character by investing in the revitalization of an area that has not seen new housing in some time."

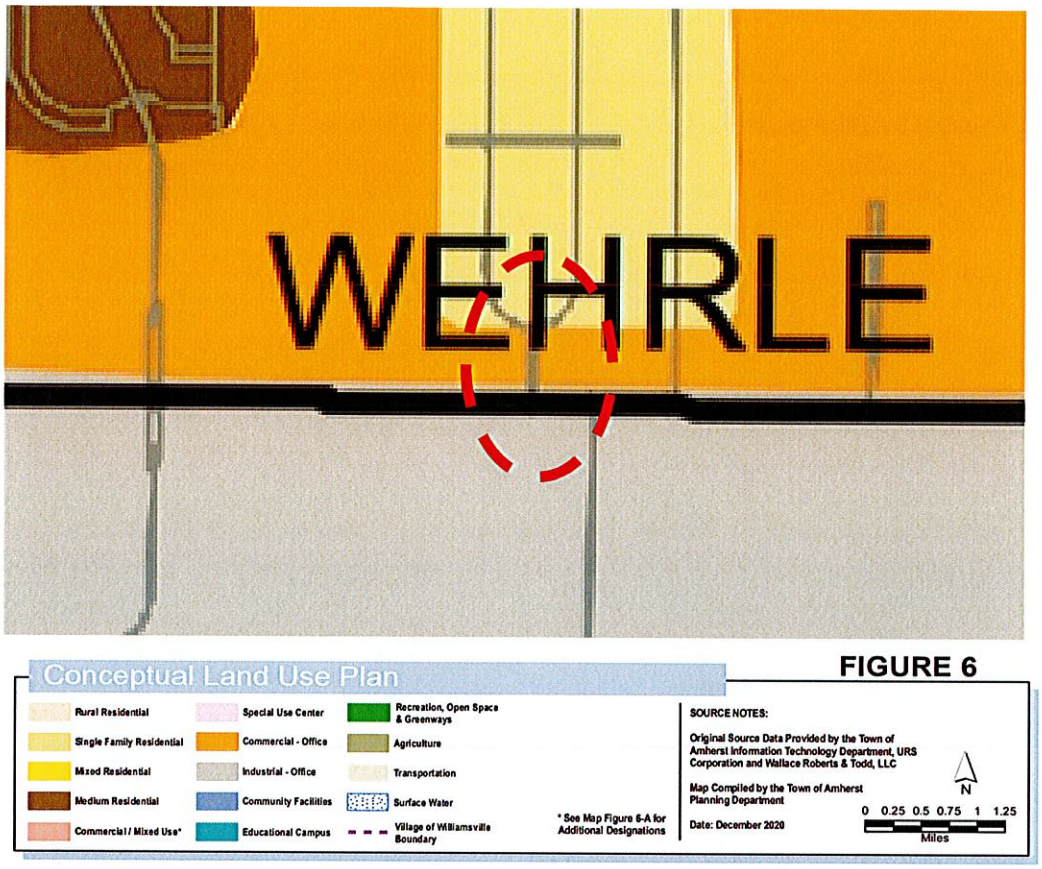
The Conceptual Land Use Plan (Figure 6) in the Town's Comprehensive Plan identifies this area as Commercial - Office (orange). In Figure 6 (below), the neighborhood directly north of the proposed site is an established single-family residential neighborhood that extends north to Main Street and then east to the east side of Oakwood Drive. The two adjacent properties along Wehrle Drive are small-scale single-story office developments.

2.3 Key Initiatives – "Aesthetic/Community Character" and "Revitalization"
Staff concurs with the petitioner's response that the use will result in providing a new housing opportunity for empty nesters, young professionals and others seeking limited maintenance obligations.

A higher housing density than is currently present in this area, with a potential of up to 12 units per acre, would be a good transition between the stable office and commercial developments along Wehrle Drive and the stable adjacent single-family residential development to the north of the proposed project. The proposed parcel is 0.41 acres that would accommodate approximately 3-4 attached units depending on the multi-family residential zoning district.

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

FIGURE 6



3.0 Land Use and Development

3.3.1 Residential Uses - Mixed Residential (4- 12 residential units per acre)

The proposed site is an opportunity for infill development. Such development should be consistent with the scale and character of the existing the single-family homes and small-scale commercial-office development that surround the site. The proposed parcel is approximately 0.41 acres and would accommodate a reasonable sized multi-family development. However, neither single-family residential nor office use would be viable investments at this time in this location. A mixed residential use would be a viable investment in the corridor as a transitional development amongst the existing uses.

While the densities of Mixed Residential use are higher than the adjacent single-family residential neighborhood to the north, the existing mix of office buildings and residential uses along Wehrle Drive suggests that a mixed residential development would be a suitable infill development and transition between these uses.

With this petition, consideration should also be given to the potential transition of the adjacent sites to the east (2288 Wehrle Drive) and to the west (2250 Wehrle Drive) from Commercial – Office use to Mixed Residential use if the opportunity presented itself in the future. Given the increasing vacancy rates for office developments in Amherst and the results of the Town's recent RKG Economic Study showing the decline in demand for these traditional office developments, transitioning existing office developments into other uses would be in keeping with the future demand for additional housing options.

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

4.0 Natural and Cultural Resources
The subject request has no future implications on important natural or cultural resources in the area.

5.0 Economic Development
Staff concurs with the petitioner's response that introducing new housing meets the Town objective of maintaining a strong tax base; and will respect the character and quality of life in the area.

6.0 Transportation
Staff concurs with the petitioner's response that the proposed townhome development would not significantly alter traffic patterns in the area.

Consideration should be given to a shared access driveway for the proposed multi-dwelling development off Ridge Ct S.

7.0 Infrastructure
Staff concurs with the petitioner's response that the proposed amendment would not stress existing storm or waste water services. Other utilities such as water, electric and gas are available on site.

8.0 Housing and Neighborhoods
8-3 Encourage higher density residential uses in mixed-use developments and other appropriate locations. The staff concurs with the petitioner's response that "Higher density housing will contribute to achieving a number of Comprehensive Plan objectives including *increasing housing diversity* and affordability, decreasing automobile dependency and reducing consumption of open space through more compact development patterns."

Housing in this area consists mainly of single-family homes on individual lots. The existing established neighborhood to the north of the proposed site is comprised of modest sized homes on medium-sized, individual lots. The neighborhood is adjacent to office developments and connects to a minor arterial roadway. A higher density infill development would fit into the location given that the proposed parcel is small and could accommodate a reasonable density that would act as a transitional development for the neighborhood.

9.0 Community Facilities and Services
Staff concurs with the petitioner's response that the location of the proposed development nearby the Main Street and Transit Road corridors gives residents access to the businesses, services, and restaurants located along these corridors.

Note: The concept plan provided with the application is being used for informational purposes only. This department review is not to be construed as endorsement or approval of the concept plan or that it complies with the requirements of Section 203 or Section 204 of Town Code.

Should you have questions regarding this correspondence, please contact Roberta Rappoccio, Associate Planner at rrappoccio@amherst.ny.us or Kim Amplement, Senior Planner at kamplement@amherst.ny.us.

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

DH/RR/KA
X:\Current_Planning\Files\Bicentennail Comp Plan Amends\2023\BCPA-2023-03_(2280_Wehrle_Dr)\DRAFT_BCPA-2023-03_LongRange_100223.doc
cc: Jeff Palumbo, Block, Longo, LaMarca & Brzezinski, 9276 Main Street, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

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: September 29, 2023

SUBJECT: Request to Amend the Bicentennial Comprehensive Plan for 0.42±Acres of Land from **Commercial-Office to Mixed Residential**
BCPA-2023-03
Property Location: **2280 Wehrle Drive**
Petitioner: **Michael Keller**

Assessor's Office agrees with request

cc: Jeff Palumbo, 9276 Main Street, Suite 3, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Amherst

Town of Amherst Planning Department

RECEIVED

SEP 27 2023

TOWN OF AMHERST
PLANNING DEPT

Erie County, New York

Brian J. Kulp
Supervisor
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D

September 26, 2023

TO: Timothy Koller, Deputy Town Clerk
Roberta Rappoccio, Associate Planner (Planning copy)
Emily Murphy, Town Assessor
Douglas Gesel, Supervising CEO, Bldg. Dept.
Vaishali Reberholt, Assistant Town Engineer
Patrick Lucey, Supt. of Hwys/ Eric Blocher, General Crew Chief
Chris Schregel, Traffic/Safety Coordinator
Brian Barnes, Senior GIS Analyst (letter only)
Bryan Parnell, Fire Chiefs' Association
Martin Polowy, Town Attorney (Local Law Only) (Attorney copy)
Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECDPW
NYSOPRHP

RECEIVED
OCT 02 2023
TOWN OF AMHERST
PLANNING DEPT.

FROM: Scott Marshall, Principal Planner TV

SUBJECT: REQUEST TO AMEND THE BICENTENNIAL COMPREHENSIVE PLAN – FOR 0.42± ACRES OF LAND FROM COMMERCIAL-OFFICE TO MIXED RESIDENTIAL; **BCPA-2023-03**; PROPERTY LOCATED AT **2280 WEHRLE DRIVE.** MICHAEL KELLER, PETITIONER.

REVIEW:

☒ No concerns with request

☐ The following additional information is required to complete review: _____

☐ Request is not reviewable because: _____

☐ General comments relative to your agency's interests: _____

Please provide comments by _____, 2023

Please call the Planning Department contact above if additional information is required (631-7051).

Reviewed By: Doug Utter **Date:** 10/2/23

DU/TV/bf
X:\Current_Planning\Files\Bicentennial Comp Plan Amends\Forms\BCPA_Transmittal_Updated_032322.doc

cc: Jeffrey Burroughs, Town Engineer
Jeffery Palumbo, 9276 Main Street, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Amherst

Town of Amherst Planning Department

9900691F

Erie County, New York

RECEIVED
OCT 18 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AI
Planning Director
Daniel J. Ulatowski, A
Assistant Planning Dir

September 26, 2023

TO: Timothy Koller, Deputy Town Clerk
Roberta Rappoccio, Associate Planner (Planning copy)
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SUBJECT: REQUEST TO AMEND THE BICENTENNIAL COMPREHENSIVE PLAN – FOR 0.42± ACRES OF LAND FROM COMMERCIAL-OFFICE TO MIXED RESIDENTIAL; **BCPA-2023-03**; PROPERTY LOCATED AT **2280 WEHRLE DRIVE.** MICHAEL KELLER, PETITIONER.

REVIEW:

☑ No concerns with request

☐ The following additional information is required to complete review: _____

☐ Request is not reviewable because: _____

☑ General comments relative to your agency's interests: DSCA will be required at the time of Site Plan review

Please provide comments by _____, **2023**

Please call the Planning Department contact above if additional information is required (631-7051).

Reviewed By: _____ **Date:** 9/29/23

DU/TV/bf
X:\Current_Planning\Files\Bicentennail Comp Plan Amends\Forms\BCPA_Transmittal_Updated_032322.doc

cc: Jeffrey Burroughs, Town Engineer
Jeffery Palumbo, 9276 Main Street, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Amherst

Town of Amherst Planning Department

RECEIVED

Erie County, New York

SEP 27 2023

TOWN OF AMHERST
BUILDING DEPT

Brian J. Kulpa
Supervisor
Daniel C. Howard, Al
Planning Director
Daniel J. Ulatowski, A
Assistant Planning Dir

September 26, 2023

RECEIVED
OCT 26 2023
TOWN OF AMHERST
PLANNING DEPT.

TO: Timothy Koller, Deputy Town Clerk
Roberta Rappoccio, Associate Planner (Planning copy)
Emily Murphy, Town Assessor
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Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECDPW
NYSOPRHP

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SUBJECT: REQUEST TO AMEND THE BICENTENNIAL COMPREHENSIVE PLAN – FOR 0.42± ACRES OF LAND FROM COMMERCIAL-OFFICE TO MIXED RESIDENTIAL; **BCPA-2023-03**; PROPERTY LOCATED AT **2280 WEHRLE DRIVE.** MICHAEL KELLER, PETITIONER.

REVIEW:

☑ No concerns with request

☐ The following additional information is required to complete review: _____

_____

☐ Request is not reviewable because: _____

_____

☐ General comments relative to your agency's interests: _____

_____.

Please provide comments by _____, 2023

Please call the Planning Department contact above if additional information is required (631-7051).

Reviewed By: Kristen Blalock **Date:** 10/17/23

DU/TV/bf
X:\Current_Planning\Files\Bicentennail Comp Plan Amends\Forms\BCPA_Transmittal_Updated_032322.doc

cc: Jeffrey Burroughs, Town Engineer
Jeffery Palumbo, 9276 Main Street, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

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 Dir

RECEIVED
OCT 1 2023
TOWN OF AMHERST
PLANNING DEPT.

September 26, 2023

TO: Timothy Koller, Deputy Town Clerk
Roberta Rappoccio, Associate Planner (Planning copy)
Emily Murphy, Town Assessor
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Integrated Review Coordinator, ECDEP
ECDPW
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SUBJECT: REQUEST TO AMEND THE BICENTENNIAL COMPREHENSIVE PLAN – FOR 0.42± ACRES OF LAND FROM COMMERCIAL-OFFICE TO MIXED RESIDENTIAL; **BCPA-2023-03**; PROPERTY LOCATED AT **2280 WEHRLE DRIVE.** MICHAEL KELLER, PETITIONER.

REVIEW:

☑ No concerns with request
☐ The following additional information is required to complete review: _____
_____
☐ Request is not reviewable because: _____
_____
☐ General comments relative to your agency's interests: _____
_____.

Please provide comments by _____, **2023**

Please call the Planning Department contact above if additional information is required (631-7051).

Reviewed By: NBRobshaw **Date:** 10/17/23

DU/TV/bf
X:\Current_Planning\Files\Bicentennail Comp Plan Amends\Forms\BCPA_Transmittal_Updated_032322.doc
cc: Jeffrey Burroughs, Town Engineer
Jeffery Palumbo, 9276 Main Street, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

Amherst

Town of Amherst Planning Department

9900697

Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard, A
Planning Director
Daniel J. Ulatowski, A
Assistant Planning Dir

RECEIVED
OCT 04 2023
TOWN OF AMHERST
PLANNING DEPT.

September 26, 2023

TO: Timothy Koller, Deputy Town Clerk
Roberta Rappoccio, Associate Planner (Planning copy)
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SUBJECT: REQUEST TO AMEND THE BICENTENNIAL COMPREHENSIVE PLAN – FOR 0.42± ACRES OF LAND FROM COMMERCIAL-OFFICE TO MIXED RESIDENTIAL; **BCPA-2023-03**; PROPERTY LOCATED AT **2280 WEHRLE DRIVE.** MICHAEL KELLER, PETITIONER.

REVIEW:

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☐ The following additional information is required to complete review: _____

☐ Request is not reviewable because: _____

☐ General comments relative to your agency's interests: _____

Please provide comments by _____, **2023**

Please call the Planning Department contact above if additional information is required (631-7051).

Reviewed By: C. Schregel **Date:** 10/3/23

DU/TV/bf
X:\Current_Planning\Files\Bicentennail Comp Plan Amends\Forms\BCPA_Transmittal_Updated_032322.doc

cc: Jeffrey Burroughs, Town Engineer
Jeffery Palumbo, 9276 Main Street, Clarence, NY 14031

Attachment: BCPA-2023-03 TB letter packet 012224 (RES-2024-58 : 2280 Wehrle Drive - Bicentennial Comprehensive Plan Amendment)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 27999 **RESOLUTION 2023-775** **ADJOURNED**

Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road

Request for a special use permit for a Tier III Solar Energy System at 800 & 850 New Road.

9/18/2023
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 7:10 PM.

Marc Kenward of Erdman Anthony & Leigh McEntire of Sol Source Power LLC, presented.

The following speakers opposed the project:
Sally Blazynski, 905 New Rd
Heidi Wagonblott, 885 New Rd
Christopher Wyles, 861 New Rd

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn, seconded by Deputy Supervisor Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:50 PM.

10/2/2023
A motion to adjourn was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

1/22/2024
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 7:25 PM.

Marc Kenward of Erdman Anthony & Leigh McEntire of Sol Source Power LLC, presented.

The following speakers addressed the Town Board:
Isabell Posner, 317 Ruskin Rd
Matt Plunkett, 299 Northill Dr
Karen Piazza, 89 San Fernando Ln
Tara Kim, 1315 Dodge Rd
Sally Blazynski, 905 New Rd

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the hearing until the February 5th Town Board meeting, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was adjourned at 7:57 PM.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Shawn Lavin, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

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

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Town Board Agenda of September 18, 2023

September 12, 2023

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

Subject: Request for a Special Use Permit for a Tier III Solar Energy System; property located at 800 & 850 New Road, Sol Source Power LLC, Petitioner. (SP-2023-01).

Honorable Members:

The project consists of the construction of a Tier III Solar Energy System (5Mw of power) that includes an access road, the solar array equipment and associated pads interior to the site. The array will be located on 27.52 ± acres of the total 51.98 ± acres of land. A fence will surround the entire project site and vegetative screening will be used along all property lines to conceal the array.

The subject property is a 51.98 ± acre rectangular parcel located on the west side of New Road approximately 800 ± feet north of its intersection with Millersport Highway. The subject site is vacant with scattered trees. The site includes two (2) Federal Jurisdictional Wetland areas and is located within the 100-Year Floodplain. New Road is an Erie County roadway, classified as a collector roadway in Figure 9 of the Bicentennial Comprehensive Plan.

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

HISTORY OF PREVIOUS REZONING REQUESTS / SITE PLAN ACTIONS:

Rezoning:

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

Z-1984-26:
A request to rezone land (3.4± acres) at 800 New Road from Suburban Agriculture (SA) to General Business (GB) for the establishment of a nursery-garden center was approved by the Town Board on December 3, 1984 subject to the following deed restriction;

1. That said parcel, together with any additions or improvements thereon, shall solely and exclusively have a primary use as a nursery and secondary use as a landscaping contract business only as started above, and shall not be at any time devoted to any other business use unless consented to or approved by the Town Board of the Town of Amherst.

Honorable Town Board

Request for a Special Use Permit;
Property located at 800 & 850 New Road
Agenda of September 18, 2023

Z-1984-26_A:
A request to remove a declaration of restrictions imposed as part of a rezoning decision limiting use to nursery and landscaping business was approved for the property located at 800 New Road by the Town Board on March 20, 2023.

Z-2022-12:
Request to rezone 3.4± Acres of Land from GB to SA for the property located at 800 New Road was approved by the Town Board on March 20, 2023.

Site Plans:

SP-1985-03	A site plan for the construction of a 1,140 sq. ft. building with 11 parking spaces for a nursery with retail sales on 3.26 +/- acres of land zoned GB was approved by the Planning Board on January 17, 1985.
SP-1985-03_A	Proposal to construct a one-story, 1,728 sq. ft. building with 15 parking spaces on approx. 3 acres of land zoned GB was approved by the Planning Board on November 19, 1987.

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

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN
Section 3.3.8 of the Bicentennial Comprehensive Plan states:

> *"Ensuring the long-term viability of agricultural and farming operations is key to maintaining diverse neighborhoods including those with rural character."*

The subject parcel is located within 500 feet of an Erie County Agricultural District and consists of soils that are of statewide importance for farming. A decommissioning plan has been submitted that documents the required procedure to return the land to the state in which it exists prior to development. The proposed use is not a farming activity, however the applicant is required to co-locate an agricultural use, such as an apiary or sheep grazing. The long-term viability of the land to be an agricultural use will not be threatened by the proposed use as a Tier III Solar Energy System and therefore is consistent with the Bicentennial Comprehensive Plan.

Section 4-7 of the Bicentennial Comprehensive Plan states:

> *"Apply best management practices (BMP's) to reduce water quality impact of development."*

Preserve natural vegetation and institute clearing limits for new construction.

The subject project contains two jurisdictional wetlands, Wetland 1, which is 0.92± acres and Wetland 2, which is 11.36± acres. Within Wetland 2, 2.18± acres of trees will be removed as part of the subject solar project. Mitigation for impacts to the wetland habitat for such tree losses should be sought by the Town.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE
The proposed Tier III Solar Energy System is consistent with Section 3-3-1 of the Zoning Ordinance which establishes the purpose of the Suburban Agriculture district as providing areas for the development of uses that include farms, farm-related activities and non-intensive compatible uses. A Tier III Solar energy system is a non-intensive farm compatible use and therefore is consistent with the intent of the zoning district.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Honorable Town Board

Request for a Special Use Permit;
Property located at 800 & 850 New Road
Agenda of September 18, 2023

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The project is located in the Suburban Agriculture (SA) zoning district; neighboring uses are single family residential on the east, west, and south zoned SA, vacant land to the north zoned SA, and vacant land to the east and south zoned Traditional Neighborhood Development District (TND); therefore, the project is consistent with surrounding land use and zoning designations.

ADEQUATE SERVICES AND UTILITIES

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

The applicant, as required in §203-6-10-7B3(d)(5) has provided confirmation from National Grid for establishment of interconnection to the grid. The applicant has also submitted an Operations and Maintenance Plan that outlines the applicant or their contractor's responsibility for maintaining each component of the system in working condition on a regular basis including inspections on an annual or semi-annual schedule. The Operations and Maintenance Plan also outlines applicable safety requirements for the maintenance of the system.

RECOMMENDATION

The Planning Board at their meeting of August 17, 2023 held a public hearing and approved a site plan for the subject request, and pursuant to Local Law #3-82, as amended, made a determination that the requirements of SEQR have been completed and issued a Negative Declaration for the subject site plan.

Tier III Solar Energy Systems are a permitted use subject to the issuance of a Special Use Permit by the Town Board pursuant to §203-8-6-1D of Town Code,

The Planning Department requests that if the Town Board desires to act on the Special Use Permit 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. The petitioner has not yet met with the Amherst IDA to discuss terms of a P.I.L.O.T. Agreement or a Community Benefit Agreement. The Town Board is encouraged to delay a decision date until the Amherst IDA has a draft P.I.L.O.T. and Community Benefit Agreement from the petitioner. Additionally, as a condition of Special Permit approval, the petitioner should provide a wetland habitat restoration plan for the 2.18± acres of tree removal that are proposed within jurisdictional wetland 2.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/TV/ac
Att.
X:\Current_Planning\Files\Site Plans\2023\SP-2023-01_(800_&_850_New_Road)_2023\SP-2023-01_TB_Letter.docx
cc: Martin Polowy, Town Attorney

Planning Board Approval August 17, 2023
Ayes 6; Noes 0; Absent 1

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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

'23 AUG 25 AM9:45

SEQR
Negative Declaration

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency:	Town of Amherst Planning Board	**Project:**	SP-2023-01
Address:	5583 Main Street Williamsville, NY 14221 (716) 631-7051	**Date:**	August 17, 2023

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: Site Plan Review

SEQR Status: Type 1 Action

Description of Action: The construction of a Tier III Solar Energy System (5Mw of power) that includes a solar array, an access road and associated equipment pads interior to the site. The array will be located on 27.52 ± acres of the total 51.98 ± acres of land and a fence will surround the entire project site. Work will include the site improvements not specifically stated above, including, stormwater, utilities, grading, lighting, paving, and landscaping.

Location: 800 & 850 New Road, Amherst, Erie County

Petitioner: Sol Source Power, LLC

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

'23 AUG 25 AM9:45

REASONS SUPPORTING THIS DETERMINATION

Based on information submitted by the applicant including a Full Environmental Assessment Form (EAF) - Part I, (as amended) and a complete site plan application, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that this action will not have a significant impact on the environment, as follows:

1. The Engineering Department on April 18, 2023 reviewed the Grading, Drainage and Utility, and Erosion Control Plans submitted on April 14, 2023. A Custom Soil Resource Report for the subject site was prepared by the United States Department of Agriculture with the National Resources Conservation Services and submitted to the Planning Department on January 23, 2023. 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 Stormwater Pollution Prevention Plan (SWPPP) submitted on July 20, 2023 was also reviewed. Based on its review of these documents, the Stormwater Management Officer has determined that the project has or will have met all applicable requirements and has no objection to its approval.

2. The Planning Department reviewed a Landscape Plan submitted on July 18, 2023 and determined that it meets or exceeds Zoning Ordinance requirements for greenspace. The Landscape Plan has or will have met all Zoning Ordinance and Town requirements for landscaping.

   A Forestry Assessment Report prepared by Keister Consulting Inc., stated that the removal of tress on the subject site is justified due to the lack of significant trees both in size and health. It was further stated that many of the existing trees are being negatively impacted by insects and that the existing groundcover would prohibit the growth of new trees.

   Further, a Habitat Assessment Report was prepared by Earth Dimensions Inc., concluded that the subject site contains a potentially suitable habitat for the Monarch Butterfly and the Northern long-eared Bat. In response, the petitioner has agreed to use a wildflower seed mix to mitigate for the potential impacts to the Monarch Butterfly' habitat. The New York State Department of Environmental Conservation (NYSDEC) in their letter dated May 23, 2023, states that there is "no records of rare or state-listed animals or plants, or significant natural communities at the project site or in its immediate vicinity".

   Therefore, 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.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

'23 AUG 25 AM9:45

3. The project is not expected to create any substantive conflict with the Town Comprehensive Plan. The Planning Department in their review of August 1, 2023 has reviewed the application documents and Building Department in their review of April 19, 2023 has reviewed the application documents and determined that the subject project has or will have met all International Building Code – 2015 and Zoning Ordinance regulations.

4. The project is within an area identified by the State as having potential archaeological or historical significance. A Phase 1 Archeological Investigation was prepared by Hartgen Archeological Resources and received by the Planning Department on July 18, 2023 concluded that the project will not have a significant impact on historical or cultural resources. The NYS Office of Parks, Recreation and Historic Preservation has reviewed the project and, as stated in their letter of June 13, 2023, determined that there will be no 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 project is located in the Suburban Agriculture (SA) zoning district; neighboring uses are single family residential on the east, west, and south zoned SA, vacant land to the north zoned SA, and vacant land to the east and south zoned Traditional Neighborhood Development District (TND); therefore, the project is consistent with surrounding land use and zoning designations.

6. The proposed subject development will include the construction of a Tier III Solar Energy System which will not cause a major change in the use of either the quantity or type of energy.

7. The project will not create any hazard to human health. The Fire Chief's Association on April 21, 2023, has reviewed the project and has no objection to the approval of the site plan, as all requirements of this agency has or will have been met.

8. The project 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 use of sheep, goats, lambs or practices such as Apiculture is required to be incorporated into the project to maintain an agricultural use of that land. Further, a vegetative management plan has been submitted and reviewed by the Town's Landscape Architect that includes the preservation of existing vegetation and soils. The construction of a Tier III Solar Energy System on approximately 53% of the subject site (27.52 out of 51.98 acres) will be consistent with the scale of surrounding land uses.

9. The function of the proposed construction of a Tier III Solar Energy System will not significantly increase the number of people using the site over its previous level of use.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

'23 AUG 25 AM9:46

10. Review by the Town Traffic/Safety Board dated April 20, 2023, and NYSDOT dated February 2, 2023, indicates that significant negative traffic impacts are not expected to result from the proposed project.

11. A coordinated review of the project has been undertaken by Town Departments, in addition to those mentioned above, Highway on March 27, 2023, Assessor on February 2, 2023, , and Right-of-Way Agent on February 2, 2023 along with outside agencies including the Erie County Department of Environment and Planning on February 22, 2023, New York State Department of Transportation on February 2, 2023, New York State Department of Environmental Conservation on February 9, 2023, and the New York State Office of Parks, Recreation and Historic Preservation on June 13, 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 cause significant negative environmental impacts.

Planning Board Approval
Moved by: Chmiel; Seconded by: Kahn Ayes 6, Noes 0, Absent 1 (Raffaele)

Thomas J. Voigt, Assistant Planner — Date 8/24/23

Robert J. Gilmour, Planning Board Chair — Date 8/24/23.

TV/ac
X:\Current_Planning\Files\Site Plans\2023\SP-2023-01_(800_&_850_New_Road)_2023\SP-2023-01_neg dec_081723.docx
cc: Commissioner of Building
Town Engineer
Fire Chiefs'
Highway
Traffic/Safety
ECDEP
NYSDEC
Steve Long, Sol Source Power, 1 Washington Place, Troy, NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Rd., Ste. 200, Rochester, NY 14620

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST
PLANNING BOARD
SITE PLAN RESOLUTION
SP-2023-01

PETITIONER

Sol Source Power, LLC
1 Washington Place
Troy, NY 12180

PROPERTY LOCATION

800 & 850 New Road

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WHEREAS, the Town of Amherst Planning Board on Thursday, August 17, 2023 held a public hearing on a Site Plan for the construction of a Tier III Solar Energy System, and

WHEREAS, the Planning Board reviewed the plans and specifications for the proposed project, and

WHEREAS, the Site Plan was referred to the Town's various review agencies, and

WHEREAS, in accordance with Section 8-7-9 of the Zoning Ordinance, the Planning Board finds that:

A. The proposed site plan is consistent with the development plan if one is required.

B. The proposed site plan is consistent with the purpose and specific requirements of the Zoning Ordinance and generally consistent with the policies of the Comprehensive Plan.

C. Adequate services and utilities will be available prior to occupancy.

D. The site plan is consistent with all other applicable laws.

E. Pursuant to Local Law #3-82, as amended, the Planning Board has determined that the requirements of SEQR are complete and that the subject proposal is not expected to have a significant adverse effect on the environment.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act is required since hydric / potentially hydric soils have been identified on the parcel.

NOW THEREFORE BE IT RESOLVED that in accordance with 6 NYCRR, Part 617 and Local Law #3-82, as amended, the Planning Board has issued a Negative Declaration attached hereto, and

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Board, in accordance with Section 8-7 of the Zoning Ordinance approves said Site Plan subject to the following conditions:

1. That the consideration of signs is specifically excluded from this approval as they require a separate review and approval by the Town.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST
PLANNING BOARD
SITE PLAN RESOLUTION
SP-2023-01

PETITIONER

Sol Source Power, LLC

PROPERTY LOCATION

800 & 850 New Road

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2. That all dumpsters/trash containers and all mechanical equipment, utility structures, multiple meter boards, generators, and similar appurtenances, including those which are mounted on any part of a primary structure shall be appropriately screened with a fence, wall, and/or landscaping. Provide gate on dumpster enclosure that shall be closed whenever dumpster is not being serviced, enclosure shall be high enough to screen the dumpster(s) within.

3. That as-built record drawings, including location of utilities, be provided to the Engineering Department prior to issuance of a Certificate of Occupancy by the Building Department.

4. At the time of inspection for the certificate of compliance, the Town can require supplemental plantings in accordance with §203-7-2-4B(a) of Town Code to satisfy buffer and screening requirements.

5. The parcels located at 800 & 850 New Road to be merged prior to issuance of final approved site plan drawings.

6. That the petitioner is required to mitigate any glare produced by the array along Hopkins, Smith, New Roads and Millersport Highway by supplementing the existing vegetative screening with additional line-of-sight plantings on the subject site if complaints relating to glare are received by the Building Department.

7. That the petitioner provide a copy of any and all USACOE, USFW, and NYSDEC permit applications to the Planning Department when filed.

8. Tree removals outside of the fenced compound will not be authorized without evidence that such removals are necessary for the operation of the solar arrays.

9. That the petitioner or petitioner's contractor obtain any and all permits from the Erie County Department of Public Works- Highways Division for any work within the New Road right-of-way.

10. That the petitioner satisfy the requirements of the Stormwater Management Officer in their review letter dated May 2, 2023 to the satisfactory of the Officer.

11. That the petitioner provide documentation of the co-location of an agricultural use as required by §203-6-10-7B(8) of Town Code.

12. That any potentially hazardous metals in the solar panels be securely contained in the event of a breakage or fire.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST
PLANNING BOARD
SITE PLAN RESOLUTION
SP-2023-01

PETITIONER

Sol Source Power, LLC

PROPERTY LOCATION

800 & 850 New Road

'23 AUG 25 AM9:46

13. That the Town Board issue a Special Use Permit pursuant to §203-8-6-1(D) of Town Code.

The foregoing resolution was adopted by the Town of Amherst Planning Board, August 17, 2023; moved by Chmiel; seconded by Kahn; ayes 6, noes 0; absent 1 (Raffele).

Robert J. Gilmour, Planning Board Chair

8/24/23
Date

TV/ac
X:\Current_Planning\Files\Site Plans\2023\SP-2023-01_(800_&_850_New_Road)_2023\SP-2023-01_resolution_081723.doc
cc: Commissioner of Building
Town Engineer
Fire Chiefs
Traffic/Safety
Highway Superintendent
ECDEP
NYSDEC
Steve Long, Sol Source Power, 1 Washington Place, Troy, NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Rd., Ste. 200, Rochester, NY 14620

Approved Plan: Erdman Anthony
Received: July 18, 2023

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Major Site Plan Review

For Official Use

File #: _____ **Acreage** _____ **Fee $** _____

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Received by Planning Department _____ RECEIVED BY DATE

Fee Paid to Town Clerk _____ RECEIVED BY DATE

Site Plan Review		**Fill In Applicable Fees**
1 acre or less	$1,250.00	_____
Each additional acre or fraction thereof	$ 650.00/acre	_____
Amendments to Site Plans	$1,200.00	_____
Request for Relief of / Change to Conditions of Site Plan Approval	$1,200.00	_____
Request for Extension of Site Plan Approval	$ 450.00	_____
Stormwater Pollution Prevention Plan		
1 - 4.99 Acres	$ 500.00	_____
5 - 10 Acres	$ 750.00	_____
>10 Acres	$1,000.00	_____
Affidavit Fee for Public Hearing	$ 15.00	_____
	TOTAL FEE:	$_____

To Be Completed By Applicant

Petitioner:

Name: New Road Solar 1, LLC; c/o Sol Source Power [contact -Steve Long]

Address: 1 Washington Place

Troy (city) NY (state) 12180 (zip code)

Phone: (603) 455-9483 Fax: _____

E Mail: Steve@solsourcepower.com

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

MAJOR SITE PLAN APPLICATION (con't) *Page 2*

Representative (Architect, Engineer, Landscape Architect, Surveyor, or Attorney):

Name: Erdman Anthony Consulting Engineers [contact - Marc Kenward]

Address: 145 Culver Rd., Suite 200

Rochester (city) NY (state) 14620 (zip code)

Phone: (585) 427-8888 Fax:

E Mail: KenwardMD@erdmananthony.com

Project Location (must be verified by Town Assessor's Office):

Address: 850 New Road, Amherst, NY 14228 &

800 New Road, Amherst, NY 14228

SBL No(s): 16.00-2-14.1 & 16.00-2-14.2

Project Name: New Road Solar 1, LLC.

Project Description: The proposed project will construct and operate a 5 Mw (AC) ground-mounted utility grade solar energy system on 28.77 +/- acres of a combined parcel area of 51.98 acres of agricultural land.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

If this petition is an amendment to a previously approved site plan, please describe the proposed changes (include type and size of existing structures and number of existing parking spaces):

	existing	proposed	total
Gross Floor Area (non-residential):			
Gross Floor Area Residential:			
Number of Residential Units:			
Number of Parking Spaces:			

Acreage of Parcel: 40.468 Acres (850 New Road)

(list each parcel separately) 11.511 Acres (800 New Road)

Frontage on Public Roads: 60 ft

(list each road separately)

Existing Zoning District(s) Suburban Agricultural & General Business

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Site Plan Submittal Requirements and Checklist

The following checklist outlines the information required by the Planning Department to accept a Site Plan application for review. ***It is strongly recommended that you make an appointment with Planning Staff to determine which items apply to your application***.

Item No.	Item	Submitted	Official use
I Basic Drawing Information			
1.0	**Drawing size not to exceed 24" x 36"**		
2.0	**Title of Drawing**		
3.0	**Name and address of Applicant**		
4.0	**Name of person preparing drawing**		
5.0	**Wet seal/raised seal and signature of NYS licensed architect, engineer, landscape architect, or surveyor (as applicable)**		
6.0	**Project address**		
7.0	**Zoning of subject property and adjacent parcels**		
8.0	**North point, scale, date, and revision date(s)**		
9.0	**4" x 6" reserved area in lower right hand corner for official Town use**		
II Structures, Paved Areas, & Open Space			
1.0	**Existing and Proposed Streets**		
1.1	Names of all existing and proposed streets		
1.2	Width and radii of proposed curb-cuts		
1.3	Existing curb-cuts on adjacent and opposite properties		
1.4	Show ROW width, pavement dimensions, lane widths, pavement markings, and proposed signage on proposed streets		
1.5	Show proposed ROW consistent with planned NYSDOT, Erie County, or Town road projects (if applicable)		
1.6	Show location of proposed cross access to adjacent parcels along with a draft easement		
1.7	Designation of Fire Lanes (if applicable)		
1.8	Fire apparatus access roads		
1.9	Label any proposed roads as public or private		
1.10	Location and dimensions of sidewalks		
1.11	Typical cross sections and profiles of proposed streets, pedestrian walkways, and bikeways		
2.0	**Proposed Structures**		
2.1	Location and complete dimensions of proposed structures		
2.2	Setback dimensions of structure(s) to all property lines		
2.3	Proposed use of structures		
2.4	Gross square feet area of each structure		
2.5	Location of all building entrances		
2.6	Indicate type of roof construction/materials		
2.7	Location, height, and design detail of existing and proposed fences and walls		
2.8	Location of light standards and building mounted lights		
2.9	Location of dumpster and detail of dumpster enclosure with gate		
2.10	Layout and dimensions of the lot(s) proposed for development		

Town of Amherst Planning Department 5583 Main Street Williamsville-NY-14221
(716) 631-7051- Fax: (716) 631-7153

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Item No.	Item	Submitted	Official use
II Structures, Paved Areas, & Open Space (cont'd)			
3.0	**Floor Plans with individual rooms and spaces labeled** (fully dimensioned)		
4.0	**Building elevations with height dimensions from finished grade to the highest point of the roof and to midpoint of gable or hip of a pitched roof.** (fully dimensioned)		
4.1	Show screening of mechanical equipment		
5.0	**Parking/Loading/Stacking Areas**		
5.1	Location and complete dimensions of all paved areas		
5.2	Setback dimensions of all paved areas to property lines		
5.3	Dimension of typical parking space and drive aisles		
5.4	Location and layout of handicapped parking spaces & access aisles		
5.5	Detail of vertical signage for handicapped parking and access aisles		
5.6	Indicate minimum parking requirement & number of spaces provided		
5.7	Proposed signage for directing and guiding traffic		
5.8	Curb cut permits from NYS, Erie County, or Town (if applicable)		
5.9	Pedestrian connections (from proposed structures to public sidewalk network)		
6.0	**Location and proposed development of all open spaces, including parks, playgrounds, and open reservations**		
III Utilities and Drainage			
1.0	**Engineers Report** (bound separately from the Stormwater Pollution Prevention Plan [SWPPP])		
1.1	Stamped/sealed and signed by NYS licensed architect or professional engineer		
1.2	Proposed water service sizing, RPZ pressure and fire safety flow and pressure calculations		
1.3	Proposed sanitary sewer facility load calculations (avg. & peak flows) including calculation of the peaking factor		
1.4	Proposed storm drainage facility calculations (see information included with this application)		
2.0	**Grading Plan**		
2.1	Existing and proposed grades indicated (proposed grades may not exceed 1 on 3)		
3.0	**Water Service**		
3.1	Location, size and material of existing and proposed facilities		
3.2	Location of existing and proposed fire hydrant location(s)		
3.3	Indicate use of sprinklers, location of Fire Department connection, and proposed fire protection systems		
3.4	Existing and proposed meter/RPZ size and location		
3.5	Applicable construction details		
4.0	**Sanitary Sewers**		
4.1	Locations, sizes, slopes, inverts, and materials of all existing and proposed facilities		

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Town of Amherst Planning Department 5583 Main Street Williamsville-NY-14221
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Item No.		Submitted	Official use
III Utilities and Drainage (cont'd)			
4.2	Applicable construction details		
4.3	Proposed water/oil/grease interceptor sizing calculations by a professional engineer (if applicable)		
5.0	**Storm Drainage**		
5.1	Locations, sizes, slopes, inverts, and materials of existing and proposed storm drainage facilities		
5.2	Connection of roof drains to proposed drainage system		
5.3	Applicable Town Standard construction details		
5.4	Existing and proposed swales and ditches		
5.5	Detention area cross-section and high-level elevations		
5.6	County and State approval for tie-in to existing sewers		
6.0	**Stormwater Pollution Prevention Plan (SWPPP) as applicable** (bound separately from the Engineer's Report) **See attached checklist.**		
7.0	**Natural Gas Service**		
8.0	**Location of transformers, generators and other mechanical equipment; include detail drawings (if applicable)**		
9.0	**Downstream Sanitary Capacity Analysis (DSCA) Report** (must be submitted if proposed average flows are greater than 2,500 gallons per day)		
9.1	The DSCA Report must include a detailed downstream sewer capacity analysis and the calculations of and commitment to (via Developer commitment letter) the required financial contribution to the Town's I/I mitigation fund based on peak flow conditions. The contribution must be based on $250 per gallon per minute of mitigated flow		
IV Lighting Plan			
1.0	**Photometric plan showing light spread in foot candles at property lines**		
1.1	Detail of all light standards, including dimension of height from finished grade		
1.2	Detail of all exterior lighting fixtures		
V Landscape Plan			
1.0	**Wet/raised seal and signature of a licensed Landscape Architect**		
2.0	**Provide a calculation of the total Parking area and a calculation of interior parking area in square feet and as a percentage**		
3.0	**Indicate location, size, number and type of proposed landscape materials**		
4.0	**Indicate location, type and size of <u>all</u> existing trees 4" caliper or larger and indicate which will be removed or retained**		
VI Other Required Information/General Requirements			
1.0	**Complete boundary survey that includes all existing structures, acreage, legal description with reference to a property line, street, or other known feature, and easements plotted to scale by a NYS licensed land surveyor**		

Town of Amherst Planning Department 5583 Main Street Williamsville-NY-14221
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Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Item No.		Submitted	Official Use
VI Other Required Information/General Requirements (cont'd)			
1.1	Copies of all easements, reciprocal access agreement or similar leag documents		
2.0	**Topographic Survey with a 30 ft. buffer outside all property lines by a NYS licensed land surveyor**		
3.0	**Draft of any deed restrictions, covenants, provisions for home associations and common ownership, and reciprocal easement agreements (as applicable).**		
4.0	**For assessment purposes, state intent to apply for condominium status (if applicable).**		
5.0	**Completed and signed Environmental Assessment Form**		
5.1	Soil boring report and geotechnical report prepared by a qualified Professional Engineer (if applicable)		
5.2	Traffic Impact Study (if applicable)		
5.3	Archaeological survey (if applicable		
5.4	Wetland Delineation report (if applicable)		
6.0	**Show existing zoning(s) of both the subject property and adjacent parcels on the Site Plan and the Landscape Plan**		
7.0	**Location of NYSDEC wetlands (including buffer area) and/or federal wetlands; indicate jurisdictional status**		
8.0	**Location of Floodway and floodplain** (if applicable)		
9.0	**Documentation pertaining to any conditions of zonings, including copies of required deed restrictions; indicate date of rezoning and the parcel address under which it was rezoned (if applicable)**		
10.0	**Documentation related to any required variances granted by the ZBA**		
11.0	**For residential site plans, provide a statement from the appropriate school district that adequate school sites and facilities are available.**		
12.0	**8 1/2" X 11" reduction of primary site plan drawing (see appendix "B" of application package for specifications)**		
13.0	**A CD containing a PDF of all site plan drawings (Must also be provided with revised drawings)**		
VII Additional Required Information for Projects in the Mixed Use Districts			
1.0	**Design Advisory Board Application**		
1.1	Required for Major Site Plan		
1.2	Required at the Planning Directors Discretion for Minor Site Plans		
2.0	**Block & Street Network Plan**		
2.1	Designation of Core, Local & Alley streets		
2.2	Dimensions of Blocks		
3.0	**Block Usage Plan (as applicable)**		
3.1	Designation of site usage for each block including open space areas		
4.0	**Phasing Plan**		

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Town of Amherst Planning Department 5583 Main Street Williamsville-NY-14221
(716) 631-7051- Fax: (716) 631-7153

For official use only:

_____
Approved/Date

X:\Current_Planning\Application Forms 2013 Working Doc\Major Site Plan\Site Plan Submittal Requirements and Checklist (3).doc

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Town of Amherst Planning Department 5583 Main Street Williamsville-NY-14221
(716) 631-7051- Fax: (716) 631-7153

TOWN OF AMHERST
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM
-- ADDENDUM --

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
Lakemont Silt Loam	severe	severe	severe	severe	severe
Niagara Silt Loam	severe	severe	severe	severe	severe
Odessa Silt Loam	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).

____ Geotechnical report attached ✓ Not applicable Utility Trenching & Electrical Equipment Pads

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:

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

(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 None
Source: N/A

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:
N/A average flow N/A 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: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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: 800 & 850 New Road Solar Project		
Project Location (describe, and attach a general location map): 800 & 850 New Road, Amherst, NY 14228 (Tax Map No.'s 16.00-2-14.1 & 16.00-2-14.2)		
Brief Description of Proposed Action (include purpose or need): Construct and operate a 5.0 Mw (AC) ground mounted, utility grade solar energy system.		
Name of Applicant/Sponsor: New Road Solar 1, LLC. c/o Sol Source Power, LLC. [contact - Steve Long]	Telephone: (603) 455 - 9483 E-Mail: Steve@solsourcepower.com	
Address: 1 Washington Place		
City/PO: Troy	State: NY	Zip Code: 12180
Project Contact (if not same as sponsor; give name and title/role): Erdman Anthony Consulting Engineers [contact - Marc Kenward]	Telephone: (585) 427 - 8888 E-Mail: KwnwardMD@erdmananthony.com	
Address: 145 Culver Road, Suite 200		
City/PO: Rochester	State: NY	Zip Code: 14620
Property Owner (if not same as sponsor): Anthony Cimato; Cimato Enterprises, Inc.; [contact for both - Ferdinando Cimato, President]	Telephone: (716) 861-3529 E-Mail: cimatoenterprises5647@gmail.com	
Address: 9220 Transit Rd.		
City/PO: East Amherst	State: NY	Zip Code: 14051

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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 Council, Town Board, or Village Board of Trustees ☐Yes ☑No		
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Town of Amherst Planning Board: Special Use Permit & Site Plan Review	January 2023
c. City, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☑Yes ☐No	Town of Amherst Building Department: Floodplain Development Permit	January 2023
e. County agencies ☑Yes ☐No	Erie County Planning Board	TBD
f. Regional agencies ☐Yes ☑No		
g. State agencies ☑Yes ☐No	NYSDEC GP-0-20-001 for Stormwater Discharges NYS DEC Wetland Permit	TBD
h. Federal agencies ☑Yes ☐No	US Army Corps of Engineers - Nationwide Permit 51 (Renewable Energy) for minor wetland impacts	TBD

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):

Town of Amherst Farmland Protection & Agricultural Development Plan - June 2021.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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?
Suburban Agricultural & General Business (General Business to be rezoned to Suburban Agricultural)

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? General Business to Suburban Agricultural

C.4. Existing community services.

a. In what school district is the project site located? Williamsville Central School District

b. What police or other public protection forces serve the project site?
Amherst Police Department, Erie County Sheriff's Office, NY State Police

c. Which fire protection and emergency medical services serve the project site?
North Amherst Fire Department,

d. What parks serve the project site?
Jurek Park, The Paw Park-Off-Leash Dog Park, Dann Lake Park

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)? Construct and Operate a utility grade (large scale) solar energy project

b. a. Total acreage of the site of the proposed action? 51.98 acres
b. Total acreage to be physically disturbed? 6.834 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 51.98 acres

Project will encompass approximately 28.766 +/- acres of the total parcel area.

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				
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? ☐Yes ☑No
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)

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): Wetland W2. See separately submitted Wetland Delineation Report Dated August 2022.

_____

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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:
Approximately 0.172 AC of Wetland W2 will be within the fenced solar array. Trees in this area will be cut and stumps removed.

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☑ Yes ☐ No
If Yes, describe: Trees will be cut and tree stumps will be removed.

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: _____ 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: _____
- 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: _____ 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): _____

iii. Will the proposed action use any existing public wastewater treatment facilities? ☐ Yes ☐ No
If Yes:

- Name of wastewater treatment plant to be used: _____
- Name of 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?

2824 Square feet or _____ acres (impervious surface)

_____ Square feet or _____ acres (parcel size)

ii. Describe types of new point sources. Electrical Equipment Pads and equipment. Note that solar arrays are considered disconnected roof-top draining onto grass meadow. New access drive is permeable stone.

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)?

Sheet flow across grass meadow. Proposed stormwater run-off is equal to the existing conditions with an overall composite (run-off) curve number (CN) of 79 compared to the existing curve number of 79.

- 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 am - 6:00 pm
- Saturday: _____
- Sunday: _____
- Holidays: _____

ii. During Operations:

- Monday - Friday: Daylight Hours
- Saturday: Daylight Hours
- Sunday: Daylight Hours
- Holidays: Daylight Hours

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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:

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:

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): General Business

ii. If mix of uses, generally describe:

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	0.130	0.065	-0.115
• Forested	15.332	9.940	-5.392
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	36.518	40.731	+4.213
• 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)	12.283	12.111	-0.172
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: Pervious Driveway	0	1.243	+1.243

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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:

Amherst Baby & Child Care Center, Inc.

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? >6.67 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:

Lakemont silt loam	47.5 %
Odessa silt loam	31.5 %
Niagara silt loam	20.1 %

d. What is the average depth to the water table on the project site? Average: 0 to 1.5 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 Federal Waters 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: _____

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m. Identify the predominant wildlife species that occupy or use the project site:
Deer, possum, raccoon, skunk
Fox, woodchucks
Songbirds, Turkey, Hawks, blackbirds
Meadow Moles, Field Mice

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:
Proposed action will limit hunting activities to areas outside the fenced array.

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? Farmland of Statewide Importance - 48.4% of site. Prime Farmland if Drained - 51.6% of site.
ii. Source(s) of soil rating(s): USDA NRCS Web Soil Survey

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:

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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: _____

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): Archaeological Buffer Area

ii. Basis for identification: NYS Office of Parks, Recreation & Historic Preservation - Cultural Resource Information System (CRIS) website

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: Jurek Park, The Paw Park-Off-Leash Dog Park, Dann Lake Park, Depeau Park, Billy Wilson Park, Nature View Park, Great Baehre Conservation Park, Amherst Veterans Canal Park, Meadow Lakes Park, Walton Woods Park, and Bassett Park

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): Scenic points, & parks

iii. Distance between project and resource: 0.54, 0.68, 1.46, 1.85, 3.18, 3.60, 3.60, 3.70, 3.88, 3.89, and 4.13 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 Marc Kenward Date January 20, 2023

Signature Marc Kenward Title Senior Associate

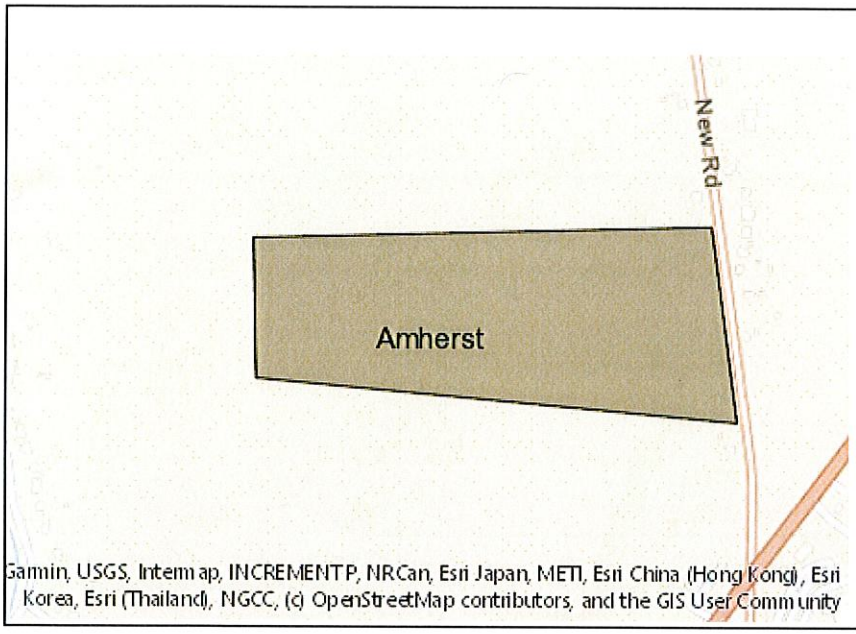
Erdman Anthony Consulting Engineers
145 Culver Road, Suite 200
Rochester, NY 14620 (585) 427 - 8888
KenwardMD@erdmananthony.com

PRINT FORM

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

EAF Mapper Summary Report

Tuesday, November 15, 2022 1:55 PM

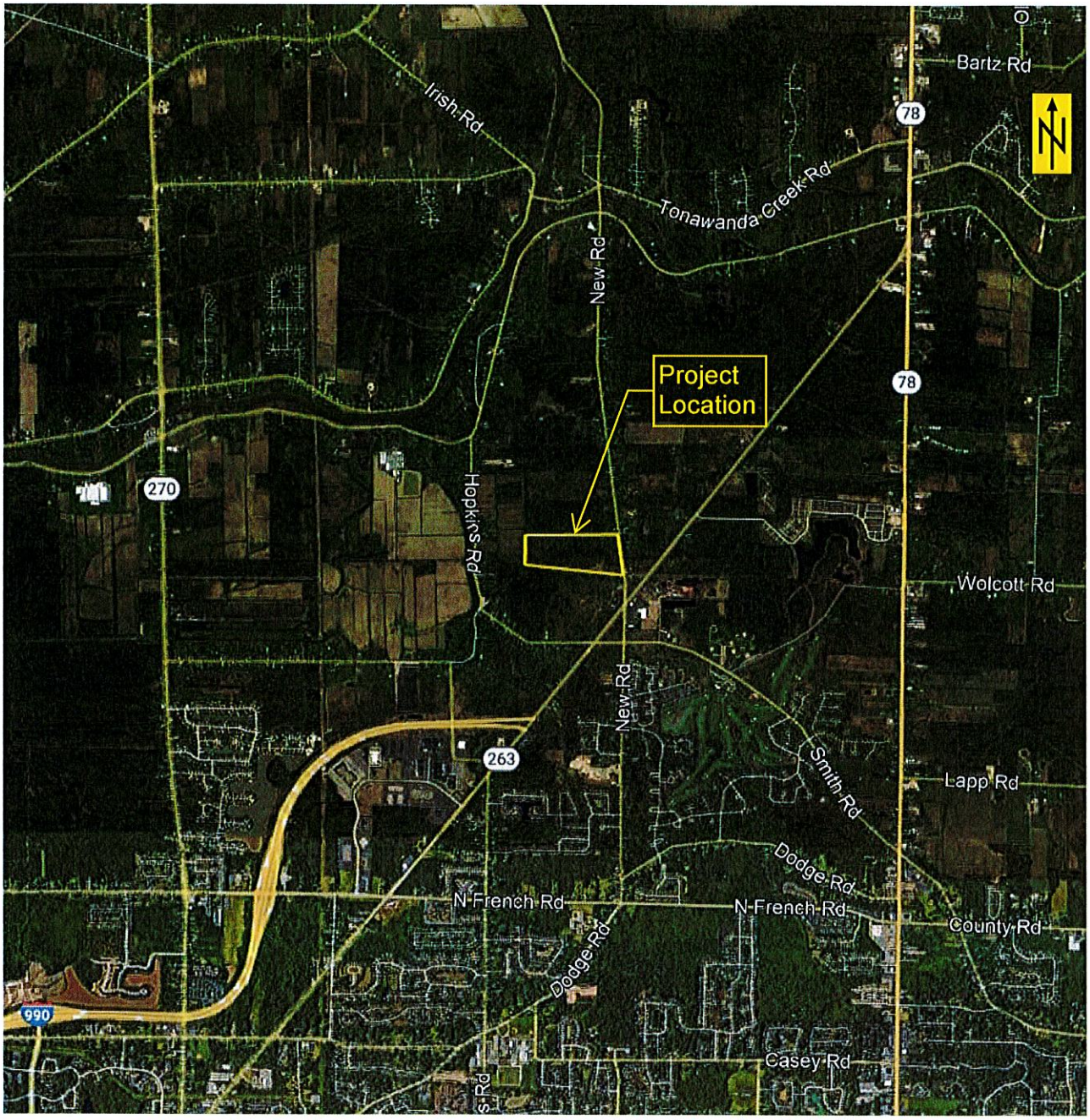


Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the 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]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)



ERDMAN ANTHONY

145 Culver Road, Suite 200
Rochester, NY 14620
(585) 427-8888

TITLE:

PROJECT LOCATION MAP

850 & 800 New Road, Amherst, New York

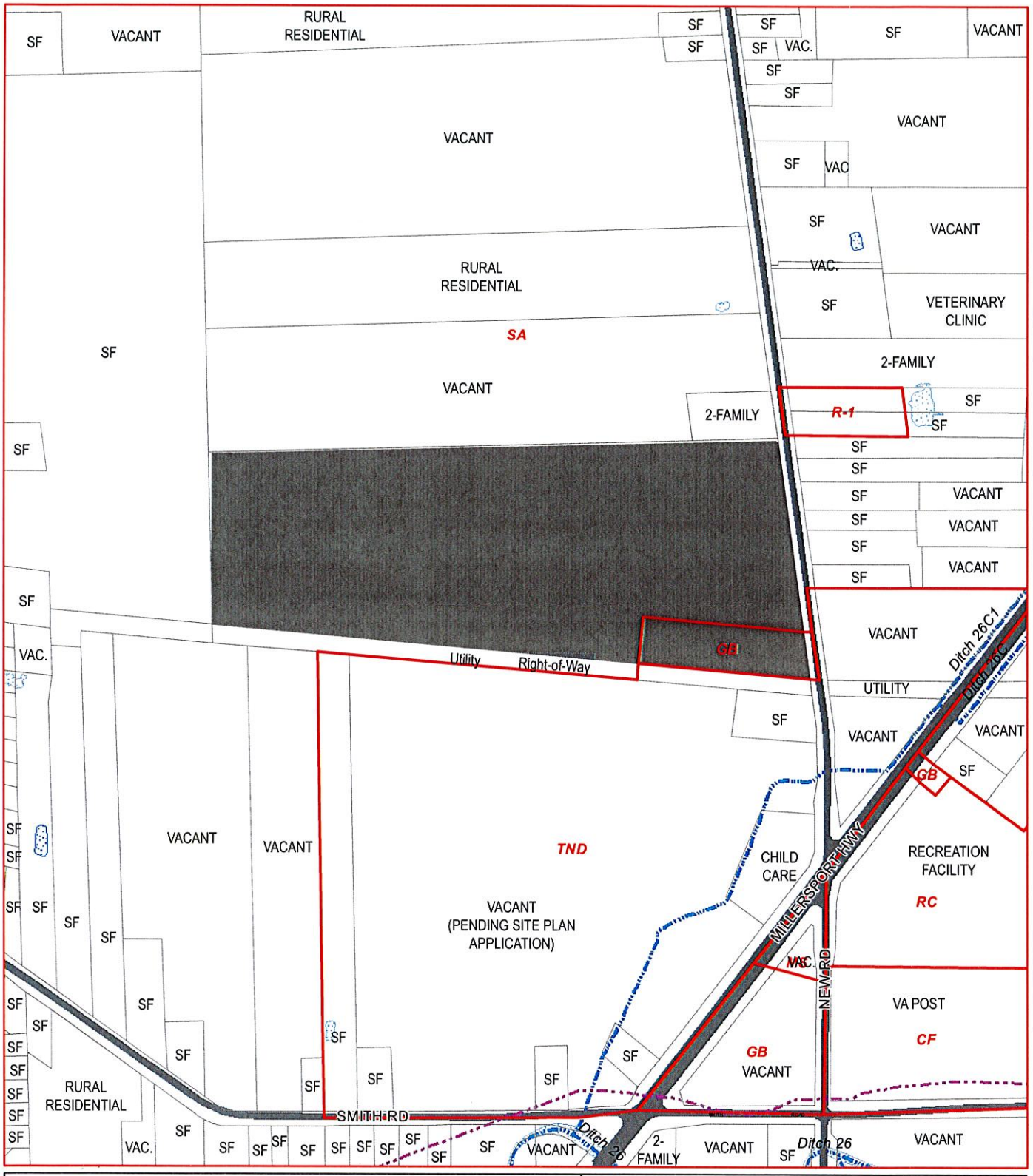
Prepared For: Sol Source Power, Inc.

DRAWING BY:	DATE:	PROJECT:
NA	November, 2022	19720.01

SCALE: NTS

REFERENCE: FIGURE I

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)


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Utility Right-of-Way
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(PENDING SITE PLAN APPLICATION)
CHILD CARE
MILLERSPORT HWY
RECREATION FACILITY
RC
VAC.
NEW RD
VA POST
CF
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Recommended Plant List

SYMBOL	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	NOTES
DECIDUOUS TREES					
CO	1	Celtis occidentalis 'Prairie Pride'	Prairie Pride Common Hackberry	2½"-3"Cal.	B&B; Grows to 45 feet high, 30 feet wide
NS	3	Nyssa sylvatica 'Wildfire'	Wildfire Blackgum	2½"-3"Cal.	B&B; Grows to 40 feet high, 25 feet wide
QB	3	Quercus bicolor	Swamp White Oak	2½"-3"Cal.	B&B; Grows 50 to 60 feet high and wide
SMALL/ORNAMENTAL TREES					
AI	8	Amelanchier laevis	Allegheny Serviceberry	8-ft. to 10-ft.*	B&B; grows 25-35 feet high
CC	7	Cercis canadensis	Eastern Redbud	8-ft. to 10-ft.*	B&B; grows 20-30 feet high
CH	7	Crataegus crus-galli 'Cruzam'	Crusader Hawthorn	1.5" - 2" Cal. *multi-stem, minimum 3 major stems	B&B; grows 20-30 feet high
SHRUBS					
AA	28	Aronia arbutifolia 'Brilliantissima'	Red Chokeberry	3 ft. high min.	No.5 Cont.; grows 8-12 feet high
CA	40	Corylus americana	American hazelnut	3 ft. high min.	No.5 Cont.; grows 6-10 feet high
RD	66	Cornus alba 'Sibirica'	Red Twig dogwood	4 ft. high min.	B&B; grows 6-9 feet high
SD	40	Cornus amomum	Silky Dogwood	4 ft. high min.	B&B; grows 6-10 feet high
HV	28	Hamamelis vernalis	Vernal Witchhazel	5 ft. high min.	B&B; multi-stem; grows 10-12 feet high
SC	24	Sambucus canadensis	Elderberry	24" high min.	No. 3 Cont.; grows 5-12 feet high
EVERGREEN TREES					
AC	13	Abies concolor	Concolor Fir	5' high min.**	B&B; Full to Ground; grows 40-60 feet high
JV	22	Juniperus virginiana	Eastern Red Cedar	5' high min.**	B&B; Full to Ground; grows 55-60 feet high
PG	24	Picea glauca	White Spruce	5' high min.**	B&B; Full to Ground; grows 40-60 feet high

**Measured from ground to bottom of leader

NOTE: All planting beds and tree saucers shall receive a minimum 3-inch depth of dark shredded hardwood bark mulch

Town of Amherst Zoning Ordinance § 7-2. Landscaping, Buffers and Screening.

Sec. 7-2-4: Buffers and Screening.

Buffering and screening may consist of healthy trees and shrubs existing on the site prior to development providing that they form an immediately effective visual screen at least 36 inches above the grade at the adjacent VUA and that the existing trees and shrubs are thoroughly protected from damage during construction by establishing a work limit line on all site plan drawings. The work limit line shall be delineated in the field prior to site clearing in the vicinity of the required yard area. Supplemental plantings may be required in addition to the existing vegetation as determined by the Planning Board or Planning Director in order to improve the screening properties of the buffer.

LANDSCAPE PLAN

Z-2022-12
800 New Road

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)



New Road: Proposed Conditions at the Time of Planting

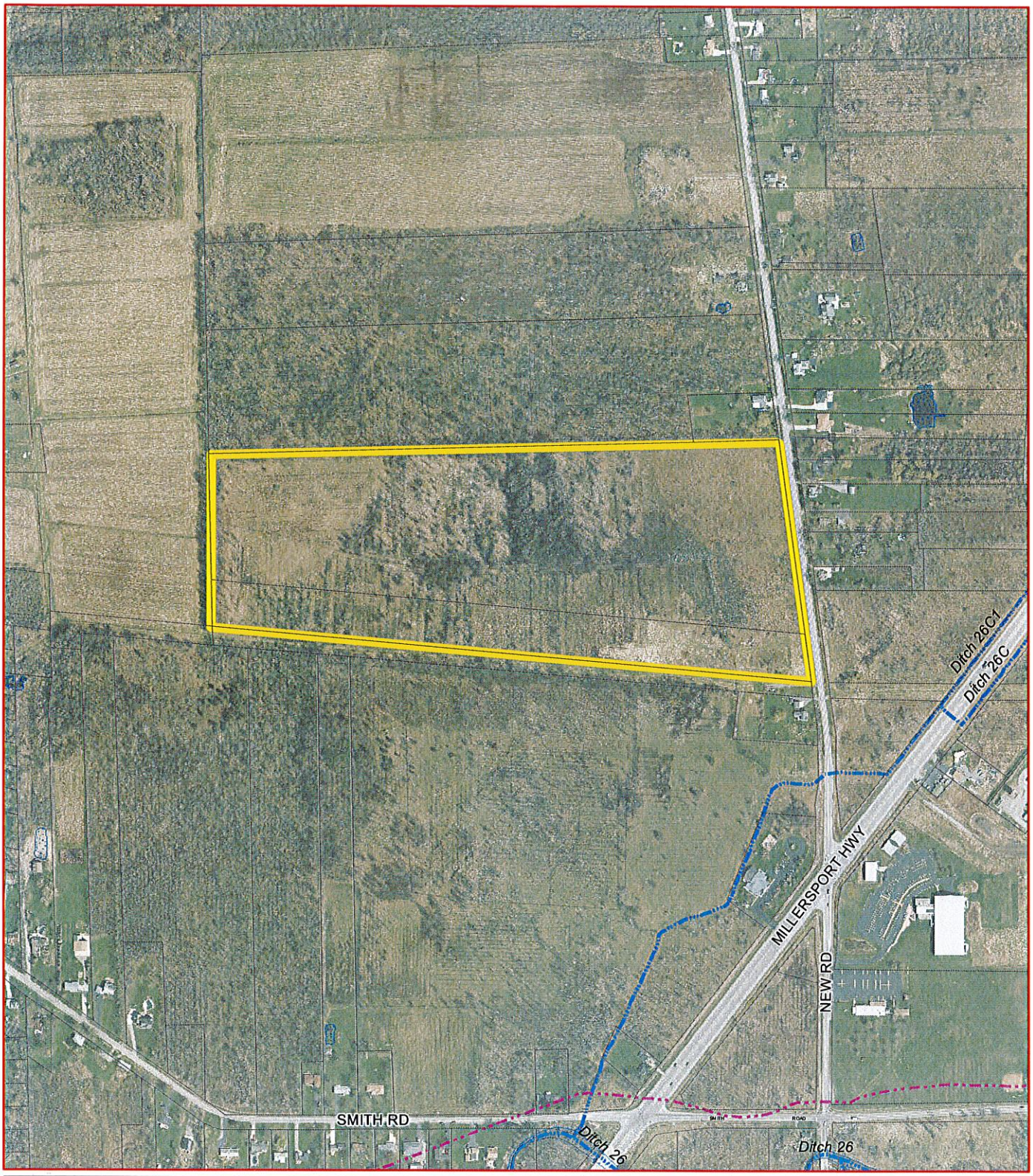


New Road: Proposed Conditions at the Time of Planting

SIMULATIONS

SP-2023-01
800 New Road

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)



SP-2023-01

Proposed Tier III Solar Energy System
Property Located at 800 & 850 New Road

Sol Source Power, LLC, Petitioner

August 17, 2023

800 & 850 New Road

Floodway Boundary

Prepared by the Town of Amherst Planning Department

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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

August 1, 2023

Steve Long
Sol Source Power
1 Washington Place
Troy, NY 12180

SUBJECT:	Site Plan Review	**SP-2023-01**
	Proposed:	Tier III Solar Energy System
	Property located at:	**800 & 850 New Road**
	Revised plans received:	July 18, 2023
	Architect/Engineer:	Erdman Anthony

Dear Sir or Madam:

Please consider the following comments:

ZONING ENFORCEMENT OFFICER:

Approvable with the following conditions;

1. At the time of inspection for the certificate of compliance, the Town can require supplemental plantings in accordance with §203-7-2-4(a) of Town Code to satisfy buffer and screening requirements.

2. The parcels located at 800 & 850 New Road to be merged prior to issuance at final approved site plan drawing.

3. That the petitioner is required to mitigate any glare produced by the array along Hopkins, Smith, New Roads and Millersport Highway by supplementing the existing vegetative screening with additional line-of-sight plantings on the subject site if complaints relating to glare are received by the Building Department.

4. That the petitioner provide a copy of any and all USACOE, USFW, and NYSDEC permit applications to the Planning Department when filed.

5. Tree removals outside of the fenced compound (within wetlands) will not be authorized without evidence that such removals are necessary for the operation of the solar arrays.

PLANNING DEPARTMENT REVIEW

1. The rezoning and the request for relief of deed restriction on the portion of 800 New Road must be finalized and the special use permit request must be approved by the Town Board prior to issuance of final approved site plan drawings.

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

LANDSCAPE ARCHITECT REVIEW:

No comments on the revised site plan drawings submitted on July 18, 2023.

This is a review only and does not constitute approval of the Major Site Plan. Final approval will occur after Planning Board approval, any conditions imposed by that board are addressed, and approved Major Site Plan drawings are issued by this department. Should you have questions regarding this correspondence, please contact Thomas Voigt, Assistant Planner at tvoigt@amherst.ny.us or 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\Site Plans\2023\SP-2023-01_(800_&_850_New_Road)_2023\SP-2023-01_Pln_Dpt_Rvw_080123.docx
cc: Daniel Ulatowski, Zoning Enforcement Officer
Mark S. Berke, Commissioner of Building
Jeffrey Burroughs, Town Engineer
Jeffrey Szatkowski, Landscape Architect
Marc Kenward, Erdman Anthony Consulting, 145 Culver Rd., Ste. 200, Rochester, NY 14620

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST
ENGINEERING DEPARTMENT
ERIE COUNTY – NEW YORK
JEFFREY S. BURROUGHS, P.E., TOWN ENGINEER

May 2, 2023

TO: Scott A. Marshall – Principal Planner
Douglas Gesel – Senior Code Enforcement Officer
Jeffrey S. Burroughs, P.E – Town Engineer

REVIEWER: Vaishali Reberholt, P.E, CPESC – SMO

SUBJECT: Site Plan Review: SP-2023-01
Proposed Tier III Solar Energy System
Town Job #2023.006

ADDRESS: 800 & 850 New Road

PETITIONER: Sol Source Power

SITE PLAN SWPPP NOT REVIEWABLE

No SWPPP sent – therefore not reviewable.
However, upon review of the plans, a bio-retention area has been added. This now will require a Stormwater Maintenance Agreement to maintain this post-construction stormwater control. A profile of the bio-retention is also required along with verbiage on the ESC plan stating that no bio-retention media will be installed until the site has been stabilized. Please also show silt sock around the bio-retention area on the ESC plan.

The following are from the March 2, 2023 review:

- Please include the 25-year storm event calculations so that the review can be completed.

Other noted comments:

- Per the NYSDEC and the 2010 MS4 Permit, all urbanized areas shall be extended to the municipal's boundary line, so the Town of Amherst will have jurisdiction over this project. Please change the SWPPP on page 1 to reflect this.
- On page 9, written authorization for disturbance over 5 acres comes from the Town of Amherst, not NYSDEC.
- The owner certification and SWPPP preparer form need to be signed.
- On page 5, Swett Road appears to be referring to New Road instead.

VR/SKB

Cc: Steve Long, Sol Source Power, 1 Washington Place, Troy, NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Rd., Suite 200, Rochester, NY 14620

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

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST

RECEIVED
APR 21 2023
TOWN OF AMHERST
PLANNING DEPT.

TRAFFIC SAFETY BOARD

ENGINEERING DEPARTMENT – 1100 NORTH FOREST ROAD, WILLIAMSVILLE, NEW YORK 14221
TRAFFIC SAFETY COORDINATOR - TELEPHONE 631-7154 - FAX 631-7222

MICHAEL SZUKALA
Councilmember & Liaison Officer

ERIC FRAAS
Chairman

GREGORY DIONNE
Vice Chairman

CHRISTOPHER P. SCHREGEL
Traffic Safety Coordinator

MEMBERS

DANIEL J. RIDER, P.E.
KENNETH A. SMITH
J. MICHNIEWICZ, P.E., P.T.O.E.
MARK STORCH
MAXWELL KAHN
KEVIN CANTWELL
KRISTIN GOSS

DEPT. LIAISONS

THOMAS VOIGT
Planning

CAPT. KEVIN BROWN
Police

WILLIAM PRENEVAU
Building

AL SPOTH
Highway

April 20, 2023

TO: Scott Marshall – Principal Planner
Mark S. Berke – Commissioner of Buildings

FROM: Christopher P. Schregel – Traffic Safety Coordinator

SUBJECT: Proposed Major Site Plan Review **SP-2023-01**
Proposed Tier III Solar Energy System
TOA Job # 2023.006

ADDRESS: 800 & 850 New Road

PETITIONER: Sol Source Power

X **MAJOR SITE PLAN IS**

X **APPROVED AS SUBMITTED**

CPS/ch
Cc: Steve Long, Sol Source Power, 1 Washington Place, Troy NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Road, Suite 200, Rochester, NY 14620

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

AMHERST FIRE CHIEFS' ASSOCIATION INC.

To: Dan Howard, Planning Director Date:

From: Krista Halt, Liaison to Amherst Fire Safety Committee

RE: Site Plan Review: SP-2023-01 PROPOSED TIER III SOLAR ENERGY SYSTEM
Address: 800 & 850 NEW RD. **REV. 4/21/23**

Petitioner: SOL SOURCE POWER

The above referenced ☒ Site Plan is ☐ Subdivision is ☐ Minor Modification is:

☒ Approved with conditions: See comments

☐ Denied due to the following:

☐ Not reviewable at this time due to the following:

☐ 1. Section 503 FCNYS 2020 – Fire Apparatus Access Road

- ☐ A. Section 503 Firelanes (fire apparatus access roads) be provided in accordance with the FCNYS 2020
- ☐ B. 503.1.1 – provide for the fire apparatus access road to within 150 feet of all portions of the building or within 300 feet if the building is sprinkled.
- ☐ C. 503.1.2 – provide an additional fire apparatus access road
- ☐ D. 503.2 – specifications – fire apparatus access roads shall be installed and arranged in accordance with section 503.2.1 through 503.2.7
  - ☐ 1. 503.2.1 – fire apparatus access road must be an unobstructed width of not less than 20 feet and a vertical clearance of 13 feet 6 inches.
  - ☐ 2. 503.2.2 – increase width of fire apparatus access road to ____ feet to be adequate for fire or rescue operations.
  - ☐ 3. 503.2.4 – the turning radius for fire apparatus access roads is 22 inside and 45 outside.
  - ☐ 4. 503.2.5 – dead end fire apparatus access roads in excess of 150 feet, shall be provided with an approved area for turning around fire apparatus.
  - ☐ 5. 503.3 – fire apparatus access roads must be marked as firelanes per the signage specification established by Appendix D FCNYS 2020
  - ☐ 6. Appendix D – Access Roads: Width, Distance from bldgs. Remoteness requiring 2 separate access roads.

☐ 2. Section 506 FCNYS 2020 – Key Boxes – A fire department Knox key box is required for access to building keys.

☐ 3. Section 507 FCNYS 2020 – Fire Protection Water Supplies

- ☐ A. Indicate all existing Fire Hydrants on plans.
- ☐ B. All waterlines with numerous hydrants should be looped or on a grid system.
- ☐ C. All fire hydrants must be within 500 feet of each other. (Subdivisions)
- ☐ D. Section 507.5.1 – provide an additional Fire Hydrant within 400 feet of the most remote point of the building (as the fire hose would be laid out) or within 600 feet if the building is equipped with a Fire Sprinkler system.
- ☐ E. [B] Section 912 - This project may be required to install a Fire Sprinkler system, if so, indicate the location of the fire department connection for the sprinkler system, which must be located on the street side of the building

COMMENTS: 1- Provide a Knox lock on the access gate for fire department access in an emergency. 4/21/23 OK SOD C-102 2- A clear, brush-free area of 10-ft. shall be required and maintained.4/21/23 OK NOTE ON C-102 3- Personnel contact information shall be provided for the fire department. 4- Emergency shut down operations shall be posted for fire department. 4/21/23 OK SIGNAGE PROVIDED.

X:\DOCS\KBH\Site Plan Reviews\2023\800 & 850 NEW RD. SOLAR PANELS SP-2023-01.docx 4/21/2023

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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

DATE: April 19, 2023

TO: Planning Department

FROM: Doug Gesel Supervising Code Enforcement Officer

RE: Major Site Plan SP-2023-01Tier III Solar energy system @ 800& 850 New Rd

☒ Site Plan is: ☐ Subdivision is: ☐ ODA is: ☐ CSP is:

☒ Approved as Submitted

☐ Approved with the following conditions or changes:

☐ Denied for the following reasons:

☐ Not reviewable at this stage because the following information is not provided:

☐ Not applicable to this department at this time.

NOTE:

☒ Floodplain Development Permit required.

☒ Wetlands on property.

☐

*This review was for site compliance only.
*Approval does not grant permission to start construction.

Douglas Gesel

Supervising Code Enforcement Officer
Town of Amherst Building Department

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST ENGINEERING DEPARTMENT

ENGINEERING SERVICES DIVISION

BRIAN J. ARMSTRONG – DIRECTOR OF ENGINEERING SERVICES

April 18, 2023

TO: Daniel J. Ulatowski, AICP – Assistant Planning Director
Doug Gesel – Senior Code Enforcement Officer
Patrick G. Lucey - Highway Superintendent
Emily Murphy - Town Assessor
Anne Demopoulos – Legal Department

FROM: Brian J. Armstrong – Director of Engineering Services

SUBJECT: Major Site Plan Review; SP-2023-01
Proposed Tier III Solar Energy System
Town of Amherst Job No. 2023.006

ADDRESS: 800 & 850 New Rd.

PETITIONER: SOL Source Power

SITE PLAN REVIEW IS APPROVED AS SUBMITTED

cc: Steve Long, SOL Source Power, 1 Washington Place, Troy, NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Rd., Suite 200, Rochester, NY 14620
Scott Marshall – Principal Planner

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

AMHERST HIGHWAY DEPARTMENT

1042 North Forest Road Williamsville, New York 14221

Patrick Lucey
Superintendent of Highways
plucey@amherst.ny.us

PHONE (716) 631-7117

FAX (716) 631-7265

www.amherst.ny.us

March 27, 2023

To: Scott Marshall, Principal Planner

From: Patrick Lucey, Superintendent of Highways

Re: MAJOR SITE PLAN REVIEW, **SP-2023-01;** PROPOSED TIER III SOLAR ENERGY SYSTEM; PROPERTY LOCATED AT **800 & 850 NEW ROAD;** SOL SOURCE POWER, PETITIONER.

After review relative to Highway Department concerns, the plan is approved as submitted.

Daniel J. Ulatowski, AICP, Assistant Planning Director
Douglas Gesel, Supervising Code Enforcement Officer
Jeffrey Burroughs, Town Engineer
Vaishali Reberholt, PE, Stormwater Management Officer (Eng)
Emily Murphy, Town Assessor
Chris Schregel, Traffic/Safety Coordinator (Eng)
Bryan Parnell, Fire Chief's Association (c/o Bldg)
Alan Herberger, Senior Plumbing Inspector, (c/o Bldg)
Ann Demopoulos, Deputy Town Attorney, ROW Agent
Jeffrey Szatkowski, Landscape Architect
Brian Barnes, Senior GIS Analyst (Eng)
ECDEP
NYSDOT
ECDPW
NYSDEC
Steve Long, Sol Source Power, 1 Washington Place, Troy, NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Road Suite 200, Rochester, NY 14620

PL/EB/TL/ke

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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.: SP-23-112
Postmark/Delivery Date: 1/27/2023

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 3/16/2023 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: 800 + 850 NEW ROAD

5a. S.B.L. of Property: 16.00-2-14.2
16.00-2-14.1

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)* PROPOSED TIER III SOLAR ENERGY SYSTEM + SPECIAL USE PERMIT

8. Other remarks: SP-2023-01

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 1/27/2023**. 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:** 2/22/2023

ZR1
Revised 5/22

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

February 22, 2023

Mr. Daniel J. Ulatowski, AICP
Assistant Planning Director/ZEO
Town of Amherst
5583 Main Street
Amherst, NY 14221

Re: **SEQR Lead Agency Request and Major Site Plan Review for Proposed Tier III Solar Energy System**

Location: **800-850 New Road, Town of Amherst**
Review No.: **SP-23-112**

Dear Mr. Ulatowski,

Pursuant to New York General Municipal Law Section 239-m and Article 8 of the New York Environmental Conservation Law, the Erie County Department of Environment and Planning (DEP) is in receipt of the above-referenced project received on January 27, 2023, and consents to the Town of Amherst acting as lead agency in the environmental review of this action. DEP offers the following comments based upon its review of the project:

- The majority of the project site is within a Special Flood Hazard Area or 100-year floodplain, while the remainder of the site is within the 500-year floodplain, according to the FEMA Flood Insurance Rate Maps.

- The project occurs within 500 feet of land in agricultural production and Erie County North Agricultural District #1.

- While the Agricultural District program enforces no financial penalty for the conversion of farmland to non-farm use, there is such a penalty associated with the Agricultural Value Assessment program. If these parcels have received such an assessment, the landowner should be aware that payment recapture may be imposed by New York State.

- Nearly half of the project site contains Farmland of Statewide Importance, and more than half of the site is listed as Prime Farmland if Drained according to the USDA NRCS Web Soil Survey. As required in

Section 6-10 of the Town of Amherst Zoning Code, the applicant should provide the Town with an operations and maintenance plan that includes an agricultural soils preservation plan that is in compliance with the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands.

- The project site is shown as an "Area of Existing/Potential Agricultural Activity" on Map 8 of the Town's Farmland Protection & Agricultural Development Plan. The Town should continue its efforts to preserve the rural and agricultural nature of the northern portion of the town, as recommended in the Bicentennial Comprehensive Plan and the Farmland Protection & Agricultural Development Plan. Protecting this undeveloped land should involve expanding the use of conservation easements and, as stated in both plans, restricting the expansion of sewer service or the existing sewer district beyond its current boundaries.

- The Town is encouraged to continue its practice of working with landowners to incorporate co-location of agricultural uses where feasible on this and future projects in locations identified as appropriate for agricultural use in the Farmland Protection & Agricultural Development Plan.

- Solar projects exempted from local property taxes under Real Property Tax Law Section 487 may be subject to a payment-in-lieu-of-taxes (PILOT) agreement. The developer must notify the Department of Environment and Planning (DEP) of their intent to construct such projects. Within sixty days, DEP will notify the developer if a PILOT agreement will be required. Notices must be mailed to:

  Attn: Sarah Gatti
  Erie County Department and Environment and Planning
  95 Franklin Street, Tenth Floor
  Buffalo, NY 14202

This review pertains to the above referenced project submitted to DEP. This should not be considered sufficient for any County approvals. The applicant and/or its contractors must still obtain any other permits and regulatory approvals applicable to this project.

Sincerely,

David Hall
Planner

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Carrato, Amy

From: Robinson, Judy A CIV USARMY CELRB (USA) <Judy.A.Robinson@usace.army.mil>
Sent: Tuesday, February 21, 2023 3:56 PM
To: Voigt, Thomas J.
Cc: Carrato, Amy
Subject: FW: LRB-2022-01059- DoD Sage Link 2.14.2023-SP-2023-01, 800 & 520 New Rd.
Attachments: SP-2023-01_USACE_021323.pdf

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.

Tom,

In reference to the Town's request for comments on the proposed project, please consider the following:

Under Section 404 of the Clean Water Act, the USACE has jurisdiction of the placement of fill or dredged material into a jurisdictional water of the United States.

Under Section 10 of the Rivers and Harbors act, the USACE has jurisdiction of the placement of fill or dredged material, and all work in, over, and under a Section 10 water.

In terms of tree removal - the Corps does not have jurisdiction over tree cutting in a jurisdictional wetland. That said, the manner in which the removal is proposed may require a Department of the Army permit. For instance, if trees are cut to the ground and left in place or winched off the site, this would not likely require a DA permit. If the tree removal, winching, and transporting of trees leaves the site so disturbed that grading uneven areas to prep the site for panel installation - a DA permit would likely be required. If removal of stumps is proposed; this activity would require a DA permit.

My professional suggestion would be to have SOL Source Power submit a permit application (or a request for a "no permit required" letter, that would not necessarily require a permit application) complete with the work proposed in the jurisdictional areas so that the file can be assigned and reviewed by a project manager to evaluate. If the tree removal falls within the non-jurisdictional parameters associated with the activity, SOL Source Power could request a "no permit required" letter, which would be beneficial to them and to the Town for your evaluation as well. Note that the USACE cannot make SOL Source Power submit a permit application if they are moving forward on the premise that their activity would not be regulated. However, it appears that this is something that the Town could require for their purposes.

Note that if the proposal to remove trees IS NOT deemed to require a DA permit, then the project manager is not required to coordinate with the USFWS with regard to bat habitat. The Town may want to require SOL Source Power to gain a response from the USFWS independently should a DA permit not be required.

I hope that these comments are helpful.

Regards,

Judy Robinson

-----Original Message-----
From: Carrato, Amy <acarrato@amherst.ny.us>

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Sent: Monday, February 13, 2023 4:39 PM
To: LRB.Regulatory.New York Actions <LRB.Regulatory.NewYork_Actions@usace.army.mil>
Cc: Voigt, Thomas J. <tvoigt@amherst.ny.us>
Subject: LRB-2022-01059-Plans Changing a bit-will send docs-Sent DoD Sage Link 2.14.2023-SP-2023-01, 800 & 520 New Rd.

Good afternoon,

Please see the attached regarding:
Major Site Plan Review, SP-2023-01; Proposed Tier III Solar Energy System; property located at 800 & 850 New Road; Sol Source Power, Petitioner.

Digital versions of the site plan materials may be viewed and/or downloaded from:
Blockedhttps://us-east-2.protection.sophos.com?d=amherst.ny.us&u=aHR0cHM6Ly93d3cuYW1oZXJzdC5ueS51cy9jb250ZW50L2RldmVsb3BtZW50X3Byb2plY3RzX3BlbmRpbmcucGhw&i=NWQ1NDQ3ZTFhNzY3NTgxMGE3OGJmYzZk&t=Y082WFExSDFKaXB2elJJbi9xNWFNWEcxTmh3OXVOa2lyTWpwQURvNDZOVT0=&h=8f88a0e660eb450c92f6e822663105e7&s=AVNPUEhUT0NFTkNSWVBUSVYKYh5CwA3I525AKcEpIj5hqNNvtWAEDsxEm0LIyUSy_A

Thank you,

Amy Carrato
Community Development Assistant
Town of Amherst Planning Department
5583 Main Street, Williamsville, NY 14221
716-631-7051

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
700 Delaware Avenue, Buffalo, NY 14209
P: (716) 851-7165 I F: (716) 851-7168
www.dec.ny.gov

February 9, 2023

Thomas Voigt
Town of Amherst Planning Department
5583 Main Street
Williamsville, New York 14221

Dear Thomas Voigt:

SEQR Lead Agency Coordination
800/850 New Road Solar Energy System
800/850 New Road
Town of Amherst, Erie County

This is to acknowledge receipt of your January 26, 2022, submission regarding the above referenced project under the State Environmental Quality Review Act (SEQR). The Department recommends that the Town of Amherst should act as SEQR Lead Agency, since the environmental impacts of the proposal are primarily of local significance. However please be aware of the following:

1. If project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002). This General Permit requires the project sponsor, owner or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on General Permit GP-0-15-002, as well as the NOI form, is available on the Department's website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution Prevention Plan (SWPPP) is available on the Department's website at www.dec.ny.gov/chemical/8468.html.

   The Town of Amherst is designated as an MS4 community. The project sponsor, owner or operator of a construction activity that is subject to the requirements of a regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 community. The "MS4 SWPPP Acceptance" form must be signed by the principle executive officer or ranking elected official from the MS4 community, or by a duly authorized representative of that person, and submitted along with the NOI, to the Department at NOTICE OF INTENT, NYSDEC, Bureau of Water Permits, 625 Broadway, 4th Floor, Albany, New York 12233-3505, telephone: 518/402-8111 to receive Department approval before construction commences.

NEW YORK STATE | Department of Environmental Conservation

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

2. It was noted on the Federal Emergency Management Agency's (FEMA) FIRM Map No. 36029COO78H that the site may be located within a flood hazard area. The proposed project should be designed in accordance with all applicable local municipal laws for flood damage reduction.

3. The site) appears to be within an archaeologically sensitive area based on information obtained through the Cultural Resource Information System (CRIS) on the New York State Office of Parks, Recreation and Historic Preservation's (OPRHP) website at https://cris.parks.ny.gov/. As part of the SEQR process, this concern should be evaluated, unless it can be verified by appropriate documentation that the sites have been significantly disturbed in a way that would destroy potential artifacts. Please recognize that normal agricultural activities, such as plowing, would not constitute such land disturbance. If there are any questions regarding this, contact OPRHP (telephone: 518/237-8643).

4. It appears that the project site may involve work in / near areas identified as federal wetlands. A permit from the U.S. Army Corps of Engineers may be required for this proposal. If a Corps permit is required, Water Quality Certification from this Department may also be necessary.

If you have any other questions, please feel free to contact Bruno DiBella of my staff or me at 716/851-7165.

Sincerely,

David S. Denk

David S. Denk
Regional Permit Administrator

BAD/slr

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Fadel, Bryan

From: Marshall, Scott
Sent: Thursday, February 2, 2023 11:55 AM
To: Carrato, Amy; Fadel, Bryan
Subject: FW: 2023-RZ445 - T. Amherst - 800 New Road - Sol Source Power development - NYSDOT comments

NYSDOT Review below

Scott A. Marshall, Principal Planner

Town of Amherst
Planning Department
5583 Main Street
Williamsville, New York 14221
Phone: (716) 631-7051 Fax: (716) 631-7153

From: Przepasniak, Justin (DOT) <Justin.Przepasniak@dot.ny.gov>
Sent: Tuesday, January 31, 2023 8:49 AM
To: Marshall, Scott <SMarshall@amherst.ny.us>
Cc: Gordon, Casey (DOT) <Casey.Gordon@dot.ny.gov>
Subject: 2023-RZ445 - T. Amherst - 800 New Road - Sol Source Power development - NYSDOT comments

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.
Good morning Scott,

The New York State Department of Transportation (NYSDOT) has reviewed the documentation provided for 800 New Road - Sol Source Power development and has the following comments:

- NYSDOT concurs with the Town of Amherst acting as Lead Agency.
- Based upon the information provided, the proposed project does not appear to have a significant impact to traffic on the State Highway System

Sincerely,

Justin Przepasniak
Planning and Program Management

New York State Department of Transportation, Region 5
100 Seneca Street
Buffalo, NY 14203
Office (716) 847-3967 | Cell (716) 574-0759 justin.przepasniak@dot.ny.gov
www.dot.ny.gov

NEW YORK STATE OF OPPORTUNITY. Department of Transportation

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST

ERIE COUNTY, NEW YORK

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
(716) 631-7030
FAX (716) 631-7101
www.amherst.ny.us

Martin A. Polowy
Town Attorney

Nicole M. Burroughs
Senior Paralegal

Samuel A. Alba
Sr. Deputy Town Attorney

Ann Demopoulos
Deputy Town Attorney

Brittanylee Penberthy
Town Prosecutor

TO: **Scott Marshall, Planning Department**

FROM: **Ann Demopoulos, Deputy Town Attorney** AD|rms
Right-of-Way Review

DATE: **February 1, 2023**

RE: **Proposed Major Site Plan Review**
SP-2023-01
800 &850 New Road
Sol Source Power, Petitioner

This office has reviewed the materials submitted by your correspondence dated January 27, 2023 and have no comments.

AD:rms
Attachment
c: Douglas Gesel, Senior Code Enforcement Officer
Jeffrey S. Burroughs, PE, Town Engineer
Steve Long, Sol Source Power
Marc Kenward, Erdman Anthony Consulting

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

TOWN OF AMHERST
ASSESSOR'S OFFICE

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
PHONE: 716-631-7038

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 31, 2023

SUBJECT: Major Site Plan Review: **SP-2023-01**
Proposed: **Tier III Solar Energy System**
Property Location: 800 & 850 New Rd
Petitioner: **Sol Source Power**

Site plan Conditionally Approved as submitted. Properties need to be merged.

cc: Steve Long, Sol Source Power, 1 Washington Place, Troy, NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Rd., Ste. 200, Rochester, NY 14620

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Carrato, Amy

From: Maria Abraham <[redacted]>
Sent: Thursday, August 17, 2023 4:16 PM
To: Carrato, Amy
Subject: Public Hearing - Proposed Tier III Solar Energy System at 800 & 850 New Rd., File No. SP-2023-01

CAUTION: This email originated from outside of the organization.
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Amherst Planning Department:

I reside at 941 New Rd. and my elderly parents reside at 931 New Rd. I feel the above-noted subject will definitely affect my family and since we are not able to attend the public hearing, I would like to submit my comments below. I'm hoping my comments can be heard at the public meeting and they are strongly considered.

Comments:

With all of the properties available in Amherst, NY, why would a residential road be considered for such a project? Solar panel farms are not a pretty sight to view out your front window. My family and I pass one everyday on the 990 and all I can do is shake my head wondering why this was allowed. Now another one planning to be installed so close to the first one? Seems as if the business folks are creating their own convenience and not considering the residents! They are a hideous sight and shouldn't be anywhere near a residential area. Instead of beautifying the area, you are destroying it with what may potentially become an abandoned waste area, which our children and future residents will most likely have to pay for in taxes to clean up the mess. No thank you!

Consider what you are doing to the homeowners on New Rd. You are certainly going to depreciate the value of our homes. We have all worked very hard, spending many years of our lives, time, and money in keeping the value of our homes high. If there is a solar panel farm installed on New Rd., who do you think will want to buy a home on New Rd. and see a solar panel farm either out their front window or having to drive past it day after day? NOBODY! This definitely causes our homes to depreciate in value. Everything we have worked for goes down the tubes.

MY FAMILY AND I AGREE THAT YOU SHOULDN'T GO FORTH WITH THIS PROJECT ACROSS THE STREET FROM OUR HOMES! MY FAMILY AND I ARE COMPLETELY AGAINST IT!

New Rd. residents shot down the Walmart plan not too long ago. In the end, it would have turned into a mess tax payers would have to clean up. This solar panel farm proposed project is really no different.

One question for you: Are you certain, in regards to the safety of our health, the solar panels don't create any kind of harmful field to the residents? Having two farms in such close proximity of each other makes me worry! I would have to insist on REQUIRING scientific proof the solar panels are not going to be harmful to our health over the years. Was any scientific proof given when the solar panel farm was installed alongside the 990?

If, for any reason, this project moves forward, and causes the depreciation of our homes and property, due to greed of business folks, their financial benefit and their convenience, and not the benefit of New Rd. home owners/residents, I STRONGLY suggest it be REQUIRED to have trees covering the solar panel farm so they ARE NOT VISIBLE, AT ALL, TO ANY OF THE NEW RD. RESIDENTS. I would also have to STRONGLY suggest ALL OF THE BUSINESS FOLKS INVOLVED, who will be profiting from this solar panel farm, be the ones who are RESPONSIBLE FOR ANY CLEAN UP down the road and NOT HAVE IT FALL ONT HE SHOULDERS OF THE AMHERST TAX PAYERS!

Thank you for your time in this sensitive matter.
Sincerely,

MARIA ABRAHAM

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

NORMAN ABRAHAM
ROSALIA DOLCE
ANTONINIO DOLCE

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Carrato, Amy

From: sally blazynski [redacted]
Sent: Wednesday, August 16, 2023 10:09 PM
To: Carrato, Amy
Subject: 800 & 850 New Road Solar Farm

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 whom it may concern,

We reside at 905 New Road and have lived here for over 30 years.

Wr never recieved notice of first town meeting concerning the New Road Solar Farm Proposal, but will be attending the one on Thursday, August 17th.

Please know from the start that we are opposed to living directly across the street the proposed New Road solar farm or any other power factory, for a multitude of reasons.

First and most importantly the very possible and likely health hazards. Per many sources, including the World Health Organization, houses should never be as close to a Solar Farm as our house would. For new builds, The World Health Organization recommends houses be built no closer than 1.2 miles.

Possible health hazards living as close as our house is to proposed solar farm can include headaches, fatigue, disrupted sleep and more potentially life threatening illnesses.

A solar farm is nothing short of an Open Air Power Factory and our home would be downwind of dangerous air pollutants during constuction and the life of the solar farm.

Environmental activist are concerned about endangered birds and plants being further harmed by solar farms, we are concerned about our family and neighbors quality of life and our health. Living directly across the street is just too close.

Also, I have researched property values being negatively impacted living close to solar farms. Houses living with one that is pretty much in their front yard are most likely to suffer drastic decline in value. Selling a house this close can prove to be almost impossible, many would not live this close to one for free.

I would hope that if the town board is seriously considering approval of this proposal, the board insist that the neighboring home owners on New Road be offered a relocation option. One that would include current market value of comparable house and property. Also any moving expenses that would be incurred.

These are only a few of our many concerns of the proposal before you.

Sincerely,

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

Walter and Sally Blazynski

Attachment: SP-2023-05 TB letter 091823 (RES-2023-775 : Special Use Permit for Tier III Solar Energy System at 800 & 850 New Road)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 28261 **RESOLUTION 2023-957** **ADJOURNED**

Adoption of Local Law to Amend the Zoning Map (4774 & 4780 Sheridan Drive, Z-2023-07)

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 October 19, 2023 that the proposed Residential District 4 zoning at 4774 & 4780 Sheridan Drive 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 density of the project site shall not exceed 4.4 units per acre.

2. That the use of the project site to be rezoned from R-3 to R-4 shall be limited to two (2) unit-attached townhomes only.

3. That the maximum allowable height of any residential building on the project site as measured from finished grade shall be thirty-five (35) feet.

4. That the project site's contaminated soil be remediated to residential standards under the purview of, and in accordance with the NYSDEC's Brownfield Cleanup Program.

5. That the conditions stated above shall be memorialized via the recording of a Declaration of Restrictions at the Erie County Clerk's Office.

12/4/2023
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 8:54 PM.

Sean Hopkins, Esq., presented.

The following speakers spoke in opposition:
Sharon Easterbrook, 80 Tristan Ln
Alicia Schreier, 79 Tristan Ln

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the hearing and set a decision date for the December 18th Town Board meeting, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was closed at 9:23 PM.

12/18/2023
Councilmember Berger made a motion to adjourn to the second Town Board meeting in January, seconded by Councilmember Szukala and unanimously approved 5-0.

1/22/2024
Supervisor Kulpa made a motion to adjourn, seconded by Councilmember Berger and unanimously approved 5-0.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

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 Dir

Town Board Agenda of December 4, 2023

November 28, 2023

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

Subject: Request to Rezone 5.03± Acres of Land From R-3 to R-4, Z-2023-07; Property Located at 4774 & 4780 Sheridan Drive. RAS Development Company LLC Petitioner. (Z-2023-07).

Honorable Members:

The subject property is a 5± acre "L-shaped" parcel located on the north side of Sheridan Drive, 4,677± feet west of Hopkins Road. The subject site contains two adjacent parcels, each with its own curb cut. The lot at 4774 Sheridan Drive has a single-family home with associated accessory structures; 4780 Sheridan Drive contains the former Gleason's Nursery business and several associated structures.

The developer is seeking entry into the NYSDEC Brownfield Cleanup Program for a "Track 4 Restricted Residential Cleanup". A requirement of this program is that the site remain in common ownership for ease of monitoring and reporting. A description of the program and requirements has been provided by Roux Environmental Engineering & Geology, DPC dated September 28, 2023.

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

The purpose of this rezoning request is to allow for the potential future development of the subject site as attached single-family residential homes as required for the petitioner's entry into the NYSDEC Brownfield Cleanup Program to remediate hazardous materials on the subject sites. (For further information please refer to the letter from Roux Environmental Engineering & Geology, DPC to the Planning Director dated September 28, 2023.)

The subject site was zoned Residential District 3 (R-3) with the adoption of the Town wide Zoning Map & Ordinance on January 19, 1976.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Honorable Town Board

Rezone land from R-3 to R-4;
property located at 4774 & 4780 Sheridan Drive.
Agenda of December 4, 2023

SUB-2018-03:
On August 15, 2019, the Planning Board considered petitioner Morgan Homes' request for a 14-lot subdivision with a public road. The Planning Board approved the proposed subdivision; however, the contamination level of the site was too great for the NYSDEC to allow the development of the site for single family homes on individual lots. Therefore, the petitioner was not able to develop the site as approved.

The Planning Board offers the following findings on the current rezoning request, consistent with Section 8-3 of the Zoning Ordinance.

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN
The proposed rezoning is generally consistent with Figure 6 of the Comprehensive Plan which depicts a single-family residential land use in this area with a density of 2-4 units/acre. The concept plan illustrates the future potential development of 22 residential units on 5.03± acres of land. The proposed density based on the concept plan is approximately 4.3 units/acre which is slightly denser than intended by the Comprehensive Plan. A reduction of 2 units would make this proposal fully consistent with the intent of the single-family land use category of the Comprehensive Plan.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE
The intent of the Residential 4 District (R-4) is to provide for the development of attached or detached dwelling units within a single structure. Based on the concept plan provided, the intent of the R-4 district is met. A full consistency review for all applicable zoning regulations will take place during site plan review.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING
The surrounding properties to the north, south, east and west are zoned Residential District 3 and are made up of single-family homes on individual lots. The R-4 District allows for a different form of housing (attached) than the adjacent zoning district however, the proposed use of the structures remain single-family residential therefore the proposed rezoning would be consistent with the surrounding development/zoning.

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 pursuant to 6 NYCCR §617.7 of the SEQR regulations.

RECOMMENDATION
The Planning Board at their meeting of October 19, 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.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Honorable Town Board

Rezone land from R-3 to R-4;
property located at 4774 & 4780 Sheridan Drive.
Agenda of December 4, 2023

The Planning Department requests that if the Town Board desires to act on the rezoning request, that a decision date be established after the close of 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-2023-07_(4774_&_4780_Sheridan_Dr)_2023\Z-2023-07_TB_letter_120423.docx
cc: Martin Polowy, Town Attorney

Planning Board Approval: October 19, 2023
Ayes 4, Noes 2; Absent 1

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-07

PETITIONER

RAS Development Company LLC
c/o Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy
5500 Main Street, Suite 343
Williamsville, New York 14221

PROPERTY LOCATION

4774 & 4780 Sheridan Drive

WHEREAS the Town of Amherst Planning Board on Thursday, October 19, 2023 held a public hearing on the proposed rezoning of land from Residential District Three (R-3) to Residential District Four (R-4), 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. The proposal is consistent with the Conceptual Land Use Plan which shows "Single-Family Residential" land 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 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 tends to improve the balance of uses, and 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.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2023-07

PETITIONER

RAS Development Company LLC

PROPERTY LOCATION

4774 & 4780 Sheridan Drive

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 rezoning request be approved subject to the following conditions:

1. That the density of the project site shall not exceed 4.3 units per acre.
2. That the use of the project site to be rezoned from R-3 to R-4 shall be limited to two (2) unit-attached townhomes only.
3. That the maximum allowable height of any residential building on the project site as measured from finished grade shall be thirty-five (35) feet.
4. That the project site's contaminated soil be remediated to residential standards under the purview of, and in accordance with the NYSDEC Brownfield Cleanup Program.
5. That the conditions stated above shall be memorialized via the recording of a Declaration of Restrictions at the Erie County Clerk's Office.

The foregoing resolution was adopted by the Town of Amherst Planning Board, October 19, 2023; moved by Chmiel; seconded by Kahn; ayes 4, noes 2 (Gill, Penberthy); absent 1 (Raffaele).

Robert J. Gilmour, Planning Board Chair

10-26-2023
Date

TV/ac
X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774_&_4780_Sheridan_Dr)_2023\Z-2023-07_resolution_101923.doc
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
RAS Development Company, c/o Sean Hopkins, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Rezoning Application & Supporting Documentation - Rezoning of 4774 & 4780 Sheridan Drive from R-3 to R-4
Applicant: Savarino Development Corp. I 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

RECEIVED
JUL 17 2023
TOWN OF AMHERST
PLANNING DEPT.

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2023-07 Acreage 5.03 Fee $ 2,265

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. 7.17.23 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**		$1,000.00
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:	$ 2,265.00

[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: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Savarino Development Corp. I

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-3 District

To: R-4 District

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

4774 and 4780 Sheridan Drive

SBL #: SBL Nos. 68.12-1-10 and 68.12-1-11

4. **Area of land to be rezoned** (in acres): Approximately 5.029 Acres

5. **Owner of Land:**

Name: Estate of Edith Fruehauf, Rudolph Gleason and Greta Gleason

Address: 4780 Sheridan Drive - Williamsville, NY 14221

Telephone:

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: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

7. **Petitioner's interest in property**

_____Option to purchase

_____Owner

__X_____Other (explain) [Authorization Letter of Property Owner Attached]

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-3 to R-4 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-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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: 22 units

B. Distribution of dwelling units by type: Attached residential units for sale

C. Gross Residential Density per acre: 4.4 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 Concept Site Plan for the proposed project is provided at Exhibit "6".]

13. Development Schedule:

Start: 2024

Finish: 2025

Stages (# of): 1 stage for infrastructure and site improvements

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

The apartments will be leased.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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 $ 2,265.00 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 15th day of July, 2023

Notary Public, Erie County, New York

MARIANNE BRAUTLACHT
Notary Public, State of New Yor
Qualified in Erie County
My Commission Expires 01/14/20

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: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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:\Cur\Plan\Applications2007\Rezoning & Comp Plan Amend App.
10/08

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

AUTHORIZATION

Estate of Edith Fruehauf, Rudolph Gleason and Greta Gleason, as the owners of property located at 4774 and 4780 Sheridan Drive in the Town of Amherst ("Project Site"), hereby authorizes Savarino Development Corp. I, Hopkins Sorgi & McCarthy PLLC, Carmina Wood Design and its other consultants to seek an amendment of the zoning classification of the Project Site from R-3 to MFR-4A, as well as all other required approvals from the Town of Amherst municipal boards and all other governmental agencies in connection with the development of the Project Site as a residential project.

Date: June 9, 2023

ESTATE OF EDITH FRUEHAUF

Signature: Diane Wolf POA Fo
Print Name: Diane Wolf Rudolph

Signature: Diane Wolf POA Gleas
Print Name: Greta Gleason Exec

Signature: Diane Wolf POA Ed
Print Name: Rudolph Gleason Est

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 1

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Full Environmental Assessment Form
Part 1 - Project and Setting

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

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: Proposed Residential Project		
Project Location (describe, and attach a general location map): 4774 and 4780 Sheridan Drive - Town of Amherst - Erie County		
Brief Description of Proposed Action (include purpose or need): The proposed project ("action") consists of the development of the parcels at 4774 and 4780 Sheridan Drive ("Project Site") as a residential project consists of eleven two-story building each comprised of two homes for sale [22 total units]. The proposed action has been defined broadly to include all all proposed site improvements as well as all required discretionary approvals and permits as well as including an amendment of the zoning classification of the Project Site from R-3 to R-4 by the Town of Amherst Town Board and approvals and permits needed from involved agencies including entry into the NYSDEC Brownfield Cleanup Program. The project purpose is to develop the Project Site for low density residential purposes per the recommended land use in Figure 6 of the Town's adopted Comprehensive Plan. The proposed project is an Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") and will not result in any potentially significant adverse environmental impacts.		
Name of Applicant/Sponsor: Savarino Development Corp. I 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): Same as above.	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): Estate of Edith Fruehauf, Rudolph Gleason and Greta Gleason	Telephone: E-Mail:	
Address: 4780 Sheridan Drive		
City/PO: Williamsville	State: NY	Zip Code: 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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 Board - Rezoning	July 17, 2023
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Planning Board - Site Plan Approval	To be Determined
c. City, Town or Village Zoning Board of Appeals ☑Yes ☐No	Zoning Board of Appeals - Area Variances	To be Determined
d. Other local agencies ☐Yes ☑No		
e. County agencies ☑Yes ☐No	ECDOH - Sewer and ECWA - Water	To be Determined
f. Regional agencies ☐Yes ☑No		
g. State agencies ☑Yes ☐No	NYSDOT - Highway Work Permit , NYSDEC - Brownfield Cleanup, SPDES Permit and DSCA	To be Determined
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):

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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-3)

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? Residential District Four (R-4)

C.4. Existing community services.

a. In what school district is the project site located? Amherst Central Schools

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?
Hutchinson Hose Company

d. What parks serve the project site?
Amherst State Park

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)? Low density residential consisting of two-unit homes for sale.

b. a. Total acreage of the site of the proposed action? 5.03 acres
b. Total acreage to be physically disturbed? 5.03 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 5.03 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: _____

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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		22		
At completion of all phases		22		

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: stormwater management area
ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☑ Other specify: Stormwater runoff
iii. If other than water, identify the type of impounded/contained liquids and their source.
Not applicable.
iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: 0.25 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):
Earth Fill - The stormwater management area does not constitute a dam regulated by the NYSDEC.

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): _____
_____

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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: 5,080 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 Water Authority
- 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: 4,600 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 Facility
- Name of district: Town of Amherst
- 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 2.20 acres (impervious surface)

_____ Square feet or 5.03 acres (parcel size)

ii. Describe types of new point sources. Building roofs, asphalt driveway

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)?

On-site stormwater management facility

- 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):

local grid

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: 7am to 5pm
- Saturday: 7am to 5pm [as needed]
- Sunday: n/a
- Holidays: n/a

ii. During Operations:

- Monday - Friday: n/a
- Saturday: n/a
- Sunday: n/a
- Holidays: n/a

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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:

Temporary and unavoidable storm term noise impacts resulting from the use of construction equipment during construction of the proposed project

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:

Proposed on site lighting will be dark sky compliant and in compliance with all Town of Amherst lighting regulations.

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): Golf course

ii. If mix of uses, generally describe:

Mixture of uses including Park Country Club Golf Course and residential uses including single-family 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	1.4	2.20	+ 0.8
• Forested	0.0	0.0	0.0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0.0	0.0	0.0
• Agricultural (includes active orchards, field, greenhouse etc.)	0.0	0.0	0.0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0.0	0.0	0.0
• Wetlands (freshwater or tidal)	0.0	0.0	0.0
• Non-vegetated (bare rock, earth or fill)	0.0	0.0	0.0
• Other Describe: Greenspace and landscaping	3.63	2.83	- 0.8

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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:
There is contamination on the project site resulting from its historical use as a nursery (herbicides and pesticides).

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? > 40 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:

Schoharie silt loam	84 %
Urban Land-Odessa complex	16 %
	%

d. What is the average depth to the water table on the project site? Average: 36 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? [There are any wetlands subject to the jurisdiction of either the USACE or NYSDEC located on 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-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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: _____

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: Amherst State Park, Glen Park, Audubon Town Park

ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): local park

iii. Distance between project and resource: 1-4 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 Savarino Development Corp. I Date July 17, 2023

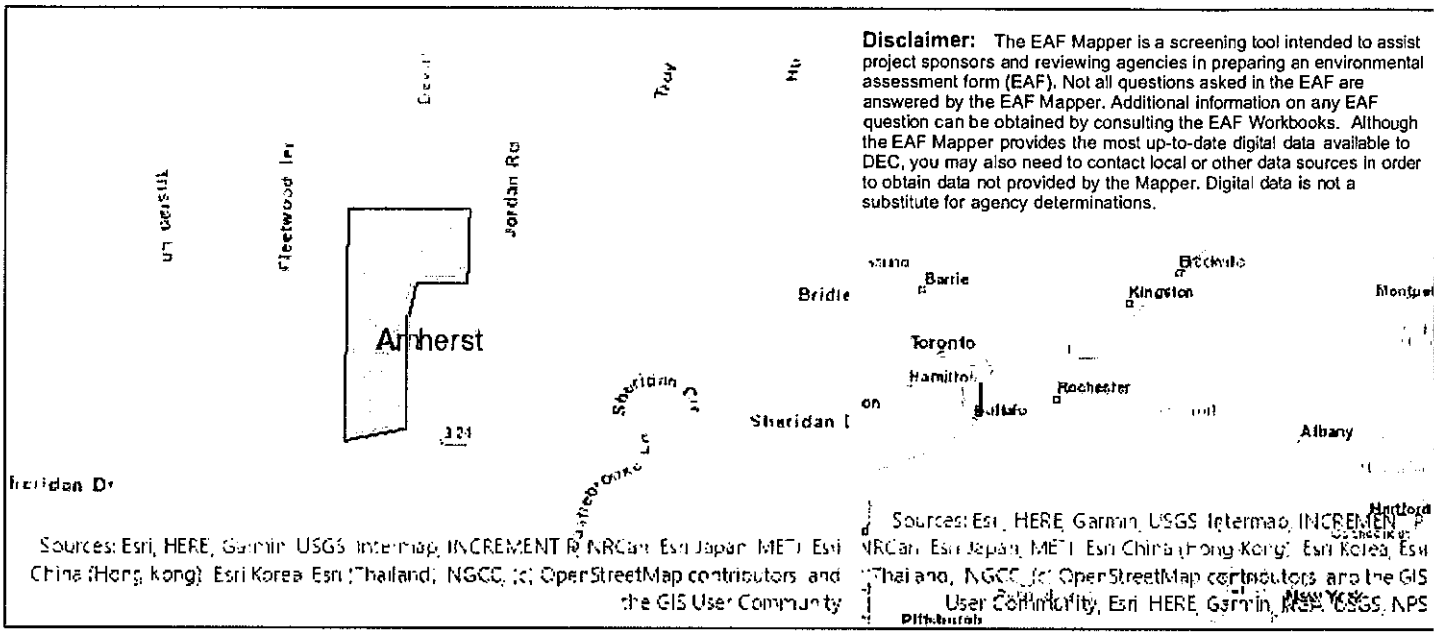
Signature _____ Title Attorney for Project Sponsor

PRINT FORM

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EAF Mapper Summary Report

Friday, June 16, 2023 10:58 AM



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]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
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

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E.2.p. [Rare Plants or Animals]	No
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]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM
Proposed Residential Project - 4774 & 4780 Sheridan Drive

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
Schoharie silt loam	✓		✓		✓
Urban Land Odessa complex	✓		✓		✓

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).

   ✓ Geotechnical report attached _____ Not applicable

   [Three copies of the Geotechnical Report prepared by Ray Teeter dated November 16, 2018 have been submitted.]

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:
   4774 Sheridan Drive - 0.67 ac
   4780 Sheridan Drive - 4.36 ac

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_____

   (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 12
   Source: ITE Trip Generator

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:

    4,400 average flow 17,600 peak flow.

    (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-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 2

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 2 OF REZONING APPLICATION

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED FROM R-3 TO 4-4

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, 60, Township 12, and Range 7 of the Holland Land Company's Survey, bounded and described as follows:

COMMENCING at a point in the center line of Sheridan Drive, distant 214.37 feet west of the east line of lands conveyed to Michael Trenz and Elsie Trenz, his wife by deed recorded in the Erie County Clerk's Office in Liber 3381 of Deeds at page 411;

thence northerly along the west line of lands per deed filed in the Erie County Clerk's Office in Liber 5022 Deeds page 430, at an interior angle of 101°11', a distance 50.97 feet to a point in the south line of said Sheridan Drive being the True Point and Place of Beginning;

thence westerly along the said south line of Sheridan Drive 215.35 feet to a point in the west line of said Michael Trenz and Elsie Trenz in Liber 3381 of Deeds at page 411;

thence northerly at an interior angle of 78°47' and along the west line of said Trenz, 789.86 feet to a point;

thence east at an interior angle of 90°59', a distance of 422.64 feet to a point in the east line of said Michael Trenz and Elsie Trenz in Liber 3381 of Deeds at page 411;

thence south at an interior angle of 88°38'9" and along the east line of said Trenz, 257.10 feet to a point, being the northeast corner of lands conveyed to Edward Roessel and Jennie Roessel, his wife by deed recorded in said Erie County Clerk's Office in Liber 4296 of Deeds at page 180;

thence westerly at right angles along said Roessel's north line, 178.00 feet to the northwest corner thereof;

thence southerly along said Roessel's west line, 101.72 feet to an angle point therein;

thence continuing along said Roessel's west line and parallel with the east line of Lot No. 60, 18.00 feet to a point;

thence westerly at right angles to the east line of said Lot No. 60, 8.29 feet to the northwest corner of lands conveyed to John J. Julian and Frances J. Julian, his wife by deed recorded in said Erie County Clerk's Office in Liber 5022 of Deeds at page 430;

thence southerly at right angles and along the west line of said lands so conveyed to said John J. Julian and Frances J. Julian, 144.32 feet to an angle point therein;

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

thence continuing southerly at an exterior angle of 178°21'05", 237.22 feet to the True Point and Place of Beginning.

This parcel containing 5.029 acres of land more or less.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 3

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

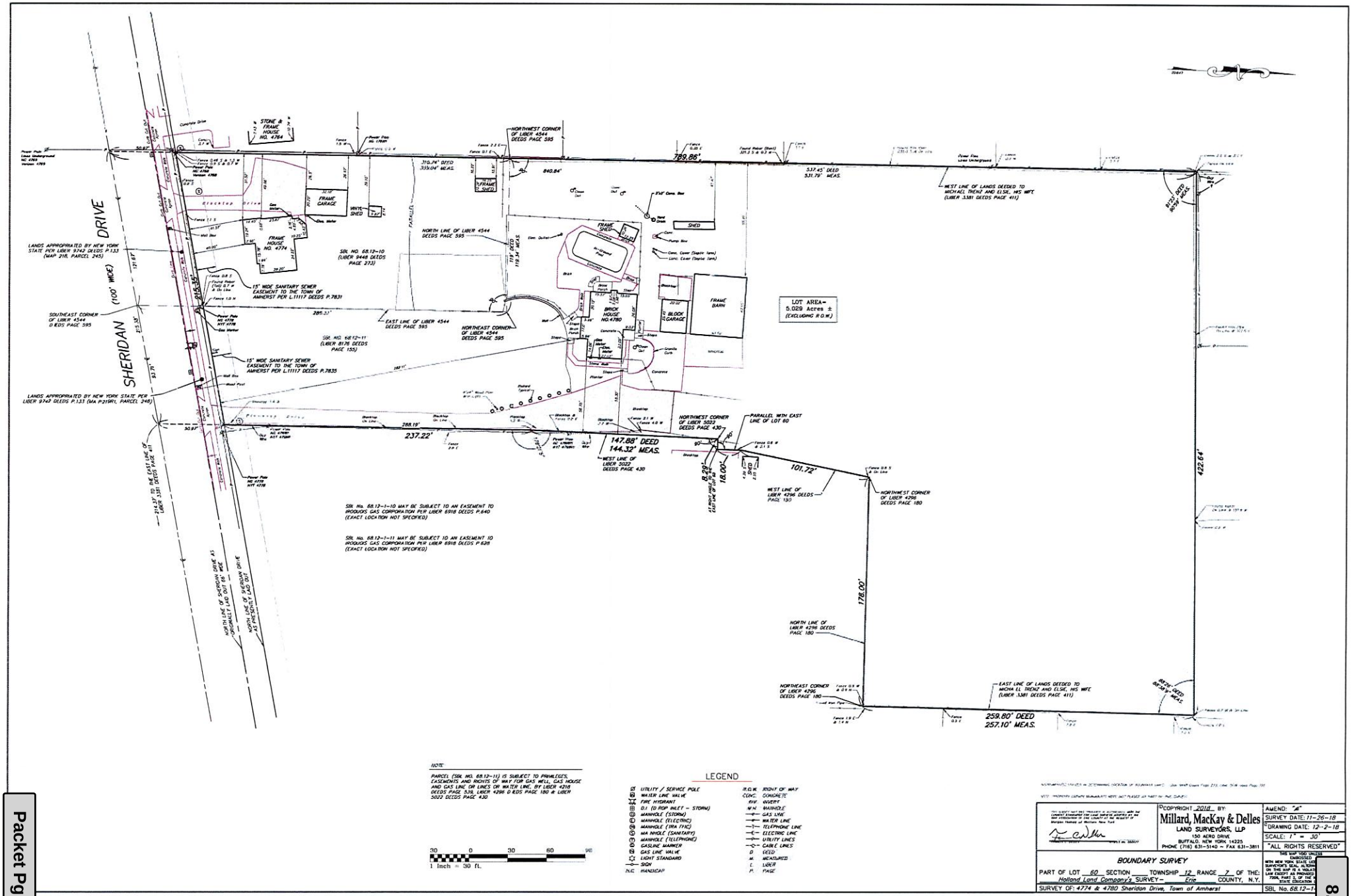

SHERIDAN DRIVE
(100' WIDE)
STONE & FRAME HOUSE NO. 4764
FRAME GARAGE
VINYL SHED
FRAME HOUSE NO. 4774
NORTHWEST CORNER OF LIBER 4544 DEEDS PAGE 595
310.74' DEED
309.04' MEAS.
789.86'
840.84'
537.45' DEED
531.79' MEAS.
WEST LINE OF LANDS DEEDED TO MICHAEL TRENZ AND ELSIE, HIS WIFE (LIBER 3381 DEEDS PAGE 411)
NORTH LINE OF LIBER 4544 DEEDS PAGE 595
SBL NO. 68.12-1-10 (LIBER 8448 DEEDS PAGE 273)
FRAME SHED
SHED
LANDS APPROPRIATED BY NEW YORK STATE PER LIBER 9743 DEEDS P.133 (MAP 218, PARCEL 245)
15' WIDE SANITARY SEWER EASEMENT TO THE TOWN OF AMHERST PER L.11117 DEEDS P.7831
SOUTHEAST CORNER OF LIBER 4544 DEEDS PAGE 595
EAST LINE OF LIBER 4544 DEEDS PAGE 595
NORTHEAST CORNER OF LIBER 4544 DEEDS PAGE 595
SBL NO. 68.12-1-11 (LIBER 8176 DEEDS PAGE 155)
BRICK HOUSE NO. 4780
4 BLOCK GARAGE
FRAME BARN
LOT AREA= 5.029 Acres ± (EXCLUDING R.O.W.)
LANDS APPROPRIATED BY NEW YORK STATE PER LIBER 9743 DEEDS P.133 (MAP 218, PARCEL 246)
NORTHWEST CORNER OF LIBER 5022 DEEDS PAGE 430
PARALLEL WITH EAST LINE OF LOT 60
288.19'
237.22'
147.88' DEED
144.32' MEAS.
WEST LINE OF LIBER 5022 DEEDS PAGE 430
101.72'
WEST LINE OF LIBER 4296 DEEDS PAGE 180
NORTHWEST CORNER OF LIBER 4296 DEEDS PAGE 180
422.64'
178.00'
NORTH LINE OF LIBER 4296 DEEDS PAGE 180
NORTHEAST CORNER OF LIBER 4296 DEEDS PAGE 180
EAST LINE OF LANDS DEEDED TO MICHA EL TRENZ AND ELSIE, HIS WIFE (LIBER 3381 DEEDS PAGE 411)
259.80' DEED
257.10' MEAS.
SBL No. 68.12-1-10 MAY BE SUBJECT TO AN EASEMENT TO IROQUOIS GAS CORPORATION PER LIBER 6918 DEEDS P.640 (EXACT LOCATION NOT SPECIFIED)
SBL No. 68.12-1-11 MAY BE SUBJECT TO AN EASEMENT TO IROQUOIS GAS CORPORATION PER LIBER 6918 DEEDS P.628 (EXACT LOCATION NOT SPECIFIED)
NOTE:
PARCEL (SBL NO. 68.12-1-11) IS SUBJECT TO PRIVILEGES, EASEMENTS AND RIGHTS OF WAY FOR GAS WELL, GAS HOUSE AND GAS LINE OR LINES OR WATER LINE, BY LIBER 4218 DEEDS PAGE 339, LIBER 4296 DEEDS PAGE 180 & LIBER 5022 DEEDS PAGE 430
LEGEND
UTILITY / SERVICE POLE
WATER LINE VALVE
FIRE HYDRANT
D.I. (D ROP INLET - STORM)
MANHOLE (STORM)
MANHOLE (ELECTRIC)
MANHOLE (TRAFFIC)
MA NHOLE (SANITARY)
MANHOLE (TELEPHONE)
GASLINE MARKER
GAS LINE VALVE
LIGHT STANDARD
SIGN
HANDICAP
R.O.W. RIGHT OF WAY
CONC. CONCRETE
INV. INVERT
M.H. MANHOLE
GAS LINE
WATER LINE
TELEPHONE LINE
ELECTRIC LINE
UTILITY LINES
CABLE LINES
D DEED
M MEASUREMENTS
L LIBER
P. PAGE
30 0 30 60
1 Inch = 30 ft.
©COPYRIGHT 2018 BY:
Millard, MacKay & Delles
LAND SURVEYORS, LLP
150 AERO DRIVE
BUFFALO, NEW YORK 14225
PHONE (716) 631-5140 ~ FAX 631-3811
AMEND: "A"
SURVEY DATE: 11-26-18
DRAWING DATE: 12-2-18
SCALE: 1" = 30'
"ALL RIGHTS RESERVED"
BOUNDARY SURVEY
PART OF LOT 60 SECTION TOWNSHIP 12 RANGE 7 OF THE: Holland Land Company's SURVEY ~ Erie COUNTY, N.Y.
SURVEY OF: 4774 & 4780 Sheridan Drive, Town of Amherst
SBL No. 68.12-1-

EXHIBIT 4

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 4

REZONING OF 4774 & 4780 SHERIDAN DRIVE FROM R-3 TO R-4

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

Response to Question 11(A): The proposed project consists of the development of 4774 and 4780 Sheridan Drive (the "Project Site") as eleven (11) residential buildings each consisting of two residential units for sale [22 total units].[1] Each of the residential units will have an attached garage and the project will result in the clean-up of the contamination located on the parcel at 4780 Sheridan Drive resulting from former use as a nursery [Gleason Nursery] via entry into the NYSDEC Brownfield Program. A full-size copy of the Concept Site Plan [Drawing C-100] prepared by Carmina Wood Design depicting the layout of the proposed project is attached is attached and a reduced-size copy of the Concept Site Plan is also attached as **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 from R-3 to R-4 to accommodate the proposed residential project since the requested R-4 zoning classification is consistent with Figure 6 of the adopted Comprehensive Plan that designates the Project Site as appropriate for low intensity residential uses. A color copy of Figure 6 of the Comprehensive Plan is attached as **Exhibit "7"**. A color excerpt of the Town of Amherst Zoning Map is attached as Exhibit "8" and an aerial photograph of the Project Site and surrounding vicinity is attached as Exhibit "9".

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

---

[1] A legal description of the Project is attached as **Exhibit "2"** and a full-size copy of the Survey of the Project Site is attached to this Rezoning Application. A reduced-size copy of the Survey of the Project Site is also attached as **Exhibit "3"**.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Response to Question 11(B)(2): The Project Site cannot be developed as single-family homes on individual lots per the existing R-3 zoning classification since this would prevent the project from being eligible for entry into the NYSDEC Brownfield Cleanup Program. A residential subdivision was previously approved for the Project Site by the Planning Board but the project was unable to move forward due to the contamination resulting from the former use of 4780 Sheridan Drive as a nursery.

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 R-4 to accommodate the proposed residential project consisting of upscale attached residential units for sale will not result in any potentially significant adverse impacts on surrounding properties. A completed Part 1 of the Full Environmental Assessment Form with attached Page 5[a] as prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is provided at **Exhibit "1"** of this Rezoning Application. It is important to mention that the project will allow the contaminated portion of the Project Site to be remediated via the requirements of the NYSDEC Brownfield Cleanup Program. The proposed project will also require site plan approval from the Planning Board which will ensure compliance with the applicable standards for landscaping, lighting, stormwater management, etc.

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

Response to Question 11(B)(4): The proposed residential project will have positive impacts on the school district since it will generate annual property taxes. The target market for the proposed upscale residential units consists of empty nesters and seniors. The proposed project will potentially

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

generate some demand for educational services provided by the school district but it is anticipated the project will have overall positive fiscal impacts since it is anticipated that the annual school taxes will be higher than the cost of educational services for school age children of the future residents of the project.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 5

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 5

REZONING OF 4774 & 4780 SHERIDAN DRIVE FROM R-3 TO R-4

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 residential project consisting of two-family buildings comprised of upscale residential units for sale is consistent with the adopted Comprehensive Plan and the land uses in the vicinity of the Project Site that includes various zoning classifications including R-3, R-4, MFR-5, MFR-6 and RC. A color excerpt of the Town of Amherst Zoning Map is 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 project is consistent with the Comprehensive Plan and such there is not a need to amend the Comprehensive Plan to accommodate the proposed residential project consisting of two-story units with attached garages for sale.

---

[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-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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 the Project Site from R-3 to R-4 to accommodate the proposed residential project consisting of units for sale on 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 the contaminated Project Site to be developed as a 2-story buildings consisting of two units each [22 total 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.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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 Project Site is not located in a regulated floodway or 100 yr. floodplain. 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 upscale residential buildings 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-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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 Concept Site Plan [Drawing C-100] prepared by Carmina Wood Design submitted with this Rezoning Application will be aesthetically harmonious with nearby areas and structures.[2]

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 a driveway connection to Sheridan Drive. There are currently three curb cuts from the Project Site onto Sheridan Drive.

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 residential 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.

---

[2] A reduced-size copy of the Concept Site Plan [Drawing C-100] is attached as **Exhibit "6"**.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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 uses and zoning classifications.

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 uses permitted by the existing R-3 zoning classification since the development of the Project Site as single-family homes for sale on individual lots is a project type that would enable remediation of the existing contamination per the standards of the NYSDEC Brownfield Cleanup Program. The proposed project to be developed as permitted by the R-4 zoning classification represent a suitable use 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 R-R-3 to R-4 to accommodate the proposed project will have positive impacts on the balance of uses in the Town by providing two-unit buildings consisting of upscale residential uses for sale, which will be attractive to empty nesters and seniors. This project type is uncommon in the Town of

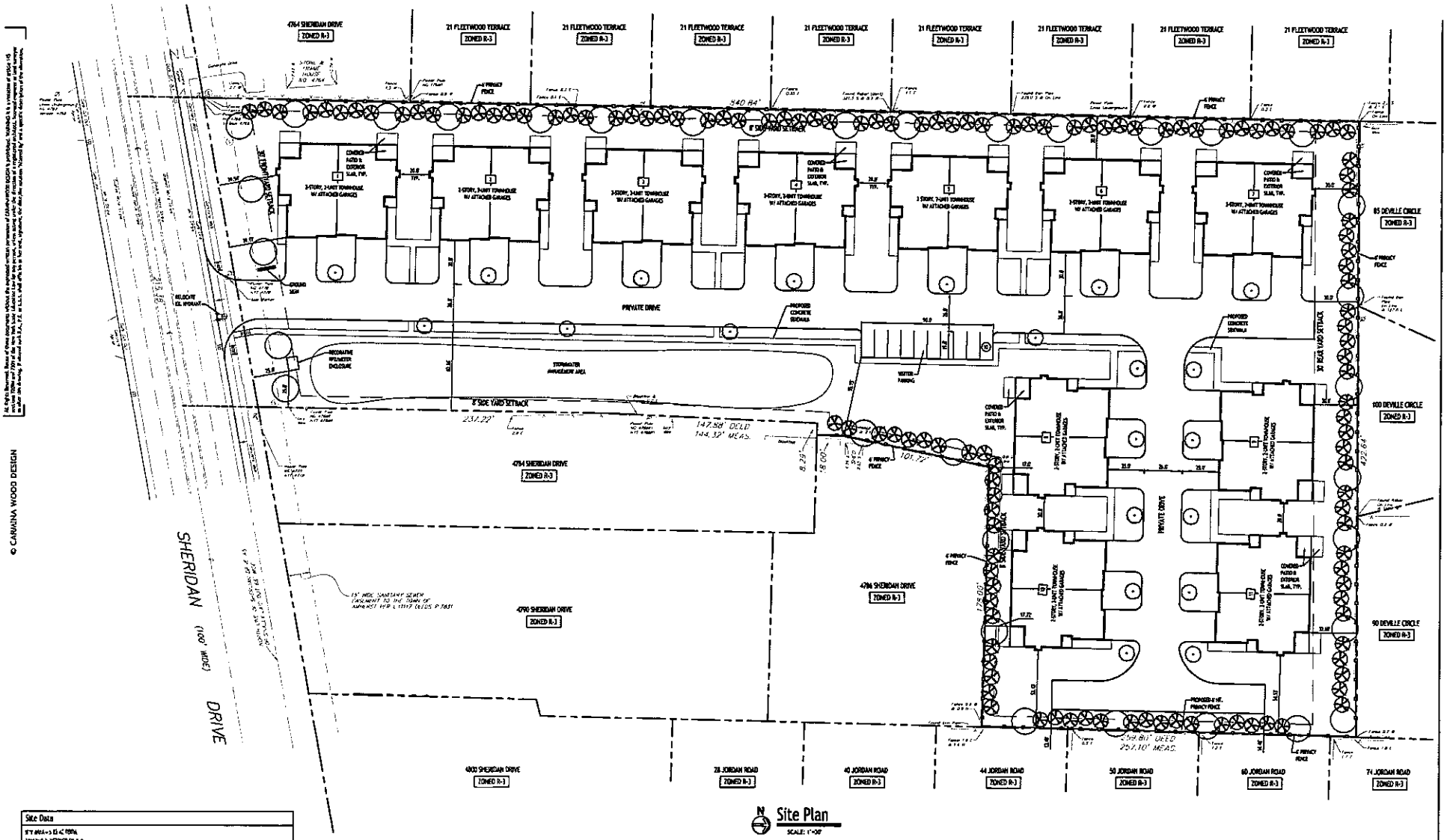
Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Amherst and the adopted Comprehensive Plan recognizes the need for a diverse range of residential housing choices including those that are attractive to seniors.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 6

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))



Site Plan
SCALE: 1"=50'

Site Data		
SITE AREA = ± 23 AC TOTAL		
ZONED: R-3 ALLOWED TO R-M		
PROPOSED USE: 3-UNIT TOWNHOUSE BUILDINGS WITH ATTACHED GARAGES (77 UNITS TOTAL)		
ATTACHED (BLDG)	REQUIRED	PROVIDED
FRONT	30 FT.	36.13 FT. (MIN.)
SIDE	8 FT. / 30 FT. (COMBINED)	17 FT. MIN. / ± 32 FT. (COMBINED)
REAR	30 FT.	30 FT. MIN.
BUILDING DENSITY:	77	77
[illegible] AREA (3-STORY):	MAX SF	± 960 SF
[illegible] COVERAGE:	35% (1.76 AC)	1.54 AC (23.7%)
[illegible] HEIGHT:	35 FT.	± 25 FT.
[illegible] SPACES:	44	94 SURFACE + 44 GARAGE SPACES = 98 TOTAL
[illegible]:	± 35 AC (75%)	± 22%
[illegible] REQUIRED		

PARKING CALCULATION:
"MULTI-FAMILY"
1 SPACES PER UNIT
22 UNITS x 2 = 44 SPACES REQD. (Per R-3)

BUILDING DENSITY REQUIREMENTS:
PER R-M ZONING REQUIREMENTS
1,850 SF / DWELLING
5.63 AC = 43,560 SF = 239,100 SF / 1,850 SF = 30.5
30 UNITS ALLOWED

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS. CARMINA WOOD DESIGN ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.

© CARMINA WOOD DESIGN

CARMINAWOOD DESIGN
Buffalo | Utica | Greensboro

Proposed Multi-Family
4774 & 4780 Sheridan Drive
Amherst, NY

REVISIONS:
No. Description Date

PRELIMINARY
NOT FOR CONSTRUCTION

DRAWING NAME:
Site Plan
Concept

Date: 7/1
Drawn By: P. St
Scale: As n

DRAWING NO.
C-1

Project No:

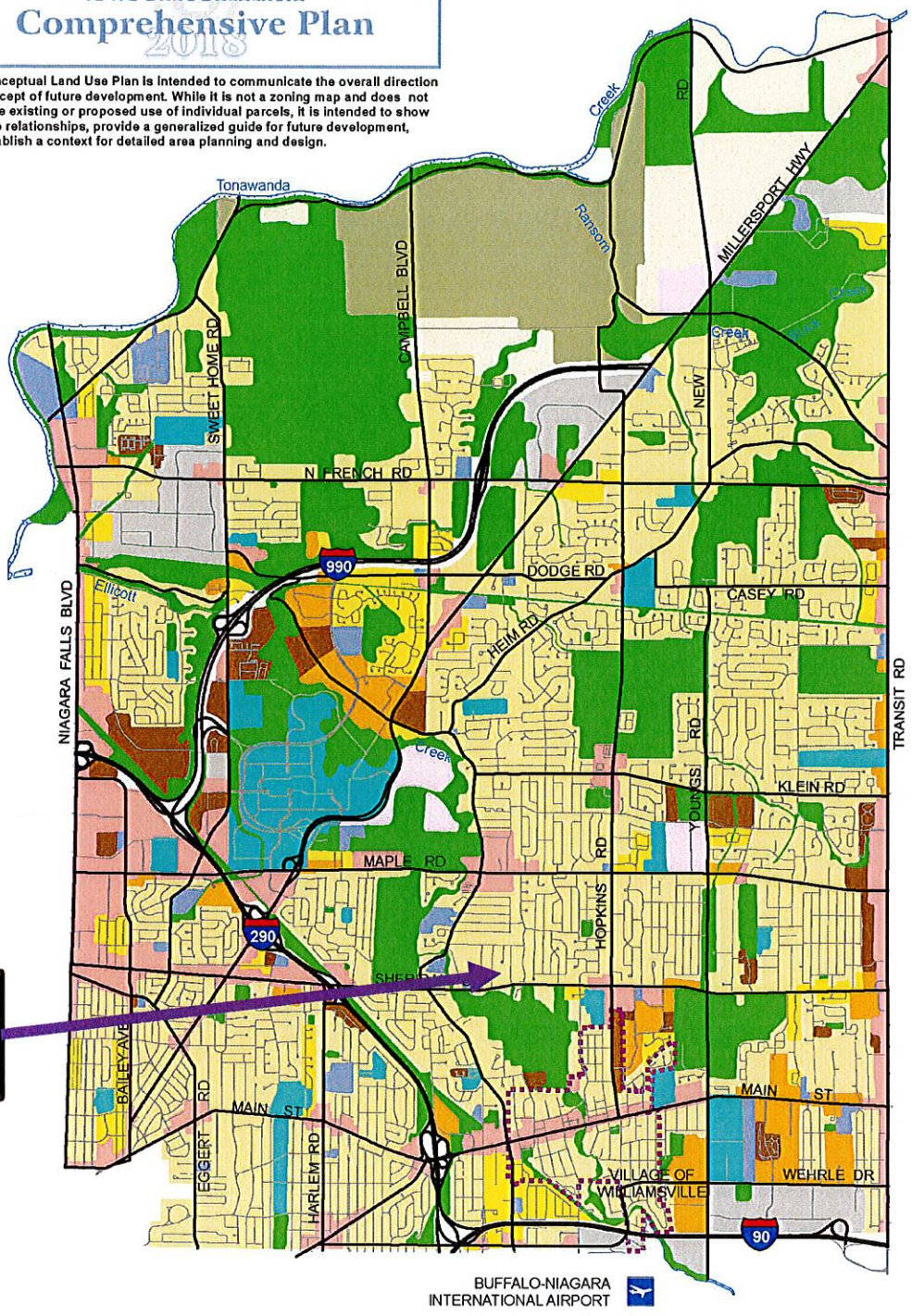
EXHIBIT 7

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Town of Amherst Bicentennial Comprehensive Plan

1818 2018

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.



Project Site

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

Miles

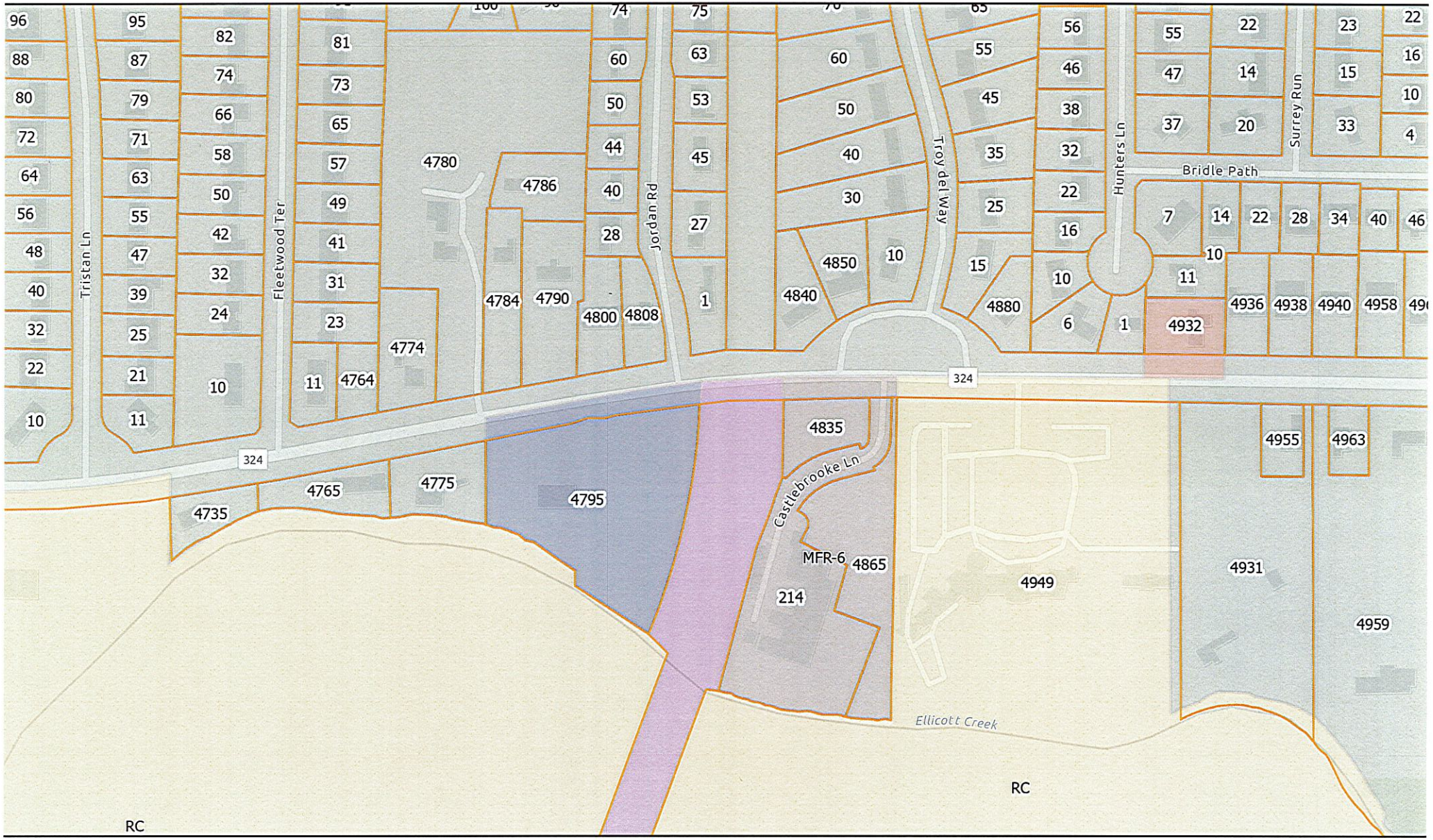
FIGURE 6

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 8

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

ArcGIS Web Map



Parcels
MFR-5
RC
R-3
Other
CF

1:4,514

0 0.03 0.06 0.11 mi

0 0.04 0.09 0.17 km

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Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, M
USGS, EPA, NPS, US Census Bureau, USDA

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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EXHIBIT 9

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

ArcGIS Web Map



/18/2023, 12:04:03 AM

Parcels

Town Boundary

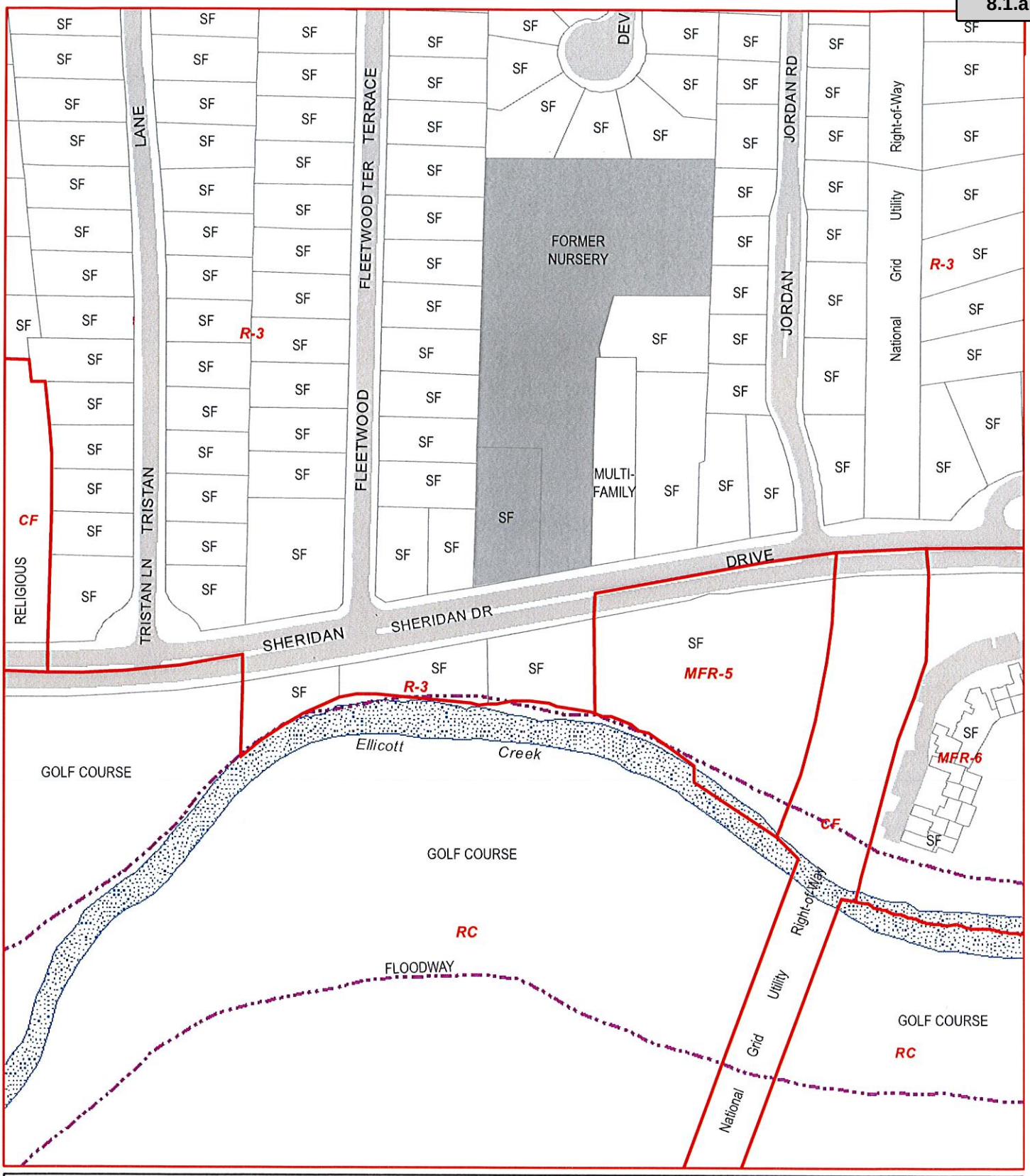
1:4,514

0 0.03 0.06 0.11 mi

0 0.04 0.09 0.17 km

Maxar

NYS GIS Clearinghouse | https://gis.ny.gov | Federal Emergency Management Agency (FEMA) - https://www.fema.gov/node/404233 | Federal Emergency Management Agency (FEMA) - https://www.fema.gov/flood-maps | Erie County GIS | Maxar



Z-2023-07

Request for Rezone 5.03± Acres of Land from R-3 to R-4
Property Located at 4774-4780 Sheridan Drive

Savarino Development Corp., Petitioner

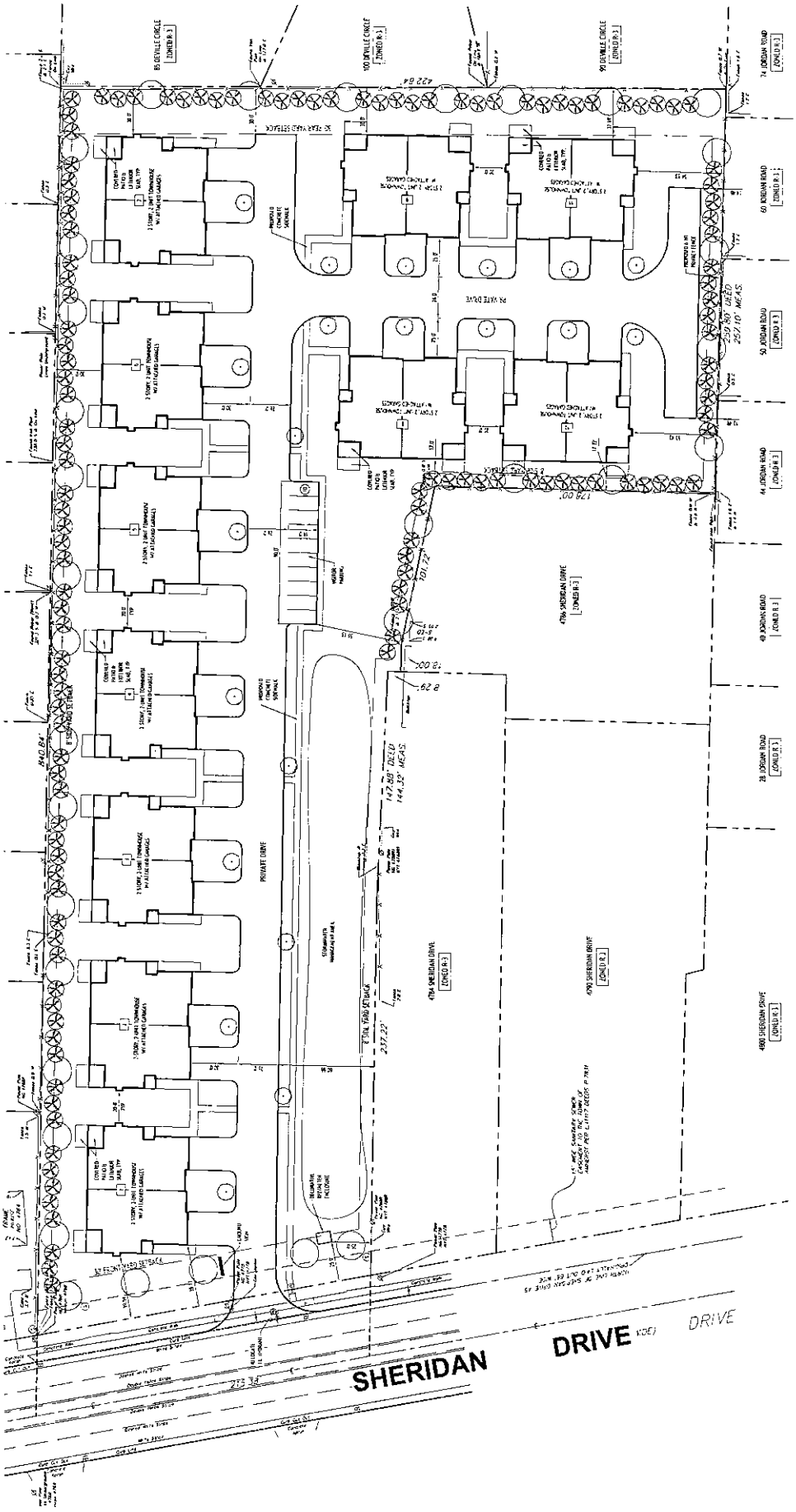
October 19, 2023

4774-4780 Sheridan Drive

Floodway Boundary

Prepared by the Town of Amherst Planning Department

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))



CONCEPT PLAN

Z-2023-07
4774-4780 Sheridan Drive

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))



Z-2023-07

Request for Rezone 5.03± Acres of Land from R-3 to R-4
Property Located at 4774-4780 Sheridan Drive

Savarino Development Corp., Petitioner

October 19, 2023

4774-4780 Sheridan Drive

Floodway Boundary

Prepared by the Town of Amherst Planning Department

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, A
Planning Director
Daniel J. Ulatowski, A
Assistant Planning Dir

MEMORANDUM

October 27, 2023

TO: Tim Koller, Deputy Town Clerk
Daniel Ulatowski, Principal Planner (Planning copy)
Douglas Gesel, Supervising Code Enforcement Officer, Building Department

FROM: Scott Marshall, Principal Planner

SUBJECT: REQUEST TO REZONE 5.03± ACRES OF LAND FROM **R-3** TO **R-4**, **Z-2023-07**; PROPERTY LOCATED AT **4774 & 4780 SHERIDAN DRIVE**. RAS DEVELOPMENT COMPANY LLC., PETITIONER.

ENVIRONMENTAL SITE ASSESSMENT:
Received October 27, 2023

This information is for your records. A review is not required at this time.

Please call the Planning Department if additional information is required (631-7051).

Signature: Doug Gesel **Date:** Nov. 8, 2023

DU/SM/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774_&_4780_Sheridan_Dr)_2023\Z-2023-07_Rev_Transmittal_102723.doc
cc: Jeff Burroughs, Town Engineer

RECEIVED
OCT 30 2023
TOWN OF AMHERST
BUILDING DEPT

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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
dmarrano@amherst.ny.us

Memorandum

November 6, 2023

To: Francina Spoth, Town Clerk
Re: Petition – 4774 & 4780 Sheridan Dr

The protest petition for 4774 & 4780 Sheridan Dr has been signed by the required property owners as stated in Town Law §265 (1) paragraph's (a) (b) or (c). The Super Majority calculations are based on three tests:

(a) The owners of 20% or more of the area of land included in such proposed change; or
(b) The owners of 20% 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 20% or more of the area of land directly opposite thereto, extending 100 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 4774 & 4780 Sheridan Dr.

Should you have questions, please feel free to contact me.

Emily Murphy
Assessor

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
700 Delaware Avenue, Buffalo, NY 14209
P: (716) 851-7165 I F: (716) 851-7168
www.dec.ny.gov

October 19, 2023

Thomas Voigt
Town of Amherst Planning Department
5583 Main Street
Williamsville, New York 14221

Dear Thomas Voigt:

SEQR Lead Agency Coordination
4774/4780 Sheridan Drive Residential Project
Town of Amherst, Erie County

This is to acknowledge receipt of your October 10, 2023, submission regarding the above referenced project under the State Environmental Quality Review Act (SEQR). The Department recommends that the Town of Amherst should act as SEQR Lead Agency, since the environmental impacts of the proposal are primarily of local significance. However please be aware of the following:

1. Information contained in the materials submitted this office indicate that there may be contamination on the project site and the project sponsor may be considering entry into the Brownfield Cleanup Program (BCP). It is recommended that the project sponsor contact Andrea Caprio, NYSDEC Division of Environmental Remediation, to discuss BCP requirements. Andrea Caprio may be reached at: 716-851-7220 or andrea.caprio@dec.ny.gov.

2. The site appears to be within an archaeologically sensitive area based on information obtained through the Cultural Resource Information System (CRIS) on the New York State Office of Parks, Recreation and Historic Preservation's (OPRHP) website at https://cris.parks.ny.gov/. As part of the SEQR process, this concern should be evaluated, unless it can be verified by appropriate documentation that the sites have been significantly disturbed in a way that would destroy potential artifacts. Please recognize that normal agricultural activities, such as plowing, would not constitute such land disturbance. If there are any questions regarding this, contact OPRHP (telephone: 518/237-8643).

3. This proposed project is a Sanitary Sewer Extension or requires a sanitary sewer connection that is designed to convey 2,500 gallons/day or more of municipal sewage that is defined as a Sanitary Sewer Extension, and therefore requires sewer extension approval by the Erie County Health Department, which acts as our agent.

NEW YORK STATE | Department of Environmental Conservation

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

A detailed Downstream Sewer Capacity Analysis must be performed and submitted for this project as part of the Project's Engineering Report. Recent wet weather flow monitoring data and proposed new development flow should be analyzed relative to theoretical capacity at key nodes in the downstream sewer system and at pump stations (if any) to determine if capacity exists.

Recent wet weather system flow data can consist of:

- Comprehensive information from recent Sanitary Sewer System Evaluation Studies, or
- Wet weather data collected at (minimum of 3) key downstream nodes specified by the municipality.
    - This dated information can consist of instantaneous flow measurements or continuous flow or sewer depth measurements obtained during significant wet weather events, preferably during high groundwater conditions. Peak sewer flow recording methods are an acceptable method to collect this information.
    - Depth or flow measurements should continue until a significant wet weather event occurs, but would not have to extend beyond three months. A significant wet weather event is considered to be a daily rainfall amount of ½" or greater.

The Downstream Sewer Capacity Analysis must also contain a narrative and a detailed map showing the downstream routing of sewers from the proposed project site to the Wastewater Treatment Plant. Line sizes, theoretical capacity and pump stations must be identified and included in the analysis.

This Downstream Sewer Capacity Analysis, as well as any required infiltration and inflow (I/I) rehabilitation offset work at a 4:1 ratio, should be part of the Project's Engineering Report. These items must be received as part of a complete sanitary sewer extension plan submission from the municipality (sewer owner) that signs the "Application for Approval of Plans" form. If adequate capacity is not available, the sewer extension will not be approved until an acceptable remediation plan is developed.

4. Since project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001). This General Permit requires the project sponsor, owner, or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on this General Permit, as well as the NOI form, is available on the Department's

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution Prevention Plan (SWPPP) is available on the Department's website at www.dec.ny.gov/chemical/8468.html.

The Town of Amherst is designated as an MS4 community. The project sponsor, owner or operator of a construction activity that is subject to the requirements of a regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 community. The "MS4 SWPPP Acceptance" form must be signed by the principle executive officer or ranking elected official from the MS4 community, or by a duly authorized representative of that person, and submitted along with the NOI, to the Department at NOTICE OF INTENT, NYSDEC, Bureau of Water Permits, 625 Broadway, 4th Floor, Albany, New York 12233-3505, telephone: 518/402-8111 to receive Department approval before construction commences.

If you have any other questions, please feel free to contact Bruno DiBella of my staff or me at 716/851-7165.

Sincerely,

David S. Denk

David S. Denk
Regional Permit Administrator

BAD/slr

Ecc: Andrea Caprio, NYSDEC Region 9
Savarino Development (c/o Sean Hopkins)

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Amherst

2018.054

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

RECEIVED
OCT 19 2023
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM

July 19, 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
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Krista Halt, Senior Fire Inspector (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 5.03± ACRES OF LAND FROM **R-3** TO **R-4, Z-2023-07**; PROPERTY LOCATED AT **4774 & 4780 SHERIDAN DRIVE**. SAVARINO DEVELOPMENT CORP., 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.)
DSCA will be required

Please call the Planning Department if additional information is required (631-7051).

Signature: _____ **Date:** 10/18/23

DU/GP/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774&4780_Sheridan)_2023\Z-2023-07_Transmittal_071923.doc
cc: Savarino Development Corp., c/o Sean Hopkins, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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

RECEIVED
AUG 18 2023
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM

July 19, 2023

RECEIVED
OCT 10 2023
TOWN OF AMHERST
PLANNING DEPT.

RECEIVED
JUL 19 2023
TOWN OF AMHERST
BUILDING DEPT

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
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
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Martin Polowy, Town Attorney (Local Law Only)
Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 5.03± ACRES OF LAND FROM **R-3** TO **R-4, Z-2023-07**; PROPERTY LOCATED AT **4774 & 4780 SHERIDAN DRIVE**. SAVARINO DEVELOPMENT CORP., 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: Krista L Halt **Date:** 8/18/23

DU/GP/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774&4780_Sheridan)_2023\Z-2023-07_Transmittal_071923.doc
cc: Savarino Development Corp., c/o Sean Hopkins, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Amherst

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

RECEIVED
JUL 28 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Daniel J. Ulatowski, AI
Assistant Planning Direc

MEMORANDUM

July 19, 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
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Krista Halt, Senior Fire Inspector (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
SEQR Review Coordinator, NYSDOT
Williamsville School District

RECEIVED
Williamsville Central School District
JUL 24 2023
Asst Superintendent for
Finance & Management Services

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 5.03± ACRES OF LAND FROM **R-3** TO **R-4**, **Z-2023-07**; PROPERTY LOCATED AT **4774 & 4780 SHERIDAN DRIVE**. SAVARINO DEVELOPMENT CORP., PETITIONER.

REVIEW:

Do you agree with all statements made? No comment.

If you do not, briefly state why: _____

General comments relative to your agency interests: This is to provide advisement and Notice that the Williamsville CSD does not provide bus service on privat roa

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: T Koller Matuski **Date:** 7/25/23

DU/GP/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774&4780_Sheridan)_2023\Z-2023-07_Transmittal_071923.doc
cc: Savarino Development Corp., c/o Sean Hopkins, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Amherst

2018.054

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 Direc

MEMORANDUM

July 19, 2023

RECEIVED
AUG 08 2023
TOWN OF AMHERST
PLANNING DEPT.

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
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Krista Halt, Senior Fire Inspector (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 5.03± ACRES OF LAND FROM **R-3** TO **R-4, Z-2023-07**; PROPERTY LOCATED AT **4774 & 4780 SHERIDAN DRIVE**. SAVARINO DEVELOPMENT CORP., 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 @ 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: _____ **Date:** 8/8/23

DU/GP/bf c. SCHaegel

X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774&4780_Sheridan)_2023\Z-2023-07_Transmittal_071923.doc

cc: Savarino Development Corp., c/o Sean Hopkins, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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

August 7, 2023

Savarino Development Corp. I
c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221

SUBJECT:	Rezoning Application Review	**Z-2023-07**
	Request:	Rezone 5.03 acres of land from R-3 to R-4
	Property located at:	**4744 & 4780 Sheridan Drive**
	Application received:	July 17, 2023

Dear Mr. Hopkins,

Please consider the following comments:

1. Please clarify if the units will be for sale or lease and correct the applicable document(s). The response to item#14 in the rezoning application (to be leased) conflicts with the project description in Part 1 A of the EAF (for sale).

2. Provide a survey that shows the meets and bounds indicated in the proposed area to be rezoned or add the information to the boundary and topographic survey so that we can accurately compare the two documents to insure that area and property to be rezoned are one in the same. Angles are missing.

3. The following items on the Environmental Assessment Form should be corrected or completed:
   - Item **C.4.a** Sites are located in the Williamsville Central School District, not Amherst Central School District.
   - Item **C.4.c** Sites are located in the Williamsville Fire Protection District, which Hutchinson Hose is part.
   - Item **E.2.h.ii** Clarify the response to wetlands on the site.

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. The subject site is located within an archaeologically sensitive area. An archaeological assessment will be required prior to the Planning Board making a SEQR determination.

4. Provide an 8½ " x 11" reduction of any revised concept plan **and an electronic version** of any revised plans or information submitted for review.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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-2023-07_(4774_&_4780_Sheridan_Dr)_2023\Z-2023-07_Ptn_Dpt_Rvw_8042023.doccc:

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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 Direc

MEMORANDUM

July 19, 2023

RECEIVED
JUL 26 2023
TOWN OF AMHERST
PLANNING DEPT.

RECEIVED
JUL 19 2023
TOWN ATTORNE

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
Vaishali Reberholt, Assistant Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Krista Halt, Senior Fire Inspector (c/o Bldg)
Martin Polowy, Town Attorney (Local Law Only)
Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 5.03± ACRES OF LAND FROM **R-3** TO **R-4**, **Z-2023-07**; PROPERTY LOCATED AT **4774 & 4780 SHERIDAN DRIVE**. SAVARINO DEVELOPMENT CORP., 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: Nora B Robshaw **Date:** 7/24/23

DU/GP/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774&4780_Sheridan)_2023\Z-2023-07_Transmittal_071923.doc
cc: Savarino Development Corp., c/o Sean Hopkins, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Amherst

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

RECEIVED
JUL 21 2023
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Daniel J. Ulatowski, AI
Assistant Planning Direc

MEMORANDUM

July 19, 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
Vaishali Reberholt, Assistant Town Engineer
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Nora Robshaw, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
SEQR Review Coordinator, NYSDOT
Williamsville School District

RECEIVED
JUL 19 2023
TOWN ATTORNEY

FROM: Daniel J. Ulatowski, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 5.03± ACRES OF LAND FROM **R-3** TO **R-4**, **Z-2023-07**; PROPERTY LOCATED AT **4774 & 4780 SHERIDAN DRIVE**. SAVARINO DEVELOPMENT CORP., PETITIONER.

REVIEW:

Do you agree with all statements made? Form of local law is acceptable.

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:** 7/20/23

DU/GP/bf
X:\Current_Planning\Files\Rezonings\2023\Z-2023-07_(4774&4780_Sheridan)_2023\Z-2023-07_Transmittal_071923.doc
cc: Savarino Development Corp., c/o Sean Hopkins, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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: July 21, 2023

SUBJECT: Request to Rezone 5.03±Acres of Land from R-3 to R-4,Z-2023-07
Property Location: **4774 & 4780 Sheridan Drive**
Petitioner: **Savarino Development Corp**

Site plan Approved as submitted. If rezone is for the construction of single family homes with condo status then the Assessor's office opposes.

cc: Savarino Development Corp, c/o Sean Hopkins, Hopkins, Sorgi & McCarthy, 5500 Main Street, Suite 343, Williamsville, NY 14221

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Fadel, Bryan

From: Voigt, Thomas J.
Sent: Monday, October 16, 2023 11:45 AM
To: Carrato, Amy
Cc: Fadel, Bryan
Subject: FW: proposed development on Sheridan Dr (formerly Gleason's Nursery)
Attachments: 2023.10.15 letter with exhibits.pdf

See attached and below

Thomas Voigt, Assistant Planner
Town of Amherst Planning Department
5583 Main St. Williamsville, NY 14221
Phone: (716) 631-7051 ex. 7118

From: Kelsey Granville <Kgranville@Petersoncos.com>
Sent: Monday, October 16, 2023 11:32 AM
To: Voigt, Thomas J. <tvoigt@amherst.ny.us>
Cc: David Granville <dgranvilleus@yahoo.com>; Elliot Frank (charles.elliot.frank@gmail.com) <charles.elliot.frank@gmail.com>
Subject: RE: proposed development on Sheridan Dr (formerly Gleason's Nursery)

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.

Re: Pending Development Project: Z-2023-07 (by Savarino Development Corp. I changed to RAS Development Company LLC "Savarino" as
Petitioner)
Planning Board Item 27793
Request to Rezone 5.03+/- Acres of Land from R-3 to R-4
SUB-2018-03PP (by Morgan Homes of WNY, Inc. as Petitioner)
And
SUB-2019-01SK (by David F. Granville, POA for Paul and Annette Granville as Petitioner)

Mr. Voigt,

See below and the attached letter with exhibits for inclusion in the record regarding pending development project Z-2023-07. Copied on this email is C. Elliot Frank, the owner of 4784 Sheridan Drive.

Our position remains unchanged.

We are IN SUPPORT of lawful, respectful, thoughtful, comprehensive development.

We are OPPOSED to the development of 4774 and 4780 without the development of 4784, 4786, and 4790 as it will greatly diminish the value of 4784, 4786 and 4790.

Thank you for your consideration.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Sincerely,

Kelsey Granville, Executor for the Estate of Annette Granville

-----Original Message-----
From: David Granville <dgranvilleus@yahoo.com>
Sent: Tuesday, October 10, 2023 5:11 PM
To: tvoigt@amherst.ny.us
Cc: Kelsey Granville <Kgranville@Petersoncos.com>
Subject: proposed development on Sheridan Dr (formerly Gleason's Nursery)

Dear Mr Voigt,
Thank you for taking the time to speak briefly this afternoon about the above referenced development.
CC'ing my brother Kelsey Granville who will forward the letter recommended.
We had submitted an application with regard to the previously proposed development which we will reference.
Thank you again,
Dave Granville
716-440-0423

Disclaimer

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Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Paul and Annette Granville
4790 Sheridan Drive
Williamsville, NY 14221

October 15, 2023

Town of Amherst Planning Board
5583 Main Street
Williamsville, NY 14221

Subject: Pending Development Project Z-2023-07 - Savarino Development Corp. I (changed to RAS Development Company LLC), "Savarino" as Petitioner
Planning Board Item 27793
Request to Rezone 5.03+/- Acres of Land from R-3 to R-4 (4774 & 4780 Sheridan Dr.)

Dear Planning Board Members (Gilmour, Chmiel, Gill, Giuliani, Kahn, Penberthy, and Raffaele) and Councilmember Berger:

Our family owns three contiguous parcels immediately east of Savarino's proposed development (4784, 4786, and 4790 Sheridan Drive) and also owns an adjacent parcel (40 Jordan Road). The four Granville Family parcels total about 2.5 acres.

We are IN SUPPORT of lawful, respectful, thoughtful, comprehensive development.

We are OPPOSED to the proposed Savarino's proposed development of 4774 and 4780 without consideration of the future development of Granville Family properties, thus greatly diminishing the value of said properties by eliminating the possibility of future development consistent with the Town Comprehensive Plan.

Before rendering a decision on the subject request, please be aware of the following:

- Savarino has failed to perform the required due diligence per the requirements of the application. See attached Exhibit A with comments to Savarino's application.
- Savarino's proposed development of 4774 & 4780 is "speculation" by definition - the practice of buying property with the intention of reselling it at a higher price in the near future.
- Savarino's proposed development includes a rezoning request in order to minimize risk and maximize profits.
- Savarino will only move forward with the development if the Planning Board grants the rezoning request. This is because the rezoning of the land INCREASES the value.
- Savarino will abandon the application if the Planning Board rejects the rezoning request. Savarino banked on buying the land at a price that is only justified with a zoning change.
- By the same token, any future proposed development of 4784, 4786 & 4790 is also "speculation" by definition.
- It is possible the Planning Board takes the position that they MUST make a decision based ONLY on the merits of the Savarino plan (4774 & 4780), and NOT take into consideration any future development plan (of 4784, 4786 & 4790) because that future development is considered to be "speculation".
- Both plans are "speculation" and the Planning Board MUST NOT abandon its authority and responsibility and remember to take into account the adjacent and neighboring properties.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

- Granville's subdivision application (SUB-2019-01SK) predates Savarino's rezoning application (Z-2023-07).

In conclusion, our position remains unchanged. It is consistent with the Planning Board's APPROVAL of the previously submitted subdivision application on the condition that the proposed "private" road be designated as "public".

A Granville Family representative plans to attend and speak as neighborhood spokesperson at the public meeting on Thursday, October 19. We will continue our efforts to work together to help new residential development contribute to the future improvements of the Town of Amherst. I welcome the opportunity to discuss this matter with each of you directly. I can be reached by email at kgranville@petersoncos.com or by phone at (703) 887-7375.

Sincerely,

Kelsey F. Granville
Executor, Estate of Annette Granville

Enclosures
Exhibit A: Comments to Savarino's Application
Exhibit B: January 16, 2019 letter
Exhibit C: January 29, 2019 letter
Exhibit D: February 20, 2019 letter
Exhibit E: March 18, 2019 letter
Exhibit F: Erie County On-Line Mapping Application (maps)
Exhibit G: March 14, 2019 Application (SUB-2019-01SK)

cc: David F. Granville, Executor, Estate of Paul Granville; Sean Hopkins, Esq. (Hopkins Sorgi & McCarthy PLLC), Attorney for Savarino; Town Board; Zoning Board of Appeals

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Exhibit A - Comments to Savarino's Application

- Exhibit 4:
  - Response to Question 11(A): "...the project will result in the clean-up of the contamination…"
  - Fact: the *alleged* contamination can be cleaned up without a rezoning request being granted.
  - Response to Question 11(B)(1): "...the site is appropriate since it is…consistent.."
  - Fact: This is circular reasoning.
  - Response to Question 11(B)(2): "...the existing R-3 zoning classification…would prevent the project from being eligible for entry into the NYSDEC Brownfield Cleanup Program."
  - Fact #1: The lack of entry into the program (and use of funds) does NOT constitute a sufficient reason for a rezoning request to be granted.
  - Fact #2: The *alleged* contamination is NOT the reason for the project not moving forward. SEQR Negative Declaration, Full Environmental Assessment Form (EAF), Geotechnical Report - NO evidence of "contaminated" soil.
- Exhibit 5:
  - Response to Question 16(A)(1): "...the proposed project…is consistent with the Comprehensive Plan."
  - Fact: The response claims to be "consistent" with the Comprehensive Plan, but FAILS to provide any details of how and FAILS to cite any specific supporting documentation.
- The 13 Objectives of the Zoning Code (Section 1-2-2)
  - A. Claim: The proposed development is "orderly and beneficial".
  - Fact: The proposed development is neither "orderly" nor "beneficial".
  - B. Claim: The proposed development provides adequate open spaces for light, air and outdoor uses to include **public**…open space areas."
  - Fact: The proposed development provides INADEQUATE **public** open space areas - NONE.
  - C. Claim: The proposed development will not result in "overcrowding of land".
  - Fact: The proposed development WILL result in overcrowding.
  - D. Claim: The proposed development will prevent "excessive concentration of population and…prevent sparse and uncoordinated development."
  - Fact: It will cause what it claims it will prevent.
  - E. Claim: The proposed development is consistent with the policies of the Comprehensive Plan.
  - Fact: The proposed development is INCONSISTENT with the Comprehensive Plan. The Response FAILS to provide any details of how and FAILS to cite any specific supporting documentation.
  - F. Omitted.
  - G. Omitted.
  - H. Claim: The proposed development is "aesthetically harmonious."
  - Fact: The proposed development is NOT aesthetically harmonious.
  - I. Claim: The proposed development includes a "private" driveway.
  - Fact: The proposed development will result in INCREASED street congestion and DETERIORATED public safety.
  - J. Claim: The proposed development was access to public utilities.
  - Fact: The proposed development will require utility service laterals, and does NOT …
  - K. Claim: The proposed rezoning is "consistent with the Comprehensive Plan."

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

- Fact: This is circular reasoning. This is what Savarino must demonstrate. Savarino does not supply any evidence that supports this claim. In fact, that is why a rezoning request is being made.
- L. Claim: The proposed rezoning is "consistent with this objective."
- Fact: This is circular reasoning. This is what Savarino must demonstrate. Savarino does not supply any evidence that supports this claim. In fact, that is why a rezoning request is being made.
- M. Omitted.

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Exhibit B: January 16, 2019 letter

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Paul and Annette Granville
4790 Sheridan Drive
Williamsville, NY 14221
716-634-3290

January 16, 2019

Town of Amherst
Planning Board
5583 Main Street
Williamsville, NY 14221

Re: SUB-2018-03SK

Dear Planning Board Members (Robert J. Gilmour, Michael J. Chmiel, Esq., Stephanie S. Gelber, Dal Giuliani, Steven L. Herberger, Mary Pfeifer-Shapiro, Daniel J. Ulatowski):

Thank you for the invitation to attend the public hearing on Thursday, January 17, 2019. Below please see our written comments regarding the proposed sketch plan for a "Sheridan Drive Subdivision" located at 4774 & 4780 Sheridan Drive:

We are IN FAVOR of lawful, respectful, thoughtful, comprehensive development, and

We are OPPOSED to unlawful, disrespectful, thoughtless, incomplete development, and

We are IN FAVOR of a subdivision of 4774 and 4780 as "Phase 1" with
Phase 1 representing 12-13 new homes (an INCREASE in taxes for the Town of Amherst), and

We are IN FAVOR of a subdivision of 4784 Front, 4784 Rear and 4790 as "Phase 2" with
Phase 2 representing 6-8 new homes (an INCREASE in taxes for the Town of Amherst), and

We are IN FAVOR of consideration of a sketch plan showing both phases, and

We are OPPOSED to a subdivision of 4774 and 4780 that excludes 4784 Front, 4784 Rear and 4790, and

We are OPPOSED to approving the Sketch Plan that shows only the subdivision of 4774 and 4780.

As residents of 4790 Sheridan for over 50 years, we look forward to continuing as good stewards of properties that increase in value and are assets to the Town of Amherst.

Thank you for your consideration.

Sincerely,

, POA

Kelsey F. Granville, POA on behalf of Paul and Annette Granville

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Exhibit C: January 29, 2019 letter

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Paul and Annette Granville
4790 Sheridan Drive
Williamsville, NY 14221

January 29, 2019

Town of Amherst Planning Board
5583 Main Street
Williamsville, NY 14221

Re: SUB-2018-03SK - proposed sketch plan review for a 14-lot "Sheridan Drive Subdivision" located at 4774 & 4780 Sheridan Drive

Dear Planning Board Members:

This letter serves as a follow-up to our first letter (dated January 16, 2019) as well as a selected summary of the proceedings of the public hearing on Thursday, January 17, 2019. Please see our comments below.

- Lot #13 – the stormwater management (SWM) area
  As proposed by the petitioner, ownership is dedicated to the homeowner's association (HOA).
  We are IN FAVOR of this plan.

- Lot #14 – the "spike" strip to the east of the proposed new road
  As proposed by the petitioner, ownership is dedicated to the homeowner's association (HOA).
  We are OPPOSED to this plan.
  Councilmember Ulatowski made a recommendation that ownership be dedicated to the Town.
  We are IN FAVOR of this recommendation.
  Therefore, the proposed subdivision plan shall be revised to show Lot #14 as a parcel that will be conveyed to the Town. In effect, the property immediately to the east will be granted an easement to the ROW.

- New Road
  As proposed by the petitioner, ownership is dedicated to the Town.
  We are IN FAVOR of this plan.

Many jurisdictions prohibit the creation of "spike" strip lots with the intentional or unintentional purpose of preventing access to adjacent lots from a street right-of-way. The approval of the current proposed subdivision plan without Lot #14 being conveyed to the Town would create a dangerous precedent.

We look forward to continuing to work together to help new residential development contribute to the future improvements of the Town of Amherst.

Thank you for your consideration.

Sincerely,

Kelsey F. Granville, POA on behalf of Paul and Annette Granville

cc: David F. Granville, POA on behalf of Paul and Annette Granville
Rich Stanton, Esq.
Corey Auerbach (Barclay Damon, LLP), attorney for the petitioner

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Exhibit D: February 20, 2019 letter

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Paul & Annette Granville
4790 Sheridan Drive
Williamsville, NY 14221

February 20, 2019

Town Board
Amherst Town Hall
5583 Main Street
Williamsville, NY 14221

Subject: SUB-2018-03SK – Proposed sketch plan review for a 14-lot "Sheridan Drive Subdivision" located at 4774 & 4780 Sheridan Drive

Dear Supervisor Kulpa, Deputy Supervisor Spoth and Councilmembers Berger, Bucki & Lavin:

I am writing to request *your direct and immediate intervention* in a serious matter concerning the proposal from Morgan Homes of Western New York, Inc. ("Morgan") to construct a new subdivision of "high-end homes" at 4774 and 4780 Sheridan Drive. The Granville Family owns three contiguous parcels immediately east of this proposed development (4784 Front, 4784 Rear and 4790 Sheridan Drive) and also owns an adjacent parcel (40 Jordan Road). The four parcels total about 2.5 acres.

On January 17, 2019, Morgan presented a sketch of its development proposal to the Amherst Planning Board. The sketch illustrated a new 14-lot subdivision accessed via a new **PUBLIC** road off of Sheridan Drive. During the meeting, Morgan stated its intent to construct and later deed the new road to the Town of Amherst. Planning Board members supported this portion of the plan. However, the sketch also depicted a narrow "**SPITE STRIP**" separating the new road from the Granville Family's property to the east, which would be owned and controlled by a future homeowner's association. Planning Board members voiced concern over this portion of the plan and asked Morgan to convey both the spite strip and the road to the Town. (Spite strips are commonly used by developers in an effort to prevent road access from neighboring lots, as would be the case with Morgan's proposal.)

Despite the Planning Board's stated objections, Morgan recently submitted a revised sketch of its proposed development to the Town that labels the new road as **PRIVATE**. *This was no mistake* – Morgan **intentionally** revised its proposal and **failed** to comply with the Planning Board's recommendations with intent to cause undue injury to the Granville Family.

For more than 50 years, the now-elderly Paul and Annette Granville have lived at 4790 Sheridan Drive, where they raised six children on a beautiful, secluded property along an otherwise busy thoroughfare. As the years passed, the Granville Family purchased two neighboring properties (4784 Front & 4784 Rear Sheridan Drive) and a third (40 Jordan Road) so that two of their children and Annette's aging mother could live nearby. This arrangement has long served our family well.

Today, however, our family's financial future is in danger, as Morgan's proposed development threatens to severely reduce the value of our property. We welcome the construction of a subdivision at 4774 and 4780 Sheridan Drive, but only if the subdivision meets the following two reasonable conditions that will preserve property values:

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

1) **New road, and all land between said road and the property line of 4784 Sheridan Drive, shall be conveyed to the Town of Amherst prior to the occupancy of any new home constructed in the proposed development.**

   Explanation: *A new road bordering the eastern edge of Morgan's property will bring vehicular traffic within a few feet of two existing Granville Family homes located at 4784 Sheridan Drive. This will dramatically alter the secluded nature of these two homes and reduce the property value. However, if the Town owned the new road and all land between said road and the property line of 4784 Sheridan Drive, the value of all 3 parcels could be preserved as the site of a future housing development with direct access to the new public road.*

2) **New water, sewer, and gas utilities installed to service this subdivision shall have sufficient capacity to support development of equal density on the east and west sides of said road.**

   Explanation: *The viability of any development site depends on access to utility infrastructure. If new water, sewer, and gas utilities are not constructed with sufficient capacity, the future development potential of the 3 parcels would be hampered by the need to upsize the existing utility infrastructure, thereby lowering the value of the properties.*

With all due respect, we kindly ask that you make certain that Morgan's proposed subdivision is **NOT** approved by the Town Planning Board without a formal commitment by Morgan to comply with the two reasonable conditions stated above. At this time, we believe that the only way to resolve this matter without initiating a legal battle is through direct and immediate intervention of our elected officials. We hope you will assist us.

Enclosed, please find our two previous letters regarding Morgan's proposed development. We look forward to continuing to work together to help new residential development contribute to the future improvements of the Town of Amherst. I would welcome the opportunity to discuss this matter with each of you directly. I can be reached at (703) 887-7375.

Sincerely,

Kelsey F. Granville
POA on behalf of Paul & Annette Granville

Enclosures

cc: David F. Granville, POA on behalf of Paul & Annette Granville
Rich Stanton, Attorney
Corey Auerbach (Barclay Damon, LLP), Attorney for Morgan

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Exhibit E: March 18, 2019 letter

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Paul & Annette Granville
4790 Sheridan Drive
Williamsville, NY 14221

March 18, 2019

Zoning Board of Appeals
Amherst Municipal Building
5583 Main Street
Williamsville, NY 14221

Subject: Morgan Homes of Western New York, Inc.
APPEAL UNDER SECTION 280-a(3) of the NYS TOWN LAW
Subdivision on a Private Road (4774 & 4780 Sheridan Drive)

Dear Zoning Board Chairman Radens and Members Kahn, Nichols, Pollack and Shields:

Before rendering a decision on the subject appeal, please be aware that Morgan Homes of Western New York Inc. ("Morgan") has defied the recommendations of the Town of Amherst Planning Board. This action is contrary to the interests of the Town and causes undue injury to the Granville Family. Our family owns three contiguous parcels immediately east of Morgan's proposed development (4784 Front, 4784 Rear, and 4790 Sheridan Drive) and also owns an adjacent parcel (40 Jordan Road). The four parcels total about 2.5 acres.

For details on this matter, including an explanation of how Morgan's current development plans threaten to severely reduce the value of our property, please see the enclosed letter to the Amherst Town Board, dated February 20, 2019.

Additionally, we have submitted an application for a proposed subdivision (File #SUB-2019-01SK for "4790 Sheridan Drive") on land adjacent to Morgan's development. The two alternatives of the sketch plan are attached with a summary below.

- Alternate #1 assumes the proposed road by Morgan is made PUBLIC and the new lots will be serviced by the road shown in Morgan's sketch plan.
- Alternate #2 assumes the proposed road by Morgan remains PRIVATE and a second road running parallel and about 20 feet to the east of Morgan's road will be needed.

A Granville Family representative plans to attend and speak at tomorrow's meeting. We will continue our efforts to work together to help new residential development contribute to the future improvements of the Towr of Amherst. I would welcome the opportunity to discuss this matter with each of you directly. I can be reachec by email at kgranville@petersoncos.com or by phone at (703) 887-7375.

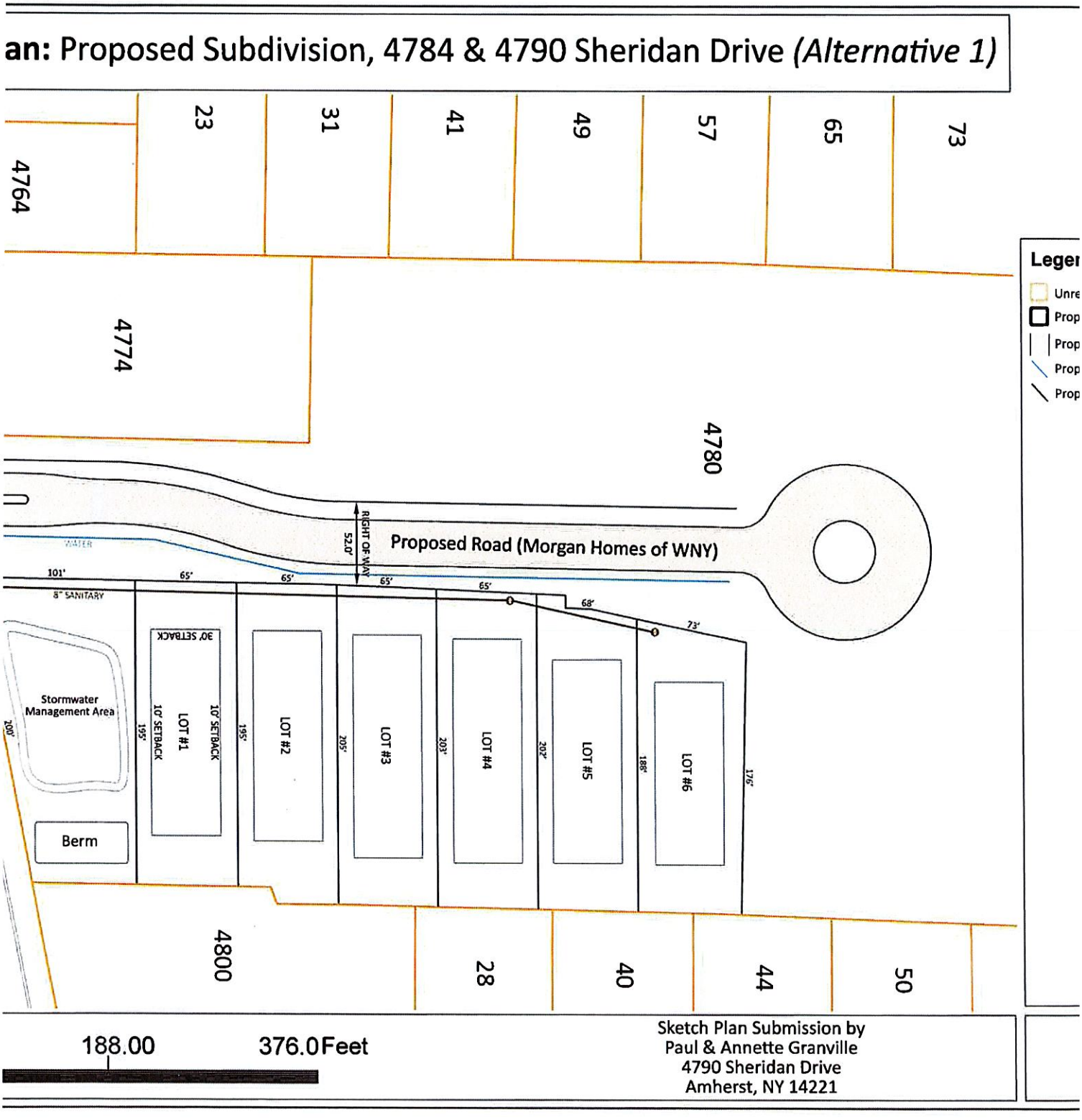
Sincerely,

Kelsey F. Granville
POA on behalf of Paul & Annette Granville

Enclosures

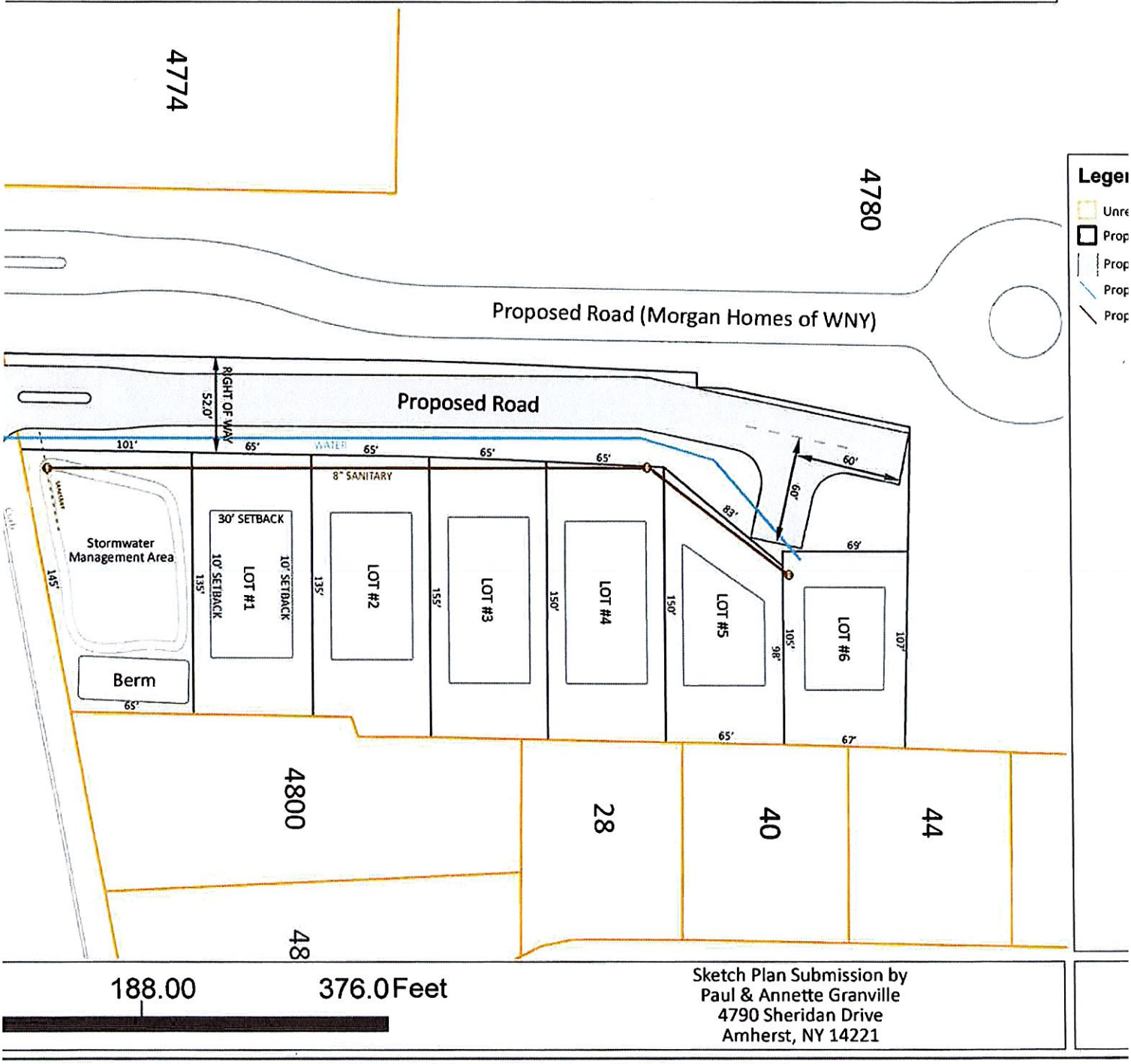
cc: David F. Granville, POA on behalf of Paul & Annette Granville; Corey Auerbach (Barclay Damon, LLP) Attorney for Morgan; Town Board; Planning Board

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))



Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

lan: Proposed Subdivision, 4784 & 4790 Sheridan Drive *(Alternative 2)*

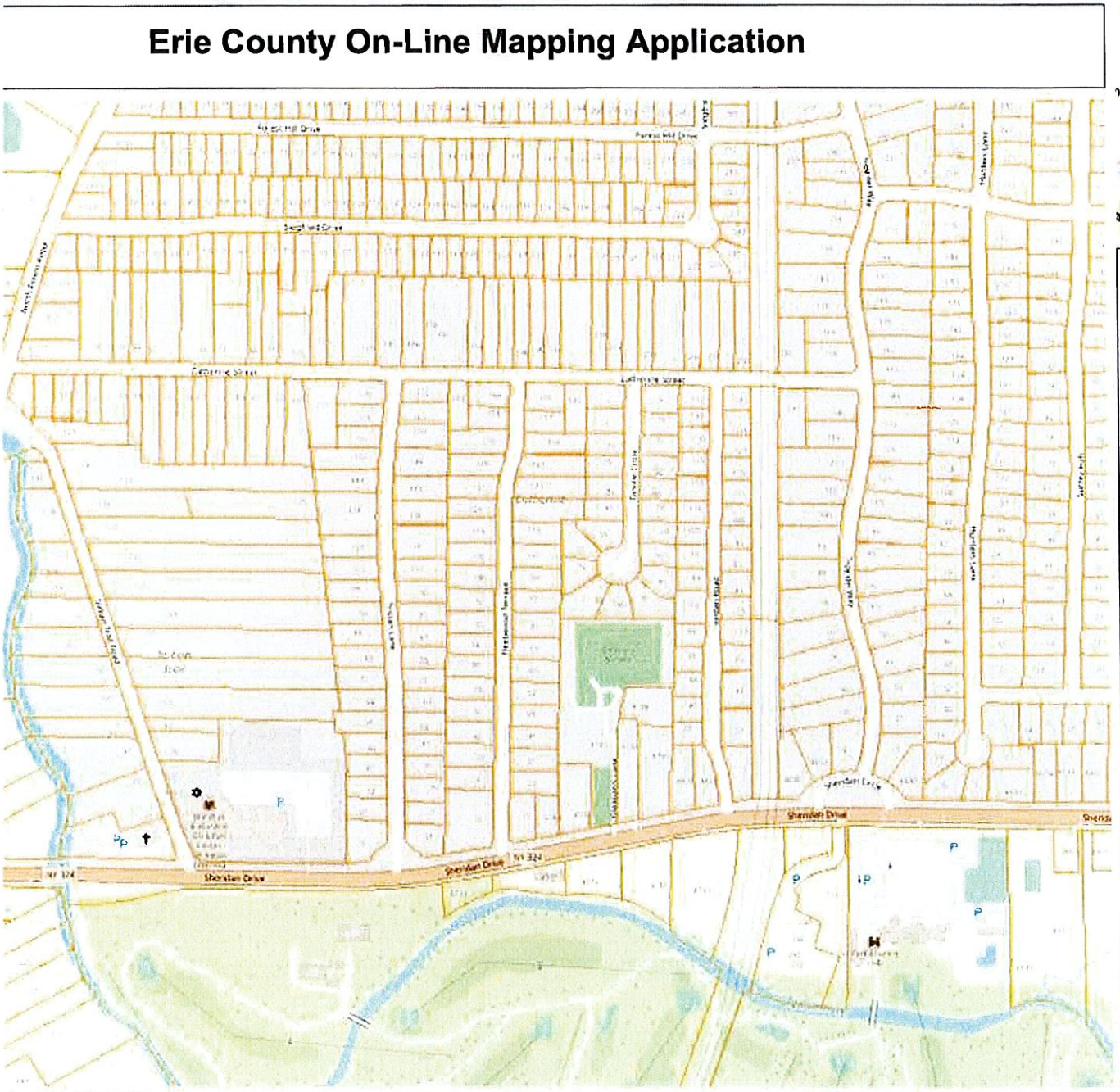


Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Exhibit F: Erie County On-Line Mapping Application (maps)

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Erie County On-Line Mapping Application



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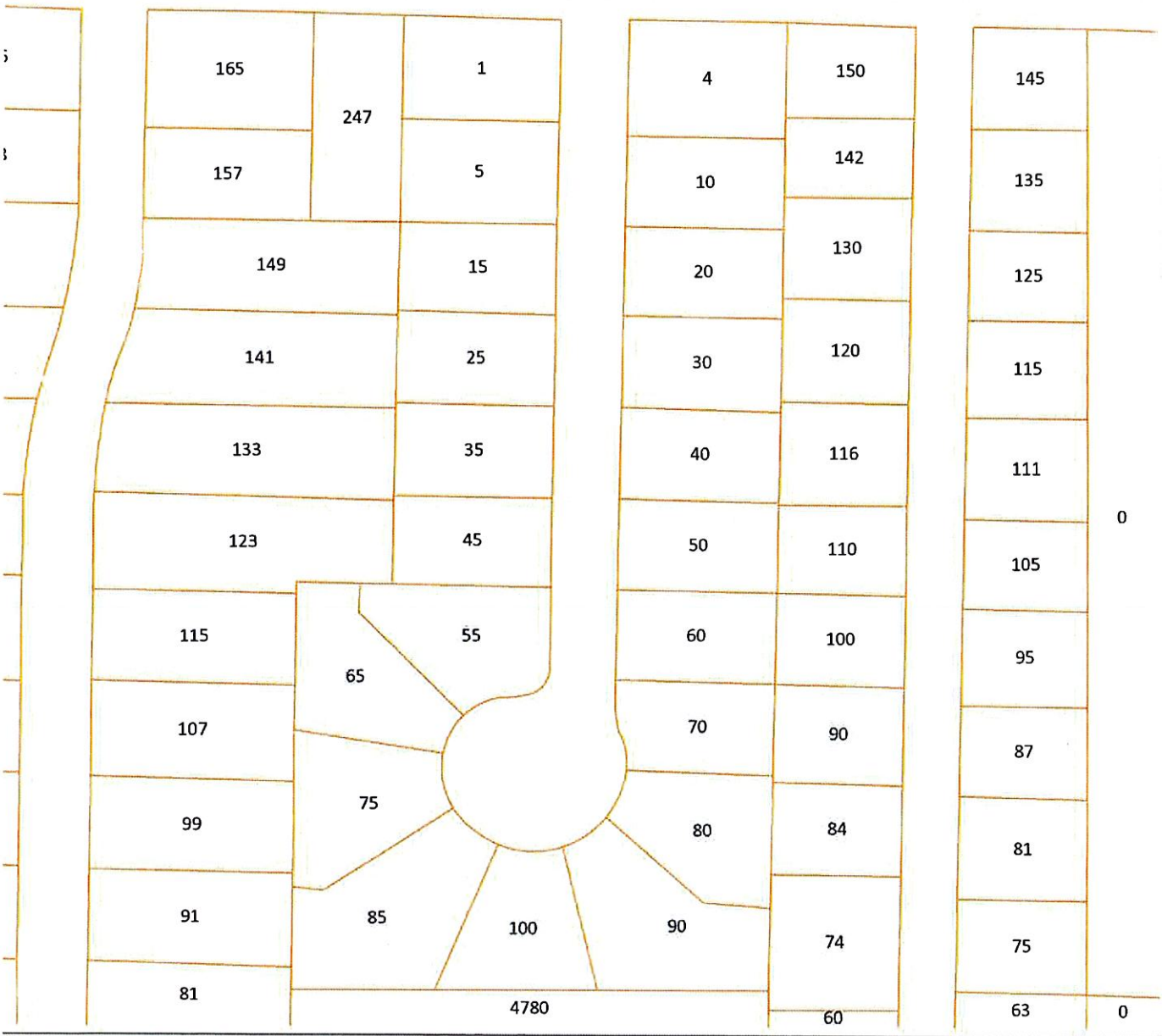
ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

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Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Erie County On-Line Mapping Application



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ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

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Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Erie County On-Line Mapping Application



188.00 376.0Feet

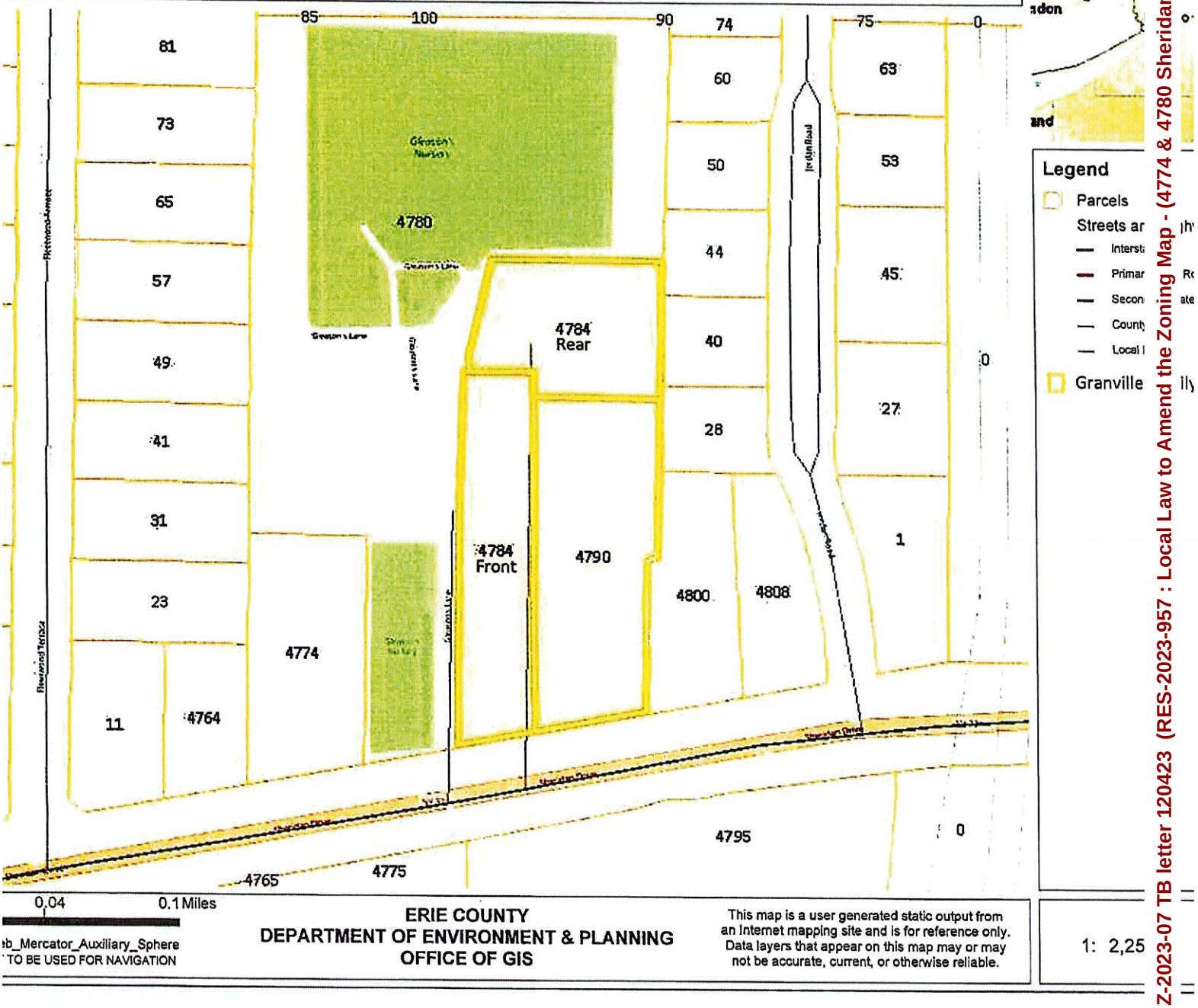
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BE USED FOR NAVIGATION

ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

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1: 2,

Attachment A: Map of Granville Family Properties



Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Exhibit G: March 14, 2019 Application (SUB-2019-01SK)

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

RECEIVED
MAR 14 2019
TOWN OF AMHERST
PLANNING DEPT.

TOWN OF AMHERST PLANNING DEPARTMENT

Application Subdivision Review

File # SUB-2019-015K For Official Use Only

Type of Subdivision Application (check one): Acreage 2± acres Fee $ 1,150.00

Address Verified by Assessor's Office

Verified By _____ Date _____

Sketch Plan		✓
Preliminary Plat		
Final Plat		

		Fill In Applicable Fees
Sketch Plan		
Preliminary Plat		
1 acre of less	$1,150.00	✓
Each Additional acre or fraction thereof	$1,250.00	
Amendments to Subdivisions	$ 650.00/acre	
Request for Relief of / or Change to Conditions of Subdivision Approval	$1,150.00	
Request for Extension of Subdivision Approval	$1,150.00	
Stormwater Pollution Prevention Plan	$ 450.00	
1-4.99 Acres	$ 500.00	
5-10 Acres	$ 750.00	
>10 Acres	$1,000.00	
Affidavit Fee for Public Hearing	$ 15.00	
Final Plat	$ 450.00	
	TOTAL FEE:	$ 1,150.00

Materials Received by Planning Department

RECEIVED BY _____ DATE 3/14/19

Materials Accepted by Town Clerk & Fee Paid

RECEIVED BY _____ DATE _____

To Be Completed By Applicant

Petitioner: Name: Paul & Annette Granville

Address: 4790 Sheridan Dr.
Williamsville NY 14221
city state zip code

Phone: 716 440-0423 Fax: _____ E Mail: c/o dgranvillensc Yahoo.com

Rev. 12/08
P:\Carrpina\Application Forms Working Document\Subdivision App.

Town of Amherst Planning Department 5583 Main Street Williamsville-NY-14221
(716) 631-7051- Fax: (716) 631-7153

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Representative (Architect, Engineer, Landscape Architect, Surveyor, or Attorney):

Name: Kelsey Granville, POA

Address: 8612 Acorn Circle

Vienna, VA 22180
city state zip code

Phone: 703 ~~887~~ 7375 Fax: 703 631-6481

E Mail: kgranville@ pertesoncos.com

Subdivision Name: 4790 Sheridan Drive

Subdivision Location & Address: 4790 Sheridan Drive
4784 Shridan Drive front + rear

Town of Amherst, Erie County, New York

Number of Sublots: 6 + 1 common lot

Land is Presently Zoned R-3

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

ROUX

September 28, 2023

Dan Howard
Planning Director
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Re: Proposed Residential Project
4774 & 4780 Sheridan Drive
Applicant's Rezoning Request from R-3 to R-4 Zoning

Dear Mr. Howard:

Our firm has reviewed previous reports completed by others for the subject property and is working with the applicant, RAS Development Company ("RAS"), in connection with the potential entry into the New York State Department of Environmental Conservation's ("NYSDEC") Brownfield Cleanup Program ("BCP") due to environmental impacts at the site.

As you know, the subject site, totaling approximately 4.4 acres of land, is located on the north side of Sheridan Drive in the Town of Amherst. The site has been utilized as a nursery since at least the 1950s. The historic use of the Site as a nursery, and the apparent use of pesticides, have contaminated the site, which will require remediation prior to redevelopment of the property. Based on the results of environmental investigations, evidence of a release of pesticides was identified based on the analytical results. Specifically, certain pesticide compounds were detected above the NYSDEC Residential Soil Cleanup Objectives ("RSCOs"). We understand that RAS intends to apply to and enter the site into the BCP, which includes oversight and guidance from the NYSDEC and provides a release of environmental liability upon successful completion of the remedy and NYSDEC issuance of a Certificate of Completion ("COC").

Cleaning up and removing hazardous substances and other contaminants from Brownfield sites reduces the risk of human exposure to harmful substances and improves the quality of air, soil, and water in affected areas. Developers such as RAS must ensure that their Brownfield site has been remediated to the rigorous standards enforced by the NYSDEC and the New York State Department of Health ("NYSDOH"). Only after the site has been remediated to the satisfaction of the NYSDEC and NYSDOH will the state allow the land to be redeveloped.

To remedy the existing known site conditions to allow the current proposed use, the two most likely and cost-effective options to remediate the site are either: 1) a Track 4 Restricted-Residential Cleanup, whereby the highest concentrations of contaminants are removed, and the remainder of the site is covered with clean soil or hardscape (e.g., pavement, concrete slabs); or 2) a Track 1 Unrestricted Cleanup, whereby all of the contaminated soil is removed from the site. Either of these options requires significant financial investment to remediate the property.

209 Shafter Street ■ Islandia, New York 11749 ■ +1.631.232.2600 ■ www.rouxinc.com
California ■ Illinois ■ Massachusetts ■ New Jersey ■ New York ■ Texas ■ Virginia

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

We understand that RAS intends to remediate the site under the BCP to a Track 4 Restricted-Residential standard, which allows for apartment buildings and condominium redevelopments. We further understand that RAS has proposed to redevelop the property in a restricted-residential capacity and sell the units to buyers under a condominium form of ownership.

Under a Track 4 cleanup, all property falling within the Brownfield Cleanup site boundaries will require certain post-remedial controls, restrictions, and ongoing monitoring and reporting obligations, which must be maintained in perpetuity. Such obligations are a condition of the BCP Certificate of Completion. This ongoing obligation makes subdividing and selling off parcels of this particular Brownfield site to individual homeowners, as a developer might do with a traditional subdivision, impractical, and certainly much less marketable. An individual homeowner is unlikely willing to undertake the post-remedial obligations required under the BCP. Furthermore, if liability and/or ongoing obligations are subdivided, there would now be multiple individual homeowners having to responsibility to report to DEC. DEC strongly discourages such arrangements for BCP sites. A condominium structure is essential to avoid this issue and help ensure proper monitoring, maintenance, and reporting. Simply stated, classifying the individual residential units as condominiums will ensure that a single entity - the condominium association - owns the land and is responsible for all post-remedial monitoring, maintenance, and reporting associated with the BCP.

In addition to ensuring that existing contamination at the Property is remediated properly, the BCP also generates tax credits that help offset cleanup costs and encourage the costly remediation and redevelopment of contaminated property. Here, the tax credits will help cover a portion of the costs of the cleanup as well as the substantial infrastructure that will be necessary for the Project, including the new roadway. Under the proposed condominium structure, the development would be built and owned by one entity (i.e., RAS), which would incur remediation and redevelopment costs, and claim the tax credits as means to make the project economically feasible. In the absence of this structure, the project is likely cost-prohibitive based on the significant remediation and infrastructure costs.

Given the applicant's vast development experience, including redeveloping environmentally impacted properties, we are confident they will find a solution to this challenging redevelopment project. We look forward to being part of a team to transform this contaminated idle property back into productive re-use.
Feel free to contact me if you have any questions regarding this matter.

Sincerely,

Roux Environmental Engineering & Geology, DPC

Michael A. Lesakowski
Vice President
Principal Scientist

ROUX

Attachment: Z-2023-07 TB letter 120423 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

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
dmarrano@amherst.ny.us

Memorandum

November 6, 2023

To: Francina Spoth, Town Clerk
Re: Petition – 4774 & 4780 Sheridan Dr

The protest petition for 4774 & 4780 Sheridan Dr has been signed by the required property owners as stated in Town Law §265 (1) paragraph's (a) (b) or (c). The Super Majority calculations are based on three tests:

(a) The owners of 20% or more of the area of land included in such proposed change; or
(b) The owners of 20% 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 20% or more of the area of land directly opposite thereto, extending 100 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 4774 & 4780 Sheridan Dr.

Should you have questions, please feel free to contact me.

Emily Murphy
Assessor

Attachment: protest petition - sheridan dr (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Attachment: protest petition - sheridan dr (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Protest Petition

NOV01'23 AM11:35 RCVD

I oppose rezoning 4774 and 4780 Sheridan Drive from R-3 to R-4.

Address	Zip	Print Name	Signature	Date
60 Jordan Rd	14221	Alexis Alfasso	Alexis Alfasso	10/26/2023
50 Jordan Rd	14221	Edgar De Leon	Edgar De Leon	10/26/2023
74 Jordan Rd	14221	Jennifer Polito-Brawley	Jennifer Polito-Brawley	10/26/2023
80 Deville circle	14221	Theodore P. Prawak	Theodore P. Prawak	10/26/2023
100 DEVILLE CIR	14221	MARSHA E. SHAPIRO	Marsha E. Shapiro	10/26/2023
75 Deville Circle	14221	Michael Honeyman		10/26/23
91 FLEETWOOD	14221	BERNADETTE CUVIELLO		10/26/23
44 Jordan Rd	14221	Beth Gianno	Beth Gianno	10/26/23
81 Fleetwood	14221	Arlene Pierce	Arlene Pierce	10-27-23
81 Fleetwood	14221	ROGER LINTNER	Roger Lintner	10-27-23
31 Fleetwood	14221	see attached	petition	
11 Fleetwood	14221	" "	"	
4775 Sheridan	14221	" "	"	

100 ft. Notification Buffer



10/11/2023, 2:14:13 PM

Town Boundary

Parcels

1:4,514

0 0.03 0.06 0.11 mi

0 0.04 0.09 0.17 km

Town Clerk

Esri Community Maps Contributors, Province of Ontario, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Attachment: protest petition - sheridan dr (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Esri Community Maps Contributors, Province of Ontario, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau,

Attn: Rene Perez-Bode & W

Dear Neighbor:

We are asking you to sign a petition to protest the rezoning from R3 to R4 of Gleasons Tree farm, located at 4774 and 4780 Sheridan Drive. RAS Development Co. has applied for this rezoning, which would allow them to build a dense residential development in an area zoned for single family homes. This is NOT typical in Amherst!

If you oppose this project please sign the petition below and tape it to your front door on **Saturday, Oct 28**. We will pick it up and add it to the signatures already collected.

Protest Petition

I oppose rezoning 4774 and 4780 Sheridan Drive from R-3 to R-4

Address: 11 FLEETWOOD TERR.

Print Name: MR and MRS RENE F. PEREZ-BODE

Signature: [signature]

Date: 10-28-2023

Attachment: protest petition - sheridan dr (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Attn: _____

Dear Neighbor:

We are asking you to sign a petition to protest the rezoning from R3 to R4 of Gleasons Tree farm, located at 4774 and 4780 Sheridan Drive. RAS Development Co. has applied for this rezoning, which would allow them to build a dense residential development in an area zoned for single family homes. This is NOT typical in Amherst!

If you oppose this project please sign the petition below and tape it to your front door on **Saturday, Oct 28**. We will pick it up and add it to the signatures already collected.

Protest Petition

I oppose rezoning 4774 and 4780 Sheridan Drive from R-3 to R-4

Address: 4775 Sheridan Dr

Print Name: Carrie A. Wanamaker

Signature: [signature]

Date: 10/27/23

Edgar DeLeon, 50 Jordan Rd

(520) 437-5066

RECEIVED 11/1/23 11:35 AM

Attachment: protest petition - sheridan dr (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Attn: Sebastiano Audreana

Dear Neighbor:

We are asking you to sign a petition to protest the rezoning from R3 to R4 of Gleasons Tree farm, located at 4774 and 4780 Sheridan Drive. RAS Development Co. has applied for this rezoning, which would allow them to build a dense residential development in an area zoned for single family homes. This is NOT typical in Amherst!

If you oppose this project please sign the petition below and tape it to your front door on **Saturday, Oct 28**. We will pick it up and add it to the signatures already collected.

Protest Petition

I oppose rezoning 4774 and 4780 Sheridan Drive from R-3 to R-4

Address: 31 Fleetwood terrace Williamsville 14221

Print Name: SEBASTIANO ANDREANA & CARLA BENEDUCE

Signature: Carla Beneduce & Sebastiano Audreana

Date: 10/27/2023

NOV01'23 AM11:35 RCVD

Attachment: protest petition - sheridan dr (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

RAS DEVELOPMENT I, LLC
4758 NORTH FRENCH RD.
EAST AMHERST, NY 14051

December 7, 2023

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Rezoning of 4774 & 4780 Sheridan Drive from R-3 to R-4 (Z-2023-07)
Applicant/Project Sponsor: RAS Development I, LLC
File No. 10015.22

Dear Supervisor Kulpa and Councilmembers:

The Town Board held a public hearing in connection with the pending request to amend the zoning classification of the property located at 4774 and 4780 Sheridan Drive from R-3 to R-4 to accommodate a residential project consisting of two-family residential units for sale during its meeting on Monday, December 4th and scheduled a decision date for its next meeting to be held on Monday, December 4th at 7:00 p.m.

There were two resident that spoke during the public hearing held on December 4th and attached as Exhibit "1" are copies of my follow up letters to both of them.

RAS Development I, LLC is requesting that the Town Board issue a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA") and approve the requested amendment of the zoning classification of the Project Site from R-3 to R-4 subject to the five (5) conditions presented during the public hearing as follows:

1. That the density of the project site shall not exceed 4.4 units per acre.

2. That the use of the project site to be rezoned from R-3 to R-4 shall be limited to two (2) unit-attached townhomes only.

3. That the maximum allowable height of any residential building on the project site as measured from finished grade shall be thirty feet (30) feet.

4. That the project site's contaminated soil be remediated to residential standards under the purview of, and in accordance with the NYSDEC Brownfield Cleanup Program.

5. That the conditions stated above shall be memorialized via the recording of a Declaration of Restrictions at the Erie County Clerk's Office.

.

Attachment: Kulpa-Project Update Ltr-12-07-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

Please feel free to contact me at (716) 908-8322 or by e-mail at robert.savarino@ccim.net if you have any questions. Thank you for your continued cooperation.

Sincerely,

Robert A. Savarino
President

Attachment
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
Marty Pollowy, Esq., Town Attorney
Sean W. Hopkins, Esq., Hopkins Sorgi & McCarthy, PLLC
Patrick Sheedy, Jr., P.E., Carmina Wood Design DPC

Attachment: Kulpa-Project Update Ltr-12-07-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

EXHIBIT 1

Attachment: Kulpa-Project Update Ltr-12-07-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

RAS DEVELOPMENT I, LLC
4758 NORTH FRENCH RD.
EAST AMHERST, NY 14051

December 7, 2023

Sharon Easterbrook
80 Tristan Lane
Williamsville, NY 14221

Re: Rezoning of 4774 & 4780 Sheridan Drive from R-3 to R-4

Dear Ms. Easterbrook:

I am reaching out to you as an interested resident who spoke during the public hearing held by the Town Board on Monday in connection with my company's request to amend the zoning classification of the above-referenced property located at 4774 and 4780 Sheridan Drive from R-3 to R-4 to accommodate a residential project consisting of upscale two-family residential units for sale. I have enclosed a color copy of the PowerPoint presentation that was presented during the public hearing.

I appreciate your comments and would like to keep the lines of communication open so we can directly address any additional questions or concerns you may have. I also invite you to participate in further resident engagement as we seek feedback during the engineering and site plan approval phase of the proposed project. We can discuss important topics such as site remediation of the existing contamination, stormwater management plans, landscaping and lighting, as well as the overall project schedule.

Please feel free to contact me at (716) 908-8322 or by e-mail at robert.savarino@ccim.net if you have any questions regarding this letter or the status of the proposed residential project.

Thank you for your time.

Sincerely,

Robert A. Savarino

Robert A. Savarino
President

Attachment

Attachment: Kulpa-Project Update Ltr-12-07-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

RAS DEVELOPMENT I, LLC
4758 NORTH FRENCH RD.
EAST AMHERST, NY 14051

December 7, 2023

Alicia Schreier
80 Tristan Lane
Williamsville, NY 14221

Re: Rezoning of 4774 & 4780 Sheridan Drive from R-3 to R-4

Dear Ms. Schreier:

I am reaching out to you as an interested resident who spoke during the public hearing held by the Town Board on Monday in connection with my company's request to amend the zoning classification of the above-referenced property located at 4774 and 4780 Sheridan Drive from R-3 to R-4 to accommodate a residential project consisting of upscale two-family residential units for sale. I have enclosed a color copy of the PowerPoint presentation that was presented during the public hearing.

I appreciate your comments and would like to keep the lines of communication open so we can directly address any additional questions or concerns you may have. I also invite you to participate in further resident engagement as we seek feedback during the engineering and site plan approval phase of the proposed project. We can discuss important topics such as site remediation of the existing contamination, stormwater management plans, landscaping and lighting, as well as the overall project schedule.

Please feel free to contact me at (716) 908-8322 or by e-mail at robert.savarino@ccim.net if you have any questions regarding this letter or the status of the proposed residential project.

Thank you for your time.

Sincerely,

Robert A. Savarino

Robert A. Savarino
President

Attachment

Attachment: Kulpa-Project Update Ltr-12-07-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

RAS DEVELOPMENT I, LLC
4758 NORTH FRENCH RD.
EAST AMHERST, NY 14051

Attachment: Savarino Ltr 12-18-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))

December 18, 2023

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Rezoning of 4774 & 4780 Sheridan Drive from R-3 to R-4 (Z-2023-07)
Applicant/Project Sponsor: RAS Development I, LLC
File No. 10015.22

Dear Supervisor Kulpa and Councilmembers:

I am submitting this on behalf of the Project Sponsor in connection with the pending request to amend the zoning classification of the above-referenced property located at 4774 and 4780 Sheridan Drive ("Project Site") from R-3 to R-4 to accommodate a residential project consisting of upscale two-family residential units for sale.

Based on input received during the Town Board public hearing held on December 4, 2023, additional enhanced screening will be provided on the northern boundary of the Project Site that is adjacent to residential properties located on Deville Circle consisting of a dense staggered row of evergreen trees with approximately 15' spacing and a planting height of 8' (the typical planting height is 6'). Enclosed is a copy of the updated Concept Site Plan prepared by Patrick Sheedy Jr. P.E. of Carmina Wood Design PLLC [Drawing C-100 – Date: 12/15/23] depicting the proposed enhanced screening described above.

It is also important to mention that the proposed residential project that will result in the clean-up of contamination resulting from the former use of the Project Site as Gleason's Nursery per the NYSDEC Brownfield Program standards will also require Site Plan Approval from the Planning Board and the Site Plan Application review process will include a review of the proposed landscaping by Jeff Szatkowski, the Town's Landscape Architect.

The Project Sponsor is respectfully requesting that the Town Board issue a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA") and approve the request to amend the zoning classification of the Project Site from R-3 to R-4 subject to conditions during its meeting this evening.

Please feel free to contact me at (716) 908-8322 or by e-mail at robert.savarino@ccim.net if you have any questions regarding this letter.

Sincerely,

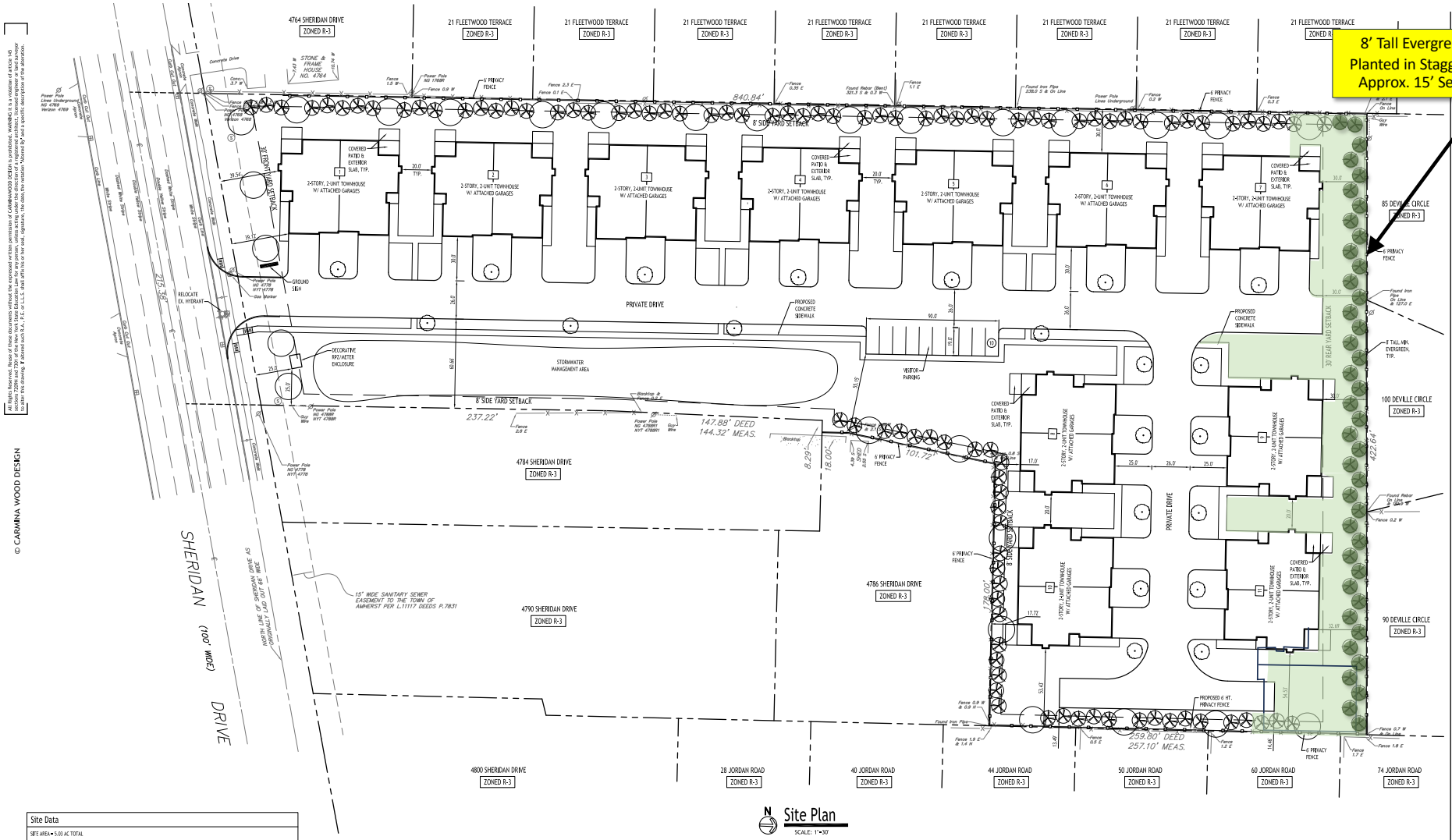
Robert A. Savarino

Robert A. Savarino
President

Attachment

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
Sean W. Hopkins, Esq., Hopkins Sorgi & McCarthy, PLLC
Patrick Sheedy, Jr., P.E., Carmina Wood Design DPC

Attachment: Savarino Ltr 12-18-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive, Z-2023-07))



Site Plan
SCALE: 1" = 30'

Site Data		
SITE AREA = 5.03 AC TOTAL ZONED: R-3 (REZONED TO R-4) PROPOSED USE: 2-UNIT RESIDENTIAL TOWNHOUSE BUILDINGS WITH ATTACHED GARAGES (22 UNITS TOTAL)		
SETBACKS (BLDG):	REQUIRED	PROVIDED
FRONT	30 FT.	39.12 FT. MIN.
SIDE	8 FT. / 20 FT. (COMBINED)	17 FT. MIN. / > 20 FT. (COMBINED)
REAR	30 FT.	30 FT. MIN.
BUILDING DENSITY:	37	22
MIN. FLOOR AREA (GARDEN):	760 SF	> 760 SF
MAX. BUILDING COVERAGE:	35% (1.76 AC)	1.14 AC (22.7%)
MAX. BUILDING HEIGHT:	35 FT.	< 35 FT.
PARKING: (9'x19')	44	54 SURFACE + 44 GARAGE SPACES = 98 TOTAL
GREENSPACE OVERALL:	1.25 AC (25%)	> 25%

* VARIANCE REQUIRED

PARKING CALCULATION:
"MULTI-FAMILY"
2 SPACES PER UNIT
22 UNITS x 2 = 44 SPACES REQD (9'x19')

BUILDING DENSITY REQUIREMENTS:
PER R-4 ZONING REQUIREMENTS
5,850 SF / DWELLING
5.03 AC * 43,560 SF = 219,106 SF / 5,850 SF = 37.5
37 UNITS ALLOWED

NOTE: BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY OTHERS. CARMINA WOOD DESIGN ASSUMES NO RESPONSIBILITY FOR ITS ACCURACY.

30' 0 30 60Ft.

© CARMINA WOOD DESIGN

CARMINA WOOD DESIGN

Proposed Multi-Family
4774 & 4780 Sheridan Drive

REVISIONS:
No. Description Date

PRELIMINARY
NOT FOR CONSTRUCTION

DRAWING NAME:
Site Plan
Concept

Date:
Drawn By:
Scale:

DRAWING NO.
C-10

Project No: 23-

Attachment: Savarino Ltr 12-18-23 (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780

RAS DEVELOPMENT I, LLC
4758 NORTH FRENCH RD.
EAST AMHERST, NY 14051

January 2, 2024

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Rezoning of 4774 & 4780 Sheridan Drive from R-3 to R-4 (Z-2023-07)
Applicant/Project Sponsor: RAS Development I, LLC
File No. 10015.22

Dear Supervisor Kulpa and Councilmembers:

I am submitting this letter on behalf of my company in connection with the pending request to amend the zoning classification of the above-referenced property located at 4774 and 4780 Sheridan Drive ("Project Site") from R-3 to R-4 to accommodate a residential project consisting of upscale two-family residential units for sale.

The Planning Board held a public hearing and recommended approval of the rezoning of the Project Site from R-3 to R-3 during its meeting on October 19, 2023. The Town Board held a public hearing in connection with the requested rezoning of the Project Site from R-3 to R-3 during its meeting on December 4, 2023, and the public hearing was closed. The following five zoning conditions have been proposed in connection with the residential project:

1. That the density of the project site shall not exceed 4.4 units per acre.

2. That the use of the project site to be rezoned from R-3 to R-4 shall be limited to two (2) unit-attached townhomes only.

3. That the maximum allowable height of any residential building on the project site as measured from finished grade shall be thirty (30) feet.

4. That the project site's contaminated soil be remediated to residential standards under the purview of, and in accordance with the NYSDEC's Brownfield Cleanup Program.

5. That the conditions stated above shall be memorialized via the recording of a Declaration of Restrictions at the Erie County Clerk's Office.

I have summarized the comments from individuals who spoke during the public comment period of the lengthy Town Board c meeting held on December 18th and each comment is followed by a response.[1]

[1] The Town Board issued a Negative Declaration pursuant to SEQRA during is meeting on December 18th and scheduled a decision date for it meeting to held on January 22nd at 7:00 p.m.

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

A. Marsha Shapiro, 100 Deville Circle

1. "Contaminants are a concern, how will they be regulated?" "As a former nursery worker, a while ago, I witnessed the spraying of chemicals, how are they going to be mitigated?

Response: We have repeatedly acknowledged that the presence of contaminants at the former nursery location, as reported in the Phase 2 Environmental Report submitted to the Town on October 27, 2023, is a major topic. The cleanup process, which will include the removal of contaminated soils, will be carried out by following the strict requirements of the NYSDEC and under its on-location supervision, as part of the Brownfield Cleanup Program. Adequate precautions will be taken to ensure that the contaminated soils are safely removed. As the cleanup will occur on property in a residential area, additional mitigation measures will be implemented per the NYSDEC requirements to ensure the safety of nearby property owners including air quality testing and reporting to the NYSDEC. The Brownfield Application along with the s environmental consultant's report, will undergo a thorough review process by the NYSDEC and will be subject to a public comment period of thirty (30) days.

B. Alicia Schreier, 79 Tristan Lane

1. "The development is not in the character of the neighborhood"

Response: We believe that our development plan aligns with the neighborhood's character and the Town's adopted Comprehensive Plan. Our proposal is a low-profile residential project consisting of residential units for sale with attached garages. The primary bedroom will be located on the main floor, which is often a preferred choice for "empty-nesters" looking to downsize. The project includes 6' privacy fencing, along with enhanced landscape screening around the perimeter of the Project Site. We have proposed zoning condition restricting the height of the two-family residential structures to 30' (the current R-3 zoning expressly permits 35'). In addition, the rear-year setback allowed in the current R-3 zoning, which is 30', will be matched in the proposed R-4 zoning of the Project Site and, in some cases, exceeded.

2. "There is no demand for additional homes"

Response: With a well-documented and reported low housing inventory, there is an all-time high demand for homes in the Town of Amherst and many other communities across the state and country. This demand is particularly high for new residential projects that feature standard amenities and potential options with floor plans such as the proposed upscale, for-sale residential project. RAS has received numerous calls from potential purchasers who are interested in selling their current larger homes to downsize into a smaller, new, maintenance-free home at a location in the Town with direct access to many amenities including parks, a golf course, grocery stores, etc.

3. "Two-bedroom homes for $500,000???"

Response: Regarding the proposed home configuration and price, each residential unit for sale will have an average size of approximately 1,760 square feet and includes a primary bedroom on the 1st floor with an attached bathroom and walk-in closets, a second bedroom with a bath and

spacious closets, a full foyer, a private den, a great room with a half bath, a kitchen, a fireplace, a covered patio, a mudroom, a laundry room, and an attached two-car garage. The purchase price is based on a per-square-foot cost of around $290-$300 per square foot, which is comparable to similar residential projects in the area.

4. "Amherst should buy the property, as opposed to Amherst paying for the cleanup"

Response: The statement suggesting that the Town of Amherst should purchase the Project Site instead of paying for the cleanup of the contamination is inaccurate and goes against the argument that Amherst needs to make financially sound decisions during the ongoing economically challenging times. Even if the Town followed this suggestion, it would have to buy the property and voluntarily clean it up, which would be a direct expense for the Town and its taxpayers. On the other hand, RAS will enter the Brownfield Program as a volunteer and safely clean up the contaminated soil area under the strict guidance of the NYSDEC. Additionally, RAS will bear the cost of the cleanup and the associated risks. As previously explained during the public hearing held by the Town Board on December 4th - in order to offset the cleanup costs and keep the project economically viable - RAS will receive a tax credit based on a capped percentage of the tangible costs incurred by the taxpayers of the entire state. The Brownfield Cleanup Program is a well-established program that encourages private entities to clean up contaminated land that poses a health risk and return it to a condition where it can be reused for productive purposes. The redevelopment of such land also adds to the tax rolls of the Town and Erie County based on the value of the redeveloped value.

5. "Disturbance of contaminated ground"

Response: Regarding the issue of the contaminated ground, please refer to our previous response. The removal of the contaminated soils will eliminate the existing health concerns and will be implemented in accordance with the applicable NYDEC stringent Brownfield Program standards. We will also take special precautions to prevent any negative impacts on air quality and water runoff.

6. "What is the plan for the three additional properties?

Response: Regarding the potential additional properties, RAS has presented a plan based on their existing Purchase Contract for the two contiguous parcels at 4774 and 4780 Sheridan Drive that comprise the Project Site. RAS is not proposing to develop additional nearby parcels. Any future change in scope of the residential project would require approval from the Town Board including a rezoning with public hearings. It is important to mention that the current homes on these adjacent parcels can be sold for higher prices than what the current residential project can make work from an economic perspective.

7. "This will produce extra traffic"

Response: The minor traffic impacts that will result from the residential project will be occurring throughout the day and are limited to Sheridan Drive, a New York State Highway. No vehicular connections are being proposed to the nearby residential side streets. NYSDOT's threshold of 100

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

vehicular trips during peak travel periods at an intersection to require a traffic impact study. The proposed residential project will not come close to exceeding this NYSDOT threshold.

8. "Additional cleanup responsible by the HOA?

Response: The Project Site needs to be cleaned up according to the strict standards of the New York State Department of Environmental Conservation ("NYSDEC"). Once a Certificate of Completion is issued by the NYSDEC after the contaminated soils have been removed, the Project Site will be considered as fully remediated by the NYSDEC. However, any property that falls within the boundaries of the Brownfield Cleanup site will require ongoing monitoring, reporting, and certain post-remedial controls and restrictions that must be maintained perpetually. These obligations are a standard condition of the Brownfield Cleanup Program ("BCP") Certification of Completion. To ensure proper monitoring, maintenance, and reporting, the individual residential units will be classified as condominiums. This means that a single entity, i.e., the condominium association to be formed, will own the land and be responsible for all post-remedial monitoring, maintenance, and reporting associated with the BCP. Any estimated costs or insurance for post-remedial obligations will be included in the Condominium Association monthly fees.

9. "How does the cleanup get paid for, taxpayer dollars?"

Response: As previously mentioned, RAS will enter NYSDEC's Brownfield Cleanup Program, bear all the costs and associated risks, and in return, receive a future and limited state tax credit. This tax credit will offset our expenses and encourage us to clean up the contaminated site and repurpose it to generate additional annual property tax revenues for the Town, the School District, and Erie County. Essentially, the state government provides an incentive for privately cleaning up the contaminated soils and re-purposing the contaminated land for residential use.

C. Sharon Caleca, 80 Tristan Lane

1. "The cleanup will be on the taxpayer's dime" "The developer said at the informational meeting that he "didn't want to pay for it himself" "He's taking advantage of the cleanup program.

Response: As mentioned previously, the cleanup for contaminated soils will be paid for privately by RAS and will be offset by a future capped state tax credit. At the informational meeting held with property owners at the Audubon Library, I stated that I would be paying it by myself, subject to receiving the capped state tax credit to offset those costs and keep the project viable. Once again, the NYSDEC cleanup program is a well-established program that encourages private entities to clean up land that poses a health risk and return it to a state where it can be reused for productive purposes.

2. "This is just phase 1, what about phase 2 of the project?"

Response: We assume this means the potential addition of the easterly properties that are not under contract and are owned by separate parties. Please see the response to Comment B.6 above for the response to this question.

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

D. Edgar Deleon, 50 Jordan Road

1. "This project will add "complications for the elderly"

Response: The residential project will not add complications for the elderly. RAS expects that most of the residential units will be purchased by senior citizens who reside in the Town and are interested in downsizing.

2. "It will create additional run-off and flooding, and make it worse"

Response: During the future engineering phase and Site Plan Application review process that will include a public hearing to be held by the Planning Board, fully engineered plans and an Engineer's Report prepared by a licensed engineering firm will be submitted demonstrating the residential project will comply with the applicable stringent stormwater quality and stormwater quantity standards of the NYSDEC (as well as the Town's drainage standards) including the need for the on-site stormwater management system to handle a 100-yr. storm event. The applicable technical documentation referenced above will need to be reviewed and approved by the Town's Engineering Department in connection with the future Site Plan Application review process. In summary, the residential project will not result in any adverse drainage impacts to properties that are contiguous to the Project Site.

3. "The developer will apply for federal funds to clean up the area, why do we have to pay the expense?"

Response: RAS will not be applying for federal funds. Instead, we will voluntarily enter NYSDEC's Brownfield Cleanup Program, bear all the costs and associated risks, and in return, receive a future and limited state tax credit. This tax credit will offset our expenses and encourage us to clean up the contaminated site and repurpose it to generate additional property tax revenue for the Town, School District, and Erie County.

4. "The change from 20 to 22 units makes it more profitable for the developer"

Response: The 22 upscale residential units for sale as depicted on the Concept Site Plan presented to both the Planning Board and Town Board that received a favorable rezoning recommendation from the Planning Board is the necessary density for the proposed residential project to be economically feasible. At no point during the lengthy review process has the number of residential units for sale been increased.

5. "They want to choose the least costly option to clean up the land."

Response: The soil will be cleaned to residential standards which is the highest standard per the NYSDEC Brownfield Program.

E. Angela Webber, New Road

1. "What if the HOA fails, how does it affect it?"

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

Response: A condominium association (not an HOA) will be formed and the Offering Plan that will need to be approved by the NYS Attorney General Office will include a very detailed budget prepared by a third-party expert to ensure the condominium association will have adequate funds for its fiscal obligations. I am not aware of a single instance in the Town of Amherst in which a condominium association has become insolvent.

F. Alexis Alfasso, 60 Jordan Road

1. "The owner is passing the problem onto us, he is a wealthy man, and he has the funds"

Response: On December 1, 2023, the representative of the Estate of the Sellers sent a letter to the Town Board that stated that "the estate lacks the expertise and resources required to clean up the existing contamination. RAS, a local developer with experience in redeveloping brownfield sites, can handle the necessary cleanup".

2. They're proposing something that's not in the character of our neighborhood"

Response:

3. "$500,000 to $750,000 homes, Amherst doesn't need more $1,000,000 homes" "We need affordable homes"

Response: Our projected base purchase price of $290-$300 per sq. ft. is substantiated by several comparables in Town. Please refer to section B.3 for my earlier response on this matter. I do agree that the Town and all communities in New York State need additional affordable housing and my company has been involved in numerous affordable housing projects in communities in Western New York including Meyer Pointe Senior Apartments at 80 Meyer Road in the Town. The Project Site is not a viable location for an affordable housing project since it would need to consist of a project with a much higher density comprised of apartments for lease.

4. "He needs more density so he can access brownfield dollars"

Response: The 22 upscale residential units for sale as depicted on the Concept Site Plan presented to both the Planning Board and Town Board that received a favorable rezoning recommendation from the Planning Board is the necessary density for the proposed project to be economically feasible.

5. "Brownfield money is on the state taxpayer".

Response: Yes, this statement is correct. However, the “Brownfield money” is in the form of a state tax credit. Therefore, one way to view it is that the voluntary cleanup of the Project Site in Amherst is funded by the entire state tax roll – the same as all Brownfield Clean Up projects in New York State). Additionally, the Town, School District, and Erie County will benefit from increased property taxes on the repurposed property.

6. He's proposing something that is in excess of R-4, 22 vs. 20 units"

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

Response: The 22 upscale residential units for sale as depicted on the Concept Site Plan presented to both the Planning Board and Town Board that received a favorable rezoning recommendation from the Planning Board does not exceed the allowable density for the R-4 zoning district.

G. David Granville, 11 Plymouth Road

1. The name of the "Petitioner" is still the attorney, "Sean Hopkins", but the name of the Developer has changed 3 times. Does Amherst allow this practice? If so, does Amherst require that the named Developer have "performance and/or payment" bonds issued from a surety company? Bonds protect against disruptions or financial loss due to a failure to complete a project or failure to meet project specifications.

Response: I cannot comment on the previous two applicants for unrelated projects including the most recently proposed project that did not move forward due to the contamination on the Project Site. However, my company is the petitioner and has been listed on this project and all correspondence with the Town and voluntary letters to adjoining neighbors and interested residents. My company, which I established in 2008 has completed several successful projects, including large-scale projects in the Town that required rezoning and ground-up construction.

2. "There are 2 parcels that comprise "the site" – 4774 & 4780. 4780 (the former nursery) is "contaminated", so that's the rationale for entering into the "NYSDEC Brownfield Cleanup Program" and changing the zoning from R-3 to R-4. 4774 is NOT contaminated as it was NEVER part of the nursery, so what is the rationale to change the zoning of this parcel? Is it "economic" only?"

Response: It is uncertain whether the parcel at 4774 Sheridan Drive is contaminated or not since no testing has been conducted on it. However, testing will likely be necessary. The Project Site is under common ownership and is being presented as a whole. The costs for cleaning up the privately funded site preparation associated with the parcel at 4780 Sheridan will need to be offset by a percentage of the tangible improvements made on that parcel in the form of a tax credit, through the NYSDEC's Brownfield Cleanup Program. It is not feasible to develop only the parcel at 4780 Sheridan Drive, and the existing owner is selling both parcels together as one site.

3. "It not only asks for a change in zoning from R-3 to R-4, but also asks for a "variance" of the R-4 zoning to allow 22 units to 20 units? What is the rationale for this - is it "economic" only?"

Response: The 22 upscale residential units for sale as depicted on the Concept Site Plan presented to both the Planning Board and Town Board that received a favorable rezoning recommendation from the Planning Board is the necessary density for the proposed project to be economically feasible.

4. "Based on the density being requested, there should be 2 additional things included: 1. Traffic Study, and 2. Noise/Light Pollution Study."

Response: The NYSDOT uses a threshold of 100 vehicular trips during peak travel periods at an intersection to determine if a traffic impact study is required. As Sheridan Drive is a New York

State Highway, it is subject to this threshold. However, the proposed project will not even come close to exceeding this threshold. During the review stage of the proposed project's Site Plan Application, the project engineering firm will submit a Lighting Plan. The lighting to be installed will be low intensity in accordance with the Town's lighting standards contained in the Zoning Code. The Lighting Plan will ensure that there is no lighting spillover onto adjacent parcels. Moreover, the construction activities on the Project Site will comply with the Town's Noise Ordinance. It is also important to note that the project will need to comply with all relevant technical standards for stormwater management, lighting, landscaping, etc., during the Site Plan Application review process.

5. "Based on the target market of "empty-nesters", the project should be ADA compliant."

Response: This project does not have any age restrictions and the residential units will be available for sale to individual buyers. It is important to note that the units will comply with the Americans with Disabilities Act ("ADA") standards. The compliance with ADA standards will be verified during the review process for the Building Permit Application. This verification process requires the submission of stamped plans that have been prepared by a licensed architect.

H. Mark Rivard, 132 Fleetwood Terrace

1. "They are falling back on the brownfield... it's an excuse".

Response: The fact that the Project Site contains contaminated soils resulting from its former use as a nursery is not an "excuse" for the proposed upscale residential project. RAS had nothing to do with the activities that resulted in the contaminated soils. In the absence of the proposed project, the likely outcome is that the contamination will not be dealt with appropriately at any point in the near future and the nearby property owners will be forced to continue to live next to a contaminated site.

2. "What about phase 2?" "They are setting their sights on parcels 1, 2, 3 to make it one big parcel" "50 Jordan has a ROW in between 44 and 40 Jordan, they want to get their hands on it"

Response: See B.6 for a previous response to this comment. Even if we added the adjacent parcels, I would still not consider purchasing the Right-of-Way between 44 and 40 Jordan in recognition of establishing vehicular access across the Right-of-Way would be viewed very unfavorably by nearby property owners.

3. "The structures are 20' from the property line"

Response: The rear yard setback in our proposed project is 30' (same as the minimum required in the current R-3 zoning district). We also have added a 6' privacy fence with enhanced landscape screening per input received from the Town Board, and have added a building height restriction zoning condition of a maximum of 30' (the current R-3 zoning allows a maximum height of 35').

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

4. "These will be 2 and 1/2 story homes"

Response: This is not accurate. Again, the proposed project will include a zoning condition that the height of the residential buildings be limited to 30' (the current R-3 zoning allows a maximum height of 35').

I. Wendy Smiley, 92 Fleetwood Terrace

1. "I don't want to live with the chemicals in the air for the next 10 years" "I don't care about the traffic"

Response: We agree with the statements of Ms. Smiley and our company is fully committed to completing the clean-up of contaminated soils per the stringent standards of the NYSDEC Brownfield Program.

J. Beverly Cuviello, 91 Fleetwood Terrace

1. "There will be contaminants in the air"

Response: It is distinctly possible that there are contaminants in the air presently. Our residential project aims to clean the site voluntarily and comply with the stringent standards of the NYSDEC. We are mandated and will be monitored by the NYSDEC to take the necessary precautions to safely manage the soil remediation given its proximity to the surrounding neighborhood.

2. "All developments must be 3' above grade, and we are at grade"

Response: Engineered plans will be prepared by a licensed engineering firm in connection with the future Site Plan Application review stage which will include a public hearing to be held by the Planning Board. I am not aware of any Town standard that states that all projects must be developed at 3 ft. above the existing grade.

3. "We don't have the capacity" "Our water and sewer lines need to be replaced"

Response: Sanitary sewer capacity during wet weather conditions will need to be confirmed during the future Site Plan Application review stage via monitoring and the preparation of a Downstream Sanitary Sewer Capacity Analysis ("DSCA") Report to be prepared by a licensed engineering firm, which will need to be approved by the Town's Engineering Department. We will also be to make a payment to the Town's I/I sewer fund per the Town's Sanitary Sewer Law. The residential project will also need to be reviewed and approved by the Erie County Water Authority ("ECWA") including verification that adequate water pressure exists.

Conclusion:

RAS is respectfully requesting that the Town Board approve the rezoning of the Project Site from R-3 to R-3 subject to the five proposed zoning conditions during its meeting to be held on Monday, January 22nd at 7:00 p.m.

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

Please feel free to contact me at (716) 908-8322 or by e-mail at robert.savarino@ccim.net if you have any questions regarding this letter.

Thank you for your anticipated cooperation.

Sincerely,

Robert A. Savarino

Robert A. Savarino
President

cc: Jacqueline Berger, Councilmember
Shawn Lavin, Councilmember
Angela Marinucci, Councilmember
Michael Szukala, Councilmember
Francina J. Spoth, Town Clerk
Timothy J. Koller, Deputy Town Clerk
Daniel C. Howard, AICP, Planning Director
Martain Pollowy, Esq., Town Attorney
Sean W. Hopkins, Esq., Hopkins Sorgi & McCarthy, PLLC
Patrick Sheedy, Jr., P.E., Carmina Wood Design DPC

Attachment: Letter to the TOA Town Board 01-02-23 (002) (RES-2023-957 : Local Law to Amend the Zoning Map - (4774 & 4780 Sheridan Drive,

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 28534 **RESOLUTION 2024-59** **ADJOURNED**

SEQR Determination (800 & 850 New Road, SP-2023-01)

DRAFT RESOLUTION
January 22, 2024

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 Special Use Permit at 800 & 850 New 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 Planning Board at their meeting of August 17, 2023 held a public hearing on the site plan application for the proposed use and issued a Determination of Significance by adopting a Negative Declaration pursuant to 6NYCRR Part 617 of the State Environmental Quality Review Act (SEQRA) and Town Code Chapter 104, as amended, 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.

1/22/2024
Supervisor Kulpa made a motion to adjourn, seconded by Councilmember Berger and unanimously approved 5-0.

FINANCIAL IMPACT:

None

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

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

Attachment: SP-2023-01_TB_Neg Dec 091823 (RES-2024-59 : SEQR Determination - 800 & 850 New Road)

D R A F T (January 22, 2024)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Project: SP-2023-01

Address: 5583 Main Street
Williamsville, NY 14221
(716) 631-7051

Date: January 22, 2024

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: Special Use Permit

SEQR Status: Type 1 Action

Description of Action: The construction of a Tier III Solar Energy System (5Mw of power) that includes a solar array, an access road and associated equipment pads interior to the site. The array will be located on 27.52 ± acres of the total 51.98 ± acres of land and a fence will surround the entire project site. Work will include the site improvements not specifically stated above, including, stormwater, utilities, grading, lighting, paving, and landscaping.

Location: 800 & 850 New Road, Amherst, Erie County

Petitioner: Sol Source Power, LLC

REASONS SUPPORTING THIS DETERMINATION

Based on information submitted by the applicant including a Full Environmental Assessment Form (EAF) - Part I, (as amended) and a complete site plan application, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that this action will not have a significant impact on the environment, as follows:

1. The Engineering Department on April 18, 2023 reviewed the Grading, Drainage and Utility, and Erosion Control Plans submitted on April 14, 2023**.** A Custom Soil Resource Report for the subject site was prepared by the United States Department of Agriculture with the National Resources Conservation Services and submitted to the Planning Department on January 23, 2023. 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 Stormwater Pollution Prevention Plan (SWPPP) submitted on July 20, 2023 was also reviewed. Based on its review of these documents, the Stormwater Management Officer has determined that the project has or will have met all applicable requirements and has no objection to its approval.

2. The Planning Department reviewed a Landscape Plan submitted on July 18, 2023 and determined that it meets or exceeds Zoning Ordinance requirements for greenspace. The Landscape Plan has or will have met all Zoning Ordinance and Town requirements for landscaping.

   A Forestry Assessment Report prepared by Keister Consulting Inc., stated that the removal of tress on the subject site is justified due to the lack of significant trees both in size and health. It was further stated that many of the existing trees are being negatively impacted by insects and that the existing groundcover would prohibit the growth of new trees.

   Further, a Habitat Assessment Report was prepared by Earth Dimensions Inc., concluded that the subject site contains a potentially suitable habitat for the Monarch Butterfly and the Northern long-eared Bat. In response, the petitioner has agreed to use a wildflower seed mix to mitigate for the potential impacts to the Monarch Butterfly' habitat. The New York State Department of Environmental Conservation (NYSDEC) in their letter dated May 23, 2023, states that there is "no records of rare or state-listed animals or plants, or significant natural communities at the project site or in its immediate vicinity".

   Therefore, 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.

Attachment: SP-2023-01_TB_Neg Dec 091823 (RES-2024-59 : SEQR Determination - 800 & 850 New Road)

3. The project is not expected to create any substantive conflict with the Town Comprehensive Plan. The Planning Department in their review of August 1, 2023 has reviewed the application documents and Building Department in their review of April 19, 2023 has reviewed the application documents and determined that the subject project has or will have met all International Building Code – 2015 and Zoning Ordinance regulations.

4. The project is within an area identified by the State as having potential archaeological or historical significance. A Phase 1 Archeological Investigation was prepared by Hartgen Archeological Resources and received by the Planning Department on July 18, 2023 concluded that the project will not have a significant impact on historical or cultural resources. The NYS Office of Parks, Recreation and Historic Preservation has reviewed the project and, as stated in their letter of June 13, 2023, determined that there will be no 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 project is located in the Suburban Agriculture (SA) zoning district; neighboring uses are single family residential on the east, west, and south zoned SA, vacant land to the north zoned SA, and vacant land to the east and south zoned Traditional Neighborhood Development District (TND); therefore, the project is consistent with surrounding land use and zoning designations.

6. The proposed subject development will include the construction of a Tier III Solar Energy System which will not cause a major change in the use of either the quantity or type of energy.

7. The project will not create any hazard to human health. The Fire Chief's Association on April 21, 2023, has reviewed the project and has no objection to the approval of the site plan, as all requirements of this agency has or will have been met.

8. The project 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 use of sheep, goats, lambs or practices such as Apiculture is required to be incorporated into the project to maintain an agricultural use of that land. Further, a vegetative management plan has been submitted and reviewed by the Town's Landscape Architect that includes the preservation of existing vegetation and soils. The construction of a Tier III Solar Energy System on approximately 53% of the subject site (27.52 out of 51.98 acres) will be consistent with the scale of surrounding land uses.

9. The function of the proposed construction of a Tier III Solar Energy System will not significantly increase the number of people using the site over its previous level of use.

Attachment: SP-2023-01_TB_Neg Dec 091823 (RES-2024-59 : SEQR Determination - 800 & 850 New Road)

10. Review by the Town Traffic/Safety Board dated April 20, 2023, and NYSDOT dated February 2, 2023, indicates that significant negative traffic impacts are not expected to result from the proposed project.

11. A coordinated review of the project has been undertaken by Town Departments, in addition to those mentioned above, Highway on March 27, 2023, Assessor on February 2, 2023, , and Right-of-Way Agent on February 2, 2023 along with outside agencies including the Erie County Department of Environment and Planning on February 22, 2023, New York State Department of Transportation on February 2, 2023, New York State Department of Environmental Conservation on February 9, 2023, and the New York State Office of Parks, Recreation and Historic Preservation on June 13, 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 cause significant negative environmental impacts.

_____ _____
Thomas Voigt date

_____ _____
Brian J. Kulpa, Supervisor date

TV/ac
X:\Current_Planning\Files\Site Plans\2023\SP-2023-01_(800_&_850_New_Road)_2023\SP-2023-01_TB_Neg Dec 091823.docx
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDEC (type 1's)
Steve Long, Sol Source Power, 1 Washington Place, Troy, NY 12180
Marc Kenward, Erdman Anthony Consulting, 145 Culver Rd., Ste. 200, Rochester, NY 14620

Attachment: SP-2023-01_TB_Neg Dec 091823 (RES-2024-59 : SEQR Determination - 800 & 850 New Road)

Attachment: SP-2023-01_TB_Neg Dec 091823 (RES-2024-59 : SEQR Determination - 800 & 850 New Road)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 28535 **RESOLUTION 2024-60** **ADJOURNED**

Adoption of a Special Use Permit for Solar Energy Project (800 & 850 New Road; SP-2023-01)

DRAFT RESOLUTION
(Januray 22, 2024)

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 August 17, 2023 that the proposed solar energy development to be located at 800 & 850 New Road is consistent with the adopted Bicentennial Comprehensive Plan and §8-6-7 of the Zoning Ordinance as follows:

1. Will be generally consistent with the policies of the Comprehensive Plan;
2. Meets any specific criteria set forth in this Ordinance;
3. Will be compatible with existing uses adjacent to and near the property;
4. Will be in harmony with the general purpose of this Ordinance;
5. Will not tend to depreciate the value of adjacent property;
6. Will not create a hazard to health, safety or the general welfare;
7. Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and
8. Will not otherwise be detrimental to the public convenience and welfare.

as amended, and be it further

RESOLVED, that in accordance with Section 6-10-7B(3)(d) of the Zoning Ordinance, the Planning Board recommended to the Town Board approval of the Special Use Permit for the proposed solar development as stated in their resolution of August 17, 2023; and be it further

RESOLVED, that pursuant with Section 8-6-6 of the Zoning Ordinance, the Town Board **approves** said Special Use Permit subject to the following conditions:

1. That the P.I.L.O.T Agreement and Community Benefit Agreement be finalized, and that a copy of the signed agreements be provided to the Planning Department prior to the issuance of final site plan drawings.

2. That the petitioner provide a wetland habitat restoration plan for the 2.18± acres of tree removal that are proposed within jurisdictional wetland 2.

1/22/2024
Supervisor Kulpa made a motion to adjourn, seconded by Councilmember Berger and unanimously approved 5-0.

FINANCIAL IMPACT:

None

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 2/5/2024 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Councilmember	
AYES:	Kulpa, Berger, Lavin, Szukala, Marinucci	

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Finance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28514 **RESOLUTION 2024-61** **ADOPTED**

2024 CIP Amendment

BE IT RESOLVED, the 2024 CIP is hereby amended as follows:

Project ID	Project Title/Description	2024 Original	2024 Amended
YR-12A	Audubon Golf Course Impr.	1,000 LA	500 LA
S-3	Misc. SS Relining & Manhole Rehab.	150 I/M	500 LG, 150 I/M
H-1	Vac Truck	132 LH, 394 F/A	0

1/22/2024
Consent

FINANCIAL IMPACT:

Budget - N/A

CIP - $500,000 LG, ($500,000) LA, ($132,000) LH

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Supervisor
Initiated by: **Brian J. Kulpa**
Co-Sponsored by:

DOC ID: 28425 **RESOLUTION 2024-62** **ADOPTED**

Liaisons to Boards & Committees and Departments 2024

BE IT RESOLVED that Town Board Liaisons to Boards & Committees and Departments be set for 2024 as shown on the attached.

1/22/2024
Consent

FINANCIAL IMPACT:

None

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

2024 BOARD & COMMITTEE LIAISONS

Board / Committee	Brian Kulpa	Jacqualine Berger	Angela Marinucci	Shawn Lavin	Michael Szukala	Francina Spoth
9/11 Commemoration Committee						X
Amherst Committee on Disabilities			X			
Amherst Community Diversity Commission			X			
Amherst Conservation Advisory Council		X				
Amherst Fire Chiefs' Association					X	
Amherst Industrial Development Agency		X				
Amherst Government Financial Advisory Board					X	
Amherst Veterans Committee		X				
Arts and Culture in Public Places Board		X				
Board of Assessment Review	X					
Board of Electrician Examiners					X	
Board of Ethics					X	
Board of Plumbing and Drainage Examiners					X	
Design Advisory Board		X				
Employee Suggestion Program Merit Award Board			X			
Employee Suggestion Review Committee			X			
Energy Conservation		X				
Erie County Industrial Development Agency ECIDA	X					
FOIL Board					X	X
Glen Park Joint Board			X			
Historic Preservation Commission			X			
Information Technology Advisory Committee				X		
Library Board of Trustees			X			
Open Government Advisory Board					X	
Planning Board		X				
Plumbing and Drainage Board					X	
Recreation Commission		X				
Recycling and Waste Committee					X	
Senior Services Advisory Board				X		
Traffic Safety Board					X	
Tree Board				X		
Youth Board			X			
Zoning Board of Appeals		X				

Attachment: 2024 Board & Committee Liaisons (RES-2024-62 : Liaisons to Boards & Committees and Departments 2024)

2024 DEPARTMENT LIAISONS

Board / Committee	Brian Kulpa	Jacqualine Berger	Angela Marinucci	Shawn Lavin	Michael Szukala
Assessor	X				
Attorney			X		
Building				X	
Central Fire Alarm					X
Comptroller					X
Contract Compliance & Administration	X				
Economic Development	X				
Emergency Services & Safety	X				
Engineering					X
Facilities	X				
Finance	X				
Highway/Refuse		X			
Human Resources			X		
Information Technology				X	
Library			X		
Planning		X			
Police					X
Senior Services				X	
Sewer Divison/Wastewater Treatment Facility		X			
Town Clerk		X			
Town Court				X	
Youth & Recreation Department		X	X		

Attachment: 2024 Town Department Liaisons (RES-2024-62 : Liaisons to Boards & Committees and Departments 2024)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Councilmembers
Initiated by: **Jacqualine Berger**
Co-Sponsored by:

DOC ID: 28533 **RESOLUTION 2024-63** **ADOPTED**

Arts & Culture in Public Places Board Appointment

WHEREAS, Town of Amherst created the Arts & Culture in Public Places Board to promote public art and culture within the town and to collaborate and cooperate with various and appropriate individuals, groups, associations, organizations and institutions concerned with art and culture; and

WHEREAS, to promote, ensure and enhance the function, object and mission of the visual and performing arts; and

WHEREAS, the Arts & Culture in Public Places Board, also known as Arts & Culture, consists of nine (9) members, each serving a term of two (2) years; and

WHEREAS, the Arts & Culture in Public Places Board currently has a Board of six (6) members, who shall continue to serve until their term of appointment expires, as follows:

Sharon Seamans, Co-Chairperson, with term that expires 12-31-2025
Burton Merriam, Member, with a term that expires12-31-2024
Michael E. Russo, Member, with a term that expires 12-31-2025
Penny Wolfgang, Member, with a term that expires 12-31-2025; and

WHEREAS, Deborah Doucette, Maureen Cilano, Jennifer Colwell, and Mary Jo Kahley-Wolf have served on the Arts & Culture Board and have expressed interest in continuing service on the Arts & Culture Board; and

WHEREAS, Joy Testa Cinquino has expressed interest in serving on the Arts & Culture in Public Places Board;

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board reappoints Deborah Doucette, Maureen Cilano, Jennifer Colwell, and Mary Jo Kahley-Wolf to terms to conclude December 31, 2025; and

BE IT FURTHER RESOLVED that the Amherst Town Board also approves the appointment of Joy Testa Cinquino for a term to conclude on December 31, 2026.

1/22/2024
Consent

FINANCIAL IMPACT:

None.

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Councilmembers
Initiated by: **Jacqualine Berger**
Co-Sponsored by:

DOC ID: 28503 **RESOLUTION 2024-64** **ADOPTED**

Self-Contained Breathing Apparatus

WHEREAS, the Amherst Fire Safety Division responds to various types of Emergency related incidents and provides a high level of safety and professionalism in performing our duties as Fire Inspectors; and

WHEREAS, the Amherst Town Fire Safety Division has the need to increase personal protection for the Amherst Fire Inspectors and to raise the level of protection with respect to the harmful effects of a fire/emergency incidents and the potential increased risk of cancer; and

WHEREAS, the Amherst Town Fire Safety Division also has the need to inspect and maintain SCBA equipment utilized in performing the Fire Inspector's duties.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the purchase of personal protective equipment and various equipment from Avoidable Alarm Fund T-2999.4002.

1/22/2024
Consent

FINANCIAL IMPACT:

A cost not to exceed $ 400.00

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Councilmembers
Initiated by: **Jacqualine Berger**
Co-Sponsored by:

DOC ID: 28504 **RESOLUTION 2024-65** **ADOPTED**

Annual Knox Maintenance

WHEREAS, the Town of Amherst has over 1000 KNOX locks to increase access to properties for emergencies without causing additional property damage; and

WHEREAS, maintenance to existing locks is important in confirming the correct access keys are up-to-date in the event of an emergency; and

WHEREAS, the Amherst Fire Safety Division administers the KNOX program in an effort to ensure safety and security for properties in the Town of Amherst; and

WHEREAS, the locks are necessary to provide safety and ease of access to the site for the Fire Departments after a fire or other emergencies of fire and/or life safety for the Town of Amherst; and

WHEREAS, having an employee of the Fire Safety Division of the Amherst Building Department assigned to maintain said locks would be consistent and efficient.

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the transfer of funds from Avoidable Alarm Fun T-2999.4002 to the Building Department Personal Services Account B 3620-1000.

1/22/2024
Consent

FINANCIAL IMPACT:

A cost not to exceed $12,000.00.

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Councilmembers
Initiated by: **Jacqualine Berger**
Co-Sponsored by:

DOC ID: 28507 **RESOLUTION 2024-66** **ADOPTED**

Art on Signal Cabinets – Yr. 2024

WHEREAS, in 2019 the Town of Amherst Arts and Culture in Public Places Board spearheaded an initiative that converted six (6) traffic signal cabinets in the Town of Amherst into public artworks; and

WHEREAS, an additional twenty (20) traffic signal cabinets were painted in subsequent years for a total of twenty-six (26) painted to date; and

WHEREAS, the Decorative Treatment for Traffic Signal Cabinets Initiative has been a success and there is desire to continue with the project; and

WHEREAS, signal cabinet artwork beautifies public spaces, builds community, and offers a more attractive and interesting streetscape environment; and

WHEREAS, an additional eight (8) traffic signal boxes have been selected by the Arts and Culture in Public Places Board to be painted by qualified and trusted artists; and

WHEREAS, the following seven (7) locations require NYSDOT permits:

Main Street & Campus Drive,
Main Street & Kensington Avenue,
Main Street & Spindrift Drive,
Millersport Highway & North Forest Road,
North Forest Road & Union Road,
Sweet Home Road & Rensch Road,
Sheridan Drive & Youngs Road; and

WHEREAS, the NYSDOT allows for Decorative Treatment for Traffic Signals by TSMI 16-04 where a PERM-33 Highway Work Permit is required to paint or wrap a traffic signal cabinet;

THEREFORE BE IT RESOLVED, the Town Board supports the initiative to paint artwork on signal cabinets by the Arts and Culture in Public Places Board in the selected locations; and

THEREFORE BE IT FURTHER RESOLVED, the Supervisor of the Town of Amherst is hereby authorized to sign all NYSDOT permits and applications in connection with the Signal Cabinet Artwork; and

THEREFORE BE IT FURTHER RESOLVED, that the NYSDOT work permit and necessary applications be reviewed by the Town Attorney prior to execution;

THEREFORE BE IT FURTHER RESOLVED, that a certified copy of this Resolution be provided to the New York State Department of Transportation as part of the PERM-33 Highway Work Permit.

1/22/2024
Consent

FINANCIAL IMPACT:

Fiscal Impact: $1600 total ($200 per box)

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Councilmembers
Initiated by: **Michael Szukala**
Co-Sponsored by:

DOC ID: 28426 **RESOLUTION 2024-67** **ADOPTED**

Amherst Traffic Safety Board Appointments

WHEREAS, the Amherst Traffic Safety Board, also known as ATSB or Traffic Safety Board, advises the Town Board on matters affecting traffic safety on all existing and proposed roadways, subdivisions, commercial areas, and wherever cars, bicycles, recreational vehicles and pedestrians are involved; and

WHEREAS, the ATSB has a maximum roster of 10 members, with the Amherst Town Board majority appointing members, who shall serve a three (3) year term; and

WHEREAS, the ATSB currently has a Board of 7 members, who shall continue to serve until their term of appointment expires, as follows:

Eric Fraas, Chairperson, term expires 12/31/2025
Gregory Dionne, Vice Chairperson, term expires 12/31/2025
Maxwell Kahn, Member, term expires 12/31/2025
Jennifer L. Minchniewicz, Member, term expires 12/31/2024
Michelle Nagel, Member, term expires 12/31/2024
Kenneth A. Smith, Member, term expires 12/31/2024
Patrick Wanamaker, Member, term expires 12/31/2024; and

WHEREAS, the members of the Amherst Traffic Safety Board shall, by majority vote, elect a Chairperson from among the members and such officers as may be deemed necessary from time to time; and

WHEREAS, Kevin Cantwell and Daniel Rider have served on the Amherst Traffic Safety Board and have expressed interest in serving another term; and

WHERESAS, Helaine Sanders has expressed an interest in serving on the ATSB;

NOW, THEREFORE, BE IT RESOLVED that the Amherst Town Board approves the re-appointments of Kevin Cantwell and Daniel Rider for a term to conclude on December 31, 2026; and

BE IT FURTHER RESOLVED that the Amherst Town Board also approves the appointment of Helaine Sanders for a term to conclude on December 31, 2026.

1/22/2024
Consent

FINANCIAL IMPACT:

None

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Refuse
Initiated by: **Ryan C Licata**
Co-Sponsored by: **Councilmember Michael Szukala**

DOC ID: 28485 **RESOLUTION 2024-68** **ADOPTED**

Resolution Supporting New York State Extended Producer Responsibility Legislation

WHEREAS, that Town of Amherst intends to encourage the State of New York to transfer responsibility for the costs of managing certain products at end-of-life to producers (brand owners and first importers); and be it

THEREFORE, the Town of Amherst urges the New York State Legislature to enact framework EPR legislation which will give producers the incentive to design products to make them less toxic and easier to repair, reuse and recycle; and be it

FURTHER RESOLVED, that the Senior Refuse Control Officer of the Town of Amherst Office of Refuse Control is requested to send letters to the State Legislature and State associations and to use other advocacy methods to urge support for EPR legislation; and be it

FURTHER RESOLVED, the State of New York and its member agencies are urged to include EPR language, such as specifying product and packaging collection and recycling requirements, in contracts for commodities.

1/22/2024
Consent

FINANCIAL IMPACT:

0

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

Resolution Supporting Extended Producer Responsibility

WHEREAS,

- manufactured goods and packaging constitute approximately 75% of the materials managed by solid waste facilities in the United States, based on figures by the U.S. Environmental Protection Agency; and
- residents and businesses in Amherst are required to spend large sums of money to manage discarded manufactured goods and packaging; and
- hazardous and hard-to-recycle product management costs are expected to increase substantially in the short term unless policy changes are made; and
- there are significant environmental and human health impacts associated with improper management of these products; and
- New York State policy currently makes local governments responsible for achieving waste diversion goals, which is an unfunded mandate; and
- the municipal waste management system in the United States was established a century ago to manage far simpler and more homogeneous wastes like ashes, food scraps and horse manure, rather than the manufactured goods and packaging which dominate today's municipal waste stream; and
- local governments such as the Town of Amherst have no input into the design or marketing of products, may not profit from the products and do not have the resources to adequately address the rising volume of discarded products; and
- costs paid by citizens and local governments to manage products are, in effect, subsidies to producers that enable and encourage producers to design products for disposal and without regard to end of life management; and
- some corporate producers have implemented take-back efforts which have been helpful, but there is a need for consistent industry-wide practices and this can only be accomplished by EPR legislation on a State or Federal level, and
- Extended Producer Responsibility (EPR) is an environmental policy approach in which producers (brand owners and importers) accept responsibility for the management of post-consumer products, so those who produce products bear the costs of recycling and responsible disposal; and
- when producers are responsible for ensuring their products are reused or recycled responsibly, and when health and environmental costs are included in the product price, there is an incentive to design products that are more durable, easier to repair and recycle, and less toxic; and
- The State of New York can advance EPR through a variety of mechanisms including requiring the manufacturers of many products sold to New York State departments to take financial responsibility for collecting and recycling those products at the end of their useful life; by incorporating EPR policies into New York State's product procurement practices; by favoring vendors and manufacturers that take back their product and associated packaging at the end of life; and
- The Town of Amherst supports statewide efforts to hold producers responsible for hazardous product discard management and other product waste management costs;

THEREFORE, BE IT RESOLVED, that Town of Amherst intends to encourage the State of New York to transfer responsibility for the costs of managing certain products at end-of-life to producers (brand owners and first importers); and be it

FURTHER RESOLVED, that the Town of Amherst urges the New York State Legislature to enact framework EPR legislation which will give producers the incentive to design products to make them less toxic and easier to repair, reuse and recycle; and be it

FURTHER RESOLVED, that the Senior Refuse Control Officer of the Town of Amherst Office of Refuse Control is requested to send letters to the State Legislature and State associations and to use other advocacy methods to urge support for EPR legislation; and be it FURTHER RESOLVED, the State of New York and its member agencies are urged to include EPR language, such as specifying product and packaging collection and recycling requirements, in contracts for commodities.

STATE OF NEW YORK

4246--A

2023-2024 Regular Sessions

IN SENATE

February 6, 2023

Introduced by Sens. HARCKHAM, KAVANAGH, ADDABBO, BRESLIN, BROUK, CHU, CLEARE, COMRIE, FERNANDEZ, GONZALEZ, HOYLMAN-SIGAL, KRUEGER, LIU, MAY, MAYER, RAMOS, RIVERA, SALAZAR, SEPULVEDA, SERRANO, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to enacting the packaging reduction and recycling infrastructure act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "packaging reduction and recycling infrastructure act".

§ 2. Article 27 of the environmental conservation law is amended by adding a new title 34 to read as follows:

TITLE 34

PACKAGING REDUCTION AND RECYCLING INFRASTRUCTURE ACT

Section 27-3401. Definitions.
27-3403. Selection of the packaging reduction organization.
27-3405. Responsibilities of packaging reduction organization.
27-3407. Packaging reduction and recycling organization plan.
27-3409. Packaging reduction and recycling plan approval.
27-3411. Packaging reduction and recycling advisory council.
27-3413. Funding mechanism.
27-3415. Collection and convenience.
27-3417. Producer responsibilities.
27-3419. Department responsibilities.
27-3421. Statewide packaging reduction, reuse, and recycling needs assessment.
27-3423. Education and outreach program.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD08868-07-3

Attachment: S4246A (RES-2024-68 : Resolution Supporting NYS ERP Legislation)

27-3425. Prohibition on certain toxic substances and materials.
27-3427. Non-reusable packaging reduction standards.
27-3429. Recycled content standards.
27-3431. Recyclability criteria and packaging recycling requirements.
27-3433. Establishment of the office of recycling inspector general.
27-3435. Penalties and enforcement.
27-3437. Rules and regulations.
27-3439. State preemption.
27-3441. Other assistance programs.
27-3443. Severability.

§ 27-3401. Definitions.

As used in this title:

1. "Advisory council" or "council" means the packaging reduction and recycling advisory council established under section 27-3411 of this title.

2. "Beverage container" shall have the same meaning as is set forth in subdivision two of section 27-1003 of this article.

3. "Brand" means any mark, word, name, symbol, design, device, or graphical element or a combination thereof, including a registered or unregistered trademark, that identifies and distinguishes a product from other products.

4. "Contamination" means:

(a) the presence of materials in a given collected material stream that are not on the minimum recyclables list maintained by the department; or

(b) the presence of materials in a given recycled material delivered as a feedstock or commodity that are not specified or accepted as a component of the feedstock or commodity.

5. "Discarded", "discards", "generated" or "generation" means packaging material that has been used for its intended purpose and is no longer needed by consumers, businesses, institutions, and other users, and can be managed through reuse, recycling, or disposal.

6. "Disposal" means the landfilling or incineration of material or products. "Disposal" shall also include energy recovery or energy generation by any means, including, but not limited to, incineration, combustion, pyrolysis, gasification, or solvolysis, waste-to-energy, or waste-to-fuel, or any other chemical conversion process. "Disposal" shall also include the use of materials as landfill cover.

7. "Eco-modulation" means structuring program fees in a way to provide producers with financial incentives to reduce waste at the source, increase recyclability of packaging materials, promote reusable packaging products, including those that are contained within a reuse and refill system, discourage and decrease contamination, disincentivize designs or practices that increase the costs and adverse environmental impacts of managing the packaging materials, and encourage designs and processes that improve and facilitate development of infrastructure and systems for source reduction, reuse, recycling, and composting.

8. "Disadvantaged community" shall have the same meaning as is set forth in subdivision five of 75-0101 of this chapter.

9. "Local government" means any municipal corporation, governmental subdivision of the state, local government unit, special district, school, local or regional board, commission, or authority authorized by law to plan or provide for waste management services for a specific geographical area.

Attachment: S4246A (RES-2024-68 : Resolution Supporting NYS ERP Legislation)

10. "Packaging material" or "material" means a discrete material or category of material, regardless of recyclability, including but not limited to such material types that are flexible, foam, or rigid material, including paper, cardboard, plastic, glass, metal, or multi-material, that is used for the containment, protection, handling, delivery, transport, distribution, or presentation of another product that is sold, offered for sale, imported, or distributed in the state, including through an internet transaction, and single-use plastic products that frequent the residential waste stream or are plastic products that have the effect of disrupting recycling processes, including, but not limited to, single-use plastic items such as straws, utensils, cups, plates, and plastic bags. Packaging material does not include:

(a) Medical devices and packaging which are included with products regulated as a drug, medical device, or dietary supplement by the United States food and drug administration under the federal food, drug, and cosmetic act, 21 U.S.C. 321 et seq., Sec. 3.2(E) of 21 U.S. code of federal regulations, or the dietary supplement health and education act;

(b) Animal biologics, including vaccines, bacterins, antisera, diagnostic kits, and other products or biological origin, and other packaging materials regulated by the United States department of agriculture under the virus, serum, toxin act, 21 U.S.C. 151-159;

(c) Packaging regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq. or other applicable federal law, rule, or regulation;

(d) Packaging used to contain hazardous or flammable products regulated by the 2012 federal Occupational Safety and Health Administration Hazard Communications Standard (29 C.F.R. 1910.1200);

(e) Beverage containers subject to a returnable container deposit under title ten of this article;

(f) Infant formula as defined in section 321(z) of title 21 of the United States code of federal regulations;

(g) Medical foods as defined in section 360ee(b)(3) of title 21 of the United States code of federal regulations; and

(h) Architectural paint containers collected and managed pursuant to title twenty of this article.

11. "Packaging reduction and recycling organization" or "organization" means a registered 501(c)(3) not-for-profit charitable organization, pursuant to 26 U.S.C. 501(c)(3) under contract with the department and authorized to collect producer fees, assist producers with compliance with the requirements of this title, provide technical assistance to producers and implement the program.

12. "Packaging reduction and recycling plan" or "plan" means a document in which an organization describes the efforts it will undertake to comply with the requirements of this title.

13. "Packaging reduction and recycling program" or "program" means the program implemented by an organization, and overseen by the department, to comply with and implement the provisions of this title.

14. "Post-consumer recycled material" means new material produced using material resulting from recycling.

15. "Primary packaging" means the packaging in direct contact with the product itself, also sometimes referred to as a consumer unit.

16. "Producer" means the following entities, other than local governments, state governments and the federal government, for compliance with the requirements for packaging materials sold, offered for sale, or distributed to consumers in or into this state:

Attachment: S4246A (RES-2024-68 : Resolution Supporting NYS ERP Legislation)

(a) For packaging materials sold or served to consumers at a physical retail location in this state:

(i) If the packaging materials are sold or served under the manufacturer's own brand or are sold or served in packaging materials that lack identification of a brand, the producer of the packaging materials is the person that manufactures the product;

(ii) If subparagraph (i) of this paragraph does not apply, the producer of the packaging materials is the person that is the licensee of a brand or trademark under which a product is sold or served to a consumer in or into this state, whether or not the trademark is registered in this state, unless the manufacturer of the packaging materials has agreed to accept responsibility; where the producer is a business operated wholly or in part as a franchise, the producer is the franchisor, if such franchisor has franchisees that are resident in the state;

(iii) If there is no person as described in subparagraph (i) or (ii) of this paragraph within the United States, the producer of the packaging material is the person who imports the product into the United States for use in a commercial enterprise that sells, offers for sale, or distributes the product to consumers in this state.

(b) For products sold or distributed to consumers in packaging materials in or into this state via remote sale or distribution:

(i) The producer of packaging materials used to directly protect or contain the product is the same as the producer defined in paragraph (a) of this subdivision.

(ii) The producer of packaging materials used to ship the product to a consumer is the person that manufacturers the shipping material.

17. "Product line" means a group of related products all marketed under a single brand that is sold by the same producer to distinguish products from each other for better usability for customers.

18. "Recyclable" means a packaging material that meets the criteria in section 27-3431 of this title.

19. "Recycled" means the use of discarded packaging materials or products in the production of a new product or packaging in place of virgin materials. "Recycled" material does not include contaminants, residues, and other process losses or use of materials as landfill cover.

20. "Recycling" means to separate, dismantle or process the materials, components or commodities contained in discards for the purpose of preparing the materials, components, or commodities for use or reuse in new products or components. "Recycling" does not include: (a) energy recovery or energy generation by any means, including but not limited to, combustion, incineration, pyrolysis, gasification, solvolysis, or waste-to-fuel; (b) any chemical conversion process; or (c) landfill disposal.

21. "Recycling rate" means the percentage of any given packaging type that is ultimately recycled. The recycling rate for any packaging material shall be calculated as the total weight of packaging that is recycled in a given year divided by the total weight of packaging material generated in that year. Material losses, including contaminants and residues, accruing during collection, processing and manufacturing new products do not count as recycled and shall not be included in the numerator of the equation.

22. "Reuse" means the return of packaging back into the economic stream for use in the same kind of application intended for the original packaging, without effectuating a change in the original composition of the package, the identity of the product, or the components thereof.

Attachment: S4246A (RES-2024-68 : Resolution Supporting NYS ERP Legislation)

23. "Reuse and refill system" means a program or set of mechanisms designed to facilitate multiple uses of packaging. Mechanisms may include, but are not limited to, deposits, incentives, curbside collection, collection kiosks, refill stations, dishwashing facilities, and re-distribution networks.

24. "Reusable or refillable packaging and containers" means packaging material and containers that are specifically designed and manufactured to maintain shape and structure, and be materially durable for repeated sanitizing, washing, and reuse.

25. "Toxic packaging task force" means the toxic packaging task force established by subdivision two of section 27-3425 of this title.

26. "Toxic substances" means a chemical or chemical class identified by a state agency, federal agency, international intergovernmental agency, accredited research university, or other scientific entity deemed authoritative by the department on the basis of credible scientific evidence as being one or more of the following:

(a) A chemical or chemical class that is a carcinogen, mutagen, reproductive toxicant, immunotoxin, neurotoxicant, or endocrine disruptor.

(b) A chemical or chemical class that is persistent or bioaccumulative.

(c) A chemical or chemical class that may harm the normal development of a fetus or child or cause other developmental toxicity in humans or wildlife.

(d) A chemical or chemical class that may harm organs or cause other systemic toxicity.

(e) A chemical or chemical class that may have adverse air quality impacts, adverse ecological impacts, adverse soil quality impacts, or adverse water quality impacts.

(f) A chemical or chemical class that the department has determined has equivalent toxicity to the above criteria.

§ 27-3403. Selection of the packaging reduction organization.

1. Until the date which is ten years after the effective date of this title, there shall be only one packaging reduction organization and all producers shall be required to register with such packaging reduction organization.

2. Consistent with the requirements of this title, within fifteen months of the effective date of this title, the department shall select and enter into a contract with a not-for-profit organization to act as the initial organization in order to operate the packaging reduction and recycling program.

3. Within nine months of the effective date of this title and consistent with applicable competitive bidding requirements under state purchasing laws, the department shall issue a request for proposals for the operation of the packaging reduction and recycling program. The successful bidder shall be required to include, at a minimum, the following information:

(a) A description of how the bidder will administer the program, including the mechanisms and processes for providing assistance to producers to comply with the reporting requirements of this title;

(b) The mechanisms and processes the bidder will use to compile information from producers;

(c) How the bidder intends to manage and account for all program related funds which pass through the organization, including how timely reimbursements to local governments will be provided;

(d) A financial assurance plan that ensures all program funds held by the organization are immediately and exclusively forfeited and trans-

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ferred to or otherwise made immediately available to the department if the organization's contract with the department is terminated by the department, or expires;

(e) A proposed budget outlining the anticipated costs of operating the program and a description of the method by which the bidder intends to determine and collect producer payments during the initial startup period; and

(f) Any other additional information required by the department.

4. If, at the close of the competitive bidding process under subdivision three of this section, the department determines that no bidder has submitted, in accordance with such subdivision, a proposal that meets the requirements of this section, the department shall operate the program by itself or designate a state public body to operate the program.

5. If after recommendation by the advisory council pursuant to subdivision ten of section 27-3411 of this title the department determines that it would be beneficial for there to be additional organizations implementing the program, beginning ten years after the effective date of this title, the department may issue a request for proposals for additional organizations in a manner consistent with the provisions of this section. Should the department determine to have additional organizations, the department shall promulgate regulations to ensure consistency and coordination between all organizations.

§ 27-3405. Responsibilities of packaging reduction organization.

1. Producers shall register with a packaging reduction organization to meet the responsibilities of the program pursuant to the provisions of this section.

2. Each packaging reduction organization shall:

(a) Develop a packaging reduction and recycling plan and submit such plan to the advisory council for review and comment, and after any modifications in response to such comments, submit the plan to the commissioner for approval pursuant to section 27-3407 of this title;

(b) Collect and compile data from producers as required by section 27-3417 of this title;

(c) Collect fees due from producers as required by section 27-3413 of this title;

(d) Reimburse the department and any other relevant state agencies for the costs associated with conducting the statewide needs assessment required by section 27-3421 of this title, the administration of the program by the department, and the expenses of the advisory council and the toxic packaging task force;

(e) Distribute funds to reimburse local governments and private companies for the costs associated with the implementation of reduction, refill, and reuse programs, and the collection, transportation and recycling, disposal or other processing of packaging materials;

(f) Offer technical support to producers, with an emphasis on support to small businesses, to assist them with compliance with the requirements of this title, including information about procuring affordable alternatives to non-compliant packaging and reducing packaging.

3. Annually, each organization shall submit a report to the department that, at a minimum, must include the following information:

(a) Contact information for the organization;

(b) A list of all (i) producers, (ii) brands, and (iii) products that each producer sells, offers for sale, or distributes into the state that are contained, protected, delivered, presented, or distributed in or

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using packaging, in each case identified by the Universal Product Code (UPC) if the product has one;

(c) The total amount, by both weight and number of units, of each type of packaging material used to contain, protect, handle, deliver, transport, distribute, or present products sold, offered for sale, or distributed into the state by each individual producer during the prior calendar year;

(d) The total amount, by both weight and number of units, of each material used to contain, protect, handle, deliver, transport, distribute, or present products sold, offered for sale, or distributed into the state by all producers during the prior calendar year;

(e) A complete accounting of all payments made to and by the organization during the prior calendar year;

(f) A list of producers reasonably believed to be out of compliance with the requirements of this title, and the reason the organization reasonably believes the producer to be out of compliance. Information on non-compliant producers shall be provided to the commissioner and recycling inspector general's office in a timely fashion and for possible enforcement action by the office;

(g) A description of the educational and outreach efforts made by the organization in the prior calendar year, and how those efforts were designed to reduce packaging waste, and increase reuse and recycling of packaging materials;

(h) An assessment of whether the fee structure adopted by the department pursuant to section 27-3413 of this title has been effective in incentivizing improvements to the design of packaging material, including actual reduction of packaging, increases in reusable and refillable packaging, recycling rates for packaging materials, and decreases in the amount of packaging;

(i) A description of the reimbursements and expenditures made pursuant to section 27-3413 of this title;

(j) Audited financial statements;

(k) The results of the review conducted pursuant to subdivision four of this section; and

(l) Any additional information required by the department.

4. Each organization shall conduct an annual review process to determine whether packaging materials are recyclable. This review shall be conducted in consultation with representatives of end markets, including recycled commodities brokers and manufacturers who purchase post-consumer material for use in manufacturing new products, and in consultation with local governments. For the purposes of calculating producer payments and local government reimbursements in accordance with this title, this annual process shall include a transitional period between the date the determination is finalized and the date it goes into effect.

5. Each organization shall conduct public outreach and provide consumers with educational and informational materials related to reducing the amount of packaging discarded, recycled, and disposed of in the state as outlined in section 27-3423 of this title.

6. Each organization shall operate a program that provides for collection convenience as described in section 27-3415 of this title.

7. Each organization shall not spend funds on lobbying or campaign contributions to any candidates running for office.

8. An organization shall not share, except with the department, the advisory council, and the toxic packaging task force, or as required by

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law, any proprietary information that is identified by a producer as proprietary information.

§ 27-3407. Packaging reduction and recycling organization plan.

1. Within two years of the effective date of this title, the initial packaging reduction organization, shall develop and submit a packaging reduction and recycling plan on implementation of the rules and regulations of this title, including ensuring timely disbursements to local governments, to the department for approval. The plan shall be submitted to the advisory council for review pursuant to section 27-3411 of this title prior to the department's approval. Any subsequent or additional organization shall develop and submit a packaging reduction and recycling plan and comply with all the requirements of this section, and have such plan approved pursuant to section 27-3409 of this title.

2. The plan shall cover five years and be updated every five years following the approval of the original plan. The department shall have the discretion to require the plan to be reviewed or revised prior to the five-year period pursuant to section 27-3419 of this title.

3. Each producer shall begin program implementation within six months after the date the plan for the initial organization is approved and in no event later than three years of the effective date of this title. If no plan is approved by that timeframe, the producer shall be subject to penalties for noncompliance.

4. Any person that becomes a producer after the plan for the initial organization is approved shall register with a packaging reduction organization and begin program implementation within six months thereof or be subject to penalties for noncompliance.

5. The submitted plan shall include, but not be limited to:

(a) contact information, including the name, electronic and physical address, and telephone number of the authorized representative of the producer or producers;

(b) the identity of the producer or producers participating in the plan;

(c) a comprehensive list of the types and brands of covered materials for which the producer or producers are responsible for;

(d) a description of (i) the proposed funding mechanism, identified in section 27-3413 of this title, that meets the requirements of this title, and (ii) how the organization will maintain a financial reserve sufficient to operate the program in a fiscally prudent and responsible manner;

(e) an objective formula establishing a reimbursement rate, which covers obligations identified in the needs assessment and takes into account variable regional costs, for participating local governments or private sector service providers;

(f) a description of the process for participating local governments or private sector service providers to recoup reasonable costs as established by the objective formula, from the producer or organization, including, as applicable, any administrative, sorting, collection, transportation, public education, or processing costs, if the organization uses existing services through a local government or obtains such services from a private sector service provider, which process and recoupment may be structured to incentivize improvements in management of materials including without limitation in the manner described in paragraph (i) of this subdivision;

(g) a description of the characteristics of each type of packaging material that is relevant to the eco-modulating factors set forth pursuant to section 27-3413 of this title;

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(h) if the local government does not elect to provide service, a description of the process used for contracting with a private sector entity to provide such services and the recoupment of reasonable costs, including procedures to ensure that such private sector entity is not compensated for such services by both the organization and the consumer for the same service;

(i) how the producers and/or organization will work with existing waste haulers, material recovery facilities, recyclers, and local governments to operate or expand current collection programs to address material collection methods, improve efficiency and yield of processing materials from separate collection streams, and increase packaging reduction and reuse;

(j) a description of how the producers or organization will use open, competitive, and fair procurement practices should they directly enter into contractual agreements with service providers, including municipalities and private entities;

(k) a description of how a local government will participate, on a voluntary basis, with collection and how existing local government recycling processing and collection infrastructure will be used;

(l) a description of how the producers or organization plans to meet the convenience requirements set forth in this title;

(m) a description of the process for end-of-life management, including recycling and disposal of residuals collected for recycling, using environmentally sound management practices;

(n) a description of how the organization shall provide the option to purchase recycled materials from processors;

(o) a description of how producers are complying with and exceeding the waste reduction, toxics, recycling and post-consumer content requirements of the title;

(p) a description of how the organization will strategically invest in existing and future reuse and recycling infrastructure and market development in the state in consultation with the department and in a manner not inconsistent with the needs assessment, including, but not limited to, installing or upgrading equipment to improve sorting of covered materials or mitigating the impacts of materials to other commodities at existing sorting and processing facilities, and capital expenditures for new technology, equipment, and facilities;

(q) a process to address concerns and questions from customers and residents;

(r) a description of the organization's public outreach education program for consumers and other stakeholders;

(s) a description of how comments of stakeholders were considered and addressed in the development of the plan; and

(t) a detailed description of how the organization consulted with the advisory council, the public, and other stakeholders in the development of the plan prior to its submission to the department, and to what extent the organization specifically incorporated the advisory council's input into the plan.

6. The organization shall also provide the advisory council a reasonable period of time to review and comment upon the draft plan prior to its submission to the department in accordance with section 27-3409 of this title which shall in no event be less than sixty days. The organization shall make an assessment of comments received and shall provide a summary and an analysis of the issues raised by the advisory council and significant changes suggested by any such comments, a statement of the reasons why any significant changes were not incorporated into the

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plan, and a description of any changes made to the plan as a result of such comments.

§ 27-3409. Packaging reduction and recycling plan approval.

1. Before approval or denial of a packaging reduction and recycling plan can be made in accordance with this title, the producer or organization shall submit the plan to the packaging reduction and recycling advisory council. The advisory council shall then make a recommendation regarding approval or disapproval of the plan in accordance with section 27-3411 of this title.

2. Within sixty days of the advisory council making a recommendation to the department, the department shall make a determination to approve the plan as submitted; approve the plan with conditions; or deny the plan, with reasons for the denial.

3. The department may establish additional plan requirements in addition to those identified herein to fulfill the intent of this title; provided, however, that any additional requirements shall be established one year prior to a required submission of a plan unless such additional requirements are in relation to the power granted to the department section 27-3419 of this title.

4. No later than six months after the date the plan is approved, the organization shall implement the approved plan. The department may rescind the approval of an approved plan at any time for cause and with documented justification.

§ 27-3411. Packaging reduction and recycling advisory council.

1. There is hereby established within the department a packaging reduction and recycling advisory council to receive and review the packaging reduction and recycling plans required under section 27-3407 of this title, to make recommendations to the department regarding approval of the plans, and to review the annual reports produced by organizations and to make recommendations to the department and organizations as required by this section.

2. The advisory council shall convene for the first time no later than one year after the effective date of this title. The advisory council shall be composed of thirteen members. Seven shall be appointed by the commissioner, three shall be appointed by the speaker of the assembly, and three shall be appointed by the temporary president of the senate. The advisory council shall include at least one member from each of the following:

(a) a local government association or local government program, including an additional local government representative from cities with a population of one million or more residents;

(b) a statewide environmental organization;

(c) a representative of an environmental justice community affected by solid waste infrastructure;

(d) an environmental justice organization;

(e) a statewide waste disposal or recycling association;

(f) a materials recovery facility located within the state;

(g) a recycling collection provider;

(h) a manufacturer of packaging materials utilizing post-consumer recycled content;

(i) a consumer advocate;

(j) a retailer;

(k) a public health specialist; and

(l) a producer and an organization established under this title as non-voting members.

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3. Appointments to the advisory council are term-limited to ten consecutive years of service; the chair shall be chosen through a majority vote of its members and shall serve no longer than three consecutive years.

4. Advisory council members shall serve without compensation, except that a member of the committee who is a state officer or employee may receive his or her regular compensation while engaging in the business of the committee, but shall be entitled to receive reimbursement for any actual, necessary expenses incurred in the course of performing business for the committee.

5. All decisions made by the advisory council shall be decided by voting and votes shall only be valid when a quorum is present. A quorum shall exist when greater than fifty percent of voting members are present. The advisory council shall meet at least once a year by the call of the chair or by request of more than half the members. The decisions of the advisory council shall be by vote of the majority of its membership.

6. The council shall determine whether the plan submitted under section 27-3409 of this title meets the criteria and objectives under such section in making its recommendation.

7. The advisory council shall, within ninety days of the submission of a packaging reduction and recycling plan, either:

(a) forward the plan to the commissioner with its recommendation for approval; or

(b) forward the plan to the commissioner with its disapproval and stated reasons therefor, including any recommended changes to the plan necessary for approval.

8. An organization may resubmit a packaging reduction and recycling plan for approval at any time. Upon such resubmission, the advisory council shall, within ninety days, forward the plan to the commissioner with its recommendation for approval or disapproval.

9. The advisory council shall review the submitted annual reports and make such recommendations to the department and the organization for improving future administration of the program and compliance with this title.

10. Thirty months from the date the department adopts rules and regulations pursuant to this title, and every three years thereafter, the advisory council shall conduct a review of all relevant data, including annual reports, the latest scientific data available, any pertinent statewide waste and reuse data, and any other information deemed important, to make recommendations to the following:

(a) organizations for any changes in administration of the program, including feedback on the education and outreach program as outlined in section 27-3423 of this title;

(b) the department for any necessary changes to regulations, the funding mechanism, reimbursement and expenditure policies or whether it would be beneficial for there to be additional organizations implementing the program; and

(c) the legislature for recommended statutory changes. Such recommendations shall include a recommendation as to whether to modify the definition of recycling under this title.

§ 27-3413. Funding mechanism.

1. All costs of the program, including administration, enforcement, and all other state costs of the program and organizations' costs of the program, including but not limited to those costs described in subdivision three of this section shall be covered by producer payments. The department shall promulgate rules and regulations in the manner required

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by section 27-3419 of this title setting forth the manner in which producer payments on packaging materials shall be calculated and assessed. Payments shall be calculated based on:

(a) The packaging material type;

(b) The quantity of each packaging material type, by weight, that the producer sells, offers for sale, or distributes in the state;

(c) Eco-modulation, including as described in subdivision seven of this section.

2. The list of packaging material types for which there is a specific fee shall include, at a minimum, the following material types:

(a) Paper;

(b) Cardboard;

(c) Corrugated cardboard;

(d) Wood;

(e) Glass;

(f) Polyethylene terephthalate (PET);

(g) High density polyethylene (HDPE);

(h) Expanded polystyrene (EPS);

(i) Polystyrene;

(j) Bio-plastics;

(k) Generic plastics;

(l) Plastic film;

(m) Other plastics;

(n) Steel or ferrous;

(o) Aluminum;

(p) Tinplate;

(q) Generic metals; and

(r) Mixed materials including laminates and packaging containing more than one of the above materials.

3. Packaging fees shall be designed to cover, at minimum, the total costs associated with:

(a) Costs to provide curbside collection or other form of residential service that is, at minimum, as convenient as detailed in section 27-3415 of this title;

(b) The department's and other state agencies' administration of this title;

(c) Organizations' administration of this title;

(d) The cost associated with the development of the needs assessment, as required in section 27-3421 of this title;

(e) The costs associated with the advisory council and the toxic packaging task force;

(f) The costs associated with establishing packaging reduction and reuse infrastructure;

(g) The cost of providing recycling services, including the collection cost, processing cost for each recyclable material, cost of handling non-recyclable material types collected as part of a recycling operation, transportation cost of recycling for each material type; and

(h) Any other factors determined by the department.

4. The department may adjust fees to be paid by producers based on factors that affect system costs. At a minimum, fees shall be variable based on:

(a) costs to process packaging materials for acceptance by secondary material markets;

(b) whether the packaging material would typically be readily-recyclable as determined by the department after consultation with the advisory council, except that as a consequence of the packaging design, the pack-

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aging product has the effect of disrupting recycling processes or the product includes labels, inks, and adhesives containing heavy metals or other toxic substances that would result in contamination of the recycling process;

(c) whether the packaging material is specifically designed to be reusable or refillable and has high reuse or refill rate;

(d) the commodity value of a packaging material, as determined by the department after consultation with the advisory council; and

(e) any other factors determined by the department.

5. The fees shall be adjusted, or the producers may be provided a credit, based upon the percentage of post-consumer recycled material content and such percentage of post-consumer recycled content shall be verified by the organization or through an independent third party approved to perform verification services to ensure that such percentage exceeds the minimum requirements in the packaging, as long as the recycled content does not, in the determination of the department, disrupt the potential for future recycling.

6. In addition to the annual schedule of fees, the department fee schedule may include a special assessment on specific categories of packaging materials at the request of responsible entities representing and approved by the advisory council if the nature of the packaging material imposes unusual costs in collection or processing or requires special actions to address effective access to recycling or successful processing in local government recycling facilities, as determined by the department after consultation with the advisory council.

7. The program charges shall be structured to provide producers with financial incentives to encourage:

(a) A reduction in total packaging as measured by unit weight used by producers, and discarded by consumers, businesses, institutions, and other users. Weight reductions shall not be achieved by substituting plastic for other materials types;

(b) An increase in the proportion of a producer's total packaging that is managed within a reuse and refill system;

(c) An increase in the proportion of a producer's total packaging that is deemed recyclable as determined by an annual review process as described in section 27-3405 of this title;

(d) An increase in the proportion of a producer's total packaging that is ultimately recycled;

(e) A reduction in toxic components in packaging materials; and

(f) A reduction in litter from packaging materials.

8. There shall be no fee assessed on packaging that is designed for reuse and refill and contained within a reuse or refill system.

9. Any funds directly collected pursuant to this title shall not be used to carry out lobbying activities on behalf of an organization.

10. No retailer may charge a point-of-sale or other fee to consumers to facilitate a producer to recoup the costs associated with meeting the obligations under this title.

11. Nothing in this title shall require a local government to participate in the program.

12. The department shall update and revise the fees with input from the advisory council every three years.

§ 27-3415. Collection and convenience.

1. The program shall provide for widespread, convenient, and equitable access to collection opportunities for recyclable packaging materials at no additional cost. Such opportunities shall be provided to all resi-

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dents of the state in a manner that is as convenient as the collection of municipal solid waste.

2. Participation in the program shall not restrict a jurisdiction's consumer's ability to contract directly with third parties to obtain recycling collection services if consumers have the option to enter into such contracts as of the effective date of this title, as long as the consumer still voluntarily chooses to contract directly with the third party. The local government shall not provide disbursement to such third party should the local government provide widespread recycling services either directly or through a contract that is different from the contract with such third party, and there shall be procedures in place to ensure that no service provider is compensated more than once for the same service.

3. All local government or private recycling service providers shall provide for the collection and recycling of all packaging materials contained on the minimum recyclables lists, based on geographic regions, in order to be eligible for reimbursement; provided, however, nothing shall penalize a local government or private recycling service for recovering and recycling materials that are generated in the local government or geographic region that are not included on the minimum recyclables lists as long as it can be demonstrated that such materials have a consistent regional market for purchase as determined by the department in consultation with the producer or organization.

4. Reimbursement shall cover reduction, as contemplated by section 27-3413 of this title, collection, processing, transportation, and recycling and disposal of all packaging materials so long as the program includes at least the minimum recyclables list. The department may grant an exception of the requirements in this subdivision upon a written showing by the local government or private recycling service that compliance with the requirements is not practicable for a specific identified product or material and if the department finds it is in the best interest of the intent of this title to grant an exception; provided, however, that any such exception granted by the department shall not exceed twelve months.

5. The department shall promulgate rules and regulations to ensure that program funds shall be used for investment in collection systems, transportation systems, reuse systems, washing systems, redistribution systems, technology for tracking and data collection, capital expenditures on new and emerging technology that is focused on reusable and refillable packaging, as well as equipment, and facilities, and other projects determined by the department to facilitate the goals and objectives of this title.

6. Nothing in this title shall be deemed to automatically void or nullify any collection contracts in effect as of the effectiveness of this title.

§ 27-3417. Producer responsibilities.

1. Beginning thirty months after the effective date of this title, a producer shall not sell, offer for sale, or distribute into the state a product contained, protected, delivered, presented, or distributed in packaging unless the producer is registered with an organization and in full compliance with all requirements of this title.

2. Either when the producer registers, or within thirty months of the effective date of this title, whichever is later and annually thereafter, each producer shall provide the organization with the following information:

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(a) Contact information, including the name, electronic and physical address, and telephone number of the authorized representative of the producer;

(b) A comprehensive list of the types and brands of packaging materials for which the producer or producers are responsible for;

(c) The total amount, in units and weight, of each type of packaging material sold, offered for sale, or distributed for sale into the state by the producer in the prior calendar year; and

(d) Any other information required by the department.

3. Producers are responsible for payment of fees, through an organization, based on the quantity, type of packaging used in the state, and other factors.

4. Producers are responsible for meeting the toxic substances, packaging reduction, post-consumer content, and recycling standards under this title.

5. A producer shall electronically submit annually, to both the department and the packaging reduction and recycling organization, a written declaration signed by its chief executive officer, verifying the producer's compliance with:

(a) The packaging material reduction requirements of this title;

(b) The packaging material recycled content requirements of this title;

(c) The packaging material recycling requirements of this title;

(d) The toxic substance reduction requirements of this title; and

(e) Any reimbursement obligations they have to local governments or third party service providers in connection with this title.

6. A producer is exempt from the requirements and prohibitions of this title in a calendar year in which:

(a) The producer realized less than one million dollars in total gross revenue during the prior calendar year; or

(b) The producer sold, offered for sale, or distributed for sale products contained, protected, delivered, presented, or distributed in or using less than one ton of packaging material in total during the prior calendar year.

7. A producer claiming an exemption pursuant to subdivision six of this section shall provide the department with sufficient information to demonstrate that the claimant is eligible for an exemption.

§ 27-3419. Department responsibilities.

1. Within eighteen months of the effective date of this title, the department shall, in accordance with section 27-3437 of this title, promulgate all rules and regulations necessary to implement, administer, and enforce the provisions of this title, including setting standards for consumer protection when the organization directly disburses funds to third parties. These rules and regulations shall include prohibiting certain packaging toxins pursuant to section 27-3425 of this title and setting recommended producers' program fees, after consulting with multiple stakeholders, including local governments, businesses, institutions, and other extended producer responsibility programs. Program fees shall be set as required by section 27-3413 of this title.

2. The department shall revise recommended program fees every three years, beginning three years after the first set of program fees is established, to reflect new data received about material use and management, or whenever the targets set in this title are not met, to drive compliance with such targets.

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3. Beginning two years after the effective date of this title, and annually thereafter, the department shall work with each organization to:

(a) Calculate the amount of packaging that was generated during the prior calendar year;

(b) Calculate the recycling rate for all packaging during the prior calendar year;

(c) Calculate the recycling rate for each packaging material type during the prior calendar year;

(d) Develop a list of producers reasonably believed to be out of compliance with the requirements of this title; and

(e) Utilize this information with input from the advisory council to produce an annual report to be shared with the legislature and posted publicly on the department's website.

4. In the event that the department determines that the organization no longer meets the requirements of this title, or fails to implement and administer the requirements of this title in a manner that effectuates the purposes of this title, after reasonable opportunity to cure such deficiencies, the department shall revoke its approval of such organization and shall either select a new organization pursuant to section 27-3403 of this title or elect to operate the program itself.

§ 27-3421. Statewide packaging reduction, reuse, and recycling needs assessment.

1. No later than one year after the effective date of this title and every five years thereafter, the department shall complete or cause to be completed a statewide packaging reduction, reuse, and recycling needs assessment to determine the current state of packaging reuse, recycling, and disposal, and identify barriers and opportunities to reduce the amount of packaging discarded and disposed of, and increase the reusability and recyclability of packaging.

2. The needs assessment, at a minimum, shall cover the following:

(a) The current recycling rate for each type of packaging material material;

(b) The amount, by weight and material type, of packaging material recycled at each recycling facility that accepts discarded packaging generated in the state;

(c) The processing capacity, market conditions, and opportunities in the state and regionally for recyclable materials generally, and packaging material categories specifically;

(d) The net cost of end-of-life management of discarded packaging material in the state, including the cost associated with the collection, transportation, sortation, recycling, littering, landfilling, or incineration of discarded packaging;

(e) The availability of opportunities in the recycling and reuse system for minority- and women-owned businesses;

(f) Current barriers affecting recycling access and availability in the state;

(g) Current barriers to the marketability of recyclable materials generated in the state;

(h) Opportunities for the creation of packaging material reuse and refill programs in the state;

(i) Opportunities for the improvement of packaging material recycling in the state, including the development of end markets for recycled packaging materials.

(j) Current barriers affecting the creation and implementation of packaging material reuse and refill programs;

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(k) Consumer education needs in the state with respect to packaging material waste reduction, recycling, and reducing contamination in recycling, and reuse and refill systems for packaging material; and

(l) Landfill capacity.

3. The cost incurred by the department associated with conducting the needs assessment shall be paid for by the organization.

4. The department shall report the results of the needs assessment to the public, the state legislature, and the governor, and shall post the results on its website.

§ 27-3423. Education and outreach program.

1. The organization shall develop and implement an educational outreach program designed to educate the public about waste reduction and improve the effectiveness of local government recycling and, at a minimum, include:

(a) Educational and informational materials for consumers related to reducing the amount of packaging discarded, recycled, and disposed of in the state;

(b) A description of the environmental, social, economic, and environmental justice impacts associated with improper disposal of packaging material and failure to reuse or recycle packaging materials;

(c) Information on the proper end-of-life management of packaging material, including reuse, recycling, composting, and disposal;

(d) The location and availability of curbside collection and additional drop-off collection opportunities for packaging material, including deposit and take-back programs;

(e) How to prevent litter of packaging material in the process of collection;

(f) Recycling instructions that are consistent statewide, except as necessary to take into account differences among local laws and processing capabilities, easy to understand, and easily accessible; and

(g) Any other information required by the department.

2. The educational outreach program shall incorporate, at a minimum, electronic, print, web-based and social media elements, including for use by local governments at their discretion, as well as including a variety of outreach and education tools. Such educational outreach programs shall ensure materials are widely accessible and available in multiple languages.

3. The educational outreach program shall be coordinated with and assist local government programs, local government contracted programs, solid waste collection companies, and other entities providing services.

4. The educational outreach program shall be developed to ensure environmental justice communities receive targeted outreach and support.

5. The educational outreach program shall include a plan to work with producers to label or mark packaging material, in accordance with reasonable labeling standards, with information to assist consumers in responsibly managing and recycling covered products.

6. The organization shall consult with local governments on the development of educational materials and may coordinate with local governments on outreach and communication.

7. The organization shall be authorized to provide producers and retailers with educational materials related to the responsible reduction, reuse, recycling, or disposal of discarded packaging material. The educational and informational materials provided to the retailer under this subdivision may include, but need not be limited to, printed materials, signage, templates of materials that can be reproduced by retailers and provided thereby to consumers at the time of a product's

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purchase, and advertising materials that promote and encourage consumers to properly reuse, recycle, or dispose of packaging material.

§ 27-3425. Prohibition on certain toxic substances and materials.

1. Beginning two years after the promulgation of rules and regulations pursuant to this title, no person or entity shall sell, offer for sale, or distribute into the state any packaging containing any of the following toxic substances:

(a) Ortho-phthalates;

(b) Bisphenols;

(c) Per- and polyfluoroalkyl substances (PFAS);

(d) Heavy metals and compounds, including lead, hexavalent chromium, cadmium, and mercury;

(e) Benzophenone and its derivatives;

(f) Halogenated flame retardants;

(g) Perchlorate;

(h) Formaldehyde;

(i) Toluene;

(j) Antimony and compounds;

(k) Carbon black;

(l) UV 328 (2-(2H-benzotriazol-2-yl)-4,6-di-tert-pentylphenol);

(m) Polyvinyl chloride, including polyvinylidene chloride;

(n) Polystyrene; or

(o) Polycarbonate.

2.(a) There is hereby established within the department a toxic packaging task force to review the toxicity in packaging in the state, and to recommend to the department the designation of additional toxic substances which shall be subject to the same prohibition as those substances listed in subdivision one of this section.

(b) The toxic packaging task force shall have seven members, one of whom shall be the commissioner or their designee who shall be chair, and one of whom shall be the commissioner of health or their designee. The other members shall include: (i) a representative of the packaging industry; (ii) a representative of an environmental justice organization; and (iii) a representative from the chemical industry; all of whom shall be appointed by the commissioner. The remaining members shall be persons with significant professional or academic expertise in public health and toxicology, one of whom shall be appointed by the temporary president of the senate and one of whom shall be appointed by the speaker of the assembly. Appointments to the toxic packaging task force are term limited to five consecutive years of service.

(c) The task force shall meet at least twice per year to review and recommend to the department whether there are additional toxic substances or classes of toxic substances that should no longer be sold, offered for sale, distributed for sale, or distributed for use in packaging in this state.

3. Within one hundred eighty days of the toxic packaging task force recommending the designation of an additional toxic substance, the department shall adopt rules and regulations to designate such substance as a toxic substance under this section and prohibit the use of such toxic substance in packaging in the same manner as those toxic substances listed in subdivision one of this section, with an effective date no later than two years after the date of such recommendation.

4. Any producer that violates this section, or any rules or regulations promulgated pursuant to this section, shall be subject to a fine for each violation not to exceed ten thousand dollars per violation. For the purposes of this section, each product line that is sold, offered

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for sale, or distributed to consumers, via retail commerce, in the state, including through an internet transaction shall be considered a separate violation.

§ 27-3427. Non-reusable packaging reduction standards.

1. Each individual producer is required to meet the following packaging reduction requirements:

(a) Beginning three years after a producer first registers with an organization, such producer shall reduce the amount of primary plastic packaging and the amount of non-primary packaging for all materials used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by ten percent by unit weight.

(b) Beginning five years after a producer first registers with an organization, such producer shall reduce the amount of primary plastic packaging and the amount of non-primary packaging for all materials used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by twenty percent by unit weight.

(c) Beginning eight years after a producer first registers with an organization, such producer shall reduce the amount of primary plastic packaging and the amount of non-primary packaging for all materials used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by thirty percent by unit weight.

(d) Beginning ten years after a producer first registers with an organization, such producer shall reduce the amount of primary plastic packaging and the amount of non-primary packaging for all materials used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by forty percent by unit weight.

(e) Beginning twelve years after a producer first registers with an organization, such producer shall reduce the amount of primary plastic packaging and the amount of non-primary packaging for all materials used to contain, protect, deliver, present, or distribute the products they sell, offer for sale, or distribute for sale into the state, by fifty percent by unit weight.

2. The reductions required by this section shall be measured against the total amount of packaging the producer used to contain, protect, deliver, present, or distribute the products they sold, offered for sale, or distributed for sale, during the first year such producer registered with the packaging reduction organization.

3. These reductions shall be achieved by eliminating single-use packaging, including secondary or tertiary packaging, elimination of packaging components, reduction of packaging components, or by transitioning to reusable or refillable packaging systems.

4. The reductions required by this section shall not be achieved by substituting non-plastic materials with plastic materials or substituting recyclable materials with non-recyclable materials.

5. In the case of a producer for which, as of the effective date of this title or upon entry into the market after such effective date, a portion of its packaging is reusable and contained within a reuse and refill system, such producer may apply to the department for a waiver from the packaging reduction requirements set forth in subdivision one of this section with respect to that percentage of its packaging, by unit weight, which is contained within a reuse and refill system.

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6. In the case of a producer that demonstrates in a manner satisfactory to the department that, for the period beginning five years prior to the effective date of this title and ending on the date which is two years after the effective date of this title, the producer reduced the amount of packaging used to contain, protect, deliver, present, or distribute the products the producer sells, offers for sale, or distributes for sale into the state, such producer may apply to the department for a waiver from the packaging reduction requirements of this section with respect to that percentage of its packaging, by unit weight, which was reduced during such five-year period.

7. A producer may apply to the department for a waiver from the reduction requirements of this section if compliance is impossible due to federal law. Such waiver must be applied for annually. In such application the producer shall provide the department and the advisory council with sufficient information, in the determination of the department in consultation with the advisory council, to make a determination on such application, including proof that the producer has taken all feasible actions to achieve the reductions required by this section.

8. Nothing in this section shall preclude a producer from going beyond the reduction standards in subdivision one of this section.

§ 27-3429. Recycled content standards.

1. Each individual producer shall meet the recycling content targets contained in this section.

2. Beginning two years after the effective date of this section:

(a) all glass containers manufactured in the state used by the producer shall contain, on average, at least thirty-five percent post-consumer recycled content;

(b) all paper carryout bags sold, offered for sale, or given away free in the state by a producer shall contain, on average, at least forty percent post-consumer recycled content; except that a paper carryout bag that holds eight pounds or less shall only be required to contain, on average, at least twenty percent post-consumer recycled content; and

(c) all plastic trash bags sold or offered for sale in the state by a producer shall contain, on average, at least twenty percent post-consumer recycled content.

3. The requirements of this section shall not apply to reusable or refillable packaging or containers.

4. Beginning two years after plan implementation begins for the initial organization, the department is authorized, in consultation with the advisory council, to:

(a) establish content requirements for materials not listed in subdivision two of this section; and

(b) modify the post-consumer recycled content targets for the materials set forth in subdivision two of this section, provided that modifications do not result in a lesser percentage or an earlier year for the respective target.

§ 27-3431. Recyclability criteria and packaging recycling requirements.

1. Beginning two years after the effective date of this section, packaging materials used by a producer shall meet the following recyclability criteria:

(a) be capable of being sorted by entities that process recyclable material generated in the state;

(b) has a consistent regional market for purchase, by end users in the production of new products;

(c) does not contain the following:

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(i) non-detectable pigments, including but not limited to carbon black;

(ii) the toxic substances set forth in subdivision one of section 27-3425 of this title and those designated by the toxic packaging task force pursuant to subdivision two of section 27-3425 of this title;

(iii) opaque or pigmented polyethylene terephthalate;

(iv) oxo-degradable additives, including oxo-biodegradable additives;

(v) polyethylene terephthalate glycol in rigid packaging;

(vi) label constructions, including adhesives, inks, materials and formats, or features that render a package non-recyclable or disruptive to the recycling process, as determined by the department in consultation with the advisory council; and

(vii) DoPS - polystyrene, including EPS (expanded polystyrene);

(d) meets the post-consumer content requirements of this title; and

(e) any other criteria determined by the department.

2. The department shall maintain a list of packing material that meet these criteria and are deemed to be recyclable. The department shall update this list annually.

3. Each individual producer shall be required to meet the following recycling rate standards:

(a) With respect to the producer's non-plastic packaging:

(i) Beginning January first, two thousand twenty-eight, a minimum of thirty-five percent of packaging material reported by the producer or an organization as supplied into the state shall be reused or recycled, with a minimum of five percent being reused;

(ii) Beginning January first, two thousand thirty-five, a minimum of fifty percent of packaging material reported by the producer or an organization as supplied into the state shall be reused or recycled, with a minimum of ten percent being reused; and

(iii) Beginning January first, two thousand fifty, a minimum of seventy-five percent of packaging material reported by the producer or an organization as supplied into the state shall be reused or recycled, with a minimum of twenty percent being reused.

(b) With respect to plastic packaging:

(i) Beginning January first, two thousand twenty-eight, a minimum of twenty-five percent of plastic packaging material reported by the producer or an organization as supplied into the state shall be reused or recycled;

(ii) Beginning January first, two thousand thirty-five, a minimum of fifty percent of plastic packaging material reported by the producer or an organization as supplied into the state shall be reused or recycled; and

(iii) Beginning January first, two thousand fifty, a minimum of seventy-five percent of plastic packaging material reported by the producer or an organization as supplied into the state shall be reused or recycled.

4. The department may adjust the recycling rates in subdivision three of this section by rulemaking based on information gathered through the needs assessment or provided in producer plans and reports, or based on consideration of environmental, technical and economic conditions. An adjustment to the statewide recycling and reuse performance targets may not adjust the recycling rate target to less than thirty-five percent or more than seventy-five percent.

5. A producer may apply to the department for a waiver from the reduction requirements of this section if compliance is impossible due to federal law. Such waiver shall be applied for annually. In such

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application the producer shall provide the department and the advisory council with sufficient information, in the determination of the department in consultation with the advisory council, to make a determination on such application, including proof that the producer has taken all feasible actions to achieve the reductions required by this section.

6. The requirements of subdivision three of this section shall not apply to reusable or refillable packaging or containers.

§ 27-3433. Establishment of the office of recycling inspector general.

1. The commissioner shall establish an independent office of recycling inspector general within the department. The recycling inspector general shall evaluate the programs created pursuant to this title on an annual basis and shall ensure such programs are functioning properly, and that all producers are in compliance with the requirements of this title.

2. The recycling inspector general shall have the authority to investigate the compliance of producers and the organization with all provisions of this title and to bring enforcement actions for violations of this title pursuant to the provisions of section 27-3435 of this title.

§ 27-3435. Penalties and enforcement.

1. Failure to comply with the requirements of this title shall subject the organization or an individual producer to penalties for violations. The department, recycling inspector general, or attorney general, may conduct investigations, including inspecting operations, facilities, and records of producers and organizations, and performing audits of producers and organizations, to determine whether such producers and organizations are complying with the requirements of this title.

2. The department, the recycling inspector general, or the attorney general, shall notify an organization or producer of any conduct or practice that does not comply with the requirements of this title and of any inconsistencies identified in an audit.

3. The department, the recycling inspector general, and the attorney general, may issue a notice of violation to, and impose an administrative civil penalty not to exceed one thousand dollars per day per violation on any entity not in compliance with this title or any of the regulations the department adopts to implement this title. For the purposes of this section, each product line that is sold, offered for sale, or distributed to consumers via retail commerce in the state, including through an internet transaction, shall be considered a separate violation.

4. Civil penalties under this section shall be assessed by the department after an opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, or by the court in any action or proceeding pursuant to section 71-2727 of this chapter, and in addition thereto, such person or entity may by similar process be enjoined from continuing such violation and any permit, registration or other approval issued by the department may be revoked or suspended or a pending renewal denied.

§ 27-3437. Rules and regulations.

1. Within eighteen months after the effective date of this section, the department shall promulgate all rules and regulations necessary to implement, administer, and enforce the provisions of this title.

2. When promulgating rules pursuant to the provisions of this section, the department shall solicit input from the public of any draft rule or regulation to implement this section, including at a minimum a ninety-day comment period and one public hearing on such draft rules.

§ 27-3439. State preemption.

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Jurisdiction in all matters pertaining to costs and funding mechanisms of packaging reduction and recycling organizations relating to the recovery of packaging materials shall, by this title, be vested exclusively in the state; provided, however, that nothing in this title shall preclude any city, town, village or other local planning units from determining what materials shall be included for recycling in a local government recycling collection program or shall preclude any person from coordinating, for recycling or reuse, the collection of packaging materials and products.

§ 27-3441. Other assistance programs.

Nothing in this title shall impact any producer eligibility for any state or local incentive or assistance program to which they are otherwise eligible.

§ 27-3443. Severability.

The provisions of this title shall be severable and if any phrase, clause, sentence or provision of this title or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this title and the application thereof shall not be affected thereby.

§ 3. The environmental conservation law is amended by adding a new section 37-0202 to read as follows:

§ 37-0202. Applicability.

This article shall only have effect to the extent that the prohibitions in this title are not otherwise substantially given effect or in conflict with the provisions of title thirty-four of article twenty-seven of this chapter.

§ 4. This act shall take effect immediately.

Attachment: S4246A (RES-2024-68 : Resolution Supporting NYS ERP Legislation)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Councilmembers
Initiated by: **Michael Szukala**
Co-Sponsored by:

DOC ID: 28502 **RESOLUTION 2024-69** **ADOPTED**

Set Public Hearing Date – 59 Kaymar Drive Parking Restriction

Please schedule a public hearing on March 11, 2024 to restrict parking on the inside of a curve along Kaymar Drive along 59 Kaymar Drive:

> "Parking is hereby restricted on the inside curve of Kaymar Drive along 59 Kaymar Drive beginning at the curb's point of curvature on the north side of 59 Kaymar Drive, along the curve and ending at a point that is approximately 20 feet beyond the point of tangency for a total distance of 125 feet."

1/22/2024
Consent

FINANCIAL IMPACT:

None.

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Attorney
Initiated by: **Samuel A Alba**
Co-Sponsored by:

DOC ID: 28498 **RESOLUTION 2024-70** **ADOPTED**

PILOT Agreement - Amherst Senior Apartments, LP and TOA (CRS #4539)

AGENDA ITEM - JANUARY 22nd, 2024

TO: **Town Board**

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

DATE: **January 17, 2024**

RE: **PILOT Agreement:**
Amherst Senior Apartments LP and the Town of Amherst, et al.
(CRS #4539)

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

WHEREAS, Amherst Senior Apartments LP has requested that the Town Board approve a PILOT Agreement with a term of fifteen (15) years for the Property; and

WHEREAS, the content and form of the proposed PILOT Agreement have been reviewed and approved by the Town Assessor's Office and the Town Attorney's Office and a copy of the approved form of the proposed PILOT Agreement is attached hereto; and

WHEREAS, the PILOT Agreement must be approved by Erie County and the Williamsville Central School District;

NOW THEREFORE BE IT RESOLVED, that approval and execution of the Agreement for the Project be subject to the three (3) conditions set forth below and that the Supervisor of the Town of Amherst, Deputy Town Attorney Samuel A. Alba, Esq., and Emily Murphy, Town Assessor, are hereby authorized to sign the PILOT Agreement between Amherst Senior Apartments LP and the Town of Amherst, Erie County, and the Williamsville Central School District upon satisfaction of the following three (3) conditions:

1. The PILOT Agreement is subject to review and approval by Erie County;

2. The PILOT Agreement is subject to review and approval by the Williamsville Central School District; and

3. Approval of the PILOT Agreement is subject to successful completion of the Town's contract routing system (CRS).

SAA:nmb

Attachment
c: Tim Koller, Deputy Town Clerk (*w/attachment*, **Agenda Item - January 22, 2024**)
Emily Murphy, Town Assessor (*w/attachment*)

1/22/2024
Consent

FINANCIAL IMPACT:

PILOT

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

Attachment: Housing Preserv - Amherst Senior Apts -PILOT Agreement FINAL 1.16.24.signature (RES-2024-70 : PILOT Agreement - Amherst

AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR AMHERST RIDGE SENIOR APARTMENTS AFFORDABLE SENIOR HOUSING PROJECT AT 467 JOHN JAMES AUDUBON PARKWAY

Between AMHERST SENIOR APARTMENTS LP

and

THE TOWN OF AMHERST, ERIE COUNTY & THE WILLIAMSVILLE CENTRAL SCHOOL DISTRICT

Attachment: Housing Preserv - Amherst Senior Apts -PILOT Agreement FINAL 1.16.24.signature (RES-2024-70 : PILOT Agreement - Amherst

AGREEMENT FOR PAYMENT IN LIEU OF TAXES
FOR AFFORDABLE SENIOR HOUSING PROJECT
AT 467 JOHN JAMES AUDUBON PARKWAY

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES made and entered as of the ____ day of _____ 2024 **("the PILOT Agreement" or "Agreement") FOR REAL PROPERTY** by and among the **TOWN OF AMHERST**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office at 5583 Main Street, Williamsville, New York 14221 (the "**Town**"), the **COUNTY OF ERIE,** a municipal corporation organized and existing under the laws of the State of New York, having its principal office c/o Erie County Department of Finance, 95 Franklin Street, Buffalo, New York 14202 (the "**County**"), the **WILLIAMSVILLE CENTRAL SCHOOL DISTRICT**, a school district formed pursuant to Article 37 of the Education Law of the State of New York, having its principal office at 105 Casey Road, East Amherst, NY 14051 ("**School District**"), and **AMHERST SENIOR APARTMENTS LP**, a Nevada limited partnership registered as a New York foreign limited partnership with an address of 795 Ridge Lake Blvd., Ste 300,Memphis, TN 38120 (the "**Taxpayer**" or "**Project Sponsor**").The Town, County, and School District are collectively referred to as the "**Taxing Jurisdictions**." The Taxing Jurisdictions and Project Sponsor are collectively referred to as the "**Parties**."

WHEREAS, the Project Sponsor is the owner and operator of an affordable senior housing project located at 467 John James Audubon Parkway (SBL to be created_____) in the Town of Amherst consisting of 150 affordable senior apartments and related improvements (the "**Project**") as further described within the attached legal description at Exhibit "1", in the Town of Amherst, County of Erie and State of New York ("**Land**"; collectively, the "**Project**"), and

WHEREAS, the proposed project provides affordable senior apartments to tenants pursuant to a Housing Assistance Payments Multi-Year Contract entered into between Amherst Senior Housing LLC and the U.S. Department of Housing and Urban Development ("**HUD**") dated January 30, 2023 with an effective date of March 1, 2023 ("**HUD Contract**"); and,

WHEREAS, the monthly rents paid by tenants of the affordable senior apartments at the Project are subject to HUD approval to ensure the monthly rents are affordable and as of March 1 2023 the HUD authorized monthly rents for the apartments at the Project are as follows:

Number of Units	Number of Bedrooms	Contract Rent	Utility Allowance Allowance	Gross Rent
50	1 bedroom	$1,193	$33.00	$1,226
50	1 bedroom	$1,193	$30.00	$1,223
50	2 bedroom	$1,193	$35.00	$1,228

WHEREAS, the development of the Project is of vital public interest to the Town, County and School District; and

WHEREAS, the development of the Project is intended to be for affordable to low income

households, and affordability of the property for residential use by low income persons shall remain consistent throughout the duration of the PILOT Agreement; and

WHEREAS, the Project Sponsor will make substantial improvements to the Project including upgrades to the affordable senior apartments, and upgrades to common areas and outside land improvements; and

WHEREAS, the Project Sponsor qualifies for those certain tax exemptions pursuant to Article 11 of the Private Housing Finance Law ("PHFL"); and

WHEREAS, the Project Sponsor is the beneficial fee owner of the Project; and

WHEREAS, the Town, County and School District wish to grant the Taxpayer and the Company such relief as permitted under Article 11 Section 577 of the PHFL.

WHEREAS, it is the intention of the Parties that Project Sponsor make annual payments to the Town, Erie County and the School District for the term of this Agreement in lieu of real property taxes that would otherwise be assessed on the Project; and

WHEREAS, because both Project Sponsor and the Town need an accurate projection of their respective expenses and revenues with respect to the real property and improvements comprising the Project that are taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement establishing the payments that will be made with respect to the Project for the term of this Agreement; and

WHEREAS, the Town, by resolution of the Town Board, adopted Resolution No. 2023-____ on _____, 2024 approved this Agreement and authorized this Agreement to be executed on behalf of the Town by the Supervisor; and

WHEREAS, Erie County, by resolution of the Erie County Legislature, adopted a resolution on _____ __, 2024 approved this Agreement and its execution on behalf of the County; and

WHEREAS, the School District, by resolution of the Board of Education, adopted a resolution on _____ ___, 2024 approved this Agreement and its execution on behalf of the School District; and

NOW, THEREFORE, in consideration of the covenants and agreements contained in this PILOT Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. **Tax Exemption**. The parties agree that Project Sponsor qualifies for real property tax exemption for the Project in accordance with the provisions of Article 11 of the PHFL and the Town hereby exempts from local and municipal taxes, including school taxes, other than assessments for local improvements, one hundred percent (100%) of the value of the Project and

Attachment: Housing Preserv - Amherst Senior Apts -PILOT Agreement FINAL 1.16.24.signature (RES-2024-70 : PILOT Agreement - Amherst

the Property, including both land and improvements. "**Local and Municipal Taxes**" shall mean any and all real estate taxes levied by the County, the Town, the School District (collectively, the "**Taxing Jurisdictions**"). The Parties understand that the exemption extended pursuant to Article 11 Section 577 of the PHFL and this Agreement does not include exemption from special assessments, special ad valorem levies, improvement district charges or similar tax equivalents. This Agreement shall not limit or restrict the Project Sponsor's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement.

2. **Obligation of the Project Sponsor to Make Payments in Lieu of Taxes**. So long as the aforementioned exemption remains in place, the Project Sponsor will make annual payments in lieu of taxes ("**PILOT Payments**") to the Taxing Jurisdictions in the amounts set forth in ***Schedule "A"***, as attached hereto and made a part hereof, in satisfaction of all real property taxes. The PILOT Payments shall be required to be made to the Taxing Jurisdictions following the March 1, 2024 tax status date commencing with the 2025 tax fiscal year of the Town, the 2025 tax fiscal year of the County, and the 2024-2025 tax fiscal year of the School District. The Parties agree that no refund of any real property taxes levied upon the Property prior to the 2025 tax fiscal year of the Town, the 2025 tax fiscal year of the County, and the 2024-2025 tax fiscal year of the School District shall be sought or claimed on account of the exemption made effective pursuant to this Agreement.

3. **PILOT Term**. The fiscal years with respect to which payments shall be due under this Agreement (the "**PILOT Term**") shall be fifteen (15) years beginning as of July 1, 2024 and shall continue until December 31, 2039. The PILOT term shall be extended for an additional fifteen (15) term for the fiscal years beginning as of July 1, 2039 and shall continue until December 31, 2054 if at the time of such future extension the Project Sponsor continues to provide affordable senior housing at the Project as evidenced by a contract with HUD.

4. **Requirements of the Project Sponsor**

a. The tax exemption provided by this Agreement will continue for a term of up to thirty (30) years as provided in Paragraph 3 above, unless sooner terminated by law or mutual agreement upon prior written consent of the Parties, provided that the Project Sponsor continues to operate the Project and the Property for persons of low income in conformance with law and the HUD Contract and in conformance with the requirements of Article 11 of the PHFL.

b. The Project Sponsor will provide the Town such information concerning its operations and the operations of the Project in form and substance as may from time to time be reasonably requested. Such information shall include, but shall not be limited to, general certificates of the Project Sponsor and the annual financial statements of the Project Sponsor from the calendar year immediately preceding the fiscal year in which payments are due.

Attachment: Housing Preserv - Amherst Senior Apts -PILOT Agreement FINAL 1.16.24.signature (RES-2024-70 : PILOT Agreement - Amherst

c. The Project Sponsor will permit the Comptroller of the Town to audit its books and records within fourteen (14) days after receiving a written request from the Town.

5. **Taxing Authorities and Amounts**.

a. Upon commencement of the Town's March 1, 2024 taxable status date (the "Commencement Date"), the Project Sponsor shall make annual payments in lieu of local and municipal real estate taxes, including school taxes but not including assessments for local improvements and special assessments on the Land and improvements constituting the Project as follows.

i. A fixed annual PILOT Payment to the Town in the amounts as stated in **Schedule "A"**, as attached hereto and made a part hereof, in satisfaction of all real property taxes.

ii. In addition to the payments set forth in **Schedule "A"**, the Project Sponsor will be responsible for paying all special district assessments and other assessments for local improvements permitted by law;

iii. At the expiration of the PILOT Term, this PILOT Agreement will cease to have any effect on the taxes due with respect to the property and the property will be taxed in accordance with applicable law unless otherwise extended or modified pursuant to a separate Agreement.

b. The PILOT Payments shall be payable annually. Each annual PILOT Payment to the Town shall be made on or before January 31st of each year and shall be delivered to the Town Clerk's Office, 5583 Main Street, Williamsville, New York 14221 or such other place as may be designated from time to time by the Town. Each such PILOT Payment to the County shall be made on or before January 31 of that year, or such payment shall be considered delinquent, and such PILOT Payment shall be delivered to County of Erie, c/o Director of Real Property Tax Services, The Edward A. Rath County Office Building, Room 100, 95 Franklin Street, Buffalo, New York 14202, or such other place as may be designated from time to time by the County. Each such PILOT Payment to the School District shall be made on or before September 30 of that year, or such payment shall be considered delinquent, and such PILOT Payment shall be delivered to the Williamsville Central School District, 105 Casey Road, East Amherst, New York 14051.

6. **No Other Reductions or Increases Based on Tax Rate Changes**. Except to the extent this Agreement explicitly provides otherwise, Project Sponsor agrees that the Payments in Lieu of Taxes to be made pursuant to the PILOT Payment Schedule attached as Schedule "A" to this Agreement shall not be reduced or increased based on an increase or reduction of tax rate of Taxing Jurisdictions.

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7. **Improvements or Modifications to Project**. To the extent the Project Sponsor, at its sole option, makes any capital improvements or modifications to the Project, such improvements or modifications shall not result in any changes to the Payments in Lieu of Taxes unless such improvements or modifications increases or decreases the number of affordable senior housing apartments at the Project, in which case the Payments in Lieu of Taxes as set forth in PILOT Payment Schedule attached as Schedule "A" shall be adjusted to reflect the number of affordable senior housing apartments at the Project. By way of example for illustrative purposes only, if the number of affordable senior housing apartments at the Project increases from 150 to 155 units during the fifth year of the PILOT Term, the Payment in Lieu of Taxes payable by the Project to the Taxing Jurisdictions for the sixth year of the PILOT Term shall increase from $70,949 based on 150 units ($473 per unit) to $73,315 ($473 per unit x 155 units) and each successive annual Payment in Lieu of Taxes shall be also adjusted accordingly.

8. **Defaults in Payment in Lieu of Taxes**. In the event the Project Sponsor fails to make any PILOT Payments when due, the amount or amounts not so paid shall be a lien on the Project in the same manner that delinquent real property taxes would be and continue as an obligation of the Project Sponsor until fully paid. In addition, the Project Sponsor shall pay the appropriate taxing authority's or authorities' interest and penalties on the unpaid amount or amounts accruing at the same times and at the interest rates as if such amounts were delinquent real property taxes. In addition to any other remedies available to them for the collection of delinquent real property taxes, including, without limitation, in rem proceedings, the Town, County and School District may exercise any other remedies available, and such remedies shall be cumulative and the exercise of any remedy shall not be an action of remedies under law.

9. **Effect of Fulfillment of the Requirement**. Once having paid the amounts required by this PILOT Agreement when due, the Property Sponsor shall not be required to pay any real property taxes for which such payments in lieu of taxes have been made, except special district assessments and other special assessments for local improvements permitted by law.

10. **Events of Default and Termination of Tax Exemption**.

An event of default ("Event of Default") shall be defined as (l) failure of the Project Sponsor to make any payment required under the PILOT Agreement when due, (2) the Project Sponsor's failure to provide any notice as required by this PILOT Agreement to the Town, County or School District, (3) Taxpayer's failure to qualify, or continue to qualify, for a real property tax exemption for the Project in accordance with Article 11 of the PHFL, (4) failure of Taxpayer to provide any of the information required by Section 3(c) of this PILOT Agreement, (5) Taxpayer's failure to comply with any applicable laws of the Town of Amherst, (6) Taxpayer's failure to timely respond to fair housing complaints or tenant rights complaints (including, but not limited to, complaints regarding any property manager's conduct prior to and after the complaint, complaints to the Town of Amherst Building Department, property inspection reports, and other verifiable information reported to the Town, in each case regarding an adverse condition at the Project in violation of applicable law, or (7) subject to the provisions of Section 24 hereof, the transfer of title or beneficial ownership of any portion of the Project or the Land without the prior written

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consent of the Town, County and School District.

(a) Upon the occurrence of an Event of Default as defined pursuant to Section 7(a) above, the Project Sponsor shall have thirty (30) days after the receipt of Notice from the Town, County or School District regarding such default to cure such default.

(b) In the event the Project Sponsor has not cured such default or defaults within the time period set forth in this PILOT Agreement, then the exemption from real property taxes described herein shall be deemed to have been terminated as of the taxable status date of the Town's immediately preceding fiscal year.

(c) Upon a termination of the exemption from real property taxes set forth in Section 7(c) above, the Project Sponsor shall be liable for real property taxes on a pro-rata basis from and after the Town's taxable status date immediately preceding the Event of Default and the statutory lien applicable to such real property taxes shall be deemed in effect as of the lien date normally applicable to such year's real property taxes, unless a separate basis for a real property tax exemption then exists for the benefit of Project Sponsor.

(d) Any such termination of the real property tax exemption applicable to the Project shall not void the liability of the Project Sponsor for any unpaid payments in lieu of taxes required by this PILOT Agreement prior to such termination.

11. **Payment Collection**. The terms and conditions of this Agreement shall govern the collection of PILOT Payments provided for in this Agreement.

12. **Tax Status.** The Taxing Jurisdictions agree that, during the term of this Agreement, that this Agreement will exclusively govern the payments of all ad valorem real property taxes that the Project Sponsor shall be obligated to make to the Taxing Jurisdictions with respect to the Project, provided, however, that this Agreement is not intended to affect, and shall not affect other assessments of general applicability by the Town for Town services provided by the Town to the Project, including but not limited to, fire protection, water, drainage, sanitary sewer, etc. (collectively "**Special District Taxes**"). The Project Sponsor acknowledges that it shall be responsible to make annual payments to the Town for Special District Taxes during the PILOT Term.

13. **Challenge of the Assessed Value.** Project Sponsor may challenge the assessed value of the Project during the term of this PILOT agreement in 2024 and in any such other years when the Town is conducting a revaluation or update or all real property of the same class as the Property and consistent with the provisions of Paragraph 12 above.

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14. **Successors and Assigns**. This Agreement will be binding upon, and shall be assigned to, the successors and assigns of Project Sponsor, provided that such successor or assign is an eligible party for the purpose of providing affordable senior housing at the Project as evidenced by an assignment of the HUD Contract. In the event that Project Sponsor sells, transfers, leases or assigns all or substantially all of its interest in the Project, this Agreement shall thereafter be assigned to and shall be binding on the purchaser, transferee or assignee.

15. **Statement of Good Faith**. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith. The Project Sponsor and the Town were represented by counsel in negotiation and preparation of this Agreement and have entered into this Agreement after full and due consideration and with the advice of its counsel. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of potential future disputes over real property taxes for the Project, establishes mutually acceptable and reasonable payments in lieu of taxes for the Project that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it ensures the Project Sponsor will be able to continue to provide affordable senior housing at the Project in accordance with the applicable standards of HUD that govern the Project.

16. **Additional Documentation and Actions.** Each party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such additional documents, and take all such actions, as the parties reasonably request for the purpose of implementing or effectuating the provisions of this Agreement.

17. **Invalidity.** If, for any reason, it is ever determined by a court of competent jurisdiction that any material provision of this Agreement is unlawful, invalid or unenforceable then the parties shall (i) undertake best efforts to amend and or reauthorize this Agreement so as to render all material provisions lawful, valid and enforceable, and (ii) if such efforts are unsuccessful, undertake reasonable efforts, including without limitation, seeking all necessary approvals, to replicate the benefits and burdens of this Agreement in the form of an Amended PILOT Agreement.

18. **Waiver**. No waiver or modification of this Agreement shall be valid unless in writing and duly executed by the Parties, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation arising out of or affecting this Agreement, or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. No failure or delay on the part of the Town to exercise any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

19. **Modification**. Neither this Agreement nor any provision hereof may be amended, modified, waived, discharged or terminated, except by an instrument in writing duly executed and agreed to by the parties hereto.

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20. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or portable document format (PDF) transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement and signature pages for all purposes.

21. **Pay Equity.** The Project Sponsor, with respect to its own employees only, if any, shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as Exhibit "3" and made a part hereof. The Project Sponsor shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Project Sponsor, its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to conforming the Agency's compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014), may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Taxpayer is not qualified to participate in future County contracts.

22. **Notices**. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service or otherwise. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To Project Sponsor:

Eleanor White
Amherst Senior Apartments LP
795 Ridge Lake Blvd., Ste 300
Memphis, TN 38120

To the Town:

Town Attorney's Office
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Town Supervisor
Town of Amherst

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5583 Main Street
Williamsville, NY 14221

Town Assessor
Town of Amherst
5583 Main Street
Williamsville, NY 14221

To Erie County:

Erie County Attorney's Office
95 Franklin Street
Buffalo, NY 14202

To Williamsville Central School District:

Williamsville Central School District
105 Casey Road
Williamsville, New

Any such addresses for the giving of notices may be changed by a party by giving written notice as provided above to the other parties. Notice given by counsel to a party shall be effective as notice from such party.

23. **Applicable Law**. This Agreement will be made and interpreted in accordance with the laws of the State of New York. Project Sponsor, the Town, Erie County and the School District each consent to the jurisdiction of New York State courts regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions.

24. **Assignment and Leasing**. The provisions of section 10(a)(7) hereof notwithstanding, the Project Sponsor shall have the right and option ("Option") upon at least thirty (30) days prior written notice to the Taxing Jurisdictions, to sell or assign all or any part of the right, title and interest in and to the Project including, without limitation, the Fee Estate and/or any Leasehold Estate in the Project, on terms and conditions acceptable to the Project Sponsor, to a purchaser, assignee, or tenant ("Assignee") so long as such Assignee is legally qualified to provide affordable senior housing at the Project pursuant to a contract with HUD and continues to provide such housing at the Project. The Taxing Jurisdictions shall cooperate with the Project Sponsor and any such Assignee to execute such documents or instruments as is reasonably necessary to effect such purchase, assignment, or lease including, but not limited to, any financing in connection with such transaction at Project Sponsor's sole cost or expense.

25. **Covenants of the Project Sponsor**. During the term of the Agreement, the Project Sponsor shall not voluntarily do any of the following:

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a. Seek to invalidate this Agreement except as expressly provided herein;

b. Convey by sale, lease or otherwise any interest in the Project to any entity or organization that does not qualify to provide affordable senior housing at the Project pursuant to a contract with HUD;

c. Abandon or discontinue to provide affordable senior housing apartments at the Project pursuant to HUD Contract; or

d. Fail to pay the Taxing Jurisdictions all amounts due hereunder when due in accordance with the terms and conditions of this Agreement.

26. **Covenants of the Town**. During the term of this Agreement, the Town will not do any of the following:

a. Seek to invalidate this Agreement;

b. Seek to collect from Project Sponsor any property tax upon the Property (Special District taxes are not governed by this Agreement) or the improvements thereon in addition to the amounts established herein.

27. **Representations of the Taxing Jurisdictions.** Each of the Taxing Jurisdictions represents and warrants to the Project Sponsor that (i) it has secured the approval of respective legislative body to duly authorize the execution, delivery and performance of this Agreement and its respective obligations hereunder, and (ii) it is not prohibited from entering into this Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement by the terms, conditions or provisions of any law, any order of any court or other agency or authority of government, or any agreement or instrument to which it is a party or by which it is bound, and (iii) this Agreement is a legal, valid and binding obligation of each Taxing Jurisdiction respectively and is enforceable in accordance with its terms.

28. **Representations of Project Sponsor**. The Project Sponsor represents and warrants to the Taxing Jurisdictions that (i) it is duly organized and validly existing as a limited liability company and is authorized to conduct business in the State of New York; and (ii) it is authorized and has the power under the laws of the State of New York to enter into this Agreement and to perform and carry out all covenants and obligations on its part to be performed pursuant to this Agreement, and (iii) the performance of its obligations hereunder will not violate, results in a breach of or constitute a default under any agreement or instrument to which Project Sponsor is a party or by which Project Sponsor is bound, and this Agreement is a legal, valid and binding obligation of Project Sponsor enforceable in accordance with its terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURES ON FOLLOWING PAGE]

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(Signature Page for Agreement For Payment In Lieu Of Taxes)

IN WITNESS WHEREOF, the Town, County, School District, Partnership, and HDFC have duly executed this Agreement as of the day and year first above written.

COUNTY OF ERIE

BY: _____
Mark C. Poloncarz, County Executive
Lisa M. Chimera, Deputy County Executive

Date: _____

TOWN OF AMHERST

BY: _____
Brian J. Kulpa, Supervisor

Date: _____

Approved as to content for Erie County:

BY: _____
Daniel Castle, Commissioner
Department of Planning
& Economic Development

Date: _____

Approved as to content for the Town of Amherst:

BY: _____
Emily Murphy, Assessor

Date: _____

Approved as to form for Erie County:

BY: _____
Richard Stanton, Esq.
Assistant County Attorney

Date: _____

Approved as to form for the Town of Amherst:

BY: _____
Samuel A. Alba, Senior Deputy
Town Attorney

Date: _____

WILLIAMSVILLE CENTRAL SCHOOL DISTRICT

BY: _____
Dr. Darren J. Brown-Hall
Superintendent

AMHERST SENIOR APARTMENTS LP

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By: _____ Date:_____

Eleanor White

President (Housing Preservation, Inc. General Partner)

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SCHEDULE A

TAX YEAR	Town of Amherst 60%	Erie County 25%	Williamsville CSD 15%	Total Annual PILOT Payment
2024-25	36,721	15,300	9,180	61,201
2025-26	37,822	15,759	9,456	63,037
2026-27	38,957	16,232	9,739	64,928
2027-28	40,126	16,719	10,031	66,876
2028-29	41,329	17,221	10,332	68,882
2029-30	42,569	17,737	10,642	70,949
2030-31	43,846	18,269	10,962	73,077
2031-32	45,162	18,817	11,290	75,270
2032-33	46,517	19,382	11,629	77,528
2033-34	47,912	19,963	11,978	79,853
2034-35	49,349	20,562	12,337	82,249
2035-36	50,830	21,179	12,707	84,716
2036-37	52,355	21,814	13,089	87,258
2037-38	53,925	22,469	13,481	89,876
2038-39	55,543	23,143	13,886	92,572
TOTALS	**682,963**	**284,568**	**170,741**	**1,138,272**

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EXHIBIT 1

LEGAL DESCRIPTION
465, 467 & 475 John James Audubon Parkway

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. 75, Township 12, Range 7 of the Holland Land Company's Survey, bounded and described as follows:

BEGINNING at a point in the center line of North Forest Road (66 feet wide) at its intersection with the south line of lands conveyed by deed filed in the Erie County Clerk's Office in Liber 7331 of Deeds at Page 19;

Thence easterly along the south line of said Liber 7331 of Deeds at Page 19, at a bearing of N85º39'23"E, a distance of 335.68 feet to a point;

Thence southerly along a line at a bearing of S00º42'01"E, a distance of 31.13 feet to a point;

Thence easterly along a line at a bearing of N89º17'59"E, a distance of 177.35 feet to a point;

Thence northerly along a line at a bearing of N00º42'01"W, a distance of 130.00 feet to a point in the south line of a deed filed in the Erie County Clerk's Office in Liber 9820 of Deeds at page 72;

Thence easterly along said Liber 9820 of Deeds at page 72, at a bearing of N89º17'59"E, a distance of 245.00 feet to a point;

Thence southerly along a line at a bearing of S00º42'01"E, a distance of 138.00 feet to a point;

Thence westerly along a line at a bearing of S89º17'59"W, a distance of 65.00 feet to a point;

Thence southerly along a line at a bearing of S00º42'01"E, a distance of 155.00 feet to a point;

Thence westerly along a line at a bearing of S89º17'59"W, a distance of 145.00 feet to a point;

Thence southerly along a line at a bearing of S00º42'01"E, a distance of 145.40 feet to a point;

Thence westerly along a line at a bearing of S89º17'59"W, a distance of 212.35 feet to a point;

Thence southerly along a line at a bearing of S00º42'01"E, a distance of 10.47 feet to a point;

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Thence westerly along a line at a bearing of S89º17'59"W, a distance of 174.74 feet to a point in the said center line of North Forest Road;

Thence northwesterly and along the said center line of North Forest Road, at a bearing of N28º40'36"W, a distance of 115.67 feet to an angle point;

Thence continuing northwesterly and along the said center line of North Forest Road, at a bearing of N25º46'41"W, a distance of 250.09 feet to the Point and Place of Beginning.

This parcel containing 4.811 acres of land more or less.

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EXHIBIT 2

U.S. Department of Housing and Urban Development PBRA Housing Assistance Payments ("HAP")

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EXHIBIT 3
Erie County Equal Pay Certification

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together "Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.

_____
Signature

Verification

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

A)
_____, being duly sworn, states he or she is the owner of (or a partner in) _____, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B)
_____, being duly sworn, states that he or she is the
(Name of Corporate Officer)
_____, of _____,
(Title of Corporate Officer) (Name of Corporation)

the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this _____ Day of _____, 20____

_____
Notary Public

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COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

Executive Order #13
Pay Equity Certification on County Contracts

WHEREAS, federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 and Federal Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity) (together "Federal Equal Pay Law"), requires that men and women in the same workplace be given equal pay for equal work; and

WHEREAS, Section 194 of New York State Labor Law ("NYS Equal Pay Law") prohibits compensating men and women differently for the same work; and

WHEREAS, on average, a full-time working woman in New York State earns just 85 cents for every dollar that a man earns and the pay gap is even greater for African-American and Latina women; and

WHEREAS, females make up nearly fifty-two percent of Erie County's population; and

WHEREAS, women make up nearly half of the U.S. labor force and are a growing number of breadwinners in their families; and

WHEREAS, this pay differential shortchanges women and their families by thousands of dollars a year, and potentially hundreds of thousands of dollars over a lifetime, presenting a lifelong threat to those families' economic security and reducing their earnings through Social Security and other post retirement plans; and

WHEREAS, poverty is recognized as a leading cause of or contributing factor to many social problems, including but not limited to substance abuse, domestic violence, child abuse, improper nutrition, obesity, improper health care and criminal conduct; and

WHEREAS, the impact of pay differentials is exacerbated as workers age, causing underpaid workers to disproportionally rely upon various forms of public support in their retirement years; and

WHEREAS, pay inequity can significantly impact the County, necessitating the provision of various public subsidies for low income residents and leading to the lack of receipt of income by women residents which would be spent in our local economy; and

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WHEREAS, through the enforcement of current state and federal laws that ban unequal pay for equal work, Erie County can help ameliorate the many negative consequences of pay inequality, thereby improving the lives of those who might otherwise be underpaid, strengthening families and protecting children, and reducing the demand for public services, all positively impacting county, state and federal budgets.

NOW, THEREFORE, I MARK C. POLONCARZ, Erie County Executive, by virtue of the authority vested in me by the Erie County Charter § 302, do hereby order as follows:

1. It is ordered that on and after January 1, 2015, all Erie County offices, departments and administrative units, including but not limited to the Division of Purchase, fully implement a requirement in all bids, requests for proposals and other contract solicitations that the contractor submit an Erie County Equal Pay Certification which certifies the contractor's compliance with Federal Equal Pay Law and New York State Equal Pay Law (together, the "Equal Pay Laws"). Such certification shall be required prior to execution of the contract; and it is,

2. Further ordered that such certification shall include a representation by the contractor that it has not been the subject of an adverse finding under the Equal Pay Laws within the previous five years and shall include disclosure of any currently pending claims against the contractor; and it is,

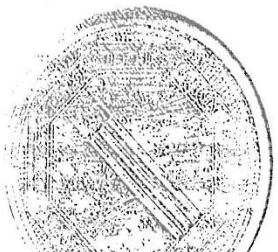
3. Further ordered that violation of any provision of the Equal Pay Laws during the effective period of such a contract or the filing of a false or misleading Erie County Equal Pay Certificate may constitute grounds for immediate termination of such a contract; and it is,

4. Further ordered that violation of any provision of the Equal Pay Laws during the effective period of such a contract or the filing of a false or misleading Erie County Equal Pay Certificate may constitute grounds for determining a bidder or responder is not qualified to participate in future County contracts; and it is,

5. Further ordered that the Law Department prepare an Erie County Equal Pay Certification for use by Erie County offices, departments and administrative units and assure compliance with this Executive Order in the contract approval process; and it is,

6. Further ordered that the County Division of Equal Employment Opportunity ("EEO") establish a procedure for compliance monitoring and periodic auditing of certification records; and it is,

GIVEN, under my hand and the Privy Seal of the County of Erie in the City of Buffalo this 6th day of November, in the year two thousand fourteen.



COUNTY OF ERIE

BY: _____

MARK C. POLONCARZ
ERIE COUNTY EXECUTIVE

OMB Approval 2502-0612
(Exp. 7/31/2025)

Part I
PBRA Housing Assistance Payments Contract
for the Conversion of **Section 202 Project Rental Assistance Contract (PRAC)** to Project-Based Section 8 (Rental Assistance Demonstration Component 2)

U.S. Department of Housing and Urban Development
Office of Multifamily Housing Programs

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in PIH 2012-32 and subsequent notices. The information will be used to direct the owner to appropriate technical assistance to initiate the conversion process. There are no assurances of confidentiality.

Type of Financing at Time of Conversion:	Section 8 Project Number:	FHA Project Number (if applicable):
N/A	NY06RP00001	N/A

This contract is a housing assistance payments contract (HAP Contract) between the United States of America, acting through the Department of Housing and Urban Development (HUD), and Amherst Senior Apartments, LP (Owner). The HAP Contract is subject to Notice H-2019-09 PIH-2019-23(HA), as amended or revised from time to time (or any successor document) (RAD Notice), including 24 C.F.R. Part 880 (as in effect November 5, 1979, as amended), as modified and as published in Appendix I of the RAD Notice.

1.1 Statutory Authority, Purpose of HAP Contract, and HAP Contract Terminology.

(a) **Statutory Authority.** The HAP Contract is entered pursuant to the Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 673 – 675 (Nov. 18, 2011); as amended by the Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 635 (Jan. 17, 2014); as further amended by the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2757 – 2758 (Dec. 6, 2014); as further amended by the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242, 2897 (Dec. 18, 2015); as further amended by the Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, 131 Stat. 135, 789 (May 5, 2017); as further amended by the Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348, 1038 – 1039 (Mar. 23, 2018), as further amended from time to time; section 8 of the United States Housing Act of 1937 (Act), 42 U.S.C. § 1437 et seq.; and the Department of Housing and Urban Development Act, 42 U.S.C. § 3531 et seq.

(b) **Purpose.** The purpose of the HAP Contract is to effectuate the conversion of a Section 202 Project Rental Assistance Contract (PRAC) project to a Multifamily Housing project with Project-Based Rental Assistance under section 8 of the Act.

(c) **Terminology.** Terms in the HAP Contract that are not otherwise defined herein have the definition given in the RAD Notice, including those terms defined in Appendix I of the RAD Notice setting forth 24 C.F.R. Part 880 except as struck in part. Terms that are not defined in the RAD Notice (including Appendix I) shall have the meanings given in 24 C.F.R. part 5, which applies pursuant to 24 C.F.R. § 880.104(d).

1.2 Scope; Assignability of HAP Contract; and HUD Requirements.

Attachment: Part I PBRA Housing SCAN_2023_10_25_1002.Alba (RES-2024-70 : PILOT Agreement - Amherst Senior Apartments, LP and TOA

(a) **Scope of HAP Contract.** The HAP Contract consists of Part I, Part II, and the exhibits identified in section 1.4(d) of the HAP Contract, which are hereby incorporated into and made a part of the HAP Contract.

(b) **Assignability of HAP Contract.** HUD may assign the HAP Contract at any time to a public housing agency (PHA) for the purpose of PHA administration of the HAP Contract to the extent permitted under any Annual Contributions Contract (ACC) between HUD and the PHA. Unless and until HUD assigns the HAP Contract to a PHA, HUD shall be the Contract Administrator (CA) and, in that capacity, a party to the HAP Contract. Upon any assignment of the HAP Contract by HUD to a PHA, the PHA shall assume all the contractual obligations of HUD under the HAP Contract (or of any PHA to which HUD had previously assigned the HAP Contract) and shall replace HUD (or any PHA to which HUD had previously assigned the HAP Contract) as the CA and as a party to the HAP Contract during the ACC term.

(c) **HUD Requirements.** The HAP Contract shall be construed and administered in accordance with the RAD Notice. With the exception of the provisions of 24 C.F.R. Part 880 and section 8 of the Act that are identified in Appendix I and Appendix II of the RAD Notice, respectively, as inapplicable, the HAP Contract shall further be construed and administered in accordance with all statutory requirements and all HUD regulations and other requirements, including any amendments to and/or changes in statutory requirements, HUD regulations (including 24 C.F.R. Part 880), and other requirements. However, any changes in HUD requirements, except to the extent required by statute, that are inconsistent with the provisions of sections 2.3(a)(1) or 2.6 of the HAP Contract, shall not be applicable.

(d) **Statutory Changes during Term.** If any statutory change during the term of the HAP Contract is inconsistent with section 2.3(a)(1) or 2.6 of the HAP Contract, and if HUD determines, and so notifies the Contract Administrator and the Owner, that the Contract Administrator is unable to carry out the provisions of such sections because of such statutory change, then the Contract Administrator or the Owner may terminate the HAP Contract upon notice to the other party.

1.3 Effective Date, Initial Term, and Funding For Initial Term of HAP Contract.

(a) **Effective Date and Initial Term.** The HAP Contract begins on 03/01/2023 and shall run for an initial term of twenty (20) years.

(b) **Funding for Initial Term.**

(1) Execution of the HAP Contract by HUD is an obligation of HUD of $ 1,257,000.00, an amount sufficient to provide housing assistance payments for approximately ten (10) months of the first annual increment of the HAP Contract term.

(2) HUD will provide additional funding for any remainder of the first annual increment and for subsequent annual increments, including any remainder of such subsequent annual increments, subject to the availability of sufficient appropriations. When such appropriations are available, HUD will obligate additional funding and provide the Owner written notification of (i) the amount of such additional funding, and (ii) the approximate amount of time within the HAP Contract term to which it will be applied.

1.4 Fiscal Year, Project Description, Statement of Services, and Exhibits.

(a) **Fiscal Year.** The ending date of each Fiscal Year shall be December 31st. (Insert March 31, June 30, September 30, or December 31, as approved by HUD.) The Fiscal Year for the project shall be the 12-month period ending on this date. However, the first Fiscal Year for the project is the period beginning with the effective date of the Contract and ending on the last day of the Fiscal Year. The project must comply with 24 CFR part 5, subpart H, as amended, revised, or modified by HUD.

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(b) **Project Description** (Print or type the street address(es) and the number of units by bedroom size).

467 John James Audubon Parkway / Amherst, NY 14228 150 1BR / 1BA units (subsidize

(c) **Statement of Services, Maintenance and Utilities Provided by the Owner.**

(1) Services and Maintenance (check all items included in rent):

☑Parking	☑Trash Removal	☐Nursing Care
☑Laundry Facilities	☐Swimming Pool	☐Tennis Courts
☐Linen/Maid Service	☑Community Ro	☐_____
☐_____		

(2) Equipment (check all items included in rent):

☑Range	☐Dishwasher	☐Kitchen Exhaust Fan
☑Refrigerator	☑Carpet	☐Ceiling Fans
☑Air Conditioner	☐Drapes	☑Smoke Detectors
☐Disposal	☐Mini Blinds	☐_____
☐_____		

(3) Utilities (check all items included in rent. For each item, even those not included in rent, enter E, F, or G on line beside that item; E = electric; G = gas; F = fuel oil or coal):):

(4)

☑Heating G	☑Hot Water G	☐Lights, etc. E
☐Cooling E	☐Cooking E	☑Water/Sewer
☐_____	☐_____	☐_____

(5) Other:

N/A

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(d) **Exhibits.** The exhibits to the HAP Contract consist of the following:

(1) **Exhibit 1**: Schedule of Contract Units and Contract Rents;

(2) **Exhibit 2**: Affirmative Fair Housing Marketing Plan; and

(3) **Exhibit 3**: Supportive Services for Elderly Families

1.5 Contract Rent Levels. The Contract Rent level for each contract unit shall be as stated in Exhibit 1 and shall be adjusted in accordance with section 2.6 of the HAP Contract and the RAD Notice or successor provision.

1.6 Owner Obligation to Operate Project. The Owner agrees to operate the project for the full initial term of the HAP Contract specified in section 1.3(a) and for each renewal term in accordance with the HAP Contract, the RAD Notice, all statutory requirements, and all HUD regulations and other requirements, including any amendments to and/or changes in statutory requirements, HUD regulations (including 24 C.F.R. Part 880, as modified and as published in Appendix I of the RAD Notice), and other requirements.

1.7 Mandatory Contract Renewal During Term of Elderly Housing Use Agreement. Upon expiration of the initial term and each renewal term of the HAP Contract, the Contract Administrator shall offer to renew the HAP Contract subject to the terms and conditions applicable at the time of each offer, and the Owner shall accept each such offer, as long as the Elderly Housing Use Agreement required under the RAD Notice is in effect.

1.8 Owner's Obligation to Provide Supportive Services and Employ Service Coordinator.

(a) Throughout the initial term and each renewal term of the HAP Contract, the Owner shall, subject to subsections (b) and (c), make available the supportive services listed in Exhibit 3 of the HAP Contract for Elderly Families residing in the project.

(b) The Owner may request that HUD periodically revise Exhibit 3 as needed for the Owner to accommodate the needs of such Elderly Families, as such needs may change from time to time.

(c) If HUD agrees to the Owner's requested revision(s), HUD shall provide the Owner a revised Exhibit 3 that specifies the supportive services that the Owner is required to provide and the date on which Exhibit 3, as revised, shall take effect. When HUD provides a revised Exhibit 3 to the Owner, the revised Exhibit shall automatically constitute an amendment to the HAP Contract.

(d) The Owner may not require any Elderly Family to accept any of the supportive services.

1.9 Flood Insurance Applicability.

☐ If the adjacent box is checked, the Owner agrees that the project will be covered, during the life of the property, regardless of transfer of ownership, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

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Signature Page

Warning: The below signatory certifies that the information provided on this form and in any accompanying documentation is true and accurate. The below signatory understands that any misrepresentations may be subject to civil and/or criminal penalties including, but not limited to, fine or imprisonment, or both under the provisions of Title 18, United States Code, Sections 1001 and 1010.

As evidenced by the signature below of their authorized representative, the Owner and HUD hereby agree to the terms of this HAP Contract, the scope of which is set forth in section 1.2(a) of the HAP Contract.

Owner

Name of Owner (Print or Type)

Amherst Senior Apartments, LP, a Nevada limited partnership

By: Eleanor White
Signature of authorized representative

Name of Signatory (Print or Type)
Eleanor White

Official Title (Print or Type)
President

Date (mm/dd/yyyy): 01/30/2023

United States of America
Secretary of Housing and Urban Development

By: _____
Signature of authorized representative

Name of Signatory (Print or Type)
Bennett R. Hilley

Official Title (Print or Type)
Deputy Director, Office of Recapitalization

Date (mm/dd/yyyy): 01/30/2023

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Exhibit 1

Schedule of Contract Units and Contract Rents

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent
50	1 BR	$1,193	$33	$1,226
50	1 BR	$1,193	$30	$1,223
50	1 BR	$1,193	$35	$1,228

Attachment: Part I PBRA Housing SCAN_2023_10_25_1002.Alba (RES-2024-70 : PILOT Agreement - Amherst Senior Apartments, LP and TOA

Exhibit 2

Affirmative Fair Housing Marketing Plan

See Attached:

DRAFT - the attached Affirmative Fair Housing Marketing Plan (AFHMP) has been submitted for HUD review. No marketing or leasing is permitted until approval of the AFHMP by HUD. Marketing or leasing includes the solicitation, distribution or acceptance of applications or development of a waiting list.

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Exhibit 3

Supportive Services for Elderly Families

The Owner shall:

☑ If the adjacent box is checked, employ or otherwise retain the services of one or more individuals to coordinate the provision of such services; and

☑ If the adjacent box is checked, use at least $17 of project funds per unit per month to aid in paying for the supportive services.

The Owner shall make available the following supportive services consistent with the requirements of section 1.8 of the HAP Contract:

SEE ATTACHED Supportive Services Plan

Attachment: Part I PBRA Housing SCAN_2023_10_25_1002.Alba (RES-2024-70 : PILOT Agreement - Amherst Senior Apartments, LP and TOA

OMB Approval 2502-0612
(Exp. 7/31/2025)

Part II
PBRA Housing Assistance Payments Contract for the Conversion of **Section 202 Project Rental Assistance Contract (PRAC)** to Project-Based Section 8 (Rental Assistance Demonstration Component 2)

U.S. Department of Housing and Urban Development
Office of Multifamily Housing Programs

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This collection of information is required to apply to the Rental Assistance Demonstration program as authorized by the Consolidated and Further Continuing Appropriations Act of 2012 and subsequent appropriations. Requirements for RAD were established in PIH 2012-32 and subsequent notices. The information will be used to direct the owner to appropriate technical assistance to initiate the conversion process. There are no assurances of confidentiality.

Section 8 Project Number:	FHA Project Number (if applicable):
NY06RP00001	N/A

2.1 OWNER'S WARRANTIES, COMPLETION DATE FOR ANY WORK, OWNER CERTIFICATIONS, AND INSPECTION REQUIREMENTS.

(a) **Legal Capacity.** The Owner warrants that it has the legal right to execute this HAP Contract and to lease dwelling units covered by this HAP Contract.

(b) **Condition of Property.** The Owner warrants that the rental units to be leased by the Owner under the HAP Contract are in decent, safe and sanitary condition (as defined and determined in accordance with HUD regulations and procedures) and comply with all applicable accessibility requirements, including Section 504 of the Rehabilitation Act, the Fair Housing Act, and Titles II and III of the Americans with Disabilities Act or will be in such condition no later than the date of completion of the Work (including any environmental mitigation measures), as indicated in Section 11.4 of the RAD Conversion Agreement, which will be on 02/01/2024. The Owner further warrants that it will remedy any defects or omissions covered by this warranty if called to its attention within 12 months of the date of completion of any Work indicated in the previous sentence.

(c) **Labor Standards.** By execution of the HAP Contract, the Owner warrants that to the extent that construction or rehabilitation is performed on nine or more units that were not previously rent-assisted or rent-restricted and will be newly assisted as a result of the conversion under RAD (including without limitation, through transfer of assistance), such construction or rehabilitation shall be in compliance with applicable labor standards, including Davis-Bacon wage requirements.

(d) **Inspection Requirement.** The Owner agrees to submit a written request to HUD for an inspection of the project by HUD's Real Estate Assessment Center no later than the Completion Date for any Work referenced in Section 2.1(b).

2.2 FAMILIES TO BE HOUSED; CONTRACT ADMINISTRATOR (CA) ASSISTANCE.

(a) **Families to Be Housed.** The Contract Units are to be leased by the Owner to eligible Low-Income Elderly Families (Families) for occupancy by such Families solely as private dwellings and as their principal place of residence. (See also section 2.9.)

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(b) **CA Assistance.**

(1) The CA hereby agrees to make housing assistance payments on behalf of Families for the Contract Units, to enable the Families to lease decent, safe, and sanitary housing pursuant to section 8 of the Act.

(2) If there is a Utility Allowance and if the Allowance exceeds the total Family contribution, the Owner shall pay the Family the amount of the excess. The CA will pay funds to the Owner in trust solely for the purpose of making this payment. Any pledge by the Owner of payments properly payable under this HAP Contract shall not be construed to include payments covered by this paragraph (b)(2). (See 24 C.F.R. § 880.501(e).)

2.3 HOUSING ASSISTANCE PAYMENTS TO OWNER.

(a) **Housing Assistance Payments on Behalf of Families.**

(1) Housing assistance payments shall be paid to the Owner for units under lease for occupancy by Families in accordance with the HAP Contract. The housing assistance payment will cover the difference between the Contract Rent and that portion of the rent payable by the Family as determined in accordance with the HUD-established schedules and criteria.

(2) The amount of housing assistance payment payable on behalf of a Family and the amount of rent payable by the Family shall be subject to change by reason of changes in Family Income, Family composition, extent of exceptional medical or other unusual expenses or program rules in accordance with the HUD-established schedules and criteria; or by reason of a change in any applicable Utility Allowance approved or required by the CA. Any such change shall be effective as of the date stated in a notification of the change to the Family, which need not be at the end of the Lease Term.

(b) **Vacancies During Rent-Up.** If a Contract Unit is not leased as of the effective date of the HAP Contract, the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the HAP Contract, provided that the Owner (1) commenced marketing; (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on its waiting list, if any, and advertising the availability of the unit in a manner specifically designed to reach eligible Families; and (3) has not rejected any eligible applicant, except for good cause acceptable to the CA.

(c) **Vacancies after Rent-Up.** If an eligible Family vacates a unit, the Owner is entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the HAP Contract or any applicable law or by moving a Family to another unit;

(2) Notified the CA of the vacancy or prospective vacancy and the reasons for it immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in paragraphs (b)(1), (2), and (3) of this section; and

(4) Certifies that any eviction resulting in a vacancy was carried out in compliance with section 2.8.

(d) **Vacancies for Longer than 60 Days.** If an assisted unit continues to be vacant after the period specified in paragraph (b) or (c) of this section, the Owner may apply to receive additional payments for the vacancy period in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit, as determined or approved by HUD, for up to 12 additional months for the unit if:

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(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The Owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Owner has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and

(ii) The project can achieve financial soundness within a reasonable time.

(e) **Prohibition of Double Compensation for Vacancies.** The Owner is not entitled to payments for vacant units to the extent it can collect for the vacancy from other sources (such as security deposits, other amounts collected from the Family, payments from the CA under section 2.7(b), and governmental payments under other programs). If the Owner collects any of the Family's share of the rent for a vacancy period in an amount which, when added to the vacancy payment, results in more than the Contract Rent, the excess must be reimbursed as HUD directs.

(f) **CA Not Obligated for Family Rent.** The CA has not assumed any obligation for the amount of rent payable by any Family or the satisfaction of any claim by the Owner against any Family other than in accordance with section 2.7(b) of this HAP Contract. The financial obligation of the CA is limited to making housing assistance payments on behalf of Families in accordance with this HAP Contract.

(g) **Owner's Monthly Requests for Payments.**

(1) The Owner shall submit monthly requests to the CA or as directed by the CA for housing assistance payments. Each request shall set forth: (i) the name of each Family and the address and/or number of the unit leased by the Family; (ii) the address and/or the number of each unit, if any, not leased to Families for which the Owner is claiming payments; (iii) the Contract Rent as set forth in Exhibit 1 for each unit for which the Owner is claiming payments; (iv) the amount of rent payable by the Family leasing the unit (or, where applicable, the amount to be paid the Family in accordance with section 2.2(b)(2)); and (v) the total amount of housing assistance payments requested by the Owner.

(2) Each of the Owner's monthly requests shall contain a certification by it that to the best of its knowledge and belief (i) the dwelling units are in decent, safe, and sanitary condition, (ii) all the other facts and data on which the request for funds is based are true and correct, (iii) the amount requested has been calculated in accordance with the provisions of this HAP Contract and is payable under the HAP Contract, (iv) none of the amount claimed has been previously claimed or paid under this HAP Contract, and (v) the Owner has not received and will not receive any payments or other consideration from the Family, the PHA (where the CA is a PHA), HUD, or any other public or private source for the unit beyond that authorized in this HAP Contract and the lease.

(3) If the Owner has received an excessive payment, the CA, in addition to any other rights to recovery, may deduct the amount from any subsequent payment or payments.

(4) The Owner's monthly requests for housing assistance payments are subject to penalty under 18 U.S.C. 1001, which provides, among other things, that whoever knowingly and willfully makes or uses any writing containing any materially false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of the executive branch of the Government of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

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2.4 MAINTENANCE, OPERATION AND INSPECTION.

(a) **Maintenance and Operation.** The Owner agrees to maintain and operate the Contract Units, unassisted units, if any, and related facilities to provide decent, safe, and sanitary housing, including the provision of all the services, maintenance and utilities set forth in section 1.4(c), in accordance with HUD's Uniform Physical Condition Standards and inspection Requirements, currently codified in 24 C.F.R. Part 5 Subpart G, and HUD's Uniform Physical Condition Standards for Multifamily Properties, currently codified in 24 C.F.R. Part 200 Subpart P. The Owner also agrees to comply with the lead-based paint regulations at 24 C.F.R. Part 35. If the CA determines that the Owner is not meeting one or more of these obligations, the CA shall have the right to take action under section 2.19(b).

(b) **Inspection.**

(1) Prior to occupancy of any Contract Unit by a Family, the Owner and the Family shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. The Owner shall keep copies of these reports on file for at least three years.

(2) The CA shall inspect or cause to be inspected the Contract Units and related facilities at least annually, or as otherwise directed by HUD, and at such other times (including prior to initial occupancy and rerenting of any unit) as may be necessary to ensure that the Owner is meeting its obligation to maintain the units in decent, safe, and sanitary condition including the provision of the agreed-upon utilities and other services. The CA shall take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.

(c) **Units Not Decent, Safe, and Sanitary.**

(1) If the CA notifies the Owner that it has failed to maintain a dwelling unit in decent, safe, and sanitary condition and the Owner fails to take corrective action within the time prescribed in the notification, the CA may exercise any of its rights or remedies under the HAP Contract, including reduction or suspension of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with section 8 assistance and the CA does not have other section 8 funds for such purposes, the CA may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. If the Family continues to occupy the unit, it will do so in accordance with the terms of its lease, including the termination date and amount of rent payable by the Family.

(2) The foregoing provision, section 2.4(c)(1), shall be construed and applied in accordance with section 2.1(b) of the HAP Contract.

(d) **Notification of Abatement.** Any reduction or suspension of housing assistance payments shall be effective as provided in written notification to the Owner. The Owner shall promptly notify the Family of any such abatement.

(e) **Overcrowded and Underoccupied Units.** Where the CA determines a unit is larger or smaller than appropriate for an eligible Family, the Owner agrees to correct the situation in accordance with HUD regulations and requirements in effect at the time of the determination.

2.5 FINANCIAL REQUIREMENTS.

(a) **Submission of Financial and Operating Statements.**

The Owner agrees to comply with HUD's Uniform Financial Reporting Standards, currently codified in 24 C.F.R. Part 5 Subpart H.

(b) **Use of Project Funds.**

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(1) Project funds must be used for the benefit of the project and the tenants, to make mortgage payments, to pay operating expenses, to make required deposits to the replacement reserve in accordance with section 2.5(c) of the HAP Contract, and to provide distributions to the Owner as provided in section 2.5(b)(2) of the HAP Contract.

(2) After HUD's acceptance of the Owner's completion certification (as required in the Conversion Agreement), Surplus Cash may be distributed to the Owner for the life of the HAP Contract only at the end of each fiscal year of project operation and only after all project expenses have been paid (or funds have been set aside for payment), and all reserve requirements have been met, including the operating reserve, as required in paragraph 2.5(d).

(c) **Replacement Reserve.**

(1) The Owner shall establish and maintain a replacement reserve in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items in accordance with the RAD Conversion Agreement.

(i) The obligation of the Owner to deposit into the replacement reserve shall commence upon the effective date of the HAP Contract, unless otherwise stated in the RAD Conversion Agreement. The amount of the deposit to the replacement reserve will be adjusted each year by the amount of the automatic annual adjustment factor. See 24 C.F.R. Part 888.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee and may be drawn from the reserve account and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(v) In the event the project is not subject to any financing, funds will be held by the Owner, and may be drawn from the reserve account and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(vi) The Owner shall not fund extraordinary maintenance and repair and/or replacement of capital items out of project funds without the prior written consent of HUD.

(2) In the case of HUD-insured projects, the provisions of this paragraph (c) will apply instead of the otherwise applicable mortgage insurance requirements.

(d) **Operating Reserve.** The Owner shall establish and maintain an operating reserve consistent with the requirements of the RAD Notice.

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2.6 RENT ADJUSTMENTS.

(a) **Operating Cost Adjustment Factor.** Contract Rents will be adjusted annually by HUD's Operating Cost Adjustment Factor (OCAF) at each Anniversary of the HAP Contract, subject to the availability of appropriations for each year of the HAP Contract term and provided that the OCAF-adjusted rent potential shall not exceed the Maximum Rent. The Maximum Rent is equal to the greater of (i) 120% of the Fair Market Rent (FMR) potential based on the FMRs in effect at such time for the FMR area in which the project is located, less Utility Allowances; or (ii) the comparable market rent potential for the market area, as demonstrated by a Rent Comparability Study (RCS) prepared in accordance with HUD requirements and procured and paid for by the Owner. If the Maximum Rent exceeds the OCAF-adjusted rent potential, the Contract Rents shall be adjusted by the OCAF. If the OCAF-adjusted rent potential exceeds the Maximum Rent, the adjusted rents shall be limited by the Maximum Rent.

(b) **Use of Small Area Fair Market Rent in Calculation of Maximum Rent.** Subject to approval by HUD, the Owner may request that the applicable Small Area Fair Market Rent (SAFMR) be used in lieu of the applicable FMR for purposes of calculating the Maximum Rent.

(c) **Exception to Application of Maximum Rent.** When an RCS has been used to justify an OCAF-adjusted rent potential in excess of 120% of the Fair Market Rent potential any time during the term of the HAP Contract, for the next four annual rent adjustments, the Maximum Rent shall not apply and the Contract Rents shall be adjusted by the OCAF.

(d) **Terminology.** For purposes of this section 2.6, the term "OCAF-adjusted rent potential" means the sum of all OCAF-adjusted Contract Rents for all units under the HAP Contract; the term "Fair Market Rent potential" means the sum of all fair market rents for all units under the HAP Contract; and the term "comparable market rent potential" means the sum of all comparable market rents for all units under the HAP Contract.

2.7 MARKETING AND LEASING OF UNITS.

(a) **Compliance with Equal Opportunity Requirements.** Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan (Exhibit 2 to this HAP Contract) and with all regulations relating to fair housing advertising. Projects shall be managed and operated without regard to race, color, religion, sex, disability, familial status or national origin.

(b) **Security Deposits.** The Owner agrees to comply with applicable section 8 regulations and other requirements, as revised from time to time, regarding security deposits and to comply with all State and local law.

(c) **Eligibility, Selection and Admission of Families.**

(1) The Owner shall be responsible for determination of eligibility of applicants, selection of Families from among those determined to be eligible, computation of the amount of housing assistance payments on behalf of each selected Family and of total Family contributions and recordkeeping in accordance with applicable HUD regulations and requirements.

(2) The Owner shall not charge any applicant or assisted Family any amount in excess of the total Family contribution except as authorized by HUD.

(3) In initial renting of the Contract Units, the Owner must comply with the income eligibility requirements of section 16(c)(2) of the Act [42 U.S.C. § 1437n(c)(2)] and 24 C.F.R. § 5.653(d)(2). The Owner must further comply with the income targeting requirements of section 16(c)(3) of the Act [42 U.S.C. § 1437n(c)(3)] and 24 C.F.R. § 5.653(c). Section 16(c)(4) – (6) of the Act [42 U.S.C. § 1437n(c)(4) – (6)] shall also apply.

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(4) The Lease entered into between the Owner and each selected Family shall be on the form of Lease approved by HUD.

(5) (i) The Owner shall make a reexamination of Family income, composition, and the extent of medical or other unusual expenses incurred by the Family at least as often as required by HUD regulations or other requirements, and appropriate redeterminations shall be made by the Owner of the amount of Family contribution and the amount of housing assistance payment, all in accordance with applicable HUD regulations and requirements.

(ii) If a Family reports a change in income or other circumstances that would result in a decrease of total Family contribution between regularly scheduled reexaminations, the Owner, upon receipt of verification of the change, must promptly make appropriate adjustments in the total Family contribution. The Owner may require in its lease that Families report increases in income or other changes between scheduled reexaminations.

(iii) A Family's eligibility for housing assistance payments continues until the total Family contribution equals the total housing expense for the unit it occupies. The termination of eligibility at this point will not affect the Family's other rights under the lease nor preclude resumption of payments as a result of later changes in income or other circumstances during the term of this HAP Contract.

(6) Where fewer than 100 percent of the units in the project are covered by this HAP Contract, assisted Families shall be dispersed throughout. At initial rent-up, the Owner shall lease the units identified in Exhibit 1 to eligible Families. Thereafter, the Owner may lease other units of appropriate size and type to eligible Families in accordance with Exhibit 1.

(7) The Owner shall maintain as confidential all information relating to section 8 applicants and assisted Families, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(8) The project's Affirmative Fair Housing Marketing Plan (Exhibit 2) including any admissions preferences for which applicable guidance or regulations require prior HUD approval (e.g., residency preferences) must be approved by HUD before they are implemented.

(d) **Rent Redetermination after Adjustment in Utility Allowance.** In the event that the Owner is notified of a CA determination approving or requiring an adjustment in the Utility Allowance applicable to any of the Contract Units, the Owner shall promptly make a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payments.

(e) **Processing of Applications and Complaints.** The Owner shall process applications for admission, notifications to applicants, and complaints by applicants in accordance with applicable HUD and PHA regulations (where the CA is a PHA), and requirements and shall maintain records and furnish such copies or other information as may be required by HUD or the PHA.

(f) **Review: Incorrect Payments.** In making housing assistance payments to Owners, the PHA (where the CA is a PHA) or HUD will review the Owner's determinations under this section. If, as a result of this review, or other reviews, audits or information received by the PHA or HUD at any time, it is determined that the Owner has received improper or excessive housing assistance payments, the PHA or HUD shall have the right to deduct the amount of such overpayments from any amounts otherwise due the Owner, or otherwise effect recovery.

2.8 Termination of Tenancy or Section 8 Assistance by the Owner. The Owner agrees not to terminate any tenancy of or assistance on behalf of an assisted Family except in accordance with all HUD regulations and other requirements in effect at the time of the termination and any State and local law.

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2.9 Reduction of Number of Units for Failure to Lease to Eligible Families.

(a) **Limitation on Leasing to Ineligible Families.** The Owner may not at any time during the term of this HAP Contract lease more than 10 percent of the assisted units in the project to families which are ineligible under section 8 requirements at initial occupancy without the prior written approval of HUD. Failure on the part of the Owner to comply with this prohibition is a violation of the HAP Contract and grounds for all available legal remedies, including specific performance of the HAP Contract, suspension or debarment from HUD programs and reduction of the number of units under the HAP Contract, as set forth in paragraph (b) of this section. (See also section 2.19.)

(b) **Reduction for Failure to Lease to Eligible Families.** If, at any time beginning six months after the effective date of the HAP Contract, the Owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by Families eligible under section 8 requirements at initial occupancy, HUD (or the PHA at the direction of HUD, as appropriate) may, on at least 30 days' notice, reduce the number of units covered by the HAP Contract. HUD or the PHA may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). This reduction, however, will not be made if the failure to lease units to eligible Families is permitted in writing by HUD under paragraph (a) of this section.

(c) **Restoration.** HUD will agree to an amendment of the ACC or the HAP Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand,

(2) The Owner otherwise has a record of compliance with its obligations under the HAP Contract, and

(3) Sufficient appropriations are available to support the funding of the units to be restored.

2.10 NONDISCRIMINATION.

(a) **General.** The Owner shall operate the project in a manner consistent with all applicable nondiscrimination, equal opportunity, and equal access requirements, including but not limited to the requirements in this section 2.10 of the HAP Contract.

(b) **Equal Access Rule**. The Owner shall make residential housing in the project available without regard to sexual orientation, gender identification, or marital status in accordance with 24 C.F.R. 5.105(a)(2).

(c) **The Fair Housing Act.** The Owner shall comply with all applicable requirements imposed by the Fair Housing Act and HUD's implementing regulations at 24 C.F.R. Parts 100, 108, 110, 121, and 200 which, among other requirements, prohibit discrimination in the sale, rental, financing, and advertising of housing on the basis of race, color, national origin, religion, sex, disability, and familial status, and require the Owner to affirmatively further fair housing in the operation of the project.

(d) **Title VI of the Civil Rights Act of 1964 and Executive Order 11063.** The Owner shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. et seq.; the HUD Regulations issued thereunder, 24 C.F.R. Part 1; the HUD requirements pursuant to these regulations; and Executive Order 11063 and the regulations and requirements issued thereunder at 24 C.F.R. Part 107 to the end that, in accordance with that Act, Executive Order 11063, and the regulations and requirements of HUD, no person in the United States shall, on the grounds of race, color, religion (creed), sex, or national origin, be excluded from participation in, or be denied the benefits of, the Section 8 Program, or be otherwise subjected to discrimination. This provision is included pursuant to HUD's implementing regulations for Title VI at 24 C.F.R. Part 1, the implementing regulations for Executive Order 11063 at 24 C.F.R. Part 107, and the HUD requirements pursuant to the regulations. The obligation of the Owner to comply therewith inures to the benefit of the United States of America, HUD, and the PHA (where the CA is a PHA), any of which

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shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Owner.

(e) **Section 504 of the Rehabilitation Act of 1973 and Other Accessibility Requirements.** The Owner shall comply with all the requirements imposed by section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq., and HUD regulations issued thereunder at 24 C.F.R. Part 8. Section 504 applies design standards on housing that receives Federal financial assistance and, more generally, provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. Accordingly, the Owner (1) shall not discriminate against any qualified individual with a disability on the basis of disability, and (2) shall cause to be incorporated into all contracts executed in connection with this project a provision requiring compliance with rules and regulations issued pursuant to section 504. The Owner shall comply, as applicable, with accessible design and operations requirements under the Fair Housing Act and implementing regulations at 24 C.F.R. Part 100, and Title II and III of the Americans with Disabilities Act and implementing regulations at 28 C.F.R. Parts 35 and 36, respectively.

(f) **Employees of Owner.**

(1) In carrying out the obligations under this HAP Contract, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, disability, familial status, or national origin. The Owner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, creed, religion, sex, disability, familial status, or national 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 selection for training, including apprenticeship.

(2) The Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscrimination clause. The Owner will in all solicitations or advertisements for employees placed by or on behalf of the Owner state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, disability, familial status, or national origin. The Owner will incorporate the foregoing requirements of this paragraph in all of its contracts for project work, except contracts for standard commercial supplies or raw materials, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for project work.

(g) **Age Discrimination Act of 1975.** The Owner shall comply with any rules and regulations issued or adopted by HUD under the Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq. at 24 C.F.R. Part 146, which prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance.

2.11 COOPERATION IN EQUAL OPPORTUNITY COMPLIANCE REVIEWS. The Owner and the PHA (where the CA is a PHA) agree to cooperate with HUD in the conducting of compliance reviews and complaint investigations pursuant to or permitted by all applicable civil rights statutes, Executive Orders, and rules and regulations.

2.12 PROPERTY AND LIABILITY INSURANCE. The Owner agrees that the project shall be covered at all times by commercially available property and liability insurance to protect the project from financial loss. To the extent insurance proceeds permit, and as determined feasible by any first mortgage lender (determination of infeasibility shall be subject to HUD approval), the Owner agrees to promptly restore, reconstruct, and/or repair any damaged or destroyed property of a project.

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2.13 FLOOD INSURANCE. (See section 1.9 of the HAP Contract for applicability.) The Owner agrees that the project will be covered, during the life of the property, regardless of transfer of ownership, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less.

2.14 REPORTS AND ACCESS TO PREMISES AND RECORDS.

(a) The Owner shall furnish any information and reports pertinent to this HAP Contract as reasonably may be required from time to time by HUD and the PHA (where the CA is a PHA).

(b) The Owner shall permit HUD and the PHA (where the CA is a PHA) or any of their duly authorized representatives to have access to the premises and, for the purpose of audit and examination, to have access to any books, documents, papers and records of the Owner that are pertinent to compliance with this HAP Contract, including the verification of information pertinent to the housing assistance payments.

2.15 DISPUTES.

(a) **Projects for which a PHA is the CA.**

(1) Any dispute concerning a question of fact arising under this HAP Contract which cannot be resolved by the PHA (where the CA is a PHA) and the Owner may be submitted by either party to the HUD Field Office, which will promptly make a decision and furnish a written copy to the Owner and the PHA.

(2) The decision of the Field Office will not be reviewable unless, within 30 calendar days from the date of receipt of the Field Office's determination, either party mails or otherwise furnishes to HUD a written appeal with written justification addressed to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the HAP Contract and in accordance with the decision of the Field Office pending resolution of the appeal.

(b) **Projects for which HUD is the CA.** Any dispute concerning a question of fact arising under this HAP Contract which cannot be resolved by agreement between the HUD Field Office and the Owner may be submitted by the Owner to the Secretary of Housing and Urban Development. Both parties shall proceed diligently with the performance of the HAP Contract and in accordance with the decision of the Field Office, pending resolution of the appeal.

2.16 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES OF PHA, MEMBERS OF LOCAL GOVERNING BODY, OR OTHER PUBLIC OFFICIALS.

(a) No person or entity in the following clauses shall have an interest, direct or indirect, in this HAP Contract or in any proceeds or benefits arising from it, during his or her tenure or for one year thereafter.

(1) any member or officer of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;

(2) (i) any employee of the PHA (where it is the CA or the Owner) who formulates policy or influences decisions with respect to the section 8 project;

(ii) any other employee of the PHA (where it is the CA or the Owner), except where his or her interest is as a tenant;

(3) any member of the governing body or the executive officer of the locality (city or county) in which the project is situated;

(4) any member of the governing body or executive officer of the locality (city or county) in which the PHA (where it is the CA or the Owner) was activated;

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(5) any other State or local public official (including State legislators), who exercise any functions or responsibilities with respect to the section 8 project;

(6) any PHA (which is not the CA), where any of its members, officers, or employees has a personal interest in the project, including an interest by reason of membership on the board of the PHA which is the CA (except an employee who does not formulate policy or influence decisions with respect to the section 8 project may have an interest as a tenant).

(b) Members of the classes described in paragraph (a) who involuntarily acquire an interest in the section 8 program or in a section 8 project, or who had acquired prior to the beginning of their tenure any such interest, must disclose any interest or prospective interest to the PHA (where it is the CA or the Owner) and the HUD Field Office, and may, with appropriate justification, if consistent with State law, apply to the HUD Field Office (through the PHA where it is the CA) for a waiver. Any other requests for waivers of paragraph (a) must be referred to HUD Headquarters, with appropriate recommendations from the Field Office, for a determination of whether a waiver will be granted.

(c) No person to whom a waiver is granted shall be permitted (in his or her capacity as member of a class described in paragraph (a)) to exercise responsibilities or functions with respect to a HAP Contract executed, or to be executed, on his or her behalf, or with respect to a HAP Contract to which this person is a party.

(d) The Owner shall insert in all contracts, subcontracts, and arrangements entered into in connection with the project or any property included or planned to be included in the project, and shall require its contractors and subcontractors to insert in each of the subcontracts, the provisions of paragraphs (a) through (d).

(e) The provisions of paragraphs (a) through (d) of this section shall not apply to a utility service if the rates are fixed or controlled by a governmental agency or applicable to the Depositary Agreement.

2.17 INTEREST OF MEMBER OR DELEGATE TO CONGRESS. No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this HAP Contract or to any benefits which may arise from it.

2.18 ASSIGNMENT, SALE, FORECLOSURE, OR DEED IN LIEU OF FORECLOSURE.

(a) The Owner agrees that it has not made and will not make any sale, assignment, or conveyance or transfer in any fashion of this HAP Contract or the project, or of any part of the HAP Contract or the project, or any of the Owner's interest in the HAP Contract or the project, without the prior written consent of HUD. However, in the case of an assignment as security for the purpose of obtaining financing of the project, HUD shall consent in writing if HUD has approved the terms of the financing. Certain limited consents are set forth in this Section 2.18 and in Sections 2.22 and 2.23 below.

(b) The Owner agrees to notify HUD (and the PHA where it is the CA) promptly of any proposed action covered by paragraph (a) of this section. The Owner further agrees to request the prior written consent of HUD for any such proposed action.

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(c) The Owner agrees that HUD may condition any prior written consent required under section 2.18(a) of this HAP Contract on any reasonable requirements related to the effective administration of the HAP Contract, as determined by HUD.

(d) (1) For purposes of this section, a sale, assignment, conveyance, or transfer includes but is not limited to one or more of the following:

(i) A transfer by the Owner, in whole or in part,

(ii) A transfer by a party having a controlling interest in the Owner,

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(iii) Transfers by more than one party of interests aggregating a controlling interest in the Owner, and

(iv) The creation or modification of any lien, including pursuant to any refinancing or any restructuring of permanent debt by the Owner of the project, including any loan modification, , except to such extent permitted pursuant to the Use Agreement entered into in connection with this project..

(2) If such assignment is made in connection with any HUD-approved financing for the project, including without limitation low-income housing tax credits, subject to the provisions of section 2.23, HUD hereby consents to:
(i) an assignment by the Owner of an interest in the project or in this HAP Contract to one of its members, partners or shareholders; or
(ii) an assignment by the general partner or managing member of Owner of its interest to a limited partner or other member of Owner, respectively.

(3) The term "controlling interest" means the interest of any general partner, managing member, or other organization or entity that controls the day-to-day operations of the Owner.

(e) The Owner and the party signing this HAP Contract on behalf of the Owner represent that they have the authority of all of the parties having ownership interests in the Owner to agree to this provision on their behalf and to bind them with respect to it.

(f) Except where otherwise approved by HUD, this HAP Contract, and the ACC (if applicable) shall continue in effect and housing assistance payments will continue in accordance with the terms of the HAP Contract in the event:

(1) Of assignment, sale, or other disposition of the project or this HAP Contract, or the ACC,

(2) Of foreclosure, including foreclosure by HUD,

(3) Of assignment of the mortgage or deed in lieu of foreclosure,

(4) The PHA or HUD takes over possession, operation or ownership,

(5) The Owner prepays the mortgage.

2.19 DEFAULTS BY PHA (if a PHA is the CA) AND/OR OWNER.

(a) **Rights of Owner if PHA (where the CA is a PHA) Defaults under HAP Contract.**

(1) Events of Default. The occurrence of any of the following events, if the Owner is not in default, is defined as a default under the ACC:

(i) If the PHA (where the CA is a PHA) fails to perform or observe any term or condition of this HAP Contract;

(ii) If the HAP Contract is held to be void, voidable, or ultra vires;

(iii) If the power or right of the PHA (where the CA is a PHA) to enter into the HAP Contract is drawn into question in any legal proceeding; or

(iv) If the PHA (where the CA is a PHA) asserts or claims that the HAP Contract is not binding upon the PHA for any such reason.

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(2) Owner Request for HUD Determination of Default. If the Owner believes that an event as specified in paragraph (a)(1) has occurred, and the Owner is not in default, the Owner may, within 30 days of the initial occurrence of the event:

(i) Notify HUD of the occurrence of the event;

(ii) Provide supporting evidence of the default and of the fact that the Owner is not in default; and

(iii) Request HUD to determine whether there has been a default.

(3) HUD Determination of Default and Curing of Default. HUD, after notice to the PHA (where the CA is a PHA) giving it a reasonable opportunity to take corrective action, or to demonstrate that it is not in default, shall make a determination whether the PHA is in default and whether the Owner is not in default. If HUD determines that the PHA is in default and that the Owner is not, HUD shall take appropriate action to require the PHA to cure the default. If necessary for the prompt continuation of the project, HUD shall assume the PHA's rights and obligations under the HAP Contract, including any funds. HUD shall continue to pay annual contributions with respect to the units covered by this HAP Contract in accordance with the ACC and this HAP Contract until reassigned to the PHA. All rights and obligations of the PHA assumed by HUD will be returned as constituted at the time of the return: (i) when HUD is satisfied that all defaults have been cured and that the project will thereafter be administered in accordance with all applicable requirements, or (ii) when the HAP Contract is at an end, whichever occurs sooner.

(4) Enforcement by Owner. The provisions of this paragraph (a) are made for the benefit of the Owner, the lender, the PHA where it is the lender and then only in its capacity as lender, and the Owner's other assignees, if any, who have been specifically approved by HUD prior to the assignment. These provisions shall be enforceable by these parties against HUD by suit at law or in equity.

(b) **Rights of PHA (where the CA is a PHA) and HUD if Owner Defaults under HAP Contract.**

(1) Events of Default. A default by the Owner under this HAP Contract shall result if:

(i) The Owner has violated or failed to comply with any provision of, or obligation under, this HAP Contract, the Conversion Agreement, or of any Lease, including failure to correct any deficiencies identified by the CA in connection with any annual or other inspection; or

(ii) The Owner has asserted or demonstrated an intention not to perform some or all of its obligations under this HAP Contract, the Conversion Agreement, or under any Lease; or

(iii) For projects with mortgages insured by HUD or loans made by HUD, the Owner has violated or failed to comply with the regulations for the applicable insurance or loan program, with the insured mortgage, or with the regulatory agreement; or the Owner has filed any false statement or misrepresentation with HUD in connection with the mortgage insurance or loan.

(2) CA Determination of Default. Upon a determination by the CA that a default has occurred, the CA shall notify the Owner and the lender, with a copy to HUD (where the CA is a PHA), of

(i) The nature of the default;

(ii) The actions required to be taken and the remedies to be applied on account of the default (including actions by the Owner and/or the lender to cure the default); and

(iii) The time within which the Owner and/or the lender shall respond with a showing that all the required actions have been taken.

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If the Owner and/or lender fail to respond or take action to the satisfaction of the CA (and HUD, where the CA is a PHA), the CA shall have the right to take corrective action to achieve compliance in accordance with paragraph (b)(3), or to terminate this HAP Contract with HUD approval (where the CA is a PHA), in whole or in part, or to take other corrective action to achieve compliance in the CA's discretion, or as directed by HUD (where the CA is a PHA). If the corrective actions that the CA takes or requires the Owner to take fail to bring the Owner into compliance with this HAP Contract to the satisfaction of the CA, the CA may terminate this HAP Contract, in whole or in part, but only with prior written approval by HUD (where the CA is a PHA).

(3) Corrective Actions. Pursuant to paragraph (b)(2) of this section, the CA, in its discretion or as directed by HUD (where the CA is a PHA), may take the following corrective actions either directly or in conjunction with or acting through a PHA:

(i) Suspend any distributions of cash to the Owner.

(ii) Require a substitution of the management agent.

(iii) Reduce or suspend housing assistance payments.

(iv) Recover any overpayments.

(v) Take possession of the project, bring any action necessary to enforce any rights of the Owner growing out of the project operation, and operate the project in accordance with the terms of this HAP Contract until such time as HUD determines that the Owner is again in a position to operate the project in accordance with this HAP Contract. If the CA takes possession, housing assistance payments shall continue in accordance with the HAP Contract.

(vi) Collect all rents and charges in connection with the operation of the project and use these funds to pay the necessary expenses of preserving the property and operating the project and to pay the Owner's obligations under the note and mortgage or other loan documents.

(vii) Apply to any court, State or Federal, for specific performance of this HAP Contract, for an injunction against any violation of the HAP Contract, for the appointment of a receiver to take over and operate the project in accordance with the HAP Contract, or for such other relief as may be appropriate. These remedies are appropriate since the injury to the PHA (where the CA is a PHA) and/or HUD arising from a default under any of the terms of this HAP Contract could be irreparable and the amount of damage would be difficult to ascertain.

(viii) Take any other remedial action permitted at law or in equity.

(4) HUD Rights.

(i) Notwithstanding any other provisions of this HAP Contract, in the event HUD determines that the Owner is in default of its obligations under the HAP Contract, HUD shall have the right, after notice to the Owner, the trustee, if any, and the PHA (where the CA is a PHA) giving them a reasonable opportunity to take corrective action, to proceed in accordance with paragraph (b)(3).

(ii) In the event HUD takes any action under this section, the Owner and the PHA hereby expressly agree to recognize the rights of HUD to the same extent as if the action were taken by the PHA. HUD shall not have the right to terminate the HAP Contract except by proceeding in accordance with paragraphs (b)(1), (2), and (3) of this section and with the ACC.

(c) **Remedies Not Exclusive and Non-Waiver of Remedies.** The availability of any remedy under this HAP Contract or the ACC, where applicable, shall not preclude the exercise of any other remedy under this HAP Contract or the ACC or under any provisions of law, nor shall any action taken in the exercise of any remedy

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be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

2.20 EXCLUSION OF THIRD-PARTY RIGHTS.

(a) A Family that is eligible for housing assistance under the HAP Contract is not a party to or a third-party beneficiary of the HAP Contract.

(b) Nothing in the HAP Contract shall be construed as creating any right of any third party to enforce any provision of the HAP Contract, or to assert any claim against HUD or the PHA (where the CA is a PHA), under the HAP Contract.

2.21 NO AGENCY RELATIONSHIP BETWEEN HUD AND THE PHA (WHERE THE CA IS A PHA). If the CA is a PHA under ACC with HUD, the PHA is not the agent of HUD, and the HAP Contract does not create any relationship between HUD and any suppliers, employees, contractors, or subcontractors used by the PHA to carry out functions or responsibilities in connection with administration of the HAP Contract under the ACC.

2.22 LENDER PROVISIONS. Notwithstanding anything else in this HAP Contract:

(a) The holder of any HUD-approved mortgage encumbering the property on which the project is located may take action against the Owner and the project that results in the holder of the mortgage or its designee (either referred to herein as the "Lender Temporary Custodian") coming into ownership of the project or assuming the role of "Owner" under this HAP Contract. Transfer of the project or the HAP Contract from the Owner is grounds for termination of the HAP Contract assistance unless otherwise approved by HUD. HUD hereby consents to a collateral assignment of this HAP Contract to any Lender Temporary Custodian and pre-approves any Lender Temporary Custodian as a temporary custodian of the project and as a new "Owner" pursuant to this HAP Contract, and continued assistance to the project pursuant to this HAP Contract, subject to the following conditions:

(1) HUD must receive thirty (30) days prior written notice of the transfer of the project to the Lender Temporary Custodian and the form of the documents necessary to effect such transfer.

(2) In connection with the transfer, Lender Temporary Custodian must execute and deliver to HUD an assumption of the HAP Contract, in such form as acceptable to HUD.

(3) Such approval and consent to continue assistance pursuant to this HAP Contract is expressly limited to a period of only 90 days that commences the date of such transfer of the project, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as HUD deems reasonably necessary for Lender to find a permanent replacement owner. In the event that the Lender Temporary Custodian assumes the role of "Owner" under the HAP Contract, the Lender Temporary Custodian shall use such interim period to identify a proposed permanent Owner determined by HUD to be capable of abiding by the HAP Contract and any and all applicable RAD program requirements. The provision of housing assistance payments to any proposed permanent replacement Owner is subject to HUD's consent.

(4) Prior to a transfer of the project to a Lender Temporary Custodian, HUD may at any time by written notice to a Lender Temporary Custodian revoke the approvals given herein if HUD becomes aware of any conditions or circumstances (by way of illustration and not limitation, such conditions or circumstances may include debarment, suspension or limited denial of participation) that would disqualify or compromise the ability of Lender Temporary Custodian from acting as an interim custodian of the project pursuant to the HAP Contract.

(b) The provisions of any form that HUD may execute on which HUD consents to the assignment of this HAP Contract as security for financing, including any of the HUD-drafted forms in use for such purpose, shall be subject to the conditions set forth in subparagraph (a) of this section.

Attachment: Part II PBRA HousingSCAN_2023_10_25_1002.Alba (RES-2024-70 : PILOT Agreement - Amherst Senior Apartments, LP and TOA

(c) Any cure of any default by Owner under the HAP Contract, Use Agreement or RCC offered by the holder of any HUD-approved mortgage shall be treated the same as if offered by Owner.

2.23 LOW-INCOME HOUSING TAX CREDIT PROVISIONS. Notwithstanding anything else in the HAP Contract:

(a) **Notice**. As long as the equity investor identified below ("Equity Investor") is a partner or member of Owner, HUD shall endeavor as a courtesy to Equity Investor to deliver to Equity Investor a copy of any notice of default that is delivered to Owner under the terms of the HAP Contract, Use Agreement, or Conversion Agreement. Equity Investor's address for such notice purposes is:

_____

_____

_____

_____

(b) **Right to Cure**. Any cure of any default by Owner under the HAP Contract, Use Agreement or Conversion Agreement offered by Equity Investor shall be treated the same as if offered by Owner.

(c) **Transfer of Investor Members/Partners**. Equity Investor, and each successor member or partner in Owner, may transfer its interest in the Owner without prior written consent of HUD if:

(1) HUD receives prior written notice of such transfer; and

(2) HUD receives executed copies of any and all documents necessary to effect such transfer, including any and all amendments to Owner's organizational documents.

(d) **Removal of General Partner/Managing Member**.

(1) HUD has pre-approved the replacement of the Owner's general partner or managing member with an affiliate of Equity Investor, or any successor equity investor ("Interim Replacement GP/MM") as a temporary replacement general partner/managing member of Owner, in the event Owner's general partner or managing member is removed for cause in accordance with Owner's organizational documents.

(2) Interim Replacement GP/MM may remove Owner's general partner or managing member in accordance with the Owner's organizational documents without further written consent from HUD and HUD shall continue assistance to the project in accordance with the HAP Contract, provided that Interim Replacement GP/MM provide HUD with prior written notice of such replacement and HUD receives executed copies of any and all documents necessary to effect such replacement.

(3) Such approval of such Interim Replacement GP/MM is expressly limited to a period of only 90 days that commences the date of such removal, provided that HUD in its sole discretion may extend such 90-day period by an additional 30 days, or for so long as HUD deems reasonably necessary to provide for a permanent replacement of the general partner or managing member. After such interim period, any proposed permanent replacement for the Owner's general partner or managing member is subject to HUD's consent.

(4) HUD may at any time by written notice to Equity Investor or any successor revoke the approvals given herein if HUD becomes aware of any conditions or circumstances that would disqualify or compromise the ability of Interim Replacement GP/MM from acting as an interim general partner/managing member pursuant to this HAP Contract.

Attachment: Part II PBRA HousingSCAN_2023_10_25_1002.Alba (RES-2024-70 : PILOT Agreement - Amherst Senior Apartments, LP and TOA

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 28478 **RESOLUTION 2024-71** **ADOPTED**

Authorization to Pay Outside Counsel from Trust and Agency Account - Jurek Post Purchase

AGENDA ITEM - JANUARY 22nd, 2024

TO: **Town Board**

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

DATE: **January 17, 2024**

RE: **Authorization To Pay Outside Counsel Invoice From Trust and Agency Account For Services Related To Jurek Post**

Kindly adopt a resolution authorizing the Comptroller and/or Finance Director to issue payment to Bengart & DeMarco, LLP in the amount of $1,035.00 from the established Trust and Agency Account (T2107.4001) for legal services performed relative to the Jurek Post.

Thank you.

MAP:nmb:hs
c: Timothy Koller, Deputy Town Clerk
(**Agenda Item : January 22, 2024**)
Daryl C. Bramer, Town Comptroller
Lynda Juul, Director of Finance

1/22/2024
Consent

FINANCIAL IMPACT:

T2107.4001 - $1,035.00

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 28505 **RESOLUTION 2024-72** **ADOPTED**

New Firefighter for Swormville Fire Company

New firefighter for the Swormville Fire Company lives in the Town of Amherst and resides within the Swormville Fire District.

Daniel Girzone
86 Bramhill Ct
East Amherst, NY 14051

1/22/2024
Consent

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

Swormville Fire Company

6971 Transit Rd
East Amherst, New York 14051
Phone: (716) 688-7055 **Fax:** (716) 688-4736

Clerk- Francina J Spoth
Town of Amherst
5583 Main St.
Williamsville, NY 14221

Dear, Francina Spoth

Please allow this letter to serve as notification that the following individual has joined the Swormville Fire Company as an active member. Please add their information to your records.

Daniel J Girzone
(Name)

86 Bramhill Ct.
(Address)

E. Amherst, NY 14051

The residency verification forms are enclosed. I can be reached at (716) 206-2540 with any questions.

Thank you for your assistance in this matter.

Sincerely,

Robert J Lind

Membership Committee

Attachment: img-116113540-0001 (RES-2024-72 : New Firefighter for Swormville Fire Company)

Swormville Fire Company

6971 Transit Rd
East Amherst, New York 14051
Phone: (716) 688-7055 **Fax:** (716) 688-4736

STATEMENT OF VOLLUNTEER FIRE COMPANY OFFICIAL

Daniel Girzano
(Name)

86 Bramhill Ct.
(Address)

E. Amherst, N.Y. 14051

The address of the applicant listed above is within the fire protection district or territory protected by such Fire Protection District to which he / she is applying, namely **Swormville Fire Company.** We have verified the applicant's residence address were applicable by examining their driver's license or other document such as a lease, utility bill, paystub, or other suitable document.

Robert J Lunch V.P.

Date: 1 / 16 / 24

Attachment: img-116113540-0001 (RES-2024-72 : New Firefighter for Swormville Fire Company)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
Initiated by: **Joanne A. Schultz**
Co-Sponsored by:

DOC ID: 28532 **RESOLUTION 2024-73** **ADOPTED**

Edmunds GovTech Tax Software Support Contract CRS #4545

Please authorize the Supervisor to sign the Annual Software & Support Agreement with Edmunds GovTech (CRS #4545) for the Tax Collection System subject to the contracting routing process. This agreement is valid from 1/1/24 -12/31/24.

1/22/2024
Consent

FINANCIAL IMPACT:

$8,004.15 A 1410 4000

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

edmunds GovTech

2024 MCSJ Software Support & License Agreement

To receive continued Application Software Support and MCSJ System upgrades from Edmunds GovTech (EGT), you must enter into this agreement.

1. Any defects in the EGT Application Software as determined by EGT will be corrected at no cost to the user, provided the said defect is not the result of misuse, operator error, or is beyond the original requirements of the system specifications.
2. EGT is responsible for providing software support under this agreement only for its proprietary application software. This includes all MCSJ licensed products. Support for third party products, i.e.; Microsoft Office, LICAARS, etc. are not covered under this agreement and all phone or on-site support is a billable service. Our minimum hourly rate is $150 with at least one-half hour billable.
3. EGT proprietary and user documentation, FAQs, helpful hints, video tutorials and such are for client use only and not to be distributed.
4. Standard telephone support will be available from 8:00am to 5:00 pm EST, Monday through Friday excluding holidays.
5. Each user of EGT MCSJ software is required to have a high-speed connection. EGT will provide support, enhancements and instruction for our application software via the internet. Lack of compliance that requires an onsite visit is billable at the rate of $ 150 per hour for each person and reasonable travel expenses.
6. EGT's liability, damages or remedy on any claim shall not exceed the original cost of the EGT MCSJ software system. In no event shall EGT be held liable for consequential, incidental, indirect, special, punitive or exemplary damages, for loss, damage or expense directly or indirectly arising from the client's inability to use our products.
7. No action arising from use of EGT's MCSJ software systems may be commenced more than 1 year after the basis for such claim could reasonably have been discovered.
8. EGT reserves the right to withdraw without penalty any EGT application software package from coverage at our sole discretion upon one-hundred-twenty (120) days' notice.
9. This agreement must be signed and returned by December 31, 2023 for continued support. The effective date of this agreement is January 1, 2024 through December 31, 2025.

Client Name: _____

Authorized Representative: _____ Date: _____
Signature

Printed Name: _____

Edmunds Representative: _____ Date: 12/4/2023

2024 Software maintenance
- Tax Collection - $8,004.15 - 01/01/2024-12/31/2024
- IPS - $25,511.85 - 02/01/2024-01/31/2025
- IPS Workflow Automation - $5,148.68 - 02/01/2024-01/31/2025
- IPS Web Portal - $3,858.75 - 02/01/2024-01/31/2025
- Clerk - $5,359.91 - 05/01/2024-04/30/2025
- Clerk Online Dog - $340.67- 05/01/2024-04/30/2025

301 Tilton Road, Northfield, NJ 08225
www.EdmundsGovTech.com | 609.645.7333 | AR@EdmundsGovTech.com

Attachment: 2024 Contract (RES-2024-73 : Edmunds GovTech Tax Software Support Contract CRS #4545)

INVOICE

Edmunds GovTech
301 Tilton Road
Northfield, NJ 08225

Thank you for your business!
Please contact us at
AR@Edmundsgovtech.com
with questions regarding this invoice.
Visit our support site
www.Edmundsgovtech.com

Invoice #: 24-IN186
Invoice Date: 11/01/20
Payment Terms: Net
Due Date: 12/31/20

Description: 2024 Softwar
Maintenanc

Attn: Accounts Payable
Amherst Town
5583 Main St.
Williamsville, NY 14221

QTY	SERVICE ID	DESCRIPTION	UNIT PRICE	AMOUNT	NOTES
1	3-RM-1253-5	Tax Collection & RPS - (01/01-12/31)	$8004.15	$8,004.15	Contract #: 22-1843-1

TOTAL:	$8,004.15
PAYMENTS/ CREDITS APPLIED:	$0.00
TOTAL AMOUNT DUE:	$8,004.15

Attachment: 2024 Invoice (RES-2024-73 : Edmunds GovTech Tax Software Support Contract CRS #4545)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Building/Building Maintenance
Initiated by: **Mark S. Berke**
Co-Sponsored by:

DOC ID: 28482 **RESOLUTION 2024-74** **ADOPTED**

2024 Building Permit Fee Schedule

Please adopt the proposed 2024 Building Permit Fee Schedule as attached. The proposed Fee Schedule includes a change to a number of fees throughout the schedule. The following fees have been added to the Fee Schedule:

1) Residential - Multiple Dwellings
    a. Fee will be determined by cost of construction in lieu of dwelling units.
2) Swimming Pools
    a. Fee for Above Ground Pool
    b. Fee for In-Ground Pool
3) Roofing
    a. Commercial Minimum Fee
4) Siding
    a. Commercial Minimum Fee
5) Certificates
    a. New Fee for Residential Certificate of Occupancy
    b. New Fee for Commercial Certificate of Occupancy
    c. New Fee for Certificate of Completion
    d. Updated Certificate of Occupancy
        i. No Changes to Building or Tenant Space
        ii. Change of Use
6) Fire Permit Fees
    a. New Fire Residential Solar Permit
    b. New Fire Residential Sprinkler Permit
    c. New Fire Emergency Radio Responder Permit
7) Electrical Permit Fees
    a. Low Voltage Permit
    b. Car Charging Stations Permit
8) Large Format printing for Electronic Plan Submission

1/22/2024
Consent

FINANCIAL IMPACT:

Revenue

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

Town of
AMHERST BUILDING DEPARTMENT
"Building Safety is No Accident"

2024 BUILDING PERMIT FEES

Fees are based on the cost of construction and shall be based on a value not less than the value determined using the most current Building Valuation Data Report published by ICC.

Application Fee A filing fee equal to one-half (1/2) of the permit fee shall be paid before the application are deemed complete. The filing fee is non-refundable.
The filing fee shall be a credit against the final permit fee.

Building Permit Fees		2024
Note: Building Permit Fees in the TNB District are reduced 50% effective 5/7/2012		
Residential Buildings		
Single dwellings		
1,000 sq. ft. or less floor area		$950.00
1,000 sq. ft. to 3,000 sq. ft. of floor area		$1,150.00
3,000 sq. ft. to 5,000 sq. ft. of floor area		$1,500.00
Over 5,000 sq. ft.		$2,000.00
2-family dwellings (per D.U.)		$1,000.00
Multiple dwellings (3 or more dwellings per building including Transient Occupancies)		
Base permit fee – includes 20 inspections		$500.00
Cost per $1,000		$18.00
Each additional inspection beyond 20		$75.00
Transient occupancy (includes hotels, motels, dormitories, sororities, fraternities, lodging houses and all other residential occupancies which do not qualify as self-contained D.U.'s:)		
Per sleeping unit		$350.00
Alterations, additions and repairs to Single and 2-family dwellings		
Up to $1,000.00 of cost		$100.00
For each $1,000.00 over $1,000.00 of cost		$9.00
Detached accessory buildings and structures (Single and 2-family dwellings)	Per sq. ft:	$0.50
	Minimum Fee:	$75.00
Alterations, additions, accessory structures and repairs to Multiple dwellings		
Base permit fee – includes 20 inspections		$500.00
Cost per $1,000		$18.00
Each additional inspection beyond 20		$75.00
Nonresidential buildings (includes buildings, additions, alterations, repairs and accessory structures)		
Base permit fee – includes 20 inspections		$500.00
Cost per $1,000		$18.00
Each additional inspection beyond 20		$75.00
Miscellaneous		
Demolition		
Up to 2,000 square feet of floor area		$350.00
Over 2,000 square feet of floor area		$600.00
Moving of buildings		
From one lot to another lot		$1,500.00
Moving a principal structure to a new location on the same lot		$1,500.00
Moving an accessory structure to a new location on the same lot		$250.00
Signs	Per sq. ft. of sign face area:	$5.00
Temporary Business 90 Day Sign:		$100.00
	Minimum Fee:	$100.00
Swimming pools		
Above Ground		$250.00
In-Ground		$450.00
Parking lot not included with a building permit	Per space:	$7.00
Minimum Fee:		$100.00

Attachment: PERMIT FEES_2024_Proposed_1-10-24 (RES-2024-74 : 2024 Building Permit Fee Schedule)

Proposed 1/10/2024

Town of
AMHERST BUILDING DEPARTMENT
"Building Safety is No Accident"

2024 BUILDING PERMIT FEES

Building Permit Fees	2024
Note: Building Permit Fees in the TNB District are reduced 50% effective 5/7/2012	
Tanks, per gallon	$0.09
Minimum Fee:	$150.00
Decks	
First $1,000.00 of cost	$80.00
Each additional $1,000.00 of cost	$10.00
Miscellaneous Structures - Portals, Chimneys, etc.	
First $1,000.00 of cost	$75.00
Each additional $1,000.00 of cost	$7.00
Roofing (Re-roof or tear off & replacement)	
Residential	$75.00
Commercial Per sq. ft:	$0.10
Commercial Minimum Fee	$150.00
Siding Replacement	
Residential	$50.00
Commercial Per sq. ft:	$0.05
Commercial Minimum Fee	$150.00
Fireplaces or stoves	$100.00
HVAC Equipment - (Furnaces, Boilers, Air-Conditioning and similar equipment) – Including Electrical Permit Fee	
Residential	
New or Replacement of Heating Equipment	$100.00
New Air-Conditioning Equipment	$100.00
Replacement of Air-Conditioning Equipment	$50.00
Nonresidential	
New or Replacement of Heating Equipment (per unit)	$300.00
New Air-Conditioning Equipment (per unit)	$150.00
Replacement of Air- Conditioning Equipment (per unit)	$150.00
Extra Inspections	
Each inspection in excess of two inspections for each required inspection	$100.00
NYS Fee for new buildings with trusses	$50.00
Floodplain Development Permit	
For the first acre or less:	$300.00
For each additional acre:	$150.00
Small Cell Wireless Permit	
Small Cell Antenna Installation – Includes Zoning Review/Building Permit and Electrical	$775.00
Small Cell Antenna Special Use Permit	$740.00
Certificate of Occupancy (CO) | Temporary Certificate of Occupancy (TCO) | Certificate of Completion (CC)	
Residential CO	$250.00
Residential TCO - Issuance is at the discretion of the Commissioner of Building	$250.00
Commercial CO	$500.00
Commercial TCO – Issuance is at the discretion of the Commissioner of Building	$500.00
Certificate of Completion	$250.00
Updated Certificate of Occupancy	
No Changes to Building or Tenant Space	$350.00
Change of Use	$500.00
PENALTY FEE	$200.00 min OR 2x Permit Fee (Whichever is greater)

Proposed 1/10/2024

Attachment: PERMIT FEES_2024_Proposed_1-10-24 (RES-2024-74 : 2024 Building Permit Fee Schedule)

Town of
AMHERST BUILDING DEPARTMENT
"Building Safety is No Accident"

2024 FIRE PERMIT FEES

Non-Residential Fire Protection Equipment - Includes Electrical Fees	
New Equipment	
Fire Alarm System < 5,000 SF	$250.00
5,000 – 10,000 SF	$400.00
> 10,000 SF	$600.00
Each story above or below	$200.00
Automatic Fire Extinguishing System < 5,000 SF	$250.00
5,000 – 10,000 SF	$400.00
> 10,000 SF	$600.00
Each story above or below	$200.00
Hood Extinguishing System (each)	$350.00
Fire Pump & Equipment	$400.00
Hood	$200.00
Alterations or Modifications to existing Fire Alarm/Smoke Detection system	
Fire Alarm/Smoke Detection System	
1-25 Devices	$150.00
26-50 Devices	$250.00
>50 Devices	$500.00
Each story above or below	$100.00
Automatic Fire Extinguishing System	
1-25 Devices	$150.00
26-50 Devices	$250.00
>50 Devices	$500.00
Each story above or below	$100.00
Hood Extinguishing system	$150.00
Fire Pumps & Equipment	$150.00
Fire Safety	
Operating Permits	
For activities and uses specified in the Building Construction Administrative Code	$150.00
Fire Prevention Permits	$150.00
Residential Solar Permit	$100.00
Residential Sprinkler Permit (if required)	$100.00
Emergency Radio Responder Permit	$500.00

Attachment: PERMIT FEES_2024_Proposed_1-10-24 (RES-2024-74 : 2024 Building Permit Fee Schedule)

Proposed 1/10/2024

Town of
AMHERST BUILDING DEPARTMENT
"Building Safety is No Accident"

2024 PLUMBING PERMIT FEES

Residential Buildings [new construction]	2024
1 family dwellings, 2-family dwellings, townhouses and condominiums	
A. For 1 to 2 bathrooms	$270.00
B. For 2-1/2 to 3-1/2 bathrooms	$340.00
C. For 4 or more bathrooms	$400.00
Sanitary sewer installations from street to house	$125.00
Storm sewer installations from street to house	$125.00
Multiple dwellings (3 or more dwelling units per structure),	
Apartments, garden apartments, hotels, motels, etc. per fixture	$75.00
Minimum fee:	$280.00
Sanitary sewer installation: for each sewer lateral exiting a building	$300.00
Storm sewer installation: for each building	$300.00
Waterline installation:	$300.00
Sanitary and storm sewer installation within a building when installed under slab-on-grade floor construction per 100 feet or fraction thereof:	$115.00
Nonresidential Structures, New Construction	
For each fixture per fixture	$75.00
Minimum fee:	$280.00
For sanitary sewer, storm sewer and waterline systems (outside of structure) Per 100 feet or fraction thereof	$115.00
Minimum fee:	$300.00
For sanitary sewer and storm sewer systems (inside of structures) when installed under slab-on-grade floor construction, per 100 feet or fraction thereof	$115.00
For each roof drain	$30.00
Alterations, additions and repairs to existing structures and systems & Misc. (all occupancies)	
Conversion from private sanitary system to public system	$225.00
Emergency Sump Pump Installation (in addition to primary sump pump system)	$75.00
Fixture installation or replacement without a roughing charge, per fixture	$30.00
Fixture installation or replacement which includes a roughing charge, per fixture.	$75.00
Minimum fee:	$75.00
Under-drain alteration, addition, repair or replacement	$150.00
Sanitary and storm sewer and waterline systems	$150.00
Sewer Tap	$175.00
Swimming pool installation	$100.00
Water Heater Replacement	$75.00
Waterline connection to lawn sprinkler installation	$95.00
Water-softening system	$75.00
Miscellaneous plumbing for items not specifically detailed in the schedule. The fee will be determined by the Commissioner of Building on the basis of actual costs to perform inspection and review services.	
Each inspection in excess of 2 inspections, for each required inspection	$100.00

[NOTE: For the purpose of computing plumbing permit fees a "fixture" shall be defined as a bathtub, sink, laundry tray, drinking fountain, dishwashing machine, lavatory, shower stall, urinal, water closet, hose bibb, wall hydrant, bidet, floor drain, garbage disposal, hot-water tank, boiler or any other item which is connected to a water supply, sanitary or storm sewer system.]

Attachment: PERMIT FEES_2024_Proposed_1-10-24 (RES-2024-74 : 2024 Building Permit Fee Schedule)

Proposed 1/10/2024

Town of
AMHERST BUILDING DEPARTMENT
"Building Safety is No Accident"

2024 ELECTRICAL PERMIT FEES

RESIDENTIAL BUILDINGS: (not including air conditioning or special equipment)			2024
Original electrical installation of a 1 or 2 family dwelling, including townhouses not exceeding 2,000 sq. ft. floor area, without air-conditioning or special equipment, per unit			$235.00
Original electrical installation of a 1 or 2 family dwelling, including townhouses in excess of 2,000 sq. ft. floor area, without air-conditioning or special equipment, per unit			$335.00
Multiple residences, per living unit			$300.00
Hotels and motels, sleeping rooms only, per room			$200.00
Alterations, repairs, modifications, additions, deletions, etc., to the electrical system includes detached accessory buildings			
1 to 10 outlets only			$40.00
11 to 20 outlets only			$75.00
Exceeding 20 outlets			$235.00
Service installation only			$105.00
1 to 10 outlets, including 1 service installation			$145.00
Exceeding 10 outlets, including 1 service installation			$180.00
Whole House Generator with or without generator panel			$100.00
Generator Panel for portable gasoline generator			$40.00
PV System			$250.00
PV Battery Back-Up - Residential			$100.00
Air conditioning and other special equipment, part of original installation, per system, device or equipment			$100.00
Swimming pool, aboveground			$75.00
Swimming pool, in-ground			$150.00
Smoke and/or Carbon Monoxide Detector installation (if no other permit issued)			$20.00
Commercial and industrial:			
Original installation			
100A	@208/240V = $500	@480V = $1,100	*SEE FEES AS LISTED TO THE LEFT*
200A	@208/240V = $500	@480V = $1,100	
300A	@208/240V = $750	@480V = $1,650	
400A	@208/240V = $1,000	@480V = $2,200	
600A	@208/240V = $1,500	@480V = $3,300	
800A	@208/240V = $2,000	@480V = $4,400	
1000A	@208/240V = $2,500	@480V = $5,500	
2000A	@208/240V = $5,000	@480V = $11,000	
3000A	@208/240V = $7,500	@480V = $16,500	
Hotels = (cost for interior as listed above) + ($55/sleeping room) + ($500)			
Shell ONLY Buildings			$500.00
Alterations, repairs, modifications, additions, deletions, etc., to the electrical system, including detached accessory buildings:			
1 to 10 fixtures or outlets only			$135.00
In excess of 10 fixtures or outlets		/each:	$2.00
Low Voltage			$50.00
Service 400A or less			$225.00
Service >400A			$425.00
Car Charging Stations		/each:	$200.00
PV Systems up to 25kW			$500.00
		Each additional kW:	$10.00
PV Battery Back-Up - Commercial			$300.00
Generator			$225.00
NOTE: The fees applicable to new electrical work shall be applicable to electrical work on, additions, alterations and repairs when the cost of alterations, additions or repairs made within any 6 month period exceeds 50% of the cost for the replacement of the existing electrical system at the beginning of that 6-month period.			
Signs			$105.00
All other electrical permit fees for work which is not stipulated in any of the items listed in this section shall be at a cost as determined by the Commissioner of Building with a minimum fee of			$50.00
Each inspection in excess of 2 inspections, for each required inspection			$100.00

Attachment: PERMIT FEES_2024_Proposed_1-10-24 (RES-2024-74 : 2024 Building Permit Fee Schedule)

Town of
AMHERST BUILDING DEPARTMENT
"Building Safety is No Accident"

2024 OTHER FEES

Storm Sewer Fees (from Chapter 158, Sewer Rates)

ARTICLE II, Stormwater Drainage District Nos. 4, 6 and 26 [Adopted 10-18-71 as L.L. No. 1-1971]

§ 158-6 Rates established. [Amended 9-29-75 by L.L. No. 1-1975]

All said owners shall be charged storm drainage rentals at the time of applying for a building permit according to the following schedules.

A. Residential structures. No charge for accessory structures.
   (1) Detached units: one hundred twenty dollars ($120.) each unit.
   (2) Attached units: eighty dollars ($80.) each unit.

B. All other structures. The charge shall be based upon land area covered by structures, including areas paved for parking, drives and other purposes.

Area (sq. ft.)	Charge (per sq. ft.)
First 5,000	$0.035 (minimum charge $70.00)
Next 5,000 (5,001 to 10,000)	.030
Next 15,000 (10,001 to 25,000)	.025
Next 25,000 (25,001 to 50,000)	.020
Next 25,000 (50,001 to 75,000)	.015
Next 25,000 (75,001 to 100,000)	.010
Next 100,000 (100,001 to 200,000)	.005
Area in excess of 200,000	No additional charge

C. Additions. No charge shall be imposed for additions to residential structures or paved areas in connection therewith. For additions to other types of structures and paved areas for parking, drives or other purposes in connection therewith, the charge shall be based upon the land area covered by the existing structures and paved area plus those to be constructed according to Subsection B less the amount attributable to the existing land area covered.

Sanitary Sewer Tap-in Fees (per § 160-69 & LL #3 1994)

For Sanitary Sewer Districts 1 & 16 $25.00 for each connection, plus $135.00 if the connection must be made by the Town.

Recreation and Open Space (from Chapter 155 Amended 2-23-1998 by L.L. No. 2-1998

Fees for Recreation and Open Space		
Use	Open Space	Recreation
Detached dwellings per unit		
Lot area 11,500 sq. ft. or larger	$230	$500
Lot area from 8,450 sq. ft. to 11,499 sq. ft.	$195	$350
Lot less than 8,450 sq. ft.	$130	$250
CR3A lots	$130	$350
Mobile homes	$195	$350
Attached dwellings per unit		
Senior citizen	$130	$65
Other	$130	$200
Industrial		
RD,ST,OB	$0.13 per sq. ft.	*
GI	$0.195 per sq. ft.	*
Commercial	$0.156 per sq. ft.	*
Community facilities	$0.104 per sq. ft.	*

NOTE: * The open space element of the fee is based on the gross floor area of each building on a lot. No recreation element of the fee is charged since these developments do not generate any demand for recreational facilities.

Attachment: PERMIT FEES_2024_Proposed_1-10-24 (RES-2024-74 : 2024 Building Permit Fee Schedule)

Town of
AMHERST BUILDING DEPARTMENT
"Building Safety is No Accident"

2024 OTHER FEES

Chapter 179 - Trees.

§ 179-17 Planting required; fees.

A. Each building permit for a building having frontage on a town highway, street or lane or having a side or rear lot line on a town highway, street or lane shall be subject to the requirement of planting trees. The number of trees to be planted shall be determined as detailed in the annual comprehensive Town Tree Plan.

B. At the time of filing the building permit, the Town Clerk shall collect the cost of planting the required trees, which cost shall be determined from time to time by Town Board resolution. The total fee collected shall be calculated on the basis of a fee for each multiple of forty (40) feet of street frontage abutting on front, side and rear property lines.
(Currently $600.00 per tree)

Refuse Fees for Residential New Builds

A. Garbage and Recycling Totes - **$65 each**

B. Residential Refuse Fee - **$243.83 per year**

   a. For any permit application submitted after September 30th of the given year, the applicant shall be responsible for two years of Residential Refuse fees at time of application.

Large Format Printing for Electronic Plan Submission

A. Large Format Printing - **$5 per sheet**

Attachment: PERMIT FEES_2024_Proposed_1-10-24 (RES-2024-74 : 2024 Building Permit Fee Schedule)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 28525 **RESOLUTION 2024-75** **ADOPTED**

Budget Transfers and Amendments

For January 22 2024 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 01/17/2024
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:***
N2238.4000 Parachute Credit- Contractual $3,200.00	N2221.4000 CDBG Rehab- Contractual $3,200.00

Requested per department.

BUDGET TRANSFERS - 2024

FROM:	***TO:***
A7253.4220 Ice Facility - Buildings & Grounds $1,633.52	A7253.9000 Interfund Transfer $1,633.52

To transfer funds for KP2220 Youth & Recreation Equipment purchase.

BUDGET AMENDMENTS - 2023

INCREASE:	***INCREASE:***
N2344.02785 Cheek HOME- PI $21,155.99	N2344.4000 Contractual $21,155.99
N2349.02785 Cheek Admin- PI $2,350.66	N2349.4003 10% Admin. $2,350.66

To recognize Community Development program income from 106 St. Felix, 35 Shanley, 238 Straley, 1328 Cleveland, Cheektowaga.

N2344.02785 Cheek HOME- PI $3,728.25	N2344.4000 Contractual $3,728.25
N2349.02785 Cheek Admin- PI $414.25	N2349.4003 10% Admin. $414.25

To recognize Community Development program income from 1168 Maryvale, Cheektowaga.

N2340.02785 AMH HOME- PI $22,174.20	N2340.4000 Contractual $22,174.20
N2354.02785 HOME Admin- PI $2,463.80	N2354.4003 10% Admin $2,463.80

To recognize Community Development program income from 17 Montbleu, Amherst.

BUDGET AMENDMENTS - 2024

INCREASE:	***INCREASE:***
KP2220.05031 Interfund Transfer $1,633.52	KP2220.2250 Truck, Tractors, Trailers $1,633.52

To increase budget for transfer from A7253.9000 into KP2220 Youth & Recreation Equipment purchase.

N2340.02401 AMH HOME- Interest Income $5,519.01	N2340.4000 Contractual $5,519.01

To recognize Community Development interest HOME income through Dec 2023.

N2323.02785 CDBG & VG- PI $170.00 N2323.4000 Contractual $170.00
To recognize Community Development program income from 169 Hillcrest, Amherst.

A7256.1000 Personal Services $27,225.00 A7256.04389 Federal Revenue $103,864.00
A7256.8030 FICA $2,764.00
A7256.4040 Travel $10,115.00
A7256.4010 Supplies $12,110.00
A7256.4110 Contractual $51,000.00
A7256.2600 Other $650.00
To set up budget for year 4 of the Task Force Grant CRS #4457.

N2344.02785 Cheek HOME- PI $138,758.77 N2344.4000 Contractual $138,758.77
N2349.02785 Cheek Admin- PI $15,417.64 N2349.4003 10% Admin. $15,417.64
N2344.02785 Cheek HOME- PI $63,000.00 N2344.4000 Contractual $63,000.00
To recognize Community Development program income from 89 Gardenvale, Cheektowaga.

N2344.02785 Cheek HOME- PI $145,884.37 N2344.4000 Contractual $145,884.37
N2349.02785 Cheek Admin- PI $16,209.38 N2349.4003 10% Admin. $16,209.38
N2344.02785 Cheek HOME- PI $39,000.00 N2344.4000 Contractual $39,000.00
To recognize Community Development program income from 36 Peachrow, Cheektowaga.

1/22/2024
Consent

FINANCIAL IMPACT:

See Descriptions.

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 28476 **RESOLUTION 2024-76** **ADOPTED**

Travel Request to the 2024 Annual New York Government Finance Officer's Association Conference

Please approve the travel request to the 2024 New York Government Finance Officer's Association (NYGFOA) Annual Conference from April 17 to April 19, 2024 for Daryl Bramer, CPA for a total estimated cost not to exceed $1,257.16.

Conference training provides core functional areas of governmental financial management and accounting and Continuing Professional Education (CPE) credits.

1/22/2024
Consent

FINANCIAL IMPACT:

NTE $1,257.16

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

TRAVEL EXPENSE APPROVAL / REIMBURSEMENT FORM

[ ] Travel in New York State and under $750 - Department Head Approval

[X] 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
Daryl Bramer	6606	Comptroller	716-631-7005

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
4/17/2024	4/19/2024	Albany, NY	NYGFOA Conference (Training)

Expenses	Estimated	Budget A/C #	Actual
Transportation:			
Mileage 574 @ $0.67	384.58	A1310.4050	
Tolls	24.08	A1310.4040	
Parking			
Local Transportation (bus/taxi)			
Plane/Rail/Bus			
Lodging:			
2 # nights @ $145.00	290.00	A1310.4040	
Meals:			
IRS Per Diem Per Day: $69.00			
1st & Last Day of Travel @ 75%	103.50	A1310.4040	
# Breakfasts @ $16			
# Lunches @ $17			
# Dinners @ $31			
# Incidentals @ $5	5.00	A1310.4040	
Registration/Conference Fee	250.00	A1310.4120	
Other			
Subtotal	1,057.16		N/A
Contingency - 10% of subtotal or $200	200.00		N/A
TOTAL	1,257.16		

Request Approved By:

Department Head Signature

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 - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

NEW YORK GOVERNMENT FINANCE OFFICERS' ASSOCIATION

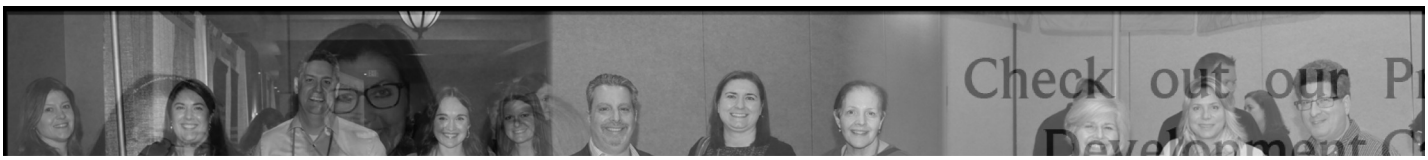
NYGFOA

Responsible | Knowledgeable | Accountable

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CALENDAR



2024 ANNUAL CONFERENCE OVERVIEW

ANNUAL 2024 CONFERENCE

APRIL 17-19

ALBANY MARRIOTT, ALBANY

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

The NYGFOA Annual Conference is New York State's premier event for government finance professionals! Interact with over 600 finance professionals from all levels of state and local government as well as the private sector. Commissioners, comptrollers, directors of finance, financial analysts, treasurers, clerks, supervisors, CFOs, accountants, budget directors, business managers, cash managers, council members, supervisors, and others will be in attendance.

PRE-CONFERENCE REGISTRATION

ANNUAL CONFERENCE REGISTRATION

Registration & Fees

- Registration for the Pre-Conference sessions and the Annual Conference is open to all persons interested in government finance.
- The Annual Conference and Pre-Conference are separate registrations and are accessible via the different links provided below.
- **Click here** to download a hard copy of the conference registration.

Annual Conference Rates *Full schedule below*	Member Rate	Non-Member Rate (gov)	Non-Member Rate (priv)
Early Bird (Ends 2/16/24)	$250	$345	$440
Regular Rate (Begins 2/17/24)	$275	$370	$465

Early Bird Pre-Conference Rates (Early Bird Ends 2/16/24) *Full schedule below*	Member Rate	Non-Member Rate
GASB Update: The Year in Review (Virtual 3/20)	$100	$200
GASB Update: Current Projects and Technical Agenda (Virtual 3/27)	$100	$200
Ethics and Professional Conduct for NYS CPAs (4/17)	$120	$240
Multi-Year Financial Planning - A Hands-On Approach (4/17)	$100	$200
GFOA Distinguished Budgeting Award Roundtable (4/17)	$100	$200
Leadership Workshop (4/17)	$100	$200

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

Regular Pre-Conference Rates (Regular Rate Begins 2/17/24) *Full schedule below*	Member Rate	Non-Member Rate
GASB Update: The Year in Review (Virtual 3/20)	$125	$250
GASB Update: Current Projects and Technical Agenda (Virtual 3/27)	$125	$250
Ethics and Professional Conduct for NYS CPAs (4/17)	$145	$290
Multi-Year Financial Planning - A Hands-On Approach (4/17)	$125	$250
GFOA Distinguished Budgeting Award Roundtable (4/17)	$125	$250
Leadership Workshop (4/17)	$125	$250

CPE & GFI Credits

- Pre-Conference (Virtual and In-Person): Earn up to 26 CPE & GFI credits.
- Annual Conference: Earn up to 11 CPE & GFI credits.
- Choose between 20 different sessions on topics related to government finance with one conference registration.
- You must have your name badge scanned at the completion of the sessions to receive credit.

Conference App

The Conference App will be back again in 2024. It will be accessible on smartphones as well as have a desktop feature on computers, laptops, and tablets. With it, you will be able to access your session details including PowerPoint slide decks, surveys, important information about exhibitors, sponsors, speakers, and more! You can also connect with other conference attendees, schedule meetings, and post on the internal social wall. Instructions on downloading the Conference App will be sent out in April 2024.

Meals

- In-person Pre-Conference sessions include lunch and refreshment breaks.
- Annual Conference registration includes two breakfasts (Thurs/Fri), several refreshment breaks, one lunch (Thurs), two receptions, one dinner (Thurs) and Thursday evening party/entertainment.
- Only registered attendees with name badges are permitted to participate in any of the conference activities, including sessions and meals.
- Please include your dietary restrictions in the field provided when registering for the Conference.

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

ANNUAL CONFERENCE SCHEDULE
(pre-conference schedule below)

	Wednesday, April 17, 2024
6:00 - 7:30 pm	Welcome Reception
	Thursday, April 18, 2024
7:30 - 8:30 am	Breakfast
8:45 - 10:20 am	- Association Annual Business Meeting and Keynote Presentation (Larry Weaver - Bringing Accounting and Humor Together!)
10:20 - 10:40 am	Coffee Break: Meet the Exhibitors
10:45 - 11:30 am	TBA
11:45 - 12:50 pm	Lunch
1:00 - 1:50 pm	Concurrent Bank #1
	- Understanding SEQRA Requirements When Bonding
	- GASB 96: Getting Comfortable with SBITAs
12:45 - 2:00 pm	Concurrent Bank #1A
	- Managing Health Care Costs Without Union Negotiation
2:10 - 3:00 pm	Concurrent Bank #2
	- Grant Accounting - A Primer
	- Cybersecurity - The Hackers Keep Coming
	- State Retirement System Update
3:00 - 3:30 pm	Afternoon Ice Cream & Coffee Break: Meet the Exhibitors
3:30 - 4:20 pm	Concurrent Bank #3
	- ARPA Closeout - Gear Up for 12/31/24
	- Attracting and Retaining Public Finance Talent
3:30 - 4:45 pm	Concurrent Bank #3A
	- Bond Rating Agency Update (Panel Presentation)

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

4:40 - 5:30 pm	Concurrent Bank #4
	- Politics in Budgeting - Negotiating the Waters
	- AI and its Future in the Public Sector
6:00 - 6:45 pm	Cocktail Reception Sponsored by Albany Marriott
6:45 - 8:00 pm	Banquet Dinner and GFI Graduation Ceremony
8:30 - 10:30 pm	Game Night: Scholarship Fundraiser
	Friday, April 19, 2024
7:15 - 8:15 am	Breakfast
8:30 - 9:20 am	Concurrent Bank #5
	- Unlocking Value from Publicly Owned Real Estate
	- Creating a Key Performance Measurement Dashboard
8:00 - 9:15 am	Concurrent Bank #5A
	- All About the New Annual Financial Report (and avoiding errors!)
9:40 - 10:30 am	Concurrent Bank #6
	- Debt Disclosure Updates
	- Bidding and Procurement Best Practices
9:30 - 10:45 am	Concurrent Bank #6A
	- The Role of HSAs, FSAs, HRAs, and OPEB
10:30 - 11:00 am	Coffee Break: Meet the Exhibitors
11:00 - 12:15 pm	- Washington Update - What You Need to Know
12:15 pm	Conference Concludes

Program subject to change

Registration for Annual Conference

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

PRE-CONFERENCE SCHEDULE

	March 2024 (Virtual via Zoom)
March 20, 2024 (10:00 - 12:00 pm)	GASB Update: The Year in Review
March 27, 2024 **(10:00 - 12:00 pm)**	GASB Update: Current Projects and Technical Agenda
	Wednesday, April 17, 2024 (In-person)
8:00 - 12:00 pm	Ethics and Professional Conduct for NYS CPAs
10:00 - 11:40 am	Multi-Year Financial Planning - A Hands-On Approach
1:00 - 2:40 pm	GFOA Distinguished Budgeting Award Roundtable
3:00 - 4:40 pm	Leadership Workshop

Program subject to change

Registration for Pre-Conference Sessions

ANNUAL CONFERENCE OVERVIEW

ANNUAL CONFERENCE REGISTRATION

PRE-CONFERENCE REGISTRATION

ANNUAL CONFERENCE SESSION DESCRIPTIONS

PRE-CONFERENCE SESSION DESCRIPTIONS

CURRENT SPONSORS & EXHIBITORS

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

HOTEL INFORMATION

SCHOLARSHIP INFORMATION

KEYNOTE

SPONSORSHIP INFORMATION

EXHIBITOR INFORMATION

POLICIES: CANCELLATION, EARLY BIRD, & MORE

New York State Government Finance Officers' Association

CONTACT US

3 Pine West Plaza, Suite 308, Albany, NY 12205
info@nygfoa.org | 518.465.1512 | 518.434.4640

Home | Calendar

Website design & development by **ADG Creative**, creative division of **ADG**

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

NEW YORK GOVERNMENT FINANCE OFFICERS' ASSOCIATION

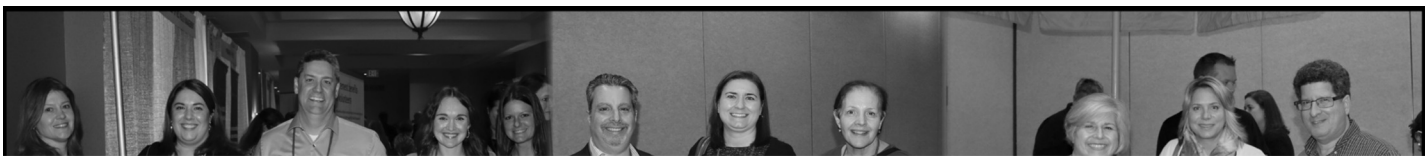
NYGFOA

Responsible | Knowledgeable | Accountable

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MEMBER PORTAL

CALENDAR



ROOM BLOCK INFORMATION

Albany Marriott Room Block

Hotels Near Albany Marriott-- NYGFOA does not have a room block with the below hotels

Fairfield Inn & Suites
Home2 Suites
Crowne Plaza- Desmond

Conference site

$145 per night

Room Block Link

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

Reserve by **March 6, 2023. DO NOT DELAY.** Group blocks fill quickly-- well before the cutoff date. Reservations made after March 6th will be subject to availability.

Hotel Group Rates for Registered Conference Attendees Only. Reservations that do not have a corresponding conference registration will be removed from the group block before the start of the conference.

ANNUAL CONFERENCE OVERVIEW

ANNUAL CONFERENCE REGISTRATION

PRE-CONFERENCE REGISTRATION

ANNUAL CONFERENCE SESSION DESCRIPTIONS

PRE-CONFERENCE SESSION DESCRIPTIONS

CURRENT SPONSORS & EXHIBITORS

HOTEL INFORMATION

SCHOLARSHIP INFORMATION

KEYNOTE

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Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

POLICIES: CANCELLATION, EARLY BIRD, & MORE

Attachment: Travel - NYGFOA Annual Conference (RES-2024-76 : Travel Request to the 2024 Annual New York Government Finance Officer's

New York State Government Finance Officers' Association

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Website design & development by **ADG Creative**, creative division of **ADG**

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 28516 **RESOLUTION 2024-77** **ADOPTED**

Tyler Technologies (MUNIS) Licensing and Support Agreement CRS #4521

Please approve the annual licensing and data base support agreement that covers general ledger, budgeting, accounts payable, MUNIS Office, payroll, purchase orders, Tyler Forms processing, GUI and Tyler system management services support for MUNIS for the period 1/1/2024 - 12/31/2024. The annual cost is $91,132.21.

Contract #4521 has successfully completed the contract routing process.

1/22/2024
Consent

FINANCIAL IMPACT:

$91,132.21

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

tyler technologies

Remittance:
Tyler Technologies, Inc
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

Invoice

Invoice No	Date	Page
045-446479	12/01/2023	1 of 1

Questions:
Tyler Technologies - ERP & Schools
Phone: 1-800-772-2260 Press 2, then 1
Email: ar@tylertech.com

Bill To: TOWN OF AMHERST
ATTN: MICHELLE BELLECOSE
5583 MAIN STREET
WILLIAMSVILLE, NY 14221

Ship To: TOWN OF AMHERST
ATTN: MICHELLE BELLECOSE
5583 MAIN STREET
WILLIAMSVILLE, NY 14221

Cust No.-BillTo-ShipTo	Ord No	PO Number	Currency	Terms	Due Date
1010 - MAIN - MAIN	200816		USD	NET30	12/31/2023

Date	Description	Units	Rate	Extended Pri
Contract No.: AMHERST, NY				
	SUPPORT & UPDATE LICENSING - ACCTG/GL/BUDGET/AP	1	33,633.20	33,633.2
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	SUPPORT & UPDATE LICENSING - MUNIS OFFICE	1	6,936.87	6,936.8
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	SUPPORT & UPDATE LICENSING - PAYROLL	1	13,873.69	13,873.6
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	SUPPORT & UPDATE LICENSING - PURCHASE ORDERS	1	10,090.14	10,090.1
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	TYLER FORM PROCESSING SUPPORT	1	5,839.66	5,839.6
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	GUI SUPPORT	30	60.00	1,800.0
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	TYLER SYSTEM MANAGEMENT SERVICES SUPPORT	1	18,958.65	18,958.6
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			

RECEIVED
DEC 05 2023
TOWN OF AMHERST
COMPTROLLER'S DEPT.

****ATTENTION****
Order your checks and forms from Tyler Business Forms at 877-749-2090 or tylerbusinessforms.com to guarantee 100% compliance with your software.

Subtotal	91,132.21
Sales Tax	$0.00
Invoice Total	91,132.21

Attachment: 2024 Contract Tyler Technologies CRS# 4521 (RES-2024-77 : Tyler Technologies (MUNIS) Licensing and Support Agreement CRS

MAINTENANCE SERVICES ADDENDUM

This maintenance services addendum ("Addendum") is made this 3rd day of January, 2023 by and between Tyler Technologies, Inc. with offices at One Tyler Drive, Yarmouth, Maine 04096 ("Tyler") and the Town of Amherst, with offices at 5583 Main Street, Williamsville, New York 14221 ("Client").

WHEREAS, Tyler and Client are parties to an original agreement dated December 23, 1992 ("Agreement"); and

WHEREAS, Tyler and Client desire to renew the maintenance services term under the Agreement;

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, Tyler and Client agree as follows:

1. Tyler shall provide maintenance services to Client, as specified in the Agreement and the support call process attached hereto as Exhibit 1, during the period from January 1, 2024 to December 31, 2024.

2. Client shall remit to Tyler maintenance services fees in the amount of $91,132.21, as detailed in the invoice attached hereto as Exhibit 2.

3. This Addendum shall be governed by and construed in accordance with the terms and conditions of the Agreement, as amended.

4. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the dates set forth below.

Tyler Technologies, Inc.	Town of Amherst
By: _____	By: _____
Name: Robert Kennedy-Jensen	Name: _____
Title: Group General Counsel	Title: _____
Date: 1/3/24	Date: _____

Attachment: 2024 Contract Tyler Technologies CRS# 4521 (RES-2024-77 : Tyler Technologies (MUNIS) Licensing and Support Agreement CRS

Exhibit 1

Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support for authorized users*:

(1) On-line submission (portal) – for less urgent and functionality-based questions, users may create support incidents through the Tyler Customer Portal available at the Tyler Technologies website. A built-in Answer Panel provides users with resolutions to most "how-to" and configuration-based questions through a simplified search interface with machine learning, potentially eliminating the need to submit the support case.
(2) Email – for less urgent situations, users may submit emails directly to the software support group.
(3) Telephone – for urgent or complex questions, users receive toll-free, telephone software support.

** Channel availability may be limited for certain applications.*

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

(1) Tyler Website – www.tylertech.com – for accessing client tools, documentation, and other information including support contact information.
(2) Tyler Search -a knowledge based search engine that lets you search multiple sources simultaneously to find the answers you need, 24x7.
(3) Tyler Community –provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
(4) Tyler University – online training courses on Tyler products.

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Tyler's holiday schedule is outlined below. There will be no support coverage on these days.

New Year's Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day
Labor Day	

For support teams that provide after-hours service, we will provide you with procedures for contacting support staff after normal business hours for reporting Priority Level 1 Defects only. Upon receipt of such a Defect notification, we will use commercially reasonable efforts to meet the resolution targets set forth below.

We will also make commercially reasonable efforts to be available for one pre-scheduled Saturday of each month to assist your IT staff with applying patches and release upgrades, as well as consulting with them on server maintenance and configuration of the Tyler Software environment.

Incident Handling

Incident Tracking

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique case

Attachment: 2024 Contract Tyler Technologies CRS# 4521 (RES-2024-77 : Tyler Technologies (MUNIS) Licensing and Support Agreement CRS

number. This system tracks the history of each incident. The case number is used to track and reference open issues when clients contact support. Clients may track incidents, using the case number, through Tyler's Customer Portal or by calling software support directly.

Incident Priority

Each incident is assigned a priority level, which corresponds to the Client's needs. Tyler and the Client will reasonably set the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the Client towards clearly understanding and communicating the importance of the issue and to describe generally expected response and resolution targets in the production environment only.

References to a "confirmed support incident" mean that Tyler and the Client have successfully validated the reported Defect/support incident.

Priority Level	Characteristics of Support Incident	Resolution Targets
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the Client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.

Attachment: 2024 Contract Tyler Technologies CRS# 4521 (RES-2024-77 : Tyler Technologies (MUNIS) Licensing and Support Agreement CRS

Priority Level	Characteristics of Support Incident	Resolution Targets*
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

**Response and Resolution Targets may differ by product or business need*

Incident Escalation

If Tyler is unable to resolve any priority level 1 or 2 defect as listed above or the priority of an issue has elevated since initiation, you may escalate the incident to the appropriate resource, as outlined by each product support team. The corresponding resource will meet with you and any Tyler staff to establish a mutually agreeable plan for addressing the defect.

Remote Support Tool

Some support calls may require further analysis of the Client's database, processes or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Tyler's support team must have the ability to quickly connect to the Client's system and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.

Attachment: 2024 Contract Tyler Technologies CRS# 4521 (RES-2024-77 : Tyler Technologies (MUNIS) Licensing and Support Agreement CRS

Exhibit 2

2024 Invoice

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INVOICE FOLLOWS ON NEXT PAGE

Attachment: 2024 Contract Tyler Technologies CRS# 4521 (RES-2024-77 : Tyler Technologies (MUNIS) Licensing and Support Agreement CRS

tyler technologies

Remittance:
Tyler Technologies, Inc
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

Invoice

Invoice No	Date	Page
045-446479	12/01/2023	1 of 1

Questions:
Tyler Technologies - ERP & Schools
Phone: 1-800-772-2260 Press 2, then 1
Email: ar@tylertech.com

Bill To: TOWN OF AMHERST
ATTN: MICHELLE BELLECOSE
5583 MAIN STREET
WILLIAMSVILLE, NY 14221

Ship To: TOWN OF AMHERST
ATTN: MICHELLE BELLECOSE
5583 MAIN STREET
WILLIAMSVILLE, NY 14221

Cust No.-BillTo-ShipTo	Ord No	PO Number	Currency	Terms	Due Date
1010 - MAIN - MAIN	200816		USD	NET30	12/31/2023

Date	Description	Units	Rate	Extended Pric
Contract No.: AMHERST, NY				
	SUPPORT & UPDATE LICENSING - ACCTG/GL/BUDGET/AP	1	33,633.20	33,633.20
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	SUPPORT & UPDATE LICENSING - MUNIS OFFICE	1	6,936.87	6,936.87
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	SUPPORT & UPDATE LICENSING - PAYROLL	1	13,873.69	13,873.69
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	SUPPORT & UPDATE LICENSING - PURCHASE ORDERS	1	10,090.14	10,090.14
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	TYLER FORM PROCESSING SUPPORT	1	5,839.66	5,839.66
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	GUI SUPPORT	30	60.00	1,800.00
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			
	TYLER SYSTEM MANAGEMENT SERVICES SUPPORT	1	18,958.65	18,958.65
	Maintenance: Start: 01/Jan/2024, End: 31/Dec/2024			

RECEIVED
DEC 05 2023
TOWN OF AMHERST
COMPTROLLER'S DEPT.

****ATTENTION****
Order your checks and forms from Tyler Business Forms at 877-749-2090 or tylerbusinessforms.com to guarantee 100% compliance with your software.

Subtotal	91,132.21
Sales Tax	$0.00
Invoice Total	91,132.21

Attachment: 2024 Contract Tyler Technologies CRS# 4521 (RES-2024-77 : Tyler Technologies (MUNIS) Licensing and Support Agreement CRS

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 28524 **RESOLUTION 2024-78** **ADOPTED**

Formax Pressure Sealer with Integrated Conveyor Purchase CRS #4533

Please approve the purchase of Formax Pressure Sealer with Integrated Conveyor FD1506plus (payroll and accounts payable checks, direct deposit advices, W2's, and 1099's folding machine) and annual maintenance agreement under New York State Office of General Services Contract PM70059.

Contract #4533 has successfully completed the contract routing system.

1/22/2024
Consent

FINANCIAL IMPACT:

$6,831.00 FD1506Plus Formax Pressure Sealer

$680.00 Annual Maintenance

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

AGREEMENT

Let this document stand as an agreement between Formax LLC and the Town of Amherst, to participate in the Information Technology Umbrella Contract – Manufacturer Based with Formax LLC thru value added reseller JSA Professional Business Technology, Inc. under the New York State Office of General Services Contract PM70059 for the purchase of a Formax Pressure Sealer model FD-1506plus and annual maintenance.

Agreed to and Accepted by:

FORMAX, LLC in care of
JSA PROFESSIONAL BUSINESS TECHNOLOGY, INC.

By: _____
Signature

John V. Arena
Printed name

General Manager
Title

Date: December 27, 2023

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: Formax Pressure Sealer with Integrated Conveyor and Annual Maintenance CRS# 4533 (RES-2024-78 : Formax Pressure Sealer

December 18, 2023

PRESENTED TO:
THE TOWN OF AMHERST

DARYL BRAMER

From: John Arena
Professional Business Technology
716-803-6013 Ext. 202

Attachment: Formax Pressure Sealer with Integrated Conveyor and Annual Maintenance

Formax Pressure Sealer – FD1506





Formax Pressure Sealer – FD1506 plus





Formax Pressure Sealer – Pricing

Model	Description	Price
FD-1506	Mid-Volume Desktop Pressure Sealer Up to 100 S.P.M.	$5,205.00
FD-1506plus	Mid-Volume Desktop Pressure Sealer Up to 100 S.P.M. with integrated conveyor	$6,831.00

Annual Maintenance FD1506 - $500.00
Annual Maintenance FD1506plus - $680.00

Formax NYS Contract Terms & Conditions

NEW YORK STATE CONTRACT - TERMS AND CONDITIONS

Formax offers a program for dealers selling to **New York State Agencies**. This program allows dealers to sell Formax products to New York State Agencies at an agreed-upon price while avoiding the traditional bid process.

New York State Contract Group Number: 73600 -Information Technology Umbrella Contract
Classification Code: 44
Award Number: 22802
OGS Contract Number: PM70059
Contract Period: June 13, 2023 - November 29, 2025
Procurement Card: Accepts orders up to $15,000 on New York State Procurement Cards.
Freight Charge: Included in New York State Pricing.

Program Outline:

* New York State Agency issues a purchase order made out to: Formax "in care of" your company name. Dealer faxes the purchase order to Formax.
* Formax will then ship the products to the customer or to your company
* Formax will invoice the customer for the product ordered.
* Once the product is installed and invoice has been paid, Formax will either issue a credit memo or a check for your commission on the sale.

Purchase Orders - Formax will not accept verbal purchase orders. All purchase orders must be e-mailed, faxed, or mailed. Machine orders can be e-mailed to: **machine-orders@formax.com**. Parts orders can be e-mailed to: **parts@formax.com**.

Minimum Order - Formax has a $15.00 minimum billing policy.

Prices - FOB shipping point.

Destination Inspection - Merchandise should be fully inspected upon receipt for any evidence of damage or shortage before acceptance. If damage or shortage occurs, refuse acceptance until a transportation agent endorses extent of damage or shortage. Notify your Formax Representative of the damage or shortage. If external appearance has not indicated damage, but upon opening, the contents are found damaged, unpacking should be stopped and the inspector of the delivering carrier immediately notified. Transportation agent notification must be made within 10 days of delivery to your premises. All cartons should be saved for inspection. The inspector should indicate on the delivery receipt the exact conditions of the contents. Notify your Formax Representative of the damage. Your cooperation in handling damaged shipments will help us to promptly replace the damaged product, and protect our mutual rights against the transportation carrier.

Returns - Any equipment returns and or special pricing must be confirmed and authorized in advance and in writing by Formax management. Authorized returns are subject to a 20% restocking charge plus freight and handling charges.

Warranty -

Paper Handling Equipment: 6 months parts
Cut-True 29A,29H, & 31H: 12 months parts
Shredders: Lifetime limited warranty on Deskside and Office cutting heads. Lifetime limited warranty on Industrial cutting heads (parts only). 1-year warranty on Specialty cutting heads (parts only). 90-day labor and 1-year parts warranty on High Security cutting heads. 1-year warranty on all other parts for all models.

Terms, conditions and prices are subject to change without notice

PB TECHNOLOGY
MAINTENANCE AGREEMENT

PROFESSIONAL
BUSINESS TECHNOLOGY
338 HARRIS HILL ROAD
SUITE 204
WILLIAMSVILLE, NY
14221
PHONE-716-803-6016
FAX-716-200-4025

Town of Amherst
5583 Main St.
Williamsville, NY 14221

Effective Dates
Starts -
Ends -

TYPE OR MODEL	SERIAL NUMBER	Unit Price	Total
FORMAX PRESSURE SEALER FD1506PLUS		$680.00	$680.00
	MAINTENANCE CONTRACT INCLUDES ALL PARTS & LABOR		
	ACCEPTED: PROFESSIONAL BUSINESS TECHNOLOGY		$680.00

PB TECH SIGNATURE _____

CUSTOMER SIGNATURE _____

Attachment: Formax Pressure Sealer with Integrated Conveyor and Annual Maintenance CRS# 4533 (RES-2024-78 : Formax Pressure Sealer

TERMS AND CONDITIONS

Professional Business Technology agrees to provide maintenance and repair service on the equipment listed in this agreement at the installation specified. Repair will be scheduled by either written or verbal notice to our company. The rates for this agreement are for equipment regularly during a normal eight hour shift per day, Monday through Friday. If the equipment is operated in excess of eight hours a day on a regular basis, the annual rate shall be adjusted to the current rate for a multi-shift operation.

Service is performed at the request of the customer, and which commences outside of Professional Business Technology "normal" working hours, or exceeds more than one hour past the close of a normal Professional Business Technology work day, customer will be charged at our published hourly rate for service time and expense.

Professional Business Technology will replace at its own expense such parts which have become defective due to normal wear and tear. Materials or items consumed as a part of the machine process are excluded, notably shredder heads, knife or trimmer blades, rubber rollers, wetter felts, brushes and sponges, drums, toner, developer, fuses, membrane key pads etc. unless otherwise noted, (this list of consumable items are non-inclusive). Not included as normal wear and tear is repairs made necessary due to negligence, misuse, external forces, loss of electrical power, power fluctuation, non Professional Business Technology service or the use of supplies not meeting our specifications.

The customer will be charged for any servicing or replacement of parts required as a result of relocation, damage due to causes other than normal usage, interference by any person other than Professional Business Technology authorized representatives or use of supplies and /or accessories not approved by Professional Business Technology.

Professional Business Technology will not accept liability to carry out adjustments and modifications to the equipment free of charge which in any way alters the original specifications of the equipment.

If service is not included in the lease agreement. The agreement fee will be paid annually in advance. Charges stated are exclusive of sales tax then in force and are not refundable.

If service is not included in the lease agreement. The agreement shall remain in force for a period of one year, and thereafter, may continue from year to year unless terminated by either party with 30 day written notice to the other party.

Professional Business Technology reserves the right to charge the customer for repeat (more than 3) visits to the location for operator adjustments. This is based on the premise the customer's operators were trained by Professional Business Technology at the time of installation or subsequently have been instructed by Professional Business Technology. That determination will be made by Professional Business Technology and the charge will be the current hourly rate (1 hour minimum). It is the customers responsibility to have its personnel available for training at the time of installation or shortly thereafter.

If there is a warranty and that warranty period has expired. Additional operator training is available to the customer for the cost of the current hourly rate (1 hour minimum). Additional is defined as training necessary after the initial operator training performed at installation. For example, employee turnover resulting in new, untrained and/or used by other departments previously untrained.

Any equipment which is out of the current warranty period can only be accepted for a maintenance contract after a Professional Business Technology has carried out an inspection of the said equipment, and if necessary, carried out adjustments, repairs, reconditioning at the customer's request and expense.

Attachment: Formax Pressure Sealer with Integrated Conveyor and Annual Maintenance CRS# 4533 (RES-2024-78 : Formax Pressure Sealer

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28348 **RESOLUTION 2024-79** **ADOPTED**

Award Bid #2023053 Miscellaneous Small Equipment and Parts - CRS #4497, 4498, 4499, 4500 & 4501

WHEREAS, bids were received on November 16, 2023 for Bid #2023053 Miscellaneous Small Equipment and Parts; and

WHEREAS, seven (7) bids were received 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 as per the attached bid tabulation form to Admar Supply, Niagara Lawn & Garden Equipment, Land Pro Equipment, Fleet Maintenance and MTE Equipment Solutions; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contracts with Admar Supply, Niagara Lawn & Garden Equipment, Land Pro Equipment, Fleet Maintenance and MTE Equipment Solutions; 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 a contract for some of the items included in this bid.

1/22/2024
Consent

FINANCIAL IMPACT:

Town Wide; Various Accounts; Amount TBD

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

Bid #2023053 Miscellaneous Small Equipment and Parts

	Low Bidder	Admar Supply Co., Inc.				Niagara Lawn & Garden Equip., Inc.				Land Pro Equipment				Fleet Maintenance, Inc.				MTE Equipment Solutions, Inc.				Niagara Frontier Equipment Sales Inc.				Evans Ace Hardware & Building Supplies			
		Equipment		Parts		Equipment		Parts		Equipment		Parts		Equipment		Parts		Equipment		Parts		Equipment		Parts		Equipment		Parts	
Item #		**Primary:** List Minus %	**Secondary:** Cost Plus %	**Primary** List Minus %	**Secondary:** Cost Plus %	**Primary:** List Minus %	**Secondary:** Cost Plus %	**Primary** List Minus %	**Secondary** : Cost Plus %	**Primary:** List Minus %	**Secondary:** Cost Plus %	**Primary** List Minus %	**Secondary:** Cost Plus %	**Primary:** List Minus %	**Secondary:** Cost Plus %	**Primary** List Minus %	**Secondary** : Cost Plus %	**Primary:** List Minus %	**Secondary:** Cost Plus %	**Primary** List Minus %	**Secondary** : Cost Plus %	**Primary:** List Minus %	**Secondary:** Cost Plus %	**Primary** List Minus %	**Secondary** : Cost Plus %	**Primary:** List Minus %	**Secondary:** Cost Plus %	**Primary** List Minus %	**Secondary** : Cost Plus %
	Equipment Manufacturer																												
1	Alamo			N/A	N/A			N/A	N/A	Per Current Sourcewell Contract		N/A	N/A			N/A	N/A			N/A	N/A	2%		N/A	N/A			N/A	N/A
2	Alitec																												
3	Argo																												
4	Bandit																					2%							
5	Blue Giant																												
6	Buffalo Turbine			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A
7	Cub Cadet					27%	7%	20%	20%																				
8	Cummins																15%												
9	Echo																												
10	Gehl		10%																										
11	Genie																					2%							
12	Hamm																												
13	Harley Rake			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A	2%		N/A	N/A			N/A	N/A
14	Husqvarna		12%																										
15	Ingersoll Rand																												
16	Jacobsen Mowers			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A	10%		N/A	N/A			N/A	N/A			N/A	N/A
17	John Deere									Per Current NYS OGS Contract			30%																
18	Kut Kwik																												
19	Land Pride																												
20	Max																												
21	Mudd-Ox																												
22	New Holland																					2%							
23	Scag					22%	7%	20%	20%													2%							
24	Sky Jack		10%																										
25	Stihl	15%				25%	7%	20%	20%																	20%		20%	
26	Sullair		10%																										
27	TCM																												
28	Tennant																												
29	Tiger			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A			N/A	N/A
30	Troy-Bilt																												
31	T&U Fork Truck																												
32	Other – Please List:	Kubota skidsteers & Excavators -12%				Hustler Equipment and Parts -								Allison Trans Parts: Cost + 20%				Giant: Equip.: List - 10% Parts:Cost + 2%											
		Kubota compact loaders -8%				Equipment: List - 27%/Cost + 7%												Smithco: Equip.: List - 20% Parts: Cost + 2%											
		Plus Freight & Fees for Kubota				Parts: List - 20%/Cost + 20%												Cushman: Equip.: List - 10% Parts: Cost + 2%											
	Service: Maintenance & Repair																												
33	Labor Rate per Hour @ vendor site	No Bid				$140.00				No Bid				$175.00				$125.00				$155.00				No Bid			
34	Labor Rate per Hour @ Town of Amherst facility	No Bid				$210.00								$175.00				$150.00				$155.00							
35	Mileage charge for pickup & delivery of equipment (if needed)	No Bid				$175.00								$2.00 - Also listed Road Serice Call Fee $150								$155.00							

NOTES:

Admar Supply: Item #10 in Equipment notes As per Sourcewell Contract. Item #32: Added Kubota Skidsteers & Excavators List -12% Plus Freight & Fees. Also added Kubota Compact Loaders for List -8% plus freight and fees.

Niagara Lawn & Garden references NY State Contract #031121-MTO. And 031121-HTE, 031121-SCG; Added Hustler Equipment & Parts List - 27%, Cost + 7% for Equipment and List -20%, Cost +20% for Parts.

LandPro: Noted Item 1: Alamo- pricing is per Sourcewell contract 070821-AGI. Item #17 for equipment is noted: Per current OGS contracts PC69378 (tractors & implements) & PC 69683 (landscaping & grounds).

Fleet Maintenance: Added Allison Trans under Parts at Cost + 20% which Fleet already has under CRS 3518. Added Road Service Call Fee: $150

MTE Equipment: Added the following equipment and parts: Giant equipment List - 10% and Parts List -2%; Smithco Equipment List -20% Parts List -2% and Cushman Equipment List -10% Parts List -2%

Niagara Frontier Equipment Sales: amended the Instructions to Bidders - needs to add shipping costs in addition. They are unable to amend these terms and withdrew their bid.

Expedited Freight: If the request for expedited shipment is made by the Town of Amherst previous to the placement of the order, the actual cost will be allowed. For payment of this fee, a copy of the original receipt paid by the vendor shall be included at the time of invoicing, along with the name of the TOA employee who requested expedited shipping.

Attachment: Bid Tab Misc Small Equipment (RES-2024-79 : Award Bid #2023053 Miscellaneous Small Equipment and Parts - CRS #4497, 4498,

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28388 **RESOLUTION 2024-80** **ADOPTED**

Award RFP #202308 Medicare Advantage Plan - CRS #4523

WHEREAS, proposals were received on November 20, 2023 for RFP #202308 Medicare Advantage Plan; and

WHEREAS, four (4) proposals were received and evaluated by Town representatives in consultation with the Town's Employee Benefits Consultant;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award this RFP to United Healthcare Insurance Co.; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contract with United Healthcare Insurance Co.; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System due to the need to have a new contract in place by April 1, 2024.

1/22/2024
Consent

FINANCIAL IMPACT:

Town-Wide; Various Accounts; Amount TBD

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

Attachment: Town of Amherst NY MED MAPD 4.1.2024 to SAE 1.17.2024 (RES-2024-80 : Award RFP #202308 Medicare Advantage Plan - CRS

MEDICARE ADVANTAGE WITH PRESCRIPTION DRUG BENEFIT GROUP AGREEMENT

This Medicare Advantage with Prescription Drug Benefit Group Agreement ("Agreement") is effective as of April 1, 2024 (the "Effective Date") between UnitedHealthcare Insurance Company ("United") and Town of Amherst, NY ("Group"). This Agreement covers the services United is providing to Group, either directly or in conjunction with one of United's affiliates. All defined terms shall be as described in this Agreement unless stated otherwise.

RECITAL OF FACTS

United is a Medicare Advantage plan sponsor certified by the Centers for Medicare & Medicaid Services ("CMS") to offer Medicare Advantage benefit plans.

Group is an employer or other entity which sponsors an employee welfare benefit plan and desires to provide a United Medicare Advantage Plan for its Eligible Retirees and their Eligible Dependents.

AGREEMENT

NOW THEREFORE, in consideration of the application of Group for the benefits provided under this Agreement and in consideration of the periodic payment of the Plan Beneficiary Premium on behalf of Members in advance as they become due, United agrees to provide Covered Services to Members subject to all terms and conditions of this Agreement.

SECTION 1 - DEFINITIONS

Centers for Medicare & Medicaid Services ("CMS") is a Federal agency within the United States Department of Health and Human Services and is responsible for administering various Medicare programs.

Coinsurance is the portion of medical expenses for a service the Member must pay out-of-pocket, usually a fixed percentage. Coinsurance is usually applied after a deductible or Copayment requirement is met. Coinsurance is in addition to the Plan Beneficiary Premium.

Confidential Information includes without limitation the following, regardless of form or the manner in which it is furnished: (a) pricing, discounts, reimbursement terms, payment methodologies and payment processes, compensation arrangements and any similar commercial information ("Rate Information") and (b) data, information, statistics, trade secrets and any information about business, costs, operations, techniques, know-how or intellectual property. Any material that is derived from or developed from Confidential Information will be deemed Confidential Information for purposes of this Agreement, regardless of the person creating, disclosing or making available such material. Any Confidential Information included in preparations, proposals, scope documents, discussions, findings, summaries, reports and conclusions remains Confidential Information.

Copayment(s) is a fixed dollar amount payable to a health care provider or pharmacy by the Member when the Member receives a health care service or product that is covered by the Plan. Copayments are in addition to the Plan Beneficiary Premium.

Covered Services are the health care services and products covered pursuant to the current terms of the Plan. Covered Services include Medicare Part D eligible prescription drugs and drug products covered pursuant to the current terms of the Plan, in compliance with Medicare Laws and Regulations.

Eligible Dependent(s) is any person defined as a qualified dependent by Group, who meets all the eligibility requirements of Group and the Plan, and who is eligible to enroll in a plan under the Medicare Laws and Regulations and who permanently resides within the Service Area.

Eligible Retiree(s) is a former Group employee who has met the minimum required retiree participation conditions as determined by Group, who is eligible to enroll in a plan under the Medicare Laws and Regulations, who meets the eligibility and enrollment requirements of the Plan, and who permanently resides in the Service Area.

Proprietary Information of UnitedHealthcare Insurance Company

Attachment: Town of Amherst NY MED MAPD 4.1.2024 to SAE 1.17.2024 (RES-2024-80 : Award RFP #202308 Medicare Advantage Plan - CRS

Enrollment is the enrollment of Group's Eligible Retirees and Eligible Dependents into the Plan by Group. Enrollment is conditioned upon acceptance of the Eligible Retiree or Eligible Dependent by United and by CMS, the execution of this Agreement by United and by Group, and the receipt of Plan Beneficiary Premium by United.

Evidence of Coverage ("EOC") is the document supplied by United and issued to Members disclosing and setting forth the health care benefits and terms and conditions of coverage of the Plan to which Members are entitled. The EOC is incorporated fully into this Agreement by reference.

Group is the single employer or other entity identified above.

Group Contribution is the amount of the Plan Beneficiary Premium applicable to each Member which is paid by Group.

Low Income Premium Subsidy ("LIPS") is a low-income subsidy provided to a LIPS-eligible Member for the cost of the Member's premium or drug cost-sharing coverage under a Plan that provides Part D prescription drug benefit coverage, as described in Medicare Laws and Regulations.

Medicare Laws and Regulations are, collectively, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the "MMA"), the Medicare Improvements for Patients and Providers Act of 2008, the Patient Protection and Affordable Care Act, the regulations implementing the Medicare Advantage provisions at 42 CFR Part 422, together with guidance, instruction and other directives from CMS relating to Medicare Advantage Plans, and as applicable the regulations implementing the Medicare Part D Plan provisions of the MMA at 42 CFR Part 423, together with guidance, instruction and other directives from CMS relating to the Medicare Part D Plan.

Medicare Part D Plan is a Medicare Part D prescription drug benefit plan.

Member is the Eligible Retiree and/or Eligible Dependent who is eligible and covered by the Plan.

Open Enrollment Period is the annual period established by Group, or if no Open Enrollment Period is declared by Group, another period required by CMS, during which all eligible and prospective Group Eligible Retirees and Eligible Dependents may enroll in the Plan.

Plan is the Medicare Advantage with prescription drug benefit plan described in this Agreement , subject to modification, amendment or termination pursuant to the terms of this Agreement and the Plan.

Plan Beneficiary Premium is an amount established by United to be paid to United by or on behalf of each Member enrolled in the Plan for coverage under the Plan. If the Plan provides coverage for prescription drugs, the Plan Beneficiary Premium may include late enrollment penalties as assessed by CMS for those Members who did not have creditable prescription drug coverage for a period that exceeds sixty-three (63) calendar days from or after eligibility for Medicare Part D Plan. Plan Beneficiary Premium will not include Income Related Monthly Adjustment Amounts (IRMAA), if any, as assessed and billed to Member by the Social Security Administration to certain individuals with higher incomes. Member is responsible for the payment of IRMAA and if not paid, Member will be disenrolled from the Plan by CMS.

Service Area is a geographic area approved by CMS within which a Plan Member must permanently reside in order to enroll in the Plan.

SECTION 2 - ELIGIBILITY AND ENROLLMENT

2.01 Eligibility. The Plan specifies the coverage for which Eligible Retirees and Eligible Dependents are eligible, in consideration of their continued entitlement to Medicare Part A and enrollment in Part B, and in consideration of United's receipt of any specified Plan Beneficiary Premium.

2.02 Submission of Eligibility List and Enrollment Information. Group shall submit Eligible Retirees and Eligible Dependents information (the "Group Eligibility List"), as communicated by United and consistent with CMS requirements. The Group Eligibility List is subject to modification by United based upon acceptance or rejection of Enrollment by United and CMS.

2.02.01 Enrollment/Election. Properly completed Enrollment information must be submitted to United by Group for each Eligible Retiree and Eligible Dependent to be enrolled in the Plan. United may accept a uniform group Enrollment (without individual enrollment election forms and usually in an electronic file format) if such group Enrollment is conducted pursuant to Medicare Laws and Regulations. If Group utilizes the group enrollment process to enroll its

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Eligible Retirees and Eligible Dependents in the Plan, Group will make available to its Eligible Retirees and Eligible Dependents the ability to opt out of the enrollment in a manner that allows its Eligible Retirees and Eligible Dependents to enroll in another plan of their choice on a timely basis and in accordance with Medicare Laws and Regulations.

2.02.02 Time of Enrollment. All Enrollment information shall be submitted by Group to United during the Open Enrollment Period. The EOC applicable to the Plan includes information regarding Initial Enrollment Period and Special Enrollment Period, as defined by CMS, during which Eligible Retirees and Eligible Dependents may enroll in the Plan outside of the Open Enrollment Period.

Group acknowledges that any Enrollment information not received by United consistent with CMS timing requirements may be rejected by United or may result in a later effective date of coverage.

2.02.03 Enrollment Notice to Eligible Retiree and Eligible Dependent. Group shall provide a written notice, prepared by United, to Eligible Retirees and Eligible Dependents at the commencement of the Open Enrollment Period and throughout the year to persons who become eligible at times other than during the Open Enrollment Period. The written notice shall provide notice of the availability of coverage under the Plan.

2.02.04 Enrollment Record Retention. Group's record of Member's enrollment election must exist in a format that can be easily, accurately and quickly reproduced for later reference by each individual Member, United and/or CMS, as necessary, and be maintained by Group for the term of this Agreement and for ten (10) years thereafter.

2.03 Commencement of Coverage. The commencement date of coverage under the Plan shall be effective in accordance with the terms of this Agreement and Medicare Laws and Regulations (or, if applicable, in accordance with the eligibility date CMS communicates to United). United's acceptance of each Member's Enrollment is contingent upon receipt of the applicable Plan Beneficiary Premium payment and CMS' confirmation of enrollment.

2.04 Involuntary Disenrollment. In the event a Member no longer meets Group's eligibility requirements for participation in the Plan, Group and/or Member shall provide written notice to United of such Member's disenrollment from the Plan or Group shall provide notice via the monthly Group Eligibility List submission, if applicable. Such notice, regardless of medium, shall include the reason for disenrollment. Group shall notify United thirty (30) calendar days prior to the proposed effective date of disenrollment. Disenrollment generally cannot be effective prior to the date Group submits the disenrollment notice.

In the case of a Member who no longer meets Group's eligibility requirements for participation in the Plan or in the case of termination of this Agreement in accordance with Section 6, Group will issue prospective notice to Member of the termination a minimum of twenty-one (21) calendar days prior to the effective date of said termination. Such notice must advise Member of other insurance options that may be available through Group. Group will also advise such Member that the disenrollment action means the Member will not have coverage. If the Plan provides coverage for prescription drugs, the Notice must include information about the potential for late-enrollment penalties that may apply in the future.

The effective date of disenrollment always falls on the last calendar day of a month. In the case of a Member no longer meeting Group's eligibility requirements, Group will send United notice of a Member's termination from the Plan by the first calendar day of the month for an effective date of the last calendar day of that month. All notifications received after the first calendar day of the month will result in a termination effective date of the last calendar day of the following month. Group agrees to pay any applicable Plan Beneficiary Premium through the last calendar day of the month in which Member is enrolled.

2.05 Voluntary Disenrollment. In the event a Member elects to discontinue being covered by the Plan, United must receive a written notice signed by Member that complies with CMS requirements. In the event Group submits Member voluntary disenrollment via the Group Eligibility List, Group must include in the Group Eligibility List the date Member advised Group of disenrollment. The effective date of disenrollment always falls on the last calendar day of a month. Disenrollment generally cannot be effective prior to the date Member advises Group of disenrollment or Member submits the Member's signed, written disenrollment notice. Group agrees to pay any applicable Plan Beneficiary Premium through the last calendar day of the month in which Member is enrolled.

2.06 Disenrollment Record Retention. Group's record of Member's election to disenroll must exist in a format that can be easily, accurately and quickly reproduced for later reference by each individual Member, United and/or CMS, as necessary, and be maintained by Group for at least ten (10) years following the effective date of the Member's disenrollment from the Plan.

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2.07 Retroactive Adjustments to Enrollment. No retroactive adjustments may be made beyond ninety (90) calendar days for any enrollments or disenrollments of Eligible Retiree, Eligible Dependent or Member or changes in coverage classification not reflected in United's records at the time United calculates and bills for Plan Beneficiary Premium.

SECTION 3 - GROUP OBLIGATIONS, PLAN BENEFICIARY PREMIUM AND COPAYMENTS

3.01 Notices to Member. If Group or United terminates this Agreement pursuant to Section 6 below, Group shall promptly notify all Members enrolled through Group of the termination of their coverage in the Plan. Such notification will include any other plan options that may be available through Group. Group shall provide such notice by delivering to each Member a true, legible copy of the notice of termination sent from United to Group, or from Group to United, at the Member's then current address. Group shall promptly provide United with a copy of the notice of termination delivered to each Member, along with evidence of the date the notice was provided. In the event that United terminates Member's enrollment in the Plan for non-payment of Plan Beneficiary Premium or United's non-renewal of this Agreement, Members will receive notice of termination from United.

If United or Group makes any changes affecting Members' benefits or obligations under the Plan, including but not limited to, increasing the Plan Beneficiary Premium payable by Member, increasing Copayments or Coinsurance or reducing Covered Services, unless the change is to be communicated by United through the Annual Notice of Change process, the party promulgating the change shall promptly notify all Members enrolled through Group of the applicable change. If Group promulgates the change and is required to provide notice to Members, Group shall provide such notice by delivering to each Member a true, legible copy of the notice of the applicable change at the Member's then current address. When required by CMS, Group shall promptly provide United with a copy of any notice delivered to each Member, along with evidence of the date the notice was provided. United shall have no responsibility to Members in the event Group fails to provide the notices required by this Section 3.01.

3.02 Plan Beneficiary Premium. Plan Beneficiary Premium will be paid to United by the Due Date in accordance with Section 3.03 below. Group shall pay or ensure payment of any portion of Plan Beneficiary Premium for Members for which Group is responsible. Each Member is responsible for paying to United or Group, as applicable, any portion of Plan Beneficiary Premium for which he or she is responsible. When agreed by United and Group, United will bill each Member for Member's amount of the Plan Beneficiary Premium. United shall arrange for Covered Services under the Plan only for those Members for whom the applicable Plan Beneficiary Premium has been paid.

3.02.01 Late Enrollment Penalty. Plan Beneficiary Premium may include any late enrollment penalties as determined applicable by CMS. The late enrollment penalty ("LEP") is based on the combination of a percentage of the national average Part D bid amount set by CMS and the number of months a beneficiary has not enrolled in a Medicare Part D plan, when eligible or a Member does not have creditable coverage (coverage containing a prescription drug benefit that is equivalent to Medicare Part D). The LEP is communicated to United by CMS upon confirmation of Member enrollment by CMS. In the event Member is assessed a LEP by CMS, United will bill the LEP directly to Group. Otherwise, upon Group's written authorization, United will bill the LEP directly to Member. In the case where United bills Member directly for Plan Beneficiary Premium, United will bill the LEP directly to the applicable Member.

3.03 Due Date. Plan Beneficiary Premium is due in full on a monthly basis by check or electronic transfer and must be paid directly by Group and/or by Member, as applicable, to United on or before the first business day of the month for which the premium applies ("Due Date"). Failure to pay the Plan Beneficiary Premium on or before the Due Date may result in termination of the Member from the Plan in accordance with eligibility requirements as determined by the Group, the procedures set forth in the EOC and Medicare Laws and Regulations. For payments due from Group, United reserves the right to assess Group an administrative fee of five percent (5%) of the monthly premium prorated on a thirty (30)-day month for each day it is delinquent thereafter. This fee will be assessed solely at United's discretion. In the event that deposit of payments not made in a timely manner are received by United after termination of Group, the depositing or applying of such funds does not constitute acceptance, and such funds shall be refunded by United within twenty (20) business days of receipt, if United, in its sole discretion, does not reinstate Group.

3.04 Modification of Plan Beneficiary Premium and Benefits.

3.04.01 Modification of Plan Beneficiary Premium. Plan Beneficiary Premium may be modified by United pursuant to Medicare Laws and Regulations, upon thirty (30) calendar days written notice to Group. Any such modification shall take effect commencing the first full month following the expiration of the thirty (30) day notice period.

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3.04.02 Modification of Benefits or Terms. Covered Services as set forth in the EOC, as well as other terms of coverage under the Plan may be modified by United pursuant to Medicare Laws and Regulations, upon thirty (30) calendar days' written notice to Group. Any such modification shall take effect commencing the first full month following the expiration of the thirty (30) day notice period or on a later date specified in the notice.

3.05 Effect of Payment. Except as otherwise provided in this Agreement, only Members for whom the Plan Beneficiary Premium is received by United are entitled to benefits under the Plan, and then only for the period for which such payment is received.

3.06 Adjustments to Payments. Any imposition of or increase in any premium tax, guarantee or uninsured fund assessments, or other governmental charges relating to or calculated in regard to the Plan Beneficiary Premium shall be automatically added to the Plan Beneficiary Premium as of their legislative effective dates, as permitted by law. In addition, any change in law or regulation that significantly affects United's cost of operation can result in an increase in the Plan Beneficiary Premium, in an amount to be determined by United, as of the next available date of Plan Beneficiary Premium adjustment, as permitted by law.

3.07 Member/Marketing Materials. Group shall provide United with copies of any and all materials relating to the coverage available through the Plan that Group intends to disseminate to Eligible Retiree, Eligible Dependent or Member. All materials relating to the Plan and/or United shall be subject to review and written approval by United prior to its distribution by Group. Group understands that the Plan is subject to federal and state regulatory oversight, and that Eligible Retiree, Eligible Dependent or Member materials and marketing materials (including, but not limited to, cover letters accompanying direct mail kits, announcement mailings, etc.) may be required to be filed with, reviewed and approved by, CMS or state regulators prior to use. Group agrees not to distribute such material prior to receipt of written approval of the material by United. Group shall assume all liabilities and damages arising from Group's unauthorized dissemination of Eligible Retiree, Eligible Dependent or Member materials and/or marketing materials. Group also agrees to comply with all relevant federal and state regulatory requirements regarding the distribution and fulfillment of Eligible Retiree, Eligible Dependent or Member materials and/or marketing materials and applicable timeframes.

3.08 Employer/Union-Only Group Obligations. Pursuant to Medicare Laws and Regulations, Group acknowledges and agrees to comply with the following obligations with respect to the Plan:

3.08.01 Uniform Premium Requirements: Group may determine how much of a Member's Plan Beneficiary Premium Group will subsidize, subject to the following conditions in determining the Plan Beneficiary Premium subsidy:

a. Group can subsidize different amounts for different classes of Members in the Plan provided such classes are reasonable and based on objective business criteria, such as years of service, date of retirement, business location, job category, and nature of compensation (e.g., salaried v. hourly). Different classes cannot be based on eligibility for Low Income Subsidy individuals;

b. Group cannot vary the Plan Beneficiary Premium subsidy for individuals within a given class of Members, other than as is required for the CMS-assessed late enrollment penalty; and

c. Group cannot charge a Member for prescription drug coverage provided under the Plan for more than the sum of his or her monthly Plan Beneficiary Premium attributable to basic prescription drug coverage and 100% of the monthly Plan Beneficiary Premium attributable to his or her supplemental prescription drug coverage (if any).

3.08.02 Low Income Subsidy: For all Plan Low Income Subsidy eligible individuals:

a. United will administer (LIPS) credits. Pursuant to federal regulations, the LIPS amount must first be used to reduce the portion of the monthly Plan Beneficiary Premium attributable to basic prescription drug coverage paid by Member, with any remaining portion of the LIPS amount then applied toward the portion of the monthly Plan Beneficiary Premium attributable to basic prescription drug coverage paid by Group. If, however, United does not or cannot directly bill Group's Members, CMS will waive this up-front reduction requirement and permit United to directly refund the amount of the LIPS to the Member.

b. If the sum of Member's and Group's monthly Plan Beneficiary Premium is less than the amount of the LIPS credit, any amount of the LIPS credit above the total Plan Beneficiary Premium must be returned to CMS; and

c. If the LIPS credit for which a Member is eligible is less than the portion of the monthly Plan Beneficiary Premium paid by Member, Group shall communicate to Member the financial consequences for Member of enrolling in the Plan as compared to enrolling in another Medicare Part D Plan with a monthly beneficiary

premium equal to or below the LIPS amount.

d. Any LIPS credit due to Member and/or Group must be applied within forty-five (45) calendar days of receipt.

e. To enable United to appropriately administer LIPS disbursements, Group shall complete and return an annual attestation issued by United.

i. The attestation validates the Group's current billing procedures and is used to determine the recipient of LIPS disbursements.

ii. The lack of an up-to-date attestation will default the disbursement of LIPS to Member regardless of prior year attestation information.

iii. United will not refund Group for LIPS disbursements made to Member during periods prior to an adequate attestation being completed and returned.

iv. In order to collect and redistribute misappropriated LIPS disbursements made to Group, United reserves the right to bill Group who has received LIPS disbursements on behalf of Member due to incorrect attestation information.

f. United shall provide reporting to Group for Members currently receiving LIPS disbursements. These reports will identify Member by name and display their respective monthly disbursements. These reports are intended to allow Group to recoup, if applicable, any remaining portion of the LIPS credit (payment that remains after the LIPS credit is used to exhaust the monthly Plan Beneficiary Premium attributable to basic prescription drug coverage paid by the Member). If the reported amount exceeds $30, the amount distributed would likely cover multiple months. Group would only be allowed to recoup the difference between the monthly Plan Beneficiary Premium and the monthly LIPS credit amount. In these cases, a request for a more detailed report from United should be sought before attempting to recoup LIPS disbursements.

SECTION 4 - RELATIONSHIPS OF AND BETWEEN PARTIES

4.01 Relationship of Parties. United is not the agent or representative of Group. Group is not the agent or representative of United.

4.02 Roles. United shall not be deemed or construed as an employer or as an employee for any purpose with respect to the administration or provision of benefits under Group's benefit plan. United shall not be responsible for fulfilling any duties or obligations of an employer or an employee with respect to Group's benefit plan. This Agreement is a business transaction between two unrelated parties.

SECTION 5 - TERM OF AGREEMENT; RENEWAL PROVISIONS

The term of this Agreement shall be one (1) year, commencing on the Effective Date, unless this Agreement is terminated as provided herein. Following the Effective Date and after United has provided one month of services this Agreement is deemed executed by the parties. This Agreement shall automatically renew for a one (1) year term on each anniversary of the Effective Date, unless terminated as provided herein. Renewal of this Agreement shall be subject to modification of rates and benefits pursuant to Section 3.04.

SECTION 6 - TERMINATION

6.01 Termination by Group. Group may terminate this Agreement by giving a minimum of sixty (60) calendar days written notice of termination to United, to allow processing time for United to notify Member with a minimum of twenty-one (21) calendar days advance notice of termination. Group termination shall always be effective on the last day of the month. Group shall continue to be liable for Plan Beneficiary Premium for all Members enrolled in this Plan through Group until the date of termination or, if later, the termination date indicated by CMS.

6.02 Termination by United.

6.02.01 This Agreement shall terminate, in whole or in part as the case may be, for one or more of the following events and notices of termination shall be sent by United within 90 (ninety) days of the effective date of termination, or as otherwise required by CMS.

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a. termination or non-renewal of United's contract with CMS;

b. termination or non-renewal with respect to a Service Area or a portion of a Service Area in which Member resides, as applicable.

c. if United no longer issues the Plan or any group health benefit plans within the applicable market, as permitted by law;

d. if Group fails to abide by and enforce the conditions of Enrollment set forth in this Agreement;

e. if Group no longer meets United's minimum contribution or participation requirements;

f. non-renewal of this Agreement by United at the end of the then current term.

g. in the event of a filing by or against the Group of a petition for relief under the Federal Bankruptcy Code,

h. any jurisdiction prohibits a party from administering the Plan under the terms of this Agreement, or imposes a penalty on the Plan, Group or United and such penalty is based on the services specified in this Agreement. In this situation, the party may immediately discontinue the Agreement's application in such jurisdiction. Notice must be given to the other party when reasonably practical. The Agreement will continue to apply in all other jurisdictions.

6.02.02 Termination for Nonpayment of Plan Beneficiary Premium. United may terminate this Agreement in the event Group or its designee, or Member fails to remit Plan Beneficiary Premium, including LEP, in full by the Due Date to United by giving written notice of termination of this Agreement to Group. Nonpayment of Plan Beneficiary Premium includes, but is not limited to, payments returned due to non-sufficient funds and post-dated checks. Such notice shall specify that payment of all unpaid Plan Beneficiary Premium must be received by United within fifteen (15) calendar days of the date of issuance of the notice, and that if payment is not received within the fifteen (15) day period, no further notice shall be given, and coverage for all Members enrolled in this Plan shall automatically be terminated effective at the end of the month for which Plan Beneficiary Premium has been actually received by United, subject to compliance with notice requirements.

6.02.03 Termination for Breach. United may terminate this Agreement if Group breaches any term, covenant or condition of this Agreement and fails to cure such breach within thirty (30) calendar days after United sends written notice of such breach to Group. United's written notice of breach shall make specific reference to Group's action causing such breach. If Group fails to cure its breach subject to United's satisfaction within thirty (30) calendar days after United sends notice of such breach to Group, United may terminate this Agreement at the end of the thirty (30) day notice period.

6.02.04 Termination for Providing Misleading or Fraudulent Information. United may terminate this Agreement thirty (30) calendar days after United sends written notice to Group if Group provides materially misleading or fraudulent information to United in any Group questionnaire or is aware that materially misleading or fraudulent information has been provided on Eligible Retiree, Eligible Dependent or Member Enrollment forms.

6.02.05 For Loss of Group's Office Location within Service Area. Group acknowledges that in the event of such change of Group's office location, a modification to Plan Beneficiary Premium may be necessary. In the event of a change of Group's office location, the parties shall negotiate any changes requested by either party to the Plan Beneficiary Premium. In the event that the parties are unable to reach agreement regarding modified Plan Beneficiary Premium, United may terminate Group upon thirty (30) calendar days' written notice prior to such termination.

6.03 Return of Prepayment Premium Fees Following Termination. In the event of termination by either party (except in the case of fraud or deception in the use of United services or facilities, or knowingly permitting such fraud or deception by another) , United will, within thirty (30) calendar days, return to Group the pro-rata portion of money paid to United which corresponds to any unexpired period for which payment has been received, together with amounts due on claims, if any, less any amounts due to United. United's exercise of its termination rights under Section 6.02 above does not waive United's right to payment by Group for all coverage provided, including late fees as provided in Section 3.03 above.

SECTION 7 - MISCELLANEOUS PROVISIONS

7.01 United Names, Logos and Service Marks. United reserves the right to control all use of its name, product names, symbols, logos, trademarks, and service marks currently existing or later established. Group shall not use United's

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name, product names, symbols, logos, trademarks, or service marks or otherwise reference United in any form of publication or media without obtaining the prior written approval of United.

7.02 Assignment. Group may not assign this Agreement or any rights or obligations under this Agreement to anyone without United's written consent.

7.03 Subcontractors. United can use its affiliates or subcontractors to perform United's services under this Agreement. United will be responsible for those services to the same extent that United would have been had it performed those services without the use of an affiliate or subcontractor.

7.04 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut (without regard to the legislative or judicial conflicts of laws/rules of any state), except to the extent superseded by federal law.

7.05 Severability. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. However, it is intended that a court of competent jurisdiction construe any invalid or unenforceable provision of this Agreement by limiting or reducing it so as to be valid or enforceable to the extent compatible with applicable law.

7.06 Amendments. Except as may otherwise be specified in this Agreement, this Agreement may be amended only by both parties agreeing to the amendment in writing, executed by a duly authorized person of each party.

7.07 Waiver/Estoppel. Nothing in this Agreement is considered to be waived by any party, unless the party claiming the waiver receives the waiver in writing. No breach of this Agreement is considered to be waived unless the non-breaching party waives it in writing. A waiver of one provision does not constitute a waiver of any other. A failure of either party to enforce at any time any of the provisions of this Agreement, or to exercise any option which is herein provided in this Agreement, will in no way be construed to be a waiver of such provision of this Agreement.

7.08 Notices. Any notices, demands, or other communications required under this Agreement will be in writing and may be provided via electronic means or by United States Postal Service by certified or registered mail, return receipt requested, postage prepaid, or delivered by a service that provides written receipt of delivery.

7.09 Acceptance of Agreement. Group may accept this Agreement either by execution of this Agreement or by making its initial Plan Beneficiary Premium payment to United on or before the Effective Date. In the event acceptance of this Agreement is made with the initial payment of the Plan Beneficiary Premium, Group shall provide United with an executed copy of this Agreement within sixty (60) calendar days of such payment. Acceptance by any of these methods shall render all terms and provisions of this Agreement binding on the parties.

7.10 Entire Agreement. This Agreement, with its exhibits, constitutes the entire agreement between the parties governing the subject matter of this Agreement. This Agreement replaces any prior written or oral communications or agreements between the parties relating to the subject matter of this Agreement. The headings and titles within this Agreement are for convenience only and are not part of the Agreement.

7.11 No Third Party Beneficiaries. Except as otherwise expressly indicated in this Agreement, nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

7.12 Superseding of Other Agreements. The Plan replaces and supersedes any previous Plan between United and Group.

7.13 Indemnification. The parties each agree to indemnify, defend and hold the other party, and its affiliates, harmless, and to accept all legal and financial responsibility for any liability (including reasonable attorneys' fees) arising out of its own failure to perform its material obligations as set forth in this Agreement, or under Medicare Laws and Regulations.

7.14 ERISA. United will administer this Agreement in accordance with the requirements of Medicare Laws and Regulations and applicable state laws. United is neither the plan administrator nor named fiduciary of the employee benefit welfare plan, as those terms are used in ERISA.

7.15 Confidential Information. Each party will limit the use of the other's Confidential Information to only the information required to administer the Plan, to perform under this Agreement, or as otherwise permitted under this Agreement. Neither party will disclose the other's Confidential Information to any person or entity other than to the receiving party's employees, subcontractors, or authorized agents needing access to such information to administer

the Plan, to perform under this Agreement, or as otherwise permitted under this Agreement. Notwithstanding the foregoing, United's Rate Information cannot be disclosed to Group or to any third party without United's express written consent and, if required by United, a mutually agreed upon confidentiality agreement. Group may not sell, license, or grant any other rights to Confidential Information.

If Group needs access to United's Confidential Information, United, at its discretion, may allow Group to use United's Confidential Information subject to the following conditions:

(1) The information requested must relate to United's services under this Agreement;

(2) Group must give United reasonable advance notice and an explanation of the need for United's Confidential Information;

(3) It must be legally permissible for United to release such information;

(4) The release and use must be consistent with United's provider contractual obligations; and

(5) The release and use must be consistent with United's data use and release policies.

Such use is subject to the terms of this Agreement and as required by United, a mutually agreed upon confidentiality agreement.

If Group is subject to a Freedom of Information Act (FOIA) request and the request includes United's Confidential Information, Group will contact United prior to releasing any information and give United the opportunity to review, respond, and/or object to the FOIA request.

United also will provide reasonable access to information to an entity providing Plan administrative services to Group, such as a consultant or vendor, if Group requests it. Such access is subject to the conditions in this Section. Before United provides Confidential Information to that entity, the parties must sign a mutually agreed-upon confidentiality agreement, and the parties must agree as to what information is minimally necessary to accomplish the Plan administrative service.

United will provide information only while this Agreement is in effect and for a period of six (6) months after the Agreement terminates, unless Group demonstrates that the information is in response to a subpoena, legal process, or other release of information required by applicable law.

Group is responsible for entering into any and all legally required agreements with consultant or vendor to ensure protection of Protected Health Information, including but not limited to, a Business Associate Agreement, as defined under the Health Insurance Portability and Accountability Act and its implementing regulations, as amended from time to time.

This provision shall survive the termination of this Agreement.

7.16 Mediation and Arbitration. The parties will work together in good faith to resolve any disputes about their business relationship. If the parties are unable to resolve the dispute within thirty (30) calendar days following the date one party sent written notice to the other party, and if any party wishes to pursue the dispute, the pursuing party may request non-binding mediation, within ninety (90) calendar days following the date one party sent written notice to the other party, facilitated by a third-party neutral mutually agreeable to both parties. The mediation shall be held in Minnesota. If agreement is not reached at the mediation, the pursuing party may submit the dispute to arbitration in accordance with the rules of the American Arbitration Association. In no event may arbitration be initiated more than one (1) year following the sending of written notice of the dispute, and no dispute may be initiated before the pursuing party submits to non-binding mediation. Any arbitration proceeding under this Agreement shall be conducted in Minnesota. The arbitrators may construe or interpret but shall not vary or ignore the terms of this Agreement, shall have no authority to award any punitive or exemplary damages and shall be bound by controlling law. Each party shall be responsible for its own costs, including attorneys' fees, incurred in connection with any arbitration. The parties acknowledge that because this Agreement affects interstate commerce, the Federal Arbitration Act applies. Notwithstanding the provisions of this Section 7.16, if any party would reasonably suffer irreparable and immediate injury as a result of another party's breach or violation of any provision of this Agreement for which there would be no adequate remedy at law, such party may seek preliminary and other injunctive relief against any such breach or violation in a court having jurisdiction over the parties and the subject matter of the dispute.

Proprietary Information of UnitedHealthcare Insurance Company

Attachment: Town of Amherst NY MED MAPD 4.1.2024 to SAE 1.17.2024 (RES-2024-80 : Award RFP #202308 Medicare Advantage Plan - CRS

Attachment: Town of Amherst NY MED MAPD 4.1.2024 to SAE 1.17.2024 (RES-2024-80 : Award RFP #202308 Medicare Advantage Plan - CRS

7.17 Protected Health Information Certification. In executing this Agreement, Group certifies that as plan sponsor it has in place appropriate Plan documents necessary to demonstrate compliance with applicable privacy requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations as amended from time to time (collectively, "HIPAA"). The Group further certifies that its Plan documents meet the following requirements: (a) Plan documents describe employees or classes of employees or other persons under the control of the plan sponsor to be given access to the protected health information to be disclosed, provided that any employee or person who receives protected health information relating to payment under, health care operations of, or other matters pertaining to the group health plan in the ordinary course of business must be included in such description; (b) restrict the access to and use by such employees and other persons described in the above to the plan administration functions that the Plan Sponsor performs for the group health plan; (c) provide an effective mechanism for resolving any issues of noncompliance by persons described above with the plan document provisions required by law; and (d) the Plan documents comply with the requirements of 45 C.F.R. Section 164.504(f)(2) and that the plan sponsor will safeguard and limit the use and disclosure of protected health information that the plan sponsor may receive from United to perform the plan administration functions.

Specifically, the plan sponsor will:

a. Not use or further disclose the information other than as permitted or required by the plan documents or as required by law;

b. Ensure that any agents, including a subcontractor, to whom it provides protected health information received from United, agree to the same restrictions and conditions that apply to the plan sponsor with respect to such information;

c. Not use or disclose the information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the plan sponsor;

d. Report to United any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;

e. Make available protected health information in accordance with 45 CFR §164.524;

f. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.526;

g. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528;

h. Make its internal practices, books and records relating to the use and disclosure of protected health information received from United available in response to an inquiry from United or an appropriate regulatory entity for purposes of determining compliance with federal privacy requirements;

i. If feasible, return or destroy all protected health information received from the United that the plan sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose of which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Town of Amherst, NY
5583 Main Street
Amherst, NY 14221

By: _____
Authorized Signature

UnitedHealthcare Insurance Company
185 Asylum Street
Hartford, CT 06103-3408

By: _____
Authorized Signature

Proprietary Information of UnitedHealthcare Insurance Company

Print Name: _____	**Print Name: _____**
Print Title: _____	**Print Title: _____**
Date: _____	**Date: _____**

Attachment: Town of Amherst NY MED MAPD 4.1.2024 to SAE 1.17.2024 (RES-2024-80 : Award RFP #202308 Medicare Advantage Plan - CRS

Proprietary Information of UnitedHealthcare Insurance Company

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28389 **RESOLUTION 2024-81** **ADOPTED**

Award Bid #2023052 Town Wide Fire Alarm Inspection, Service & Security Monitoring - CRS #4524

WHEREAS, the Contract Compliance and Administration Department received bids on November 16, 2023 for Bid #2023052 for Town Wide Fire Alarm Inspection, Service & Security Monitoring; and

WHEREAS, the bid process resulted in responses from five (5) vendors, as per the attached bid analysis form;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award the bid to Davis-Ulmer Sprinkler Company, Inc. dba All State Fire & Security; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contract with Davis-Ulmer Sprinkler Company, Inc. dba All State Fire & Security.

1/22/2024
Consent

FINANCIAL IMPACT:

Town Wide; Various Accounts; Amount TBD

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

BID # 2023052 Town Wide Fire Alarm Inspection, Service, & Security Monitoring

Low Bid		Davis Ulmer				Structured WNY				Kepco				All State Fire & Security				Johnson Controls			
ITEM #	LOCATION	Annual System Inspection Cost	Annual Fire Alarm Monitoring Cost	Annual Security Monitoring Cost	Total Annual Cost	Annual System Inspection Cost	Annual Fire Alarm Monitoring Cost	Annual Security Monitoring Cost	Total Annual Cost	Annual System Inspection Cost	Annual Fire Alarm Monitoring Cost	Annual Security Monitoring Cost	Total Annual Cost	Annual System Inspection Cost	Annual Fire Alarm Monitoring Cost	Annual Security Monitoring Cost	Total Annual Cost	Annual System Inspection Cost	Annual Fire Alarm Monitoring Cost	Annual Security Monitoring Cost	Total Annual Cost
1	Northtown Center of Amherst (NCA)	$1,620.00	N/A		$1,620.00	$1,620.00	N/A	$384.00	$2,004.00	$940.00	N/A	$336.00	$1,276.00	$2,195.00	N/A	$445.00	$2,640.00	$2,190.00	N/A	$360.00	$2,550.00
2	Amherst Recreation Maint. Bldg. (ARMB)	$100.00	$700.00	Included with Fire Alarm	$800.00	$500.00	$540.00	Included with Fire Alarm	$1,040.00	$310.00	$336.00	Included with Fire Alarm	$646.00	$149.00	$445.00	Included with Fire Alarm	$594.00	$350.00	$600.00	Included with Fire Alarm	$950.00
3	Clearfield Community Center (CCC)	$1,080.00	N/A	N/A	$1,080.00	$808.00	N/A	N/A	$808.00	$480.00	N/A	N/A	$480.00	$1,949.00	N/A	N/A	$1,949.00	$1,180.00	N/A	N/A	$1,180.00
4	Audubon Golf Course	$250.00		Included with Fire Alarm	$250.00	$500.00	$540.00	Included with Fire Alarm	$1,040.00	$420.00	$336.00	Included with Fire Alarm	$756.00	$295.00	$445.00	Included with Fire Alarm	$740.00	$640.00	$600.00	Included with Fire Alarm	$1,240.00
5	North Amherst Recreation Center (NARC)	$540.00	N/A	$700.00	$1,240.00	$500.00	N/A	$384.00	$884.00	$790.00	N/A	$336.00	$1,126.00	$349.00	N/A	$445.00	$794.00	$780.00	N/A	$360.00	$1,140.00
6	North Forest Pool	$250.00	N/A	N/A	$250.00	$500.00	N/A	N/A	$500.00	$290.00	N/A	N/A	$290.00	$195.00	N/A	N/A	$195.00	$480.00	N/A	N/A	$480.00
~~7~~	~~Bassett Park Bandshell~~	~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~	
~~8~~	~~Oakwood Golf Course~~	~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~		~~N/A~~	~~N/A~~	~~N/A~~	
9	Harlem Road Community Center	$810.00	N/A	N/A	$810.00	$742.00	N/A	N/A	$742.00	$610.00	N/A	N/A	$610.00	$995.00	N/A	N/A	$995.00	$1,140.00	N/A	N/A	$1,140.00
10	Senior Center	$1,080.00	N/A	$700.00	$1,780.00	$1,127.00	N/A	$384.00	$1,511.00	$1,240.00	N/A	$336.00	$1,576.00	$1,595.00	N/A	$445.00	$2,040.00	$1,680.00	N/A	$360.00	$2,040.00
11	Court Building	$250.00	N/A	N/A	$250.00	$500.00	N/A	N/A	$500.00	$470.00	N/A	N/A	$470.00	$195.00	N/A	N/A	$195.00	$400.00	N/A	N/A	$400.00
12	Police Building	$250.00	N/A	N/A	$250.00	$500.00	N/A	N/A	$500.00	$790.00	N/A	N/A	$790.00	$295.00	N/A	N/A	$295.00	$580.00	N/A	N/A	$580.00
13	Police Dept. Mechanics Garage	$100.00	N/A	N/A	$100.00	$500.00	N/A	N/A	$500.00	$290.00	N/A	N/A	$290.00	$149.00	N/A	N/A	$149.00	$350.00	N/A	N/A	$350.00
14	Municipal Building	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$480.00	N/A	$336.00	$816.00	$195.00	N/A	$445.00	$640.00	$460.00	N/A	$360.00	$820.00
15	Parks Dept. Bldg.*	$250.00	$700.00	Included with Fire Alarm	$950.00	$500.00	$540.00	Included with Fire Alarm	$1,040.00	$480.00	$336.00	Included with Fire Alarm	$816.00	$195.00	$749.00	Included with Fire Alarm	$944.00	$520.00	$600.00	Included with Fire Alarm	$1,120.00
16	Highway Dept. Buildings	$810.00	N/A	N/A	$810.00	$756.00	N/A	N/A	$756.00	$950.00	N/A	N/A	$950.00	$449.00	N/A	N/A	$449.00	$820.00	N/A	N/A	$820.00
17	Engineering Building	$540.00	N/A	N/A	$540.00	$500.00	N/A	N/A	$500.00	$790.00	N/A	N/A	$790.00	$295.00	N/A	N/A	$295.00	$820.00	N/A	N/A	$820.00
18	Records Center - Bldg C	$100.00	N/A	N/A	$100.00	$500.00	N/A	N/A	$500.00	$310.00	N/A	N/A	$310.00	$149.00	N/A	N/A	$149.00	$350.00	N/A	N/A	$350.00
19	Maintenance - Bldg. B*	$250.00	N/A		$250.00	$500.00	N/A	$384.00	$884.00	$310.00	N/A	$336.00	$646.00	$195.00	N/A	$445.00	$640.00	$460.00	N/A	$360.00	$820.00
20	Water Pollution Control Facilty (WPCF)	$250.00	N/A	N/A	$250.00	$500.00	N/A	N/A	$500.00	$610.00	N/A	N/A	$610.00	$249.00	N/A	N/A	$249.00	$620.00	N/A	N/A	$620.00
21	Clearfield Library	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$390.00	N/A	$336.00	$726.00	$195.00	N/A	$445.00	$640.00	$480.00	N/A	$360.00	$840.00
22	Audubon Library	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$890.00	N/A	$336.00	$1,226.00	$295.00	N/A	$445.00	$740.00	$740.00	N/A	$360.00	$1,100.00
23	Eggertsville Snyder Library	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$390.00	N/A	$336.00	$726.00	$149.00	N/A	$445.00	$594.00	$400.00	N/A	$360.00	$760.00
24	Williamsville Library	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$390.00	N/A	$336.00	$726.00	$149.00	N/A	$445.00	$594.00	$400.00	N/A	$360.00	$760.00
25	Williamsville Youth and Family Center	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$390.00	N/A	$336.00	$726.00	$249.00	N/A	$445.00	$694.00	$700.00	N/A	$360.00	$1,060.00
26	Amherst Central Park (Clubhouse)*	$100.00	$700.00	Included with Fire Alarm	$800.00	$500.00	$540.00	Included with Fire Alarm	$1,040.00	$280.00	$480.00	Included with Fire Alarm	$760.00	$149.00	$749.00	Included with Fire Alarm	$898.00	$350.00	$600.00	Included with Fire Alarm	$950.00
27	Amherst Central Park (Garage)*	$250.00	$700.00	Included with Fire Alarm	$950.00	$500.00	$540.00	Included with Fire Alarm	$1,040.00	$310.00	$480.00	Included with Fire Alarm	$790.00	$149.00	$749.00	Included with Fire Alarm	$898.00	$350.00	$600.00	Included with Fire Alarm	$950.00
28	30 South Cayuga	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$450.00	N/A	$336.00	$786.00	$195.00	N/A	$445.00	$640.00	$450.00	N/A	$360.00	$810.00
29	Amherst Police Bailey Training Center	$540.00	N/A	N/A	$540.00	$500.00	N/A	N/A	$500.00	$770.00	N/A	N/A	$770.00	$295.00	N/A	N/A	$295.00	$540.00	N/A	N/A	$540.00
30	Buffalo Niagara Heritage Village - Shaw Bldg	$540.00	N/A		$540.00	$500.00	N/A	$384.00	$884.00	$980.00	N/A	$336.00	$1,316.00	$795.00	N/A	$445.00	$1,240.00	$860.00	N/A	$360.00	$1,220.00
31	Buffalo Niagara Heritage Village - Steffan Bldg	$250.00	N/A	$700.00	$950.00	$500.00	N/A	$384.00	$884.00	$850.00	N/A	$336.00	$1,186.00	$195.00	N/A	$445.00	$640.00	$560.00	N/A	$360.00	$920.00
32	Eggertsville Community Center (O'Connell & Co.)	$250.00	N/A	N/A	$250.00	$500.00	N/A	N/A	$500.00	$740.00	N/A	N/A	$740.00	$295.00	N/A	N/A	$295.00	$740.00	N/A	N/A	$740.00
33	TOTAL ANNUAL COST PER YEAR (Items #1-#32)				**$22,010.00**				**$25,245.00**				**$23,726.00**				**$22,120.00**				**$28,070.00**
	Extra Work:	Hourly Rate or Markup %	Quantity			Hourly Rate or Markup %	Quantity			Hourly Rate or Markup %	Quantity			Hourly Rate or Markup %	Quantity			Hourly Rate or Markup %	Quantity		
34	Standard Hourly Labor Rate	$140.00	80	$11,200.00		$160.00	80	$12,800.00		$147.00	80	$11,760.00		$150.00	80	12,000.00		$180.00	80	14,400.00	
35	Emergency Call Labor Rate	$245.00	20	$4,900.00		$260.00	20	$5,200.00		$294.00	20	$5,880.00		$175.00	20	3,500.00		$260.00	20	5,200.00	
36	Material Mark-Up Rate **	25%	$5,000.00	$6,250.00		60%	$5,000.00	$8,000.00		38%	$5,000.00	$6,900.00		15%	$5,000.00	5,750.00		15%	$5,000.00	5,750.00	
37	Specialized Equipment - if needed (specify equipment and rate per day) (i.e. scizzor lift or ez-up)	$600.00	Per Day	$600.00		$465.00	Per Day	$465.00		$400.00	Per Day	$400.00		$595.00	Per Day	$595.00		Inc.	Per Day	Inc.	
38	EXTRA WORK SUBTOTAL (Items #34 - #37 Extension):			**$22,950.00**				**$26,465.00**				**$24,940.00**				**$21,845.00**				**$25,350.00**	
39	GRAND TOTAL (Items #33 + #38)				**$44,960.00**				**$51,710.00**				**$48,666.00**				**$43,965.00**				**$53,420.00**

NOTES:

Davis Ulmer: Filled in N/A for monitoring on lines 1, 4, 19 and 30; Line 35 Emergency Call Labor Rate: $210/Hour Monday through Friday; $280/Hour Saturdays, Sundays and Holidays (blended rate used in bid tab).

Allstate Fire: Subcontractor Rapid Response will be used for monitoring. Confirmed via email a lift would be $595 if needed. They use telescopic poles that can cover most places without a lift.

Johnson Controls: Line item 37 - specialized equipment - is included with their pricing. Line item 22 Audobon Library - $1,940 submitted on bid but should be $1,100.

Attachment: Bid Analysis Town Wide Fire Alarm Inspection Service and Security Monitoring (RES-2024-81 : Award Bid #2023052 Town Wide

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28492 **RESOLUTION 2024-82** **ADOPTED**

Award of Bid #2024004 NYS OGS Mini-Bid for (1) 2024 Chevy Silverado 3500 - CRS #4520

WHEREAS, Contract Compliance issued Mini-Bid #2024004 through NYS OGS for one (1) 2024 Chevy Silverado 3500; and

WHEREAS, bids were received 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 Dept. to award the Mini-Bid to Joe Basil Chevrolet for their low bid of $75,868,55; and

BE IT FURTHER RESOLVED, The Town Board authorizes the Supervisor to sign the contract with Joe Basil Chevrolet; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System due to the need to place the order with the vendor as soon as possible as the vehicle is the only one in stock.

1/22/2024
Consent

FINANCIAL IMPACT:

C3625-2250; $75,868.55

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

Award 23166 Summary of Mini-Bid Responses Received for Mini-Bid # 2024004

Rank	Built to Specification or Pre-Existing Inventory	Mini-Bid #	Contractor	Contract #	NYS Price for Vehicle	Model Year	Make	Model and Trim Level	Model Code	Body Make	Body Model
1	Pre-Existing Inventory	2024004	Joe Basil Chevrolet	PC68942	$75,868.55	2024	Chevrolet	Silverado 3500 Crew LT	CK31043	Knapheide	Combo Body
2	Built to Specification	2024004	DeNooyer Chevrolet, Inc	PC69048	$76,285.50	2024	Chevrolet	Silverado 3500 Crew LT	CK31043	Knapheide	Knapheide 9' Combo body

Attachment: Mini Bid 2024004 bid Evaluation (RES-2024-82 : Award of Bid #2024004 NYS OGS Mini-Bid

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28517 **RESOLUTION 2024-83** **ADOPTED**

Award Bid #2024003 Refrigerant for Northtown Center at Amherst - CRS #4556

WHEREAS, the Contract Compliance and Administration Department received bids on January 11, 2024 for Bid #2024003 Refrigerant for the Northtown Center at Amherst; and

WHEREAS, the bid process resulted in responses from four (4) 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 the bid contract to Perfect Resource Group LLC; and

BE IT FURTHER RESOLVED, The Town Board authorizes the Supervisor to sign the contract with Perfect Resource Group LLC; and

BE IT FURTHER RESOLVED, that approval is pending successful completion of the Contract Routing System due to the fact that product is needed as soon as possible.

1/22/2024
Consent

FINANCIAL IMPACT:

A7253-4220; $34,200

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

Bid # 2024003 Refrigerant for Northtown Center At Amherst											
Low Bidder				Perfect Resource Group LLC		Hudson Technologies Company		Mollenberg-Betz, Inc.		Peter Murphy	
ITEM NO	QTY	U/M	CATALOG NO/DESCRIPTION	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price
1	40	Each	R-22 refrigerant in 30 lb. cylinders	$855.00	$34,200.00	$1,050.00	$42,000.00	$1,260.00	$50,400.00	$1,221.99	$48,879.60
2	40	Each	Cylinder Deposit (if applicable)	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
			Total - 30 lb. option		$34,200.00		$42,000.00		$50,400.00		$48,879.60
			OR								
3	10	Each	R-22 refrigerant in 125 lb. cylinders	$4,075.00	$40,750.00	$4,375.00	$43,750.00	$6,500.00	$65,000.00		
4	10	Each	Cylinder Deposit (if applicable)	$500.00	$5,000.00	$500.00	$5,000.00	$500.00	$5,000.00		
			Total - 125 lb. option		$45,750.00		$48,750.00		$70,000.00		
			NO ADDITIONAL CHARGES WILL BE ALLOWED.								
Notes:											

Attachment: Bid Tab - Refrigerant for Ice Center (RES-2024-83 : Award Bid #2024003 Refrigerant for

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28499 **RESOLUTION 2024-84** **ADOPTED**

Extension of Town Wide Towing Contracts - CRS #4535 (Original CRS/CMS #3791/3529); CRS #4538 (Original CRS/CMS #3790/3528)

WHEREAS, 9180 Transit Road, DBA Becker's Towing and Rusiniak's Service, Inc. have both agreed to extend their contracts for Town Wide Towing; and

WHEREAS, the Contract Compliance & Administration Dept. recommends extending these contracts;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Supervisor to sign the one-year contract extensions with 9180 Transit Road Inc. DBA Becker's Towing and Rusiniaks Service, Inc..

1/22/2024
Consent

FINANCIAL IMPACT:

Town Wide; Various Accounts; Amount TBD

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

TOWN OF AMHERST

Erie County, New York

SUPERVISOR
Brian J. Kulpa
716-631-7032

DEPUTY SUPERVISOR/COUNCILMEMBER
Deborah Bruch Bucki, RN, PhD

COUNCILMEMBERS
Jacqualine Berger
Shawn Lavin
Michael Szukala

9180 Transit Road, DBA Becker's Towing agrees to hold prices and extend the current contract with the Town of Amherst for Bid #2022034 (Original CRS/CMS ID #3791/3529) for Town-Wide Towing.

This contract will be extended for a one-year term from March 6, 2024 to March 5, 2025.

SIGNED:

Becker's Towing
Vendor

DATED 12/12/23

Brian J. Kulpa, Supervisor
Town of Amherst

DATED

Attachment: Beckers & Rusiniaks extensions (RES-2024-84 : Extension of Town Wide Towing Contracts - CRS #4535 (Original CRS/CMS

TOWN OF AMHERST

Erie County, New York

SUPERVISOR
Brian J. Kulpa
716-631-7032

DEPUTY SUPERVISOR/COUNCILMEMBER
Deborah Bruch Bucki, RN, PhD

COUNCILMEMBERS
Jacqualine Berger
Shawn Lavin
Michael Szukala

Rusiniak's Service, Inc. agrees to hold prices and extend the current contract with the Town of Amherst for Bid #2022034 (Original CRS/CMS ID #37901/3528) for Town-Wide Towing.

This contract will be extended for a one-year term from March 6, 2024 to March 5, 2025.

SIGNED:

Vendor

DATED

Brian J. Kulpa, Supervisor
Town of Amherst

DATED

Attachment: Beckers & Rusiniaks extensions (RES-2024-84 : Extension of Town Wide Towing Contracts - CRS #4535 (Original CRS/CMS

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Refuse
Initiated by: **Ryan C Licata**
Co-Sponsored by:

DOC ID: 28486 **RESOLUTION 2024-85** **ADOPTED**

Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676

WHEREAS, kindly authorize the Supervisor to sign a contract with the New York State Department of Environmental Conservation (NYSDEC) to receive grant funds for the Amherst Organics Management Plan, CRS #3676, and;

WHEREAS, the awarded grant is $150,000 and the designated matching funds are $50,000, and;

NOW THEREFORE BE IT RESOLVED, the Town Board authorizes the Supervisor to sign the contract with the NYSDEC for the Amherst Organics Management Plan, CRS #3676.

1/22/2024
Consent

FINANCIAL IMPACT:

$50,000 C3625.02800

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

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address):

Department of Environmental Conservation

625 Broadway
Albany, NY 12233-1080

BUSINESS UNIT/DEPT. ID: DEC01

CONTRACT NUMBER: DEC01-C01676GG-3350000

CONTRACT TYPE:

- ☐ Multi-Year Agreement
- ☐ Simplified Renewal Agreement
- ☒ Fixed Term Agreement

CONTRACTOR SFS PAYEE NAME:

AMHERST TOWN OF

TRANSACTION TYPE:

- ☒ New
- ☐ Renewal
- ☐ Amendment

CONTRACTOR DOS INCORPORATED NAME:

Amherst, Town of

PROJECT NAME:

Amherst Community Food Scraps Recycling Program- Phase II

CONTRACTOR IDENTIFICATION NUMBERS:

NYS Vendor ID Number: 1000003949

Federal Tax ID Number: 166002157

DUNS Number (if applicable): 030212336

AGENCY IDENTIFIER:

CFDA NUMBER (Federally Funded Grants Only):

CONTRACTOR PRIMARY MAILING ADDRESS:

5583 MAIN ST
WILLIAMSVILLE, NY 14221

CONTRACTOR PAYMENT ADDRESS:

☒ Check if same as primary mailing address

CONTRACT MAILING ADDRESS:

☒ Check if same as primary mailing address

CONTRACTOR STATUS:

- ☐ For Profit
- ☒ Municipality, Code:
- ☐ Tribal Nation
- ☐ Individual
- ☐ Not-for-Profit

Charities Registration Number:

Exemption State/Code:

- ☐ Sectarian Entity

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

CURRENT CONTRACT TERM:

From: 01/01/2023 To: 12/31/2026

CURRENT CONTRACT PERIOD:

From: 01/01/2023 To: 12/31/2026

AMENDED TERM:

From: To:

AMENDED PERIOD:

From: To:

CONTRACT FUNDING AMOUNT

(Multi-year - enter total projected amount of the contract; Fixed Term/Simplified Renewal - enter current period amount):

CURRENT: $150,000.00

AMENDED:

FUNDING SOURCE(S)

- [x] State
- [ ] Federal
- [ ] Other

FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT AND FUNDING AMOUNT:

(Out years represents projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

ATTACHMENTS PART OF THIS AGREEMENT:

Attachment A:

- [X] A-1 Program Specific Terms and Conditions
- [ ] A-2 Federally Funded Grants

Attachment B:

- [X] B-1 Expenditure Based Budget
- [ ] B-2 Performance Based Budget
- [ ] B-3 Capital Budget
- [ ] B-4 Net Deficit Budget
- [ ] B-1 (A) Expenditure Based Budget (Amendment)
- [ ] B-2 (A) Performance Based Budget (Amendment)
- [ ] B-3 (A) Capital Budget (Amendment)
- [ ] B-4 (A) Net Deficit Budget (Amendment)

Attachment C: Work Plan

Attachment D: Payment and Reporting Schedule

Other: OSC Approval Letter

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

IN WITNESS THEREOF, the parties hereto have electronically executed or approved this Master Contract on the dates below their signature.

In addition, I, acting in the capacity as Contractor, certify that I am the signing authority, or have been delegated or designated formally as the signing authority by the appropriate authority or officials, and as such I do agree, and I have the authority to agree, to all of the terms and conditions set forth in the Master Contract, including all appendices and attachments. I understand that (i) payment of a claim on this Master Contract is conditioned upon the Contractor's compliance with all applicable conditions of participation in this program and (if I am acting in the capacity as a not-for profit Contractor) the accuracy and completeness of information submitted to the State of New York through the Gateway vendor prequalification process and (ii) by electronically indicating my acceptance of the terms and conditions of the Master Contract, I certify that (a) to the extent that the Contractor is required to register and/or file reports with the Office of Attorney General's Charities Bureau ("Charities Bureau"), the Contractor's registration is current, all applicable reports have been filed, and the Contractor has no outstanding requests from the Charities Bureau relating to its filings and (b) all data and responses in the application submitted by the Contractor are true, complete and accurate. I also understand that use of my assigned User ID and Password on the State's contract management system is equivalent to having placed my signature on the Master Contract and that I am responsible for any activity attributable to the use of my User ID and Password. Additionally, any information entered will be considered to have been entered and provided at my direction. I further certify and agree that the Contractor agrees to waive any claim that this electronic record or signature is inadmissible in court, notwithstanding the choice of law provisions.

CONTRACTOR:
AMHERST TOWN OF

By: _____

_____
Printed Name

Title: _____

Date: _____

In addition, the party below certifies that it has verified the electronic signature of the Contractor to this Master Contract.

STATE AGENCY:
Department of Environmental Conservation

_____

By: _____

_____
Printed Name

Title: _____

Date: _____

ATTORNEY GENERAL'S SIGNATURE
APPROVED AS TO FORM

By: _____
Printed Name

Title: _____

Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____
Printed Name

Title: _____

Date: _____

Contract Number: # DEC01-C01676GG-3350000

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

STATE OF NEW YORK
MASTER CONTRACT FOR GRANTS

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) 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 Master 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 PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master 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 Master 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 Master 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.

***Budget Changes*:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC 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

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2[1], Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2[2], Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master 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.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and

[1] To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

[2] To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master 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 Master Contract shall attempt in good faith to reform the Master 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.

I. Interpretation: The headings in the Master 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 Master 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.

J. 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 designated in Attachment A-1 (Program Specific Terms and Conditions).

3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).

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 service 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

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

Master 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 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.

K. 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.

L. 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 Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master 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 set-off pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

M. 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 Master 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 Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master 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 the State Agency 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 Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master 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

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

any of the State of New York, the State Agency, 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.

P. No Arbitration: Disputes involving the Master 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.

Q. Secular Purpose: Services performed pursuant to the Master 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.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master 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.

S. 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.[3]

T. 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.

U. 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.

V. Federally Funded Grants and Requirements Mandated by Federal Laws: All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master 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 Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

[3]As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. *General Renewal*: The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. *Renewal Notice to Not-for-Profit Contractors*:

a) Pursuant to State Finance Law §179-t, if the Master 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 Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master 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 Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master 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 Master 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 Master Contract as required in this Section and State Finance Law §179-t, the Master 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 Master Contract.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

C. Termination:

1. *Grounds*:

a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Master 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 Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, 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 Master 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 Master 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 Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency 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 Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master 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.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

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 Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property*:

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master 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 Master 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 Master Contract.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency 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 Master Contract shall not be reimbursed.

3. 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 Attachment D (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 the State Agency, 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.

5. If travel expenses are an approved expenditure under the Master 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.

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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 Attachment D (Payment and Reporting Schedule).

2. Initial 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. Subsequent 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 dates specified in Attachment D (Payment and Reporting Schedule).

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 (Attachment D) 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 Attachment D (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 Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (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 Attachment 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 appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (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 Attachment C (Work Plan).

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The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency 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 Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency 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 Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:[4] 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 Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:[5] Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:[6] Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:[7] The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

[4] 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 Master Contract effort.
[5] Fee for Service is a rate established by the Contractor for a service or services rendered.
[6] Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.
[7] 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 Master 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.

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h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:[8] Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

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 Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master 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 Master 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 Master Contract shall be submitted to the State Agency 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 the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency 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 ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) 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,

[8] 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.

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(ii) the Contractor's Federal social security number, and/or (iii) DUNS number. 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 the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master 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:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). 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 Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master 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 Master 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 Master 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 Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

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2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (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 Attachment D (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 Attachment C (Work Plan). 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 Attachment D (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 Attachment D (Payment and 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 Master Contract, not later than the time period listed in Attachment D (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 Attachment C (Work Plan).

(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 Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

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(ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (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 Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (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 the State Agency 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 Master 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 Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could 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. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

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 Master Contract, and all applicable Federal and State laws and regulations.

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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 Master Contract and/or any subcontract entered into under the Master 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 Master 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 Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master 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 Master 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 Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master 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.

4. If requested by the State, when a subcontract equals or exceeds $100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall 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 the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting

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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 Master Contract for any activity other than those provided for under the Master 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 Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master 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 Master 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 Master 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 Master 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 the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

e) A rental charge to the Master 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 Master 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

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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 Master 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 Master 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 Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

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 Master Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master 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 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,

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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, and cost allocation plans, 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 the State Agency or State Agencies involved in the Master 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 OMB Circulars A-87, A-122, and/or A-21. 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 Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

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F. Confidentiality: The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master 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 Master 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 Contractor's 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 Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility

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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 be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master 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 non-discrimination 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 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 Master 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 Master 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 Master 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 Master 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;

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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;

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.

The Contractor shall include the provisions of subclauses 1 – 5 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 Master 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 Master Contract is greater than $1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master 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;

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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

d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master 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 Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master 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 the State Agency 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 Master 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

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obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master 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.

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 Master 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 Master 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 Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master 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 Master 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 Master Contract based on:

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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 the State Agency 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 Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. Consultant Disclosure Law:[9] 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.

[9] Not applicable to not-for-profit entities.

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ATTACHMENT A-1
PROGRAM SPECIFIC TERMS AND CONDITIONS

Standard Clauses for All New York State Department of Environmental Conservation Contracts

The parties to the attached contract, license, lease, grant, amendment or other agreement of any kind (hereinafter "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract. The word "Contractor" herein refers to any party to the contract, other than the New York State Department of Environmental Conservation (hereinafter "Department").

A) AGENCY SPECIFIC TERMS AND CONDITIONS

I. Postponement, suspension, abandonment or termination by the Department: Within 15 days of receipt of notice, the Contractor shall deliver to the Department all data, reports, plans, or other documentation related to the performance of this contract, including but not limited to source codes and specifications, guarantees, warranties, as-built plans and shop drawings. In any of these events, the Department shall make settlement with the Contractor upon an equitable basis as determined by the Department which shall fix the value of the work which was performed by the Contractor prior to the postponement, suspension, abandonment or termination of this contract. This clause shall not apply to this contract if the contract contains other provisions applicable to postponement, suspension or termination of the contract.

II. Conflict of Interest

(a) Organizational Conflict of Interest - To the best of the Contractor's knowledge and belief, the Contractor warrants that there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, as herein defined, or that the Contractor has disclosed all such relevant information to the Department.

(1) An organizational conflict of interest exists when the nature of the work to be performed under this contract may, without some restriction on future activities, impair or appear to impair the Contractor's objectivity in performing the work for the Department.

(2) The Contractor agrees that if an actual, or potential organizational conflict of interest is discovered at any time after award, whether before or during performance, the Contractor will immediately make a full disclosure in writing to the Department. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Department, to avoid, mitigate, or minimize the actual or potential conflict.

(3) To the extent that the work under this contract requires access to personal, proprietary or confidential business or financial data of persons or other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(b) Personal Conflict of Interest - The following provisions with regard to management or professional level employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(1) A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair or appear to impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work. The Contractor agrees to notify the Department immediately of any actual or potential personal conflict of interest with regard to any such person working on or having access to information regarding this contract, as soon as Contractor becomes aware of such conflict. The Department will notify the Contractor of the appropriate action to be taken.

(2) The Contractor agrees to advise all management or professional level employees involved in the work of this contract, that they must report any personal conflicts of interest to the Contractor. The Contractor must then advise the Department which will advise the Contractor of the appropriate action to be taken.

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(3) Unless waived by the Department, the Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, as defined herein, have been reported to the Department. Such certification must be signed by a senior executive of the Contractor and submitted in accordance with instructions provided by the Department. Along with the annual certification, the Contractor shall also submit an update of any changes in any conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification is to be submitted no later than 45 days after the close of the previous certification period covered.

(4) In performing this contract, the Contractor recognizes that its employees may have access to data, either provided by the Department or first generated during contract performance, of a sensitive nature which should not be released without Department approval. If this situation occurs, the Contractor agrees to obtain confidentiality agreements from all affected employees working on requirements under this contract including subcontractors and consultants. Such agreements shall contain provisions which stipulate that each employee agrees not to disclose, either in whole or in part, to any entity external to the Department, Department of Health or the New York Department of Law, any information or data provided by the Department or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the Department. If a Contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the Contractor must provide immediate advance notification to the Department so that the Department can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) Remedies - The Department may terminate this contract in whole or in part, if it deems such termination necessary to avoid an organizational or personal conflict of interest, or an unauthorized disclosure of information. If the Contractor fails to make required disclosures or misrepresents relevant information to the Department, the Department may terminate the contract, or pursue such other remedies as may be permitted by the terms of Clause I of this Attachment or other applicable provisions of this contract regarding termination.

(d) The Contractor will be ineligible to make a proposal or bid on a contract for which the Contractor has developed the statement of work or the solicitation package

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder (except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services) provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Department.

III. Dispute Resolution

The parties agree to the following steps, or as many as are necessary to resolve disputes between the Department and the Contractor.

(a) The Contractor specifically agrees to submit, in the first instance, any dispute relating to this contract to the designated individual, who shall render a written decision and furnish a copy thereof to the Contractor.

(1) The Contractor must request such decision in writing no more than fifteen days after it knew or should have known of the facts which are the basis of the dispute.

(2) The decision of the designated individual shall be the final DEC determination, unless the Contractor files a written appeal of that decision with the designated appeal individual ("DAI") within twenty days of receipt of that decision.

(b) Upon receipt of the written appeal, the DAI, will review the record and decision. Following divisional procedures in effect at that time, the DAI will take one of the following actions, with written notice to the Contractor.

(1) Remand the matter to the program staff for further negotiation or information if it is determined that the matter is not ripe for review; or

(2) Determine that there is no need for further action, and that the determination of the designated individual is confirmed; or

(3) Make a determination on the record as it exists.

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(c) The decision of the DAI shall be the final DEC decision unless the Contractor files a written appeal of that decision with the Chair of the Contract Review Committee ("CRC") within twenty days of receipt of that decision.

The designated individual to hear disputes is:

John Vana, Chief
Bureau of Waste Reduction and Recycling
Division of Materials Management
NYS Department of Environmental Conservation
625 Broadway, 9th Floor
Albany, NY 12233-7253
(518) 402-8706

The designated appeal individual to review decisions is:

Richard Clarkson, Asst. Director
Division of Materials Management
NYS Department of Environmental Conservation
625 Broadway, 9th Floor
Albany, NY 12233-7253
(518) 402-8706

The Chair of the Contract Review Committee is:

Department of Environmental Conservation
Nancy W. Lussier, Chair
Contract Review Committee
625 Broadway
Albany, NY 12233-5010
Telephone: (518) 402-9228

(d) Upon receipt of the written appeal, the Chair of the CRC, in consultation with the members of the CRC and the Office of General Counsel, will take one of the following actions, or a combination thereof, with written notice to the Contractor.

(1) Remand the matter to program staff for additional fact finding, negotiation, or other appropriate action; or

(2) Adopt the decision of the DAI; or

(3) Consider the matter for review by the CRC in accordance with its procedures.

(e) Following a decision to proceed pursuant to (d) 3, above, the Chair of the CRC shall convene a proceeding in accordance with the CRC's established contract dispute resolution guidelines. The proceeding will provide the Contractor with an opportunity to be heard.

(f) Following a decision pursuant to (d) 2 or (d) 3, the CRC shall make a written recommendation to the Deputy Commissioner for Administration who shall render the final DEC determination.

(g) At any time during the dispute resolution process, and upon mutual agreement of the parties, the Office of Hearings and Mediation Services (OHMS) may be requested to provide mediation services or other appropriate means to assist in resolving the dispute. Any findings or recommendations made by the OHMS will not be binding on either party.

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(h) Final DEC determinations shall be subject to review only pursuant to Article 78 of the Civil Practice Law and Rules.

(i) Pending final determination of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract in accordance with the decision of the designated individual. Nothing in this Contract shall be construed as making final the decision of any administrative officer upon a question of law.

(j)(1) Notwithstanding the foregoing, at the option of the Contractor, the following shall be subject to review by the CRC: Disputes arising under Article 15-A of the Executive Law (Minority and Women Owned Business participation), the Department's determination with respect to the adequacy of the Contractor's Utilization Plan, or the Contractor's showing of good faith efforts to comply therewith. A request for a review before the CRC should be made, in writing, within twenty days of receipt of the Department's determination.

(2) The CRC will promptly convene a review in accordance with Article 15-A of the Executive Law and the regulations promulgated thereunder.

IV. Tax Exemption

Pursuant to Tax Law Section 1116, the State is exempt from sales and use taxes. A standard state voucher is sufficient evidence thereof. For federal excise taxes, New York's registration Number 14740026K covers tax-free transactions under the Internal Revenue Code.

V. Litigation Support

In the event the Department becomes involved in litigation related to the subject matter of this contract, the Contractor agrees to provide background support and other litigation support, including but not limited to depositions, appearances, and testimony. Any compensation paid to the Contractor under this paragraph will be negotiated and based on the rates established in the contract, or as may otherwise be provided in the contract. No compensation for such support will be paid if the litigation is the result of the Contractors misconduct, negligence or omissions.

VI. Inventions or Discoveries

The Scope of work of this agreement shall not include any inventions. If, however, an invention results from this project it shall be owned as follows:

Any invention or discovery first made or conceived and reduced to practice in the performance of this Contract solely by the Contractor shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract solely by Department or State shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

Any invention or discovery made or conceived and reduced to practice in the performance of this Contract jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

VII. Intellectual Property and Copyright Materials

(a) Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Contractor in the performance of this work shall remain with the Contractor; provided that the Contractor shall grant to the Department and the State a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for on behalf of the Department and the State the subject copyright throughout the world, where the Contractor is able to do so.

Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created solely by Department or State in the performance of this work shall remain with the State; provided that the Department or State shall grant to the Contractor a nonexclusive, nontransferable, irrevocable, paid-up license to use for non-commercial research, educational, and public service purposes.

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Title to, and the right to determine the disposition of any copyrights, or copyrightable material, first produced or created jointly by Contractor and Department or State in the performance of this work shall be jointly held by the Contractor and Department or State.

VIII. Patent and Copyright Protection

If any patented or copyrighted material is involved in or results from the performance of this Contract, this Article shall apply.

(a) The Contractor shall, at its expense, defend any suit instituted against the Department and indemnify the Department against any award of damages and costs made against the Department by a final judgment of a court of last resort based on the claim that any of the products, services or consumable supplies furnished by the Contractor under this Contract infringes any patent, copyright or other proprietary right; provided the Department gives the Contractor:

(1) prompt written notice of any action, claim or threat of infringement suit, or other suit, and

(2) the opportunity to take over, settle or defend such action at the Contractor's sole expense, and

(3) all available information, assistance and authority necessary to the action, at the Contractor=s sole expense.

The Contractor shall control the defense of any such suit, including appeals, and all negotiations to effect settlement, but shall keep the Department fully informed concerning the progress of the litigation.

(b) If the use of any item(s) or parts thereof is held to infringe a patent or copyright and its use is enjoined, or Contractor believes it will be enjoined, the Contractor shall have the right, at its election and expense to take action in the following order of precedence:

(1) procure for the Department the right to continue using the same item or parts thereof;

(2) modify the same so that it becomes non-infringing and of at least the same quality and performance;

(3) replace the item(s) or parts thereof with noninfringing items of at least the same quality and performance;

(4) if none of the above remedies are available, discontinue its use and eliminate any future charges or royalties pertaining thereto. The Contractor will buy back the infringing product(s) at the State's book value, or in the event of a lease, the parties shall terminate the lease. If discontinuation or elimination results in the Contractor not being able to perform the Contract, the Contract shall be terminated.

(c) In the event that an action at law or in equity is commenced against the Department arising out of a claim that the Department's use of any item or material pursuant to or resulting from this Contract infringes any patent, copyright or proprietary right, and such action is forwarded by the Department to the Contractor for defense and indemnification pursuant to this Article, the Department shall copy all pleadings and documents forwarded to the Contractor together with the forwarding correspondence and a copy of this Contract to the Office of the Attorney General of the State of New York. If upon receipt of such request for defense, or at any time thereafter, the Contractor is of the opinion that the allegations in such action, in whole or in part, are not covered by the indemnification set forth in this Article, the Contractor shall immediately notify the Department and the Office of the Attorney General of the State of New York in writing and shall specify to what extent the Contractor believes it is and is not obligated to defend and indemnify under the terms and conditions of this Contract. The Contractor shall in such event protect the interests of the Department and State of New York and secure a continuance to permit the State of New York to appear and defend its interests in cooperation with Contractor as is appropriate, including any jurisdictional defenses which the Department and State shall have.

(d) The Contractor shall, however, have no liability to the Department under this Article if any infringement is based upon or arises out of:

(1) compliance with designs, plans, or specifications furnished by or on behalf of the Department as to the items;

(2) alterations of the items by the Department;

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(3) failure of the Department to use updated items provided by the Contractor for avoiding infringement;

(4) use of items in combination with apparatus or devices not delivered by the Contractor;

(5) use of items in a manner for which the same were neither designed nor contemplated; or

(6) a patent or copyright in which the Department or any affiliate or subsidiary of the Department has any direct or indirect interest by license or otherwise.

(e) The foregoing states the Contractor's entire liability for, or resulting from, patent or copyright infringement or claim thereof.

IX. Freedom of Information Requests

In response to a Freedom of Information Law (FOIL) request received by the Department, the Contractor agrees to provide to the Department records generated by the Contractor as a result of this contract's scope of work that are responsive to the FOIL request. The contractor may request that the Department except from disclosure records on the basis that they contain trade secrets or confidential commercial information in accordance with FOIL (Public Officers Law Section 87 and 6 NYCRR Part 616).

X. Article 15-Requirements

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

(a) General Provisions

(1) The Department 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.

(2) 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 New York State Department (the "Department"), to fully comply and cooperate with the Department 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.

(3) 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 Article or enforcement proceedings as allowed by the Contract.

(b) Contract Goals

(1) For purposes of this procurement, the Department hereby establishes an overall goal of **0%** for Minority and Women-Owned Business Enterprises ("MWBE") participation, (based on the current availability of qualified MBEs and WBEs).

(2) For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address; https://ny.newnycontracts.com

Additionally, the 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.

(3) 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

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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 Department for liquidated or other appropriate damages, as set forth herein.

(c) MWBE Responsibilities & Requirements

(1) Contractors must read, sign, and submit the NYSDEC MWBE Responsibilities & Requirements document. This document describes the MWBE requirements and provides directions for completing the required MWBE Utilization Plan form and subsequent Quarterly Reports.

(2) By signing and submitting this document, the Contractor acknowledges they understand the assigned MWBE goals, the MWBE Utilization Plan form requirements, the MWBE Quarterly Report requirements, and understand what Good Faith Efforts they must put forth to meet their assigned MWBE goals.

(d) MWBE Utilization Plan

(1) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.

(2) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section X-B-1 of this Attachment.

(3) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

(e) Equal Employment Opportunity (EEO)

(1) 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 State 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. 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 submit an EEO policy statement to the Department within seventy-two (72) hours after the date of the notice by Department to award the Contract to the Contractor.

(iii) If Contractor or Subcontractor does not have an existing EEO policy statement, the Department may provide the Contractor or Subcontractor a model statement. This statement can be found at the link provided in Section 8.

(iv) The Contractor's EEO policy statement shall include the following 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.

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 employer Department, 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 employer Department, 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 4 and Paragraph "E" of this Section III, 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.

(2) Staffing Plan Form

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 Staffing Plan as part of the MWBE Utilization Plan and submit at the time of award of the contract.

(3) Workforce Employment Utilization Report Form ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the Department of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the Contract to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted 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 Workforce Report and indicate that the information provided related 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 Workforce 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.

(4) 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.

(f) Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report Form to the Department by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

(g) Waivers

(1) For Waiver Requests Contractor should use Waiver Request Form.

(2) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(3) If the Department, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been

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issued in regards to such non-compliance, the Department 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.

(h) Liquidated Damages - MWBE Participation

(1) Where Department 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, Contractor shall be obligated to pay to the Department liquidated damages.

(2) Such liquidated damages shall be calculated as an amount equaling the difference between:
(i) All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
(ii) All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

(3) 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 Department, Contractor shall pay such liquidated damages to the Department within sixty (60) days after they are assessed by the Department 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 Department.

(i) Forms

Forms referenced in this Article can be found at http://www.dec.ny.gov/about/48854.html

XI. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. The Department recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Department contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

(a) Contract Goals

The Department hereby establishes an overall goal of **0%** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: https://ogs.ny.gov/veterans/. Questions regarding compliance with SDVOB participation goals should be directed to the Department's Designated Contacts.

Contractor must document "good faith efforts" to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause (XI)(d) below).

(b) **SDVOB Utilization Plan**

1. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.

2. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties

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including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Department.

3. The Department will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of Department acceptance or issue a notice of deficiency within 20 days of receipt.

4. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Department, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Department to be inadequate, The Department shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Department, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

5. The Department may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:

(i) If a Bidder fails to submit an SDVOB Utilization Plan;
(ii) If a Bidder fails to submit a written remedy to a notice of deficiency;
(iii) If a Bidder fails to submit a request for waiver; or
(iv) If the Department determines that the Bidder has failed to document good faith efforts.

6. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

7. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, The Department shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

(c) Request for Waiver

1. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at the Department for guidance.

2. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause (XI)(d) below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Department at that time, the provisions of clauses (XI)(b) 3., 4., & 5. will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the Department shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

3. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Department but must be made no later than prior to the submission of a request for final payment on the Contract.

4. If the Department, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Department may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Department.

(d) Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

(1) Copies of solicitations to SDVOBs and any responses thereto.

(2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

(3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Department with certified SDVOBs whom the Department determined were capable of fulfilling the SDVOB goals set in the Contract.

(4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

(5) Other information deemed relevant to the waiver request.

(e) **Quarterly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Quarterly SDVOB Contractor Compliance within the first month of each quarter to the Department during the term of the Contract for the preceding quarters' activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by the Contractor and submitted to the Department, by the 10th day of the first month of each quarter during the term of the Contract, for the preceding quarters' activity to: sdvob@dec.ny.gov

(f) **Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

XII. Iran Divestment Act Requirements

By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerors 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

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.

During the term of the Contract, should the state agency 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.

The state agency 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.

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XIII. Americans With Disabilities Act

In the event the monies defined herein are to be used for the development of facilities, outdoor recreation areas, transportation or written or spoken communication with the public, the Contractor shall comply with all requirements for providing access for individuals with disabilities as established by Article 4A of the New York State Public Buildings Law, Americans with Disabilities Act, and relevant sections of the New York State Uniform Fire Prevention and Building Code. Standards for certain Recreation Facilities are found in the 2010 ADA Standards for Accessible Design while others are found in the Architectural Barriers Act Accessibility Guidelines for Outdoor Recreation Areas, https://www.access-board.gov/guidelines-and-standards

XIV. Public Access to Facilities

If applicable to the project, the Contractor agrees to allow public access to any facilities developed with monies defined herein on the same basis to all residents of New York State for a period not less than five (5) years after the date of final payment under this Contract or five (5) years after the date that the final payment was due. Failure to comply with the provisions of this clause shall be considered an abandonment of the Project.

XV. Project Insurance Considerations

Refer to project insurance requirements as set forth in A-1 (B) Program Specific Terms and Conditions.

XVI. Amendment/Extensions

The Contract may be amended and/or extended by mutual written consent of all parties. Amendment forms will be incorporated into this Contract and will not take effect until approved by all applicable State agencies and final approval by the Office of the State Comptroller, if applicable. Contract amendments may be conditioned upon funds being re-appropriated in the State Budget each state fiscal year to the Department.

XVII. Environmental Protection Fund Acknowledgement

If applicable, in recognition of a portion of the Department funds utilized for any work completed under this Contract, the Contractor agrees to acknowledge in any communication to the public, that such funding was provided from the Environmental Protection Fund as administered by the New York State Department of Environmental Conservation.

XVIII. Vendor Responsibility

a) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner 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 organizational and financial capacity.

b) The Department recommends that vendors file a required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/vendor_index.htm or go directly to the VendRep System online at https://portal.osc.state.ny.us.

c) Vendors must provide their New York State Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep or may contact the Department of the Office of the State Comptroller's Help Desk for a copy of the paper form.

d) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Department officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the 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.

XVIII. Permits

a) If applicable, the Contractor agrees to obtain all required permits, including but not limited to, local, state and federal permits prior to the commencement of any project related work. The Contractor agrees that all work performed in relation to the project by the Contractor or its agents, representatives, or contractors will comply with all relevant federal,

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state and local laws, rules, regulations and standards, zoning and building codes, ordinances, operating certificates for facilities, or licenses for an activity.

b) With respect to the project, the contractor certifies that is has complied, and shall continue to comply with all requirements of the State Environmental Quality Review Act (SEQRA). The Contractor agrees to provide all environmental documents as may be required by the Department. The Contractor has notified, and shall continue to notify, the Department of all actions proposed for complying with the environmental review requirements imposed by SEQRA.

XIX. Approvals

The Contractor agrees that the project will be performed in accordance with the condition of any applicable administrative, judicial or governmental orders or approvals.

XX. Site Access

If applicable, the Contractor represents it has or will obtain title to or sufficient interest in the project site, including rights-of-way and necessary easements, before the start of the project to ensure undisturbed use and possession for purposes of construction and completion of the project, as well as operation of the project throughout its useful life.

XXI. Cost Overruns

If applicable, any cost overruns will not be paid by the Department and the Department is not committed to seeking additional appropriations or re-appropriation of funds and will not be responsible for the maintenance and operation of any facility which may be developed or equipment which may be purchased with the funds herein identified.

XXII. Construction Plans

It is the Contractor's responsibility (if applicable to the Project) to have all construction contract plans, specifications and cost estimates certified by a professional engineer licensed to practice in the State of New York. All certified plans and specifications shall become part of this Contract and shall be kept on the project site at all times.

XXIII. Payment and Reporting

a) The Contractor agrees to fully fund the Project and then seek reimbursement from the Department for eligible project costs. The Department will not process final payment for this Contract, until the Department determines that the project was completed satisfactorily and upon receipt of all required final close-out payment documentation in accordance with the direction and requirements described in Attachment D.

b) The Contractor will be entitled to receive reimbursement payments for work, projects, and/or services rendered as detailed and described in Attachment C and Attachment D of this Contract. Claims for reimbursement must be accompanied by such receipts and documents verifying expenditures as may be required by the Department and by the Comptroller. Satisfactory documentation shall include, but is not limited to, signed copies of payment vouchers or invoices, canceled checks/or the latest cumulative work-in-place estimate for each construction Contract, and any further documentation as may be required by the Department and/or the Comptroller. The Department reserves the right, in its sole discretion, to determine if the reimbursement request and accompanying documentation submitted by the Contractor is in satisfactory form and substance. A final payment determination will be based upon the Department's review of the Contractor's final voucher submission and reporting as described in Attachment D.

XXIV. On-Site Inspections

The State, Department or authorized representatives will conduct a review of the Project funded from this Contract, which may include on-site inspections, at a time that is satisfactory to the Department.

XXV. Prohibition on Purchase of Tropical Hardwoods

The Contractor certifies and warrants that all wood products to be sued under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State of any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

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B) PROGRAM SPECIFIC TERMS AND CONDITIONS

I. Notices:

The Department's authorized representative for the implementation of this Contract and for approval, direction and receipt of all Project reports called for in this Contract is listed below. Whenever it is provided in this Contract that notice must be given or other communications sent to the Department, the notices or communications must be in writing and delivered or sent to the Department's authorized representative at:

Address: New York State Department of Environmental Conservation
Division of Materials Management
625 Broadway – 9th Floor
Albany, NY 12233-7253
518-402-8706

A copy of all legal notices shall be sent to:

General Counsel
New York State Department of Environmental Conservation
625 Broadway - 14th Floor
Albany, New York 12233-1500

The Contractor's authorized representative for the implementation of this Contract is the person authorized in the Resolution of Support for the contract. Notices or communications regarding this Contract should be in writing and delivered or sent to the Contractor's authorized representative at the address identified on the Face Page, with copies sent to the Contractor's contract administrator as identified in the contract application.

Notices delivered or sent shall be deemed for all purposes as notice to all persons who are Parties to this Contract as Department or Contractor.

II. Project Insurance Considerations

The Contractor agrees to procure and maintain at its own expense and without expense to the Department until final acceptance by the Department of the services covered by this Contract, insurance of the kinds and amounts as determined by the Department and based upon the project work plan. The insurance policies should be provided by insurance companies licensed to do business in the State of New York. Any delay or time lost as a result of the Contractor not having insurance required by the Contract shall not give rise to a delay claim or any other claim against the Department.

Upon execution of this Contract, the Contractor shall furnish to the Department a certificate or certificates, satisfactory to the Department, showing that it has complied with this Article. The insurance documentation shall provide that:

- Liability and protective liability insurance policies shall provide primary and non-contributory coverage to the NYS Department of Environmental Conservation for any claims arising from the Contractor's Work under this contract, or as a result of Contractor's activities.
- The State of New York, NYS Department of Environmental Conservation, its officers, agents and employees, Division of Materials Management, shall be listed as Certificate Holder on all liability insurance certificate(s), as additional insureds on endorsements(s) and on additional supporting documentation.
- The policies shall include a waiver of subrogation endorsement in favor of the Department as an additional insured. The endorsement shall be on ISO Form Number CG 24 04 or a similar form with same modification to the policy.
- Policies shall not be changed or canceled until thirty (30) days prior written notice has been given to the Department; as evidenced by an endorsement or declarations page.

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- Insurance documentation shall disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the Contract.
- Endorsements in writing must be added to and made part of the insurance contract for the purpose of changing the original terms to reflect the revisions and additions as described. A copy of these endorsements must be provided to the Department within a reasonable amount of time.
- Applicable insurance policy number(s) reference on the ACORD form must be referenced in the supporting documentation requested by the Department and supplied by the insurance company (e.g. endorsement page, declarations page, etc.).
- This Contract shall be void and of no effect unless the Contractor procures the required insurance policies and maintains them until completion of the work or acceptance by the Department, whichever event is later.

The kinds and amounts of insurance required are as follows:

a) Workers' Compensation coverage must be provided for work to be performed in New York State. The Contractor shall provide and maintain full New York State coverage during the life of this contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	**FORM TITLE**
C-105.2	Certificate of Workers' Compensation Insurance
U-26.3	State Insurance Fund Version of the C-105.2 form
SI-12/ GSI-105.2	Certificate of Workers' Compensation Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

b) Disability Benefits coverage must be provided for work to be performed in New York State. 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 New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Department of Environmental Conservation and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chairman of the New York State Workers' Compensation Board:

FORM #	**FORM TITLE**
DB-120.1	Certificate of Disability Benefit Insurance
DB-155	Certificate of Disability Benefit Self-Insurance
CE-200	Certificate of Attestation of Exemption – (no employees)

An ACORD form is **NOT** an acceptable proof of Workers' Compensation coverage. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME** The State of New York and The New York State Department of Environmental Conservation, Division of Materials Management, 625 Broadway 9th floor, Albany, NY 12233-7253, as the Entity Requesting Proof of Coverage.

Additional information can be obtained at the Worker's Compensation website:
http://www.wcb.ny.gov/content/main/Employers/Employers.jsp

Upon review of the scope of work outlined in the Grant Application by the Department, the following types of liability insurance may be required:

c) Commercial General Liability Insurance with a limit of not less than $2,000,000 each occurrence, and $5,000,000 General aggregate. Such insurance shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability assumed in a contract (including tort liability of another assumed in a contract). Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

d) Business Automobile Liability with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any registered motor vehicle including owned, leased, hired and non-owned vehicles. If the Contractor does not own, rent or lease any registered vehicles and will not be using any vehicles on State Land proof of Business Automobile Liability Insurance shall not be required for this Contract. The Contractor shall assume full responsibility and liability that owners and operators of any registered vehicles entering State Land to conduct work under this contract carry the same Business Automobile Liability Insurance of the kinds and amounts listed above. NYS Department of Environmental Conservation reserves the right to request proof of the same.

e) Environmental Liability with a limit of not less than $1,000,000 providing primary coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the Department of Environmental Conservation arising from the Contractor's Work.

f) Professional Liability Insurance includes coverage for its negligent act, error or omission in rendering or failing to render professional services required by this contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. The Contractor, any subcontractor or supplier retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of this contract, Professional Liability Insurance in the amount of $1,000,000. The professional liability insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

g) Marine Protection & Indemnity: Anytime the activity involves work on navigable water or the work is connected to water related activities, the Contractor shall procure Marine Protection & Indemnity and Hull and Machinery coverage, if available. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the contract, with a minimum $2,000,000 limit.

Should the Contractor engage a subcontractor, the Contractor shall impose the insurance requirements of this document on the subcontractor. Contractor shall determine the required insurance types and limits, commensurate with the work of the Subcontractor. The Contractor will maintain the certificate or certificates and endorsements for all subcontractors hired as part of the Contractor's records.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

SUMMARY

PROJECT NAME: Amherst Community Food Scraps Recycling Program- Phase II

CONTRACTOR SFS PAYEE NAME: AMHERST TOWN OF

CONTRACT PERIOD: From: 01/01/2023

To: 12/31/2026

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Personal Services					
a) Salary	$0.00	$0.00	0 %	$0.00	$0.00
b) Fringe	$0.00	$0.00	0 %	$0.00	$0.00
Subtotal	$0.00	$0.00	0 %	$0.00	$0.00
2. Non Personal Services					
a) Contractual Services	$0.00	$0.00	0 %	$0.00	$0.00
b) Travel	$0.00	$0.00	0 %	$0.00	$0.00
c) Equipment	$75,000.00	$25,000.00	33 %	$0.00	$100,000.00
d) Space/Property & Utilities	$0.00	$0.00	0 %	$0.00	$0.00
e) Operating Expenses	$0.00	$0.00	0 %	$0.00	$0.00
f) Other	$75,000.00	$25,000.00	33 %	$0.00	$100,000.00
Subtotal	$150,000.00	$50,000.00	33 %	$0.00	$200,000.00
TOTAL	$150,000.00	$50,000.00	33 %	$0.00	$200,000.00

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

PERSONAL SERVICES DETAIL

SALARY					
POSITION TITLE	**ANNUALIZED SALARY PER POSITION**	**STANDARD WORK WEEK (HOURS)**	**PERCENT OF EFFORT FUNDED**	**NUMBER OF MONTHS FUNDED**	**TOTAL**
				Subtotal	
TOTAL FRINGE					
				PERSONAL SERVICES TOTAL	

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	TOTAL
TOTAL	

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

TRAVEL - TYPE/DESCRIPTION	TOTAL
TOTAL	

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

EQUIPMENT - TYPE/DESCRIPTION	TOTAL
Food Waste Satellite Collection Vehicle	$100,000.00
TOTAL	$100,000.00

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

OTHER - TYPE/DESCRIPTION	TOTAL
Sitework cost estimates & construction material costs	$100,000.00
TOTAL	$100,000.00

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT C - WORK PLAN

SUMMARY

PROJECT NAME: Amherst Community Food Scraps Recycling Program- Phase II

CONTRACTOR SFS PAYEE NAME: AMHERST TOWN OF

CONTRACT PERIOD: From: 01/01/2023

To: 12/31/2026

Project Summary: A high-level overview of the project, including the overall goal and desired outcomes.

If awarded, funding from this grant would be used to further expand the Town of Amherst Food Scrap Recycling Program by using 50% of the requested funding for the construction of a permanent organics recycling facility site located at the present temporary site, while the other half will be for purchasing a vehicle specifically for hauling food scraps from various drop off locations around the Town of Amherst. The location for the permanent site will continue to be at our New Rd. location (physical address is 3755 Tonawanda Creek Rd.) with funding being primarily used for site work that would include, but not be limited to: grading of existing land, potential tree and brush removal, retention pond creation, drainage improvements, etc. No permanent structures will be built at this site using this grants funding. We intend to use this site to serve all 125,000 residents of the Town on a voluntary basis, with the overall number of persons realistically being served at any one point ranging from 10,000 to 25,000 residents. We have begun distributing 10,000 kitchen size food scrap containers to our residents primarily through community events and social media advertising. As of 6/15/2022 we have given out close to 1,000 containers. Residents can use these at home and then bring them to our main office at the Highway Dept. 7 days a week or by bringing their full container back to the Farmers market events held on Saturdays throughout the year to empty them. Eventually after collecting and composting enough material, we will then offer the finished product to interested residents, free of charge.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT C - WORK PLAN

DETAIL

Objective	
1	Project Administration - Meeting(s) with DEC representatives to discuss plan and implantation.

Tasks	
1.1	Meeting Summary - Meet to discuss plan and implementation timeline.

Performance Measures

1.1.1	Meeting Summary - Meet to discuss plan and implementation timeline.

Tasks	
1.2	Reporting - Quarterly progress reports, reimbursement requests, and final project summary.

Performance Measures

1.2.1	Quarterly progress reports - Submit quarterly reports to DEC within 30 days of the close of each quarter.
1.2.2	Reimbursement requests - Submitted as needed, but only at the end of each quarter. Final reimbursement requests due within 120 days of contract end date.
1.2.3	Final Project Summary - Report and all deliverables submitted to DEC within 60 days of the contract end date.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT C - WORK PLAN

DETAIL

Objective	
2	Develop vehicle specs and pricing, purchase new vehicle - Develop specifications and bid package for new food scrap collection vehicle for publishing on NYSOGS site for bids

Tasks	
2.1	Develop & Publish Mini-bid - Develop bid from specs developed through online research and in-person meetings with local sales representatives.

Performance Measures

2.1.1	Submit Draft to DEC - Submit draft to DEC for review & approval using purchase requirements.
2.1.2	Publish mini-bid - Publish mini-bid on NYS OGS website
2.1.3	Qualify responses & award bid - Submit winning bid to DEC for approval

Tasks	
2.2	Purchase Vehicle - Enter into contract for purchase of food scrap collection vehicle with winning bidder(s).

Performance Measures

2.2.1	Contract - Submit contract to DEC for approval
2.2.2	Inspection - Invite DEC representative to inspect and approve vehicle for reimbursement purposes.
2.2.3	Reimbursement - Submit purchase documentation and inspection to DEC for reimbursement purposes.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT C - WORK PLAN

DETAIL

Objective	
3	Site Preparation- Food Scrap Compost Site - Survey, design, and site work for existing composting site.

Tasks	
3.1	Survey Site - Survey site for record purposes

Performance Measures

3.1.1	Survey Area - Using qualified Town of Amherst Engineering staff, survey plotted land for record and permit purposes.
3.1.2	Submit Survey to DEC - Submit survey to DEC for grant records and also for any reimbursement expenses.
3.1.3	Part 360 Application - Use official survey for DEC part 360 permit application to prepare site to receive additional material than what is already allowed under our current registration.

Tasks	
3.2	Land Preperation - Heavy equipment and design work to prepare site for larger operation

Performance Measures

3.2.1	Grade & Process - Preparing additional portions of land for use in composting residential food scraps.
3.2.2	DEC Inspection - Invite local DEC office to inspect the site and submit reports to DEC offices on progress and feasibility.
3.2.3	Resource Use - All site work done will be completed by in-house staff from our Highway, Engineering, and Refuse Control Departments. We do not anticipate any outside help at this time.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

ATTACHMENT D

PAYMENT AND REPORTING SCHEDULE

I. **PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency 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. Advance Payment, Initial Payment and Recoupment Language (if applicable):

1. The State Agency will make an advance payment to the Contractor, during the initial period, in the amount of ___ percent (___%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).

2. The State Agency will make an initial payment to the Contractor in the amount of ___ percent (___%) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than ___ days from the beginning of the budget period.

3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period	Amount	Due Date

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting (___%) of subsequent claims and such claims will be reduced until the advance or initial payment is fully recovered within the contract period.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

B. Interim and/or Final Claims for Reimbursement

Claiming Frequency: Quarterly Reimbursement

Number of Days/Claims: 30

For Quarterly, Monthly and Biannual Reimbursement Claim Frequency, the above field represents the number of days after the claim period that the claim is due to the State from the Grantee.

For Interim Reimbursement as Requested by Contractor the Number of Days/Claims is not applicable.

For all other selected Claim Frequency, the Number of Days/Claims represents the number of claims due under the contract and listed in the table below.

Expenditure Period Dates		Due Date
From	To	

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC -

II. REPORTING PROVISIONS

A. Expenditure-Based Reports (select the applicable report type):

[X] Narrative/Qualitative 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 III(G)(2)(a)(i) of the Master Contract

[ ] Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than ___ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

[ ] Expenditure Report

The Contractor will submit, on a quarterly basis, not later than ___ days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

[X] Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.

[ ] Consolidated Fiscal Report (CFR) [1]

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

[1] The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

B. Progress-Based Reports

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (See Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until ___ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is ___. The agency shall complete its audit and notify vendor of the results no later than ___. The Contractor shall submit the report not later than ___ days from the end of the contract.

C. Other Reports

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

TABLE 1 - REPORTING SCHEDULE

PROGRESS REPORT #	PERIOD COVERED		Due Date
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

III. SPECIAL PAYMENT AND REPORTING PROVISIONS

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

THOMAS P. DiNAPOLI
STATE COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

BUREAU OF CONTRACTS
PROCUREMENT RECORD APPROVAL LETTER

Business Unit:	DEC01	**Determination:**	Approved
Program Name:	Municipal Food Scraps Recycling	**Approval Date:**	08/16/2022
Procurement Record ID:	DEC01-0000146-3350000	**Approved Through:**	05/03/2027
Reporting Code:	GTA1	**Sequence Number:**	0

To: Kristina Ketzer

The procurement record for the above referenced procurement has been deemed acceptable as supporting documentation. Please note that these contracts shall not be deemed effective until they have received the Comptroller's approval pursuant to State Finance Law §112. The proposed contract awards related to this procurement can be submitted for review and approval as follows:

Competitive - Municipal Food Scraps Recycling program. Continuous recruitment valued at $2,000,000.00 with an earliest start date- 5/2/2022; latest end date - 5/3/2027. Five (5) awards have been made with others currently in review.

Please attach a copy of this note when submitting any contracts and/or amendments under this program. In order for OSC to process your contract transactions efficiently, please include the Procurement Record Identification Number and Reporting Code identified in this letter in the description field of the Single Transaction Summary (STS) or Contract Encumbrance Request (AC340-S.)

Thank you for your time on this matter.

REGINA RICHARDSON
(518) 473-5689
rrichardson@osc.ny.gov

Attachment: ContractPreview (RES-2024-85 : Authorize Supervisor to Sign Contract with NYSDEC - Organics Management Grant, CRS #3676)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28436 **RESOLUTION 2024-86** **ADOPTED**

Noco Organic Composting Agreement CRS #4463

NOW THEREFORE, BE IT RESOLVED, that the Town of Amherst is approved to enter into a Partnership with NOCO Enterprises LLC (DBA Buffalo River Compost), 2440 Sheridan Drive, Tonawanda, NY 14150 for Organics Management Partnership.

WHEREAS, the Town of Amherst agrees that the contract includes Composting Services for the capability and experience with habitat restoration, environmental consulting and remediation from 1/1/24 through 12/31/24.

BE IT FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this one (1) year contract subject to the Contract Routing System (CRS #4463) and the approval of the Town Attorney.

1/22/2024
Consent

FINANCIAL IMPACT:

NTE $18,200.00 PER YEAR

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28459 **RESOLUTION 2024-87** **ADOPTED**

NYS-OGS Contract Piggyback Public Safety Communications Equip/Svc-FM COMMUNICATIONS - CRS #4534

The Highway Department requests the Town Board give the Supervisor permission to sign a contract with FM Communications, Inc and the Town of Amherst. Purchases are for parts and service for Public Safety Communications Equipment (2-way radios) bases on NYS-OGS Award 23141, Group 77200, Contract PT68713 from 08/27/2019 through 08/26/2024.

FM Communications, Inc. is located at 1914 Colvin Blvd, Tonawanda, NY 14150.

BE IT FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this contract subject to the Contract Routing System (CRS#4534) and the approval of the Town Attorney.

1/22/2024
Consent

FINANCIAL IMPACT:

TOWN WIDE

VARIOUS

TBD

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28481 **RESOLUTION 2024-88** **ADOPTED**

Authorize Supervisor to Sign LACAL EQUIPMENT INC Contract Extension - CRS #4540

Whereas, BID #2022035 Highway Department allows for the contract to be extended for a period of one (1) year at the same terms and conditions; and

WHERE AS, THE HIGHWAY DEPARTMENT IS REQUESTING APPROVAL FOR THE EXTENSION OF THE contract under Resolution 2023-47 from 1/2/24 through 1/2/25.

This contract is subject to the Contract Routing System (CRS #4540) extension and the approval of the Town Attorney.

1/22/2024
Consent

FINANCIAL IMPACT:

C8163 : 4240

D5130 : 4240

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

AGREEMENT EXTENSION

Let this document stand as an Agreement between LACAL EQUIPMENT, INC. and THE Town of Amherst permitting the Town of Amherst to participate in the purchase of Sweeper Parts for individual models to include brooms and supplies for individual vendors.

Lacal Equipment Inc and the Town of Amherst,
BID # 2022035, Resoltion # 2023-47 AWARDED CONTRACT
from 01/03/2023 through 01/02/2024 and extended to 01/02/25
for Sweeper parts and supplies.

Agreed to and Accepted by:

LACAL EQUIPMENT INC

By: _____
Signature

Craig Merickel
Print Name

Sales Manager
Title

Date: 1/5/23

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
BRIAN KULPA
Supervisor

Date: _____

Attachment: DOC011024-01102024111539 (RES-2024-88 : Authorize Supervisor to Sign LACAL EQUIPMENT INC Contract Extension - CRS

TOWN OF AMHERST
AMHERST, NEW YORK 14221

Town of Amherst

Contract Compliance & Administration Department

INVITATION TO BID # 2022035

Sweeper Parts

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: 2022035

OPENING DATE November 17, 2022 TIME: 12:00 PM

FOR: Sweeper Parts

NAME OF BIDDER: Lacal Equipment 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: DOC011024-01102024111539 (RES-2024-88 : Authorize Supervisor to Sign LACAL EQUIPMENT INC Contract Extension - CRS

Town of Amherst

Contract Compliance & Administration Department

BID SPECIFICATIONS

ITEM NO	CATALOG NO/DESCRIPTION	% Off Manufacturers List Price
	NY State Contract # (if applicable)	
1	Leach Compactor/Packer Parts – All Models	NO BID
2	ODB Model LCT6000 Leaf Machine Parts	35%
3	Tarco/Tarrant/Loughberry Parts – All Models	5%
4	Keystone All Pro 460 Strip Brooms (Per Box) – NO EXCEPTIONS	5%
5	Keystone All Pro #411 Center Sweep Mandrel for Elgin Eagle Sweeper - NO EXCEPTIONS	5%
6	Keystone All Pro #410 Center Sweep Mandrel for Elgin Pelican Sweeper – NO EXCEPTIONS	5%
7	Keystone All Pro 466 Strip Brooms (Per Box) – NO EXCEPTIONS	5%
8	Sweeper Side Brooms Filled with 21 Steel Strands of Spring Wire, Nuts in Plastic Segments, 5 Segments per Box to Fit Elgin Sweepers NOTE: Oil coated or oil tempered wire are acceptable	5%
9	Elgin Sweeper Pars	35%
10	Rockford Sweeper Parts	NO BID
11	Superior Sweeper Parts	NO BID
12	Tennant Sweeper Parts	NO BID
13	Tymco Sweeper Parts	35%
	No Additional Charges Will Be Allowed	

NAME OF BIDDER: Lacal Equipment Inc

Attachment: DOC011024-01102024111539 (RES-2024-88 : Authorize Supervisor to Sign LACAL EQUIPMENT INC Contract Extension - CRS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 01/04/2024

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
Gibbs Insurance Associates, LLC
131 W WALNUT STREET
P O BOX 727
HILLSBORO, OH 45133

CONTACT NAME: James R. Gibbs
PHONE (A/C, No, Ext): 937-393-3444 FAX (A/C, No): 937-393-5262
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : State Auto Insurance	
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Lacal Equipment Company, Inc.
Mary Lee Smock, CFO
901 West Pike Street
Jackson Center, OH 45334

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	✓ COMMERCIAL GENERAL LIABILITY			PBP2676959	12/19/2023	12/19/2024	EACH OCCURRENCE	$	1,000,0
	☐ CLAIMS-MADE ☑ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$	100,0
							MED EXP (Any one person)	$	5,0
							PERSONAL & ADV INJURY	$	1,000,0
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$	2,000,0
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$	2,000,0
	OTHER:						Employee Benefits	$	1,000,0
A	AUTOMOBILE LIABILITY			BAP2393136	12/19/2023	12/19/2024	COMBINED SINGLE LIMIT (Ea accident)	$	1,000,0
	☐ ANY AUTO						BODILY INJURY (Per person)	$	
	☐ OWNED AUTOS ONLY ☑ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$	
	✓ HIRED AUTOS ONLY ✓ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$	
								$	
A	✓ UMBRELLA LIAB ✓ OCCUR			PBP2676959	12/19/2023	12/19/2024	EACH OCCURRENCE	$	6,000,0
	EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$	6,000,0
	☐ DED ☐ RETENTION $							$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N			PBP2676959 Stop Gap Liability	12/19/2023	12/19/2024	✓ PER STATUTE ✓ OTH-ER		
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ N/A (Mandatory in NH)						E.L. EACH ACCIDENT	$	1,000,0
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$	1,000,0
							E.L. DISEASE - POLICY LIMIT	$	1,000,0

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

"Town of Amherst is included as an additional insured. Coverage applies on a Primary and Non-Contributory basis for all ongoing completed operations.

CERTIFICATE HOLDER

Town of Amherst
5583 Main St
Buffalo, 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: DOC011024-011024111539 (RES-2024-88 : Authorize Supervisor to Sign LACAL EQUIPMENT INC Contract Extension - CRS

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28483 **RESOLUTION 2024-89** **ADOPTED**

Funding - Sidewalk Snow Plowing Program - 2024

Please approve authorization to spend up to $10,000.00 for maintenance and repairs to the sidewalk snow plowing equipment from T4024:4002. Thank you for your time and consideration!

1/22/2024
Consent

FINANCIAL IMPACT:

T4024:4002 Not to exceed $10,000.00

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28484 **RESOLUTION 2024-90** **ADOPTED**

Approval to Spend Funds - Veterans Memorial - 2024

The Veterans Memorial Fountain is in need of various maintenance and repairs to the filtration system, i.e. to include: various filter replacement and repair, pumps, chlorine, etc.

We are respectfully requesting the authorization of spending up to $4,000.00 from the Trust Account T4017:4002 for the various supplies and repairs.

Thank you for your time and consideration.

1/22/2024
Consent

FINANCIAL IMPACT:

T4017:4002 NOT TO EXCEED $4,000.00

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28500 **RESOLUTION 2024-91** **ADOPTED**

Tree Planting - Escrow Funds from Agency Account - 2024

Please approve authorization to spend up to $100,000.00 from the Agency Account AG2022-0699 for the Spring and Fall 2024 season for various trees planted for new builds 2023-24.

Thank you for your time and consideration!

1/22/2024
Consent

FINANCIAL IMPACT:

AG2022-0699

Not to Exceed $100,000.00 for 2024

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28510 **RESOLUTION 2024-92** **ADOPTED**

Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal Fab - (Viking CRS # 4554/Valley Fab CRS #4555)

WHEREAS. BID #2019038, Highway Department, Dump Box, Plow Parts and Custom Metal Fabrication allows the contract to be extended for a period of (12) twelve months at the same terms and conditions; and

WHEREAS, the Highway Department is requesting approval for the extension of the contract under Resolution 2019-1302 from 12/13/2021 to 12/12/2023 to 12/12/2024 and

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Highway Department to extend as follows the contracts with Valley Fab & Equipment, Inc. (CRS #1753/3114/4555) and Viking Cives, Inc (1755/3115/4554), and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the extension for the two (2) vendors subject to the Contract Routing System and the approval of the Town Attorney.

1/22/2024
Consent

FINANCIAL IMPACT:

town wide

various

TBD

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

CONTRACT EXTENSION

Let this document stand as a Contract Extension between VALLEY FAB & EQUIPMENT and the Town of Amherst. VALLEY FAB & EQUIPMENT agrees to hold discounts and extend the current contract with the Town of Amherst for:

BID # 2019038 Dump Box, Sanders, Plow Parts and Fabrication

RESOLUTION # 2019-1302

This contract will be extended for one (2) year period from the date of Town of Amherst Town Board approval commencing on December 13, 2023 through December 12, 2025.

Agreed to and Accepted by:

VALLEY FAB & EQUIPMENT INC.

By: Karen J Schweickert
Signature

Karen J Schweickert
Print Name

Vice President
Title

Date: 12/11/23

Agreed to and Accepted By:

TOWN OF AMHERST

BY:_____
BRIAN KULPA
SUPERVISOR

Date:_____

Attachment: DOC011624-01162024131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

CRS-CMS ID # 1753-1981: Bid #2019038 Dump Box, Sander, Plow Parts & Custom Metal Fabrication - Valley Fab & Equipment, Inc.

CRS ID # 1753

CMS ID # 1981

Townwide Yes

Contract Type Award of Public Bid Contract / RFP

Title Bid #2019038 Dump Box, Sander, Plow Parts & Custom Metal Fabrication

Vendor Valley Fab & Equipment, Inc.

Description

Department Highway

Responsible User(s) ☐ Anderson, Paul ☑ Bryan, Steve ☑ Lucey, Patrick G.

Start/End Date Yes

Start Date * 12/13/2019

End Date 12/12/2023

Status Expired

Active ○ Yes ◉ No

Attachment: DOC011624-01162024131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

Bid #2019038 Dump Box, Sander, Plow Parts
Low Bidder

Item No.	Vendor Name:	CAS # 1755 Viking Cives	CAS # 1753 Valley Fab
		% off Manufacturers List	% off Manufacturers List
1	All M/G Dump Box Parts	10%	
2	All Viking Cives Plow Systems Parts	10%	
3	All Galion Body Parts	10%	5%
4	All Force America Products Parts	10%	5%
5	All Smith Spreader Parts	10%	
6	All Brandon Body Parts	NB	5%
7	All Goodwin Body Parts	10%	5%
8	All Everst Equipment Parts	NB	5%
9	All Evolution Edges Plow Blade/Shoe Parts		
10	All Western Plow & Equipment Parts	10%	
11	All Donovan Tarp System Parts	10%	5%
12	All Roll-Rite Tarp System Parts	10%	
13	All Minimizer Fenders	10%	
	SYSTEM PARTS		
14	All Waltco Liftgate Parts	NB	
15	All Tommy Gate System Parts	NB	
16	All Rexroth Ground Speed Control Parts	10%	
17	All Harder Dump Box	10%	
	SPREADER PARTS		
	CUSTOM MATERIAL FABRICATION SPECS		
18	Labor cost per hour for custom metal fabrication	$81.00	$125.00
19	Materials cost per pound for hot rolled steel products used in fabrication process	$1.80	$1.75
20	Materials cost per pound for aluminum products used in the fabrication process	$2.47	$4.25
	NOTES:		
	Viking Cive: **#18: Quoted 10% off Hourly rate, which is $90** **#19: Quoted 10% off per pound rate, which is $2.00** **#20: Quoted 10% off per pound rate, which is $2.75**		

Attachment: DOC011624-01162024131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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

Francina J. Spoth
Town Clerk

Meeting: 01/18/22 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 25250 **RESOLUTION 2022-106** **ADOPTED**

CONTRACT EXTENSION BID #2019038 - Dump Box, Sander, Plow Parts and Custom Metal Fab - CRS - Below

WHEREAS, BID # 2019038, Highway Department, Dump Box, Plow Parts and Custom Metal Fabrication allows the contract to be extended for a period of twenty-four (24) months at the same terms and conditions; and

WHEREAS, the Highway Department is requesting approval for the extension of the contract under Resolution 2019-1302 from 12/13/2021 to 12/12/2023; and

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Highway Department to extend as follows the contracts with Valley Fab & Equipment, Inc. (CRS#1753/3114) and Viking Cives, Inc. (CRS#1755/3115), and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the extension for the two (2) vendors subject to the Contract Routing System and the approval of the Town Attorney.

1/18/2022
Consent

FINANCIAL IMPACT:

Town Wide

Various

TBD

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

Attachment: DOC011624-011624131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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

Jeffery C. Zeplowitz
Town Clerk

Meeting: 12/02/19 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by:

DOC ID: 21231 **RESOLUTION 2019-1302** 12-12-2021 **ADOPTED**

Award Bid #2019038 Dump Box, Sander, Plow Parts & Custom Metal Fabrication - CRS #1753 & #1755

VF VC

WHEREAS, the Contract Compliance and Administration Department received bids on September 26, 2019 for Bid #2019038 for Dump Box, Sander, Plow Parts and Custom Metal Fabrication; 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 as follows: Items 1-5, 7, 10-13, 16-20 to Viking Cives, 2917 Judge Road, Oakfield, NY 14125; Items #6 & 8 to Valley Fab & Equipment, Inc., 9776 Trevett Road, Boston, NY 14025; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contracts with Viking Cives and Valley Fab & Equipment, Inc.

12/02/2019
Consent

FINANCIAL IMPACT:

Town Wide; Various Accounts; Amount TBD

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

Attachment: DOC011624-011620241310S3 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

VALLE-8

OP ID: SM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 06/13/2023

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), AUTHORIZE 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 United Insurance Agency, Inc. 90 Bryant Woods South Amherst, NY 14228 Martin Agency 716-632-6118	CONTACT NAME: Sheila Mack PHONE (A/C, No, Ext): 716-632-6118 FAX (A/C, No): 716-631-5045 E-MAIL ADDRESS: smack@uiai.com
INSURED Valley Fab & Equipment Inc 9776 Trevett Rd LLC 9776 Trevett Rd, PO Box 380 Boston, NY 14025	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Erie Insurance Company — 26263 INSURER B : 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 X LOC OTHER:	X		Q610196140	06/22/2023	06/22/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,0 $ 1,000,0 $ 5,0 $ 1,000,0 $ 2,000,0 $ 2,000,0
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY			Q037430368	03/24/2023	03/24/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,0 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10000			Q307270056NY	06/22/2023	06/22/2024	EACH OCCURRENCE AGGREGATE	$ 2,000,0 $ 2,000,0
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		Q85-5106976	01/01/2023	01/01/2024	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,0 $ 1,000,0 $ 1,000,0
A	Garagekeepers Direct Primary			Q610196140	06/22/2023	06/22/2024	Limit Ded	Actual Lo 2

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Town of Amherst is named as as Additional Insured on a primary and non contributory basis, to the extent of the written contract, not to exceed limits shown above.

CERTIFICATE HOLDER

TOWNAMH

Town of Amherst
5583 Main St
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

Edward C. Kelly Jr

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Attachment: DOC011624-011624131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (use street address only) Valley Fab & Equipment Inc 9776 Trevett Rd, PO Box 380 Boston NY 14025	1b. Business Telephone Number of Insured 716-941-6644 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 16-1541913
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst 5583 Main St Williamsville NY 14221	3a. Name of Insurance Carrier Erie Insurance Company 3b. Policy Number of entity listed in box "1a" Q85-5106976 3c. Policy effective period 01/01/2024 to 01/01/2025 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".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is canceled 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: Edward C Gelia Jr., CPCU
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Edward C. Gelia Jr. 12-13-23
(Signature) (Date)

Title: Executive Vice President

Telephone Number of authorized representative or licensed agent of insurance carrier: 716-632-6118

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.

Attachment: DOC011624-011624131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (use street address only) Valley Fab & Equipment Inc 9776 Trevett Rd, PO Box 380 Boston NY 14025	1b. Business Telephone Number of Insured 716-941-6644 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 16-1541913
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst 5583 Main St Williamsville NY 14221	3a. Name of Insurance Carrier Erie Insurance Company 3b. Policy Number of entity listed in box "1a" Q85-5106976 3c. Policy effective period 01/01/2023 to 01/01/2024 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".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is canceled 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: Edward C Gelia Jr., CPCU
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Edward C. Gelia Jr. 1-12-2023
(Signature) (Date)

Title: Executive Vice President

Telephone Number of authorized representative or licensed agent of insurance carrier: 716-632-6118

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.

Attachment: DOC011624-011624131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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 FAB & EQUIPMENT, INC.
9776 TREVETT ROAD
BOSTON, NY 14025

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
7169416644

1c. Federal Employer Identification Number of Insured or Social Security Number
16-1541913

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
R14963-000

3c. Policy Effective Period
1/1/2016 to 6/11/2024

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:
- [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 6/13/2023 By Beth A. Schmidt
(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 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 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(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: DOC011624-01162024131053 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

CONTRACT EXTENSION

Let this document stand as a Contract Extension between VIKING CIVES INC. and the Town of Amherst. VIKING CIVES INC. agrees to hold discounts and extend the current contract with the Town of Amherst for:

BID # 2019038 Dump Box, Sanders, Plow Parts and Fabrication

RESOLUTION # 2019-1302

This contract will be extended for one (2) year period from the date of Town of Amherst Town Board approval commencing on December 13, 2021 through December 12, 2025.

Agreed to and Accepted by:

VIKING CIVES INC.

By: Wade Ayers
Signature

Wade Ayers
Print Name

Regional Sales Manager
Title

Date: 12/14/2023

Agreed to and Accepted By:

TOWN OF AMHERST

BY:_____
BRIAN KULPA
SUPERVISOR

Date:_____

Attachment: DOC011624-01162024130327 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

	Bid #2019038 Dump Box, Sander, Plow Parts Low Bidder		
Item No.	Vendor Name:	CRS # 1755 Viking Cives	CRS # 1753 Valley Fab
		% off Manufacturers List	% off Manufacturers List
1	All M/G Dump Box Parts	10%	
2	All Viking Cives Plow Systems Parts	10%	
3	All Galion Body Parts	10%	5%
4	All Force America Products Parts	10%	5%
5	All Smith Spreader Parts	10%	
6	All Brandon Body Parts	NB	5%
7	All Goodwin Body Parts	10%	5%
8	All Everst Equipment Parts	NB	5%
9	All Evolution Edges Plow Blade/Shoe Parts		
10	All Western Plow & Equipment Parts	10%	
11	All Donovan Tarp System Parts	10%	5%
12	All Roll-Rite Tarp System Parts	10%	
13	All Minimizer Fenders	10%	
	SYSTEM PARTS		
14	All Waltco Liftgate Parts	NB	
15	All Tommy Gate System Parts	NB	
16	All Rexroth Ground Speed Control Parts	10%	
17	All Harder Dump Box	10%	
	SPREADER PARTS		
	CUSTOM MATERIAL FABRICATION SPECS		
18	Labor cost per hour for custom metal fabrication	$81.00	$125.00
19	Materials cost per pound for hot rolled steel products used in fabrication process	$1.80	$1.75
20	Materials cost per pound for aluminum products used in the fabrication process	$2.47	$4.25
	NOTES:		
	Viking Cive: **#18: Quoted 10% off Hourly rate, which is $90** **#19: Quoted 10% off per pound rate, which is $2.00** **#20: Quoted 10% off per pound rate, which is $2.75**		

Attachment: DOC011624-01162024130327 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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

Francina J. Spoth
Town Clerk

Meeting: 01/18/22 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 25250 **RESOLUTION 2022-106** **ADOPTED**

CONTRACT EXTENSION BID #2019038 - Dump Box, Sander, Plow Parts and Custom Metal Fab - CRS - Below

WHEREAS, BID # 2019038, Highway Department, Dump Box, Plow Parts and Custom Metal Fabrication allows the contract to be extended for a period of twenty-four (24) months at the same terms and conditions; and

WHEREAS, the Highway Department is requesting approval for the extension of the contract under Resolution 2019-1302 from 12/13/2021 to 12/12/2023; and

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Highway Department to extend as follows the contracts with Valley Fab & Equipment, Inc. (CRS#1753/3114) and Viking Cives, Inc. (CRS#1755/3115), and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the extension for the two (2) vendors subject to the Contract Routing System and the approval of the Town Attorney.

1/18/2022
Consent

FINANCIAL IMPACT:

Town Wide

Various

TBD

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

Attachment: DOC011624-011620241303327 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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

Jeffery C. Zeplowitz
Town Clerk

Meeting: 12/02/19 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by:

DOC ID: 21231 **RESOLUTION 2019-1302** 12-12-2021 **ADOPTED**

Award Bid #2019038 Dump Box, Sander, Plow Parts & Custom Metal Fabrication - CRS #1753 & #1755

VF VC

WHEREAS, the Contract Compliance and Administration Department received bids on September 26, 2019 for Bid #2019038 for Dump Box, Sander, Plow Parts and Custom Metal Fabrication; 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 as follows: Items 1-5, 7, 10-13, 16-20 to Viking Cives, 2917 Judge Road, Oakfield, NY 14125; Items #6 & 8 to Valley Fab & Equipment, Inc., 9776 Trevett Road, Boston, NY 14025; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contracts with Viking Cives and Valley Fab & Equipment, Inc.

12/02/2019
Consent

FINANCIAL IMPACT:

Town Wide; Various Accounts; Amount TBD

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

Attachment: DOC011624-011620241303327 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

VIKIUSA-01 MBEARD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 12/10/2023

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	CONTACT NAME:	
CH Insurance Brokerage Services Co., Inc. 100 S. Salina St. Suite 370 Syracuse, NY 13202	PHONE (A/C, No, Ext): (315) 234-7500	FAX (A/C, No): (315) 234-7508
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Viking-Cives USA 14331 Mill Street Harrisville, NY 13648	INSURER A : Liberty Mutual Fire Ins Co	23035
	INSURER B : Liberty Mutual Insurance Corp	42404
	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		TB2-621-094553-024	1/1/2024	1/1/2025	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 5,000,0 $ 500,0 $ 10,0 $ 5,000,0 $ 5,000,0 $ 5,000,0
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY			AS2-621-094553-034	1/1/2024	1/1/2025	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,0
B	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			TH7-621094553-044	1/1/2024	1/1/2025	EACH OCCURRENCE AGGREGATE	$ 1,000,0 $ 1,000,0
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WA5-62D-094553-014	1/1/2024	1/1/2025	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,0 $ 1,000,0 $ 1,000,0

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The Town of Amherst is named as an Additional Insured on a primary & non-contributory basis.

CERTIFICATE HOLDER

The Town of Amherst
5583 Main Street
Amherst, 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

Joseph Cimeno

ACORD 25 (2016/03)
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Attachment: DOC011624-011624130327 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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
Cives Corporation dba Viking-Cives USA 14331 Mill St. Harrisville, NY 13648 Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)*	315-543-2321 1c. NYS Unemployment Insurance Employer Registration Number of Insured 1d. Federal Employer Identification Number of Insured or Social Security Number 16-0955800
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst 5583 Main St. Williamsville, NY 14221	3a. Name of Insurance Carrier Liberty Insurance Corp. 3b. Policy Number of Entity Listed in Box "1a" WA5-62D-094553-014 3c. Policy effective period 1/1/2024 to 1/1/2025 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 on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will sen 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: CH Insurance Brokerage Services Co., Inc.
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Joe Cowartin Jr 1/6/2024
(Signature) (Date)

Title: President

Telephone Number of authorized representative or licensed agent of insurance carrier: 315-234-7500

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NO authorized to issue it.

C-105.2 (9-15)

Attachment: DOC011624-011624130327 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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 carrie

1a. Legal Name & Address of Insured (use street address only)
CIVES CORPORATION DBA VIKING CIVES USA
14331 MILL STREET
HARRISVILLE, NY 13648

1b. Business Telephone Number of Insured
315-543-2321

1c. Federal Employer Identification Number of Insured or Social Security Number
160955800

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*

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"
DBL473380

3c. Policy effective period
10/01/2023 to 09/30/2024

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:
- [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 1/11/2024 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: DOC011624-01162024130327 (RES-2024-92 : Contract Extension Bid #2019038 - Dump Box, Sander, Plow Parts and Custom Metal

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28501 **RESOLUTION 2024-93** **ADOPTED**

Supervising Fire Dispatcher/Central Fire Alarm

Please designate a Supervising Fire Dispatcher to head the Central Fire Alarm Office. Effective January 27, 2024 at an annual salary of $102,159.98, Grade 6, Step M of the Exempt Department Head Salary Schedule for Thomas Merrill.

Replacing an employee who retired.

1/22/2024
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28506 **RESOLUTION 2024-94** **ADOPTED**

Public Safety Dispatcher/Police Department (2 Positions)

Please appoint two (2) Public Safety Dispatchers to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an annual salary of $49,206, Grade 13, Step A for Jennifer Green and Nicholas White.

Contingent upon completing all pre-employment requirements and Erie County Rules and Regulations.

1/22/2024
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28511 **RESOLUTION 2024-95** **ADOPTED**

Maintenance Worker/Building Maintenance/Facilities

Please appoint a Maintenance Worker to the Building Maintenance/Facilities Department. Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an hourly rate of $20.05, Grade 4, Step C for Matthew Yorko.

This is a promotion for an employee currently serving as Laborer.
Replacing an employee who retired.

1/22/2024
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28512 **RESOLUTION 2024-96** **ADOPTED**

Senior Laboratory Technician (Environmental Chemistry)/Engineering

Please appoint a Senior Laboratory Technician (Environmental Chemistry) to the Engineering Department/Plant #16. Permanent from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an annual salary of $65,269, Grade 12, Step J for Andrew Szymanski.

This is a Permanent appointment for a current employee who has been serving Provisionally.

1/22/2024
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28513 **RESOLUTION 2024-97** **ADOPTED**

Electronics Technician Wastewater Facilities-Eng./Plant #16

Please appoint an Electronics Technicians Wastewater Facilities to the Engineering Department/Plant #16. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an annual salary of $63,088, Grade 14, Step E for Joseph Abramo.

Contingent upon completing all employment requirements and Erie County Rules and Regulations.

This is a Permanent appointment for a current employee who has been serving Provisionally.

1/22/2024
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28515 **RESOLUTION 2024-98** **ADOPTED**

Electronics Technician Wastewater Facilities-Eng./Plant #16

Please appoint an Electronics Technician Wastewater Facilities to the Engineering Department/Plant #16. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective January 23, 2024 at an annual salary of $67,348, Grade 14, Step G for Richard Hoose.

This is a Permanent appointment for a current employee who has been serving Provisionally.

1/22/2024
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Information Technology
Initiated by: **David J. Willer**
Co-Sponsored by: **Councilmember Shawn Lavin**

DOC ID: 28475 **RESOLUTION 2024-99** **ADOPTED**

Disposal of Obsolete Equipment

According to the Town's Property Disposition Policy (Res. 2011-1032), the Information Technology Department is requesting approval from the Town Board to dispose of an HP DL380 Server which is no longer in service and a battery backup UPS which is also no longer is service.

1/22/2024
Consent

FINANCIAL IMPACT:

n/a

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 28536 A **RESOLUTION 2024-100** **ADOPTED**

Scheduling a Public Hearing Regarding Designation of 22 Chateau Terrace as a Local Historic Landmark

WHEREAS, The Town of Amherst has many significant historic, architectural and cultural landmarks within its borders; and

WHEREAS, On March 21, 2023 the Town of Amherst Historic Preservation Commission heard a resident petition for a landmark designation application for 22 Chateau Terrace; and

WHEREAS, The Amherst Historic Preservation Commission held a public hearing on August 8, 2023 on the designation of the 22 Chateau Terrace as a Town historic landmark; and

WHEREAS, Finding that it is associated with the lives of individuals or of people or of events significant in national, state or local history and embodies the distinctive characteristics of the Craftsman-style architecture and represents an established and familiar visual feature of the neighborhood as the first residential structure for the gateway of the Chateau neighborhood, and the HPC voted at its September 12, 2023 meeting to recommend historic designation of the 22 Chateau Terrace to the Town Board; now therefore be it

RESOLVED, In accordance with the Historic Preservation Commission Rules of Order, the Amherst Town Board schedules a public hearing on the date of February 5, 2024 on the matter of designation of 22 Chateau Terrace as a local historic landmark.

1/22/2024
Consent

FINANCIAL IMPACT:

This action will have no impact on the Town operating budget or on the tax rate.

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 28531 A **RESOLUTION 2024-101** **ADOPTED**

Town Acceptance of a Land Donation at 75 Tupelo Lane

WHEREAS, Cimato Enterprises, owner of land identified as 75 Tupelo Lane (SBL: 26.06-8-33), has offered to donate a 1.6± acre vacant parcel of land located on the west end of Tupelo Lane, east of its intersection with Cherry Laurel Lane to the Town; and

WHEREAS, the Bicentennial Comprehensive Plan supports the acquisition of property to preserve wetlands and open space; and

WHEREAS, 75 Tupelo Lane would provide both a new open park space, and preserve the sensitive environmental features of open wetlands; and

WHEREAS, the land donation request was distributed to Town Departments for review, following Cimato Enterprises' agreement to remove a condition that it retain an access easement, and no objections were expressed to the Town accepting the land donation, and

NOW THERFORE BE IT RESOLVED, that the acquisition of this property is an unlisted action pursuant to Part 617 of State Environment Quality Review (SEQR); and pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that the Town accepts the land donation of 75 Tupelo Lane (SBL: 26.06-8-33)and directs the Town Attorney's Office to work with Cimato Enterprises to complete the land transfer; and be it further

RESOLVED, the Town Supervisor is authorized to execute all necessary agreements and documents to complete the land donation acceptance.

1/22/2024
Consent

FINANCIAL IMPACT:

Based on the current Town Comprehensive Property Information database the fiscal impact to acquire this property (75 Tupelo Lane) would include undetermined legal fees and the loss of approximately $1,199.62 in annual Town & County taxes and $1,269.87 in tax (based on 2023-2024) paid to the Sweet Home School District. The total assessed value of the parcel is $82,100.

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

Amherst
Town of Amherst Planning Department
Erie County, New York

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Director

Daniel J. Ulatowski, A
Assistant Planning Dir

Town Board Agenda of January 22, 2024

TO: Town Board

FROM: Daniel C. Howard, Planning Director

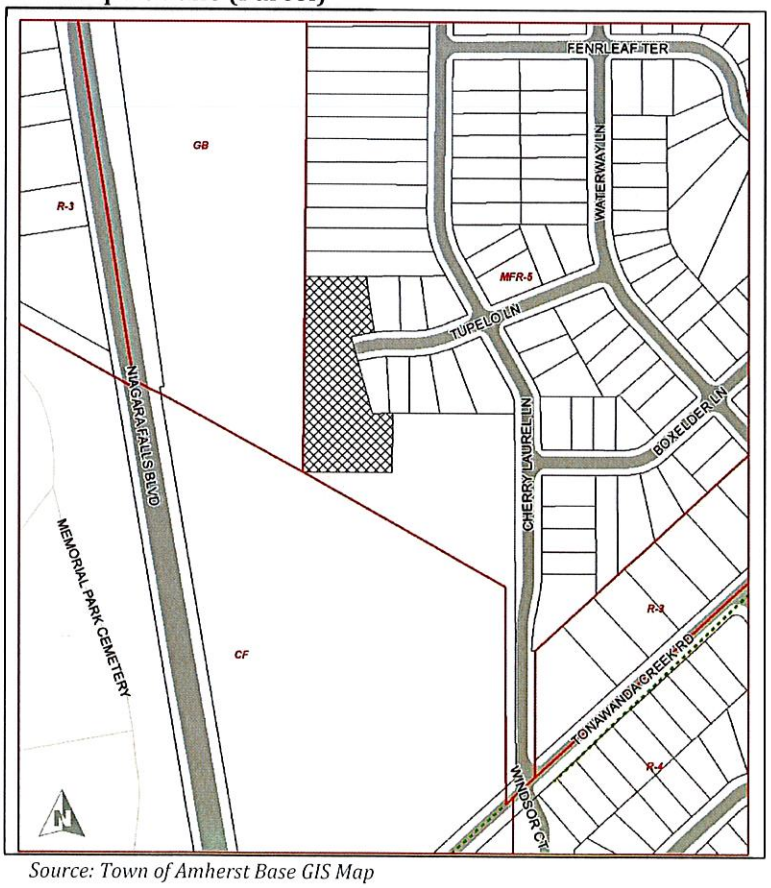
DATE: January 17, 2024

SUBJECT: Acquisition of 75 Tupelo Lane for use as a Public Park

Background

At its meeting of April 17, 2023 the Town Board reffered Communication 2023-46, an offer to donate a parcel of land at 75 Tupelo Lane to become a public playspace (see attachments), to the Planning Department for an inter-departmental review and recommedation. A copy of the communication letter is attached. The Planning Department has coordinated an interdepartmental review and a Phase 1 environmental site assessment for the parcel. The following is a summary of findings.

75 Tupelo Lane (Parcel)



Source: Town of Amherst Base GIS Map

Description of Parcel

The parcel (SBL: 26.06-8-33) is addressed as 75 Tupelo Lane, it measures approximately 1.7± acres and has 60 feet of frontage along Tupelo Lane. The site is wooded, with a mix of open areas with relatively flat topography. The parcel is part of the Evergreen Subdivision, a subdivision plat on file with Erie County and shows the presence of NYSDEC wetlands with a corresponding 100-foot buffer on within the subject property. Approximately 0.21 acres of the site are NYS regulated wetlands, the remainder of the parcel is within the 100-foot State wetland buffer protected under NYS law. Federal wetlands may also be present on the site, but an actual determination requires a separate delineation that has not been completed at this time. The parcel is

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

zoned Multi-Family Residential-5 (MFR-5) and the owner is Cimato Enterprises. The neighborhood context and available infrastructure can support a small park. The Planning Department obtained comments from pertinent Town departments regarding the subject request. Several departments responded to the request and no department objected to the acquisition of the property by the Town.

Intent and Objectives of the Comprehensive Plan /Rationale

The subject action involves the acquisition of real property, an action that falls under Comprehensive Plan Policy 3-15 which discusses a public open space acquisition program to achieve a town-wide open space and greenway network. Acquisition of the property is generally consistent with the stated criteria for implementing the policy as described in the Plan. Acquisition of the property is also consistent with the level-of-service goals stated in the 2018 Recreation and Parks Master Plan and recommendations from the National Recreation and Parks Association. A park/playground space at 75 Tupelo Lane would add a new facility to the Town's park system that is located close to surrounding neighborhoods where residents are able to access it by walking or cycling in lieu of driving.

Adequate Services and Utilities

No proposed major services or utilities are necessary for the proposed acquisition. A play area will not alter any utilities.

State Environmental Quality Review and Environmental Consideration

If the Town pursues the purchase of this property, the transaction would be an Unlisted Action as defined under the provisions of the NYS SEQRA. The Town conducted a Phase 1 Environmental Site Assessment (ESA) as per ASTM E1527-21 in July 2023. The result of the study states that possible contamination from historical operations on the property is considered a De Minimis Condition by definition and is not a Recognized Environmental Condition (RECs). Based on the results of the Phase I ESA, no further investigation is necessary. Depending on the intended future use of the property, the Town may consider additional surface soil investigation at the time of site design. The Town should consider removing the soil excavated for any proposed site work during construction as per NYSDEC standards and guidelines.

The NYSDEC notes that the proposed play area space is a part of lands for which a permit was issued to develop the Evergreen subdivision, and is within the NYS-Wetland 100 foot buffer. The Town will need a permit from the NYSDEC for the development of the play area as it is within the area adjacent to Wetland TE-45, and must also adhere to the provisions of the existing permit.

Fiscal Impact

Based on current data from the Town's Comprehensive Property Information database the current total assessed value of the parcel is $82,100. The assessed value could be reevaluated given the presence of wetlands on the property. The fiscal impact of acquiring the property would include the annual loss of approximately $1,200 in Town & County taxes and $1,270 in school tax paid to the Sweet Home School District. The fiscal impact may also include funds for

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

legal fees and other expenses for federal wetlands delineation, permit acquisition, and development of the park.

Findings

The Planning Department finds that acquisition of 75 Tupelo Lane for use as a park/playground is consistent with the Town of Amherst Comprehensive Plan and 2018 Recreation and Parks Master Plan. There are NYSDEC wetlands present on site. We recommend that a wetland delineation be completed prior to design and development of the site. The Town should also consider preparing a restoration and remediation management plan to preserve and enhance existing environmental/hydrologic features on site. The physical boundary of the acquired property should be marked (signed) to avoid future expansion or operational disturbances near state regulated wetlands. The Town should adhere to all NYSDEC permit conditions and follow the guidance provided by a wetland specialist throughout the design process.

Attached for your consideration is a draft Negative Declaration and draft Town Board Resolution. Please contact me with any questions you may have.

JS/ac
(Attachment Exhibit A & Communication Letter)
X:\Current_Planning\Files\Special Requests\2022\SR-2022-02_A Evergreen Park\Resolution\RES-2024-XXX SR-2022-02A_Recommendation to Town Board_Draft.docx
cc: Daniel Ulatowski, Assistant Planning Director
Mary-Diana Pouli, Executive Director of Youth and Recreation
Martin Polowy, Esq., Town Attorney
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St., Ste. 343, Williamsville, NY 14221

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)



Exhibit A: 75 Tupelo Lane

Parcel ID: 26.06-8-33
Address: 75 Tupelo Lane
Owner: Cimato Enterprises
Size 1.79 acres
Wetlands: Federal and State
Zoning: MFR-5

Prepared by the Town of Amherst Planning Department

January 2024

Legend

- Parcels
- Existing Zoning
- 75 Tupelo Lane
- Wetland (not delineated)

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

D R A F T (1/22/24)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Action: Town Purchase of
Property (SR-2022-02A)

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: Town Purchase of 75 Tupelo Lane

SEQR Status: Unlisted action.

Description of Action: Town acquisition of property at 75 Tupelo Lane (SBL 26.06-8-33), a 1.7± acre vacant parcel of land located in northwest Amherst, from the Cimato Enterprises to increase the Town's recreation and open space properties.

Location: 75 Tupelo Lane, Town of Amherst, Erie County, New York

Petitioner: Town of Amherst

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Short Environmental Assessment Form (EAF) - Part 1 (as amended), a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed Town acquisition of property located at 75 Tupelo Lane will not have a significant impact on the environment, as follows:

1. The action 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 has not identified a specific use for this property but seeks to increase its ownership of land parcels to meet future recreation/open space needs of the community.

2. The action 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. The parcel contains some mature trees. Any future development on this site will require completion of landscape/tree preservation plan to ensure that all landscape requirements of the Zoning Ordinance are met.

3. The action is not expected to create any material conflict with the Town Comprehensive Plan. Policies 3-14 and 4-3 advocate a public open space acquisition program to achieve a Town-wide open space and greenway network.

4. The action is within an area identified by the State as potentially containing significant cultural or archeological resources. Any future plans to develop this site will require an archaeological assessment to ensure there will be no impairment of the character or quality of important historical resources.

5. The action will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for purchase of a vacant parcel of land. The parcel is zoned Multi-Family Residential District Five (MFR-5) and is adjacent to other MFR-5 residential properties to the east and north, and vacant land zoned General Business (GB) to the west. Therefore, the action is consistent with surrounding land use.

6. The proposed action will not affect the use of either the quantity or type of energy.

7. The action will not create any hazard to human health.

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

8. The action will increase the amount of recreational/open space land in the Town. Any future use of this property will be consistent with the scale of surrounding land uses.

9. The action will not significantly increase the number of people using the site over its previous level of use.

10. Significant negative traffic impacts are not expected to result from the proposed action.

11. Reviews of the action have been undertaken by Town Departments including the Traffic/Safety Board on May 3, 2023, Engineering Department on May 9, 2023, Building Department on May 12, 2023, Zoning Enforcement Officer on May 26, 2023, Youth and Recreation on May 2, 2023, Highway Department on May 17, 2023, Attorney's Office on May 17, 2023, Liason to Amherst Fire Safety Committee on May 13, 2023 and Assessor on May 16, 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.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

DU
X:\Current_Planning\Files\Special Requests\2022\SR-2022-02_A Evergreen Park\Resolution\Draft Neg Dec_01172024_75_Tupelo_Ln_012224.docx

cc: Amherst Town Attorney
Amherst Town Clerk
Amherst Building Department

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

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

Francina J. Spoth
Town Clerk

Meeting: 04/17/23 07:00 PM
Department: Town Clerk
DOC ID: 27416

COMMUNICATION 2023-46

Correspondence from Sean Hopkins

Letter submitted by Sean Hopkins, Esq. regarding the donation of 75 Tupelo Lane to the Town of Amherst.

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

HSM

April 12, 2023

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Donation of 75 Tupelo Lane to the Town of Amherst
Owner: Cimato Enterprises

Dear Supervisor Kulpa and Councilmembers:

Cimato Enterprises is the owner of a parcel of vacant land consisting of approximately 1.64 acres located at 75 Tupelo Lane located within the Evergreen Subdivision. Our client has been asked to consider donating this parcel to the Town to accommodate its future use for recreational purposes. A color plan depicting the approximately 1.64 acre parcel at 75 Tupelo Lane along with a Parcel Detail Report from the Erie County GIS is attached as Exhibit "A".

Our client is willing to donate the parcel at 75 Tupelo Lane to the Town in its "As-Is" condition subject to the terms and conditions to be included in an agreement that would require Town Board approval. The terms and conditions that would need to be included in the Agreement would include Cimato Enterprises potentially retaining an access easement bisecting the parcel similar the alignment of Tupelo Lane and that all expenses related to the land donation including any diligence investigations, the preparation of a survey, obtaining an abstract of title, recording fees and legal fees would be paid for by the Town.

Our client has been asked to submit this letter to the Town Board for the purpose of expressing its willingness to donate the parcel at 75 Tupelo Lane to the Town subject to the terms and conditions to be contained in an Agreement between the parties that would require Town Board approval.

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

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

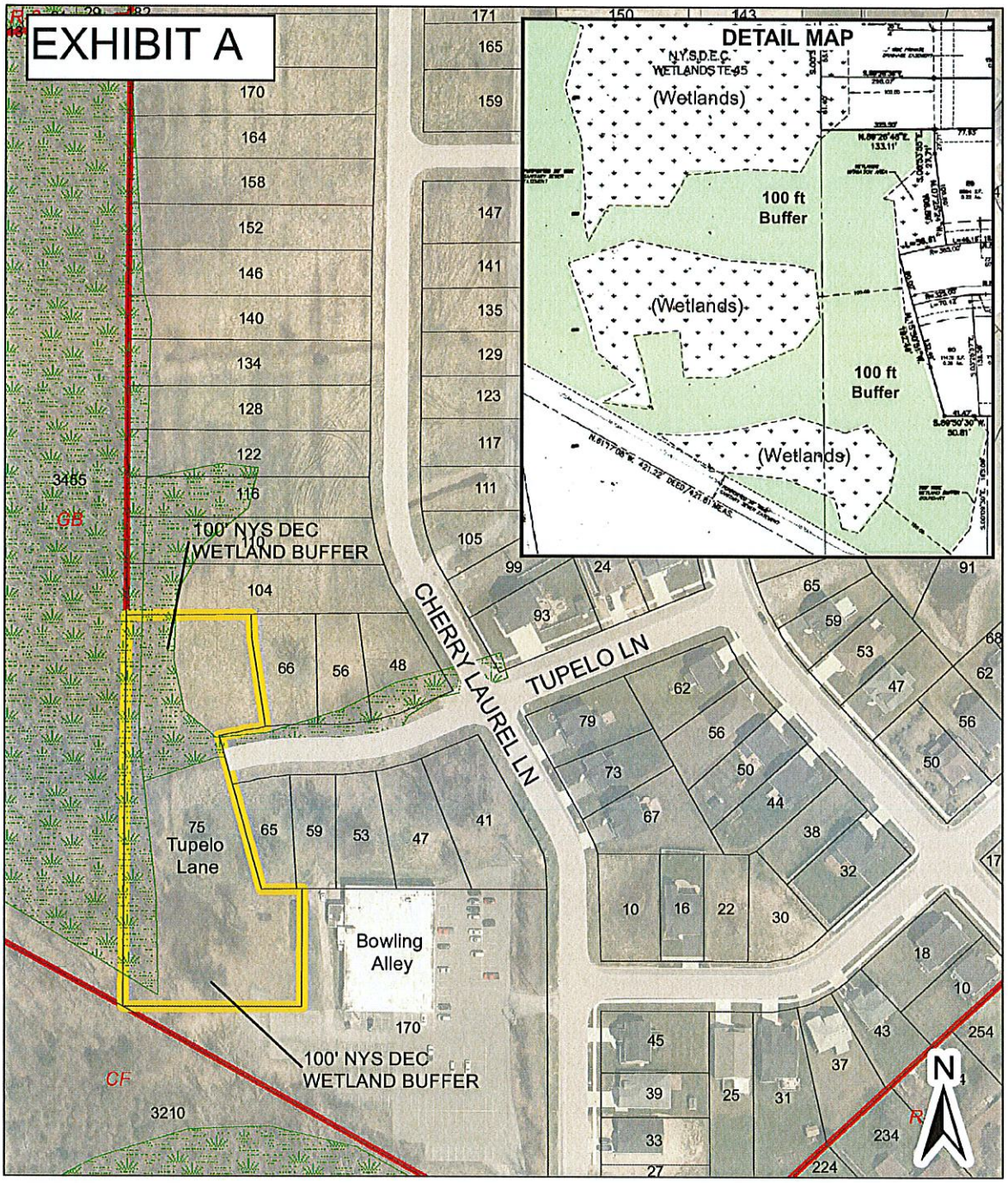
Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

Timothy J. Koller, Deputy Town Clerk
Angela Panaro Rossi, Director of Economic Development
Martin A. Polowy, Esq., Town Attorney
Daniel C. Howard, AICP, Planning Director
Fred Cimato, Cimato Enterprises

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

Exhibit A

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)



Evergreen Subdivision Parcel Data

Parcel ID: 26.06-8-33
Address: 75 Tupelo Lane
Owner: Cimato Enterprises
Size 1.79 acres
Wetlands: Federal and State
Zoning: MFR-5

Prepared by the Town of Amherst Planning Department

February 15, 2022

Legend

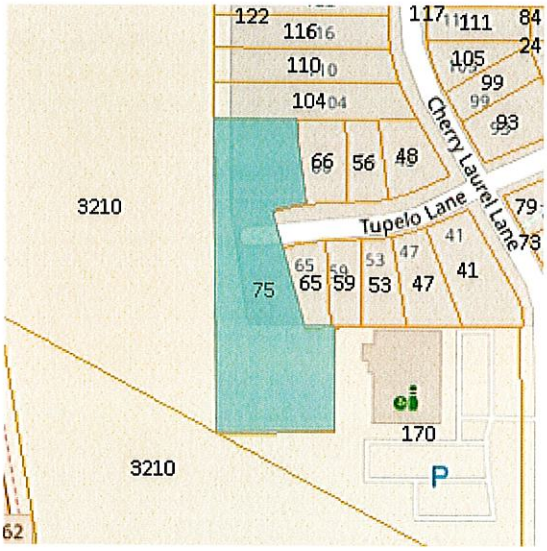
- State Wetland
- Federal Wetland
- Parcel
- Existing Zoning

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

Erie County On-Line Mapping System
Parcel Detail Report



Parcel Overview Map



Parcel Detail Map

PIN: 142289026060000080330000

SBL: 26.06-8-33

Address: 75 TUPELO LN

Owner 1: CIMATO ENTERPRISES

Owner 2:

Mailing Address: 9220 TRANIST RD

City/Zip: EAST AMHERST NY 14051

Municipality: Amherst

Property Class: 311

Class Description: R - Res vac land

Front: 0

Depth: 0

Deed Roll: 1

Deed Book:

Deed Page:

Deed Date:

Acreage: 1.69394185

Total Assessment: $82,100

Land Assessment: $82,100

County Taxes: $82,100

Town Taxes: $0

School Taxes: $0

Village Taxes: $0

School District: SWEET HOME CENTRAL SCHOOL DISTRICT

Year Built: 0

Sqft Living Area: 0

Condition: 0

Heating: 0

Basement: 0

Fireplace: 0

Beds: 0

Baths: 0

Erie County, its officials, and its employees assume no responsibility or legal liability for the accuracy, completeness, reliability, timeliness, or usefulness of any information provided. Tax parcel data was prepared for tax purposes only and is not to be reproduced or used for surveying or conveyancing. This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

Attachment: RES-2024-XXX 75 Tupelo Lane_TB letter packet 012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

Attachment: Draft Neg Dec_01172024_75_Tupelo_Ln_012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

D R A F T (1/22/24)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Action: Town Purchase of
Property (SR-2022-02A)

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: Town Purchase of 75 Tupelo Lane

SEQR Status: Unlisted action.

Description of Action: Town acquisition of property at 75 Tupelo Lane (SBL 26.06-8-33), a 1.7± acre vacant parcel of land located in northwest Amherst, from the Cimato Enterprises to increase the Town's recreation and open space properties.

Location: 75 Tupelo Lane, Town of Amherst, Erie County, New York

Petitioner: Town of Amherst

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Short Environmental Assessment Form (EAF) - Part 1 (as amended), a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed Town acquisition of property located at 75 Tupelo Lane will not have a significant impact on the environment, as follows:

1. The action 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 has not identified a specific use for this property but seeks to increase its ownership of land parcels to meet future recreation/open space needs of the community.

2. The action 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. The parcel contains some mature trees. Any future development on this site will require completion of landscape/tree preservation plan to ensure that all landscape requirements of the Zoning Ordinance are met.

3. The action is not expected to create any material conflict with the Town Comprehensive Plan. Policies 3-14 and 4-3 advocate a public open space acquisition program to achieve a Town-wide open space and greenway network.

4. The action is within an area identified by the State as potentially containing significant cultural or archeological resources. Any future plans to develop this site will require an archaeological assessment to ensure there will be no impairment of the character or quality of important historical resources.

5. The action will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for purchase of a vacant parcel of land. The parcel is zoned Multi-Family Residential District Five (MFR-5) and is adjacent to other MFR-5 residential properties to the east and north, and vacant land zoned General Business (GB) to the west. Therefore, the action is consistent with surrounding land use.

6. The proposed action will not affect the use of either the quantity or type of energy.

7. The action will not create any hazard to human health.

Attachment: Draft Neg Dec_01172024_75_Tupelo_Ln_012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

8. The action will increase the amount of recreational/open space land in the Town. Any future use of this property will be consistent with the scale of surrounding land uses.

9. The action will not significantly increase the number of people using the site over its previous level of use.

10. Significant negative traffic impacts are not expected to result from the proposed action.

11. Reviews of the action have been undertaken by Town Departments including the Traffic/Safety Board on May 3, 2023, Engineering Department on May 9, 2023, Building Department on May 12, 2023, Zoning Enforcement Officer on May 26, 2023, Youth and Recreation on May 2, 2023, Highway Department on May 17, 2023, Attorney's Office on May 17, 2023, Liason to Amherst Fire Safety Committee on May 13, 2023 and Assessor on May 16, 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.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

DU
X:\Current_Planning\Files\Special Requests\2022\SR-2022-02_A Evergreen Park\Resolution\Draft Neg Dec_01172024_75_Tupelo_Ln_012224.docx

cc: Amherst Town Attorney
Amherst Town Clerk
Amherst Building Department

Attachment: Draft Neg Dec_01172024_75_Tupelo_Ln_012224 (RES-2024-101 : Town Acceptance of a Land Donation at 75 Tupelo Lane)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Police
Initiated by: **Scott Chamberlin**
Co-Sponsored by:

DOC ID: 28487 **RESOLUTION 2024-102** **ADOPTED**

Request for Additional Funds 2023 Asset Forfeiture Trust Account

Town Board Agenda Item: January 22, 2024

TO: **Town Board**

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

RE: **Request for Additional Funds**
2023 Asset Forfeiture Trust Account

Kindly adopt a resolution authorizing the approval to spend up to an additional $10,000.00 from T2917 Asset Forfeiture Trust Account. This account is federally regulated by instituted guidelines regarding the expenditure of funds.

Thank you.

SPC: msl
C: Tim Koller, Deputy Town Clerk **(Agenda Item: January 22, 2024)**

1/22/2024
Consent

FINANCIAL IMPACT:

T2917: $10,000.00

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Police
Initiated by: **Scott Chamberlin**
Co-Sponsored by:

DOC ID: 28509 **RESOLUTION 2024-103** **ADOPTED**

Amendment to the "APD Safety Education" Trust & Agency Account

WHEREAS, on March 2, 2009 under Resolution 2009-233, the Town Board created the "APD Safety Education" Trust and Agency account for the Police Department to utilize for its Safety Education Program to promote important services and programs throughout the community; and

WHEREAS, this account and its funds are to be used solely for the use of Safety Education programs; and

WHEREAS, over the past few years the efforts of the Community Policing Unit of the Police Department has grown exponentially bringing additional services, initiatives and events to the community; and

WHEREAS, the Safety Education program and the Community Policing program are working hand in hand educating, promoting and building a healthy relationship with the community through various types of community events and initiatives; and

WHEREAS, there are no budgeted funds dedicated to the Department's Community Policing program in the Town of Amherst and majority of its events are largely funded by community donations; and

WHEREAS, the Department does receive monetary donations from local businesses and residents which the department utilizes for both its Safety Education and Community Policing efforts; and

NOW THEREFORE BE IT RESOLVED, that the "APD Safety Education" Trust and Agency account be amended to allow the use of funds within that account to be used for the Department's Community Policing initiatives; and

BE IT FURTHER RESOLVED, that this amended account is authorized to accept donations for the continuation of the Safety Education and Community Policing Programs;

BE IT FURTHER RESOLVED, that the "APD Safety Education" Trust and Agency account be renamed the "APD Safety Education & Community Policing" Trust and Agency account.

SPC:msl
C: Tim Koller, Deputy Town Clerk **(Agenda Item: January 22, 2024)**

1/22/2024
Consent

FINANCIAL IMPACT:

None for the purposes of this resolution

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Senior Services
Initiated by: **Melissa Abel**
Co-Sponsored by:

DOC ID: 28479 **RESOLUTION 2024-104** **ADOPTED**

Request to Use Trust and Agency Funds

We respectfully request Town Board permission to authorize the Supervisor to approve the request to spend up to $5000.00 in Trust and Agency Funds- Account T2100.

1/22/2024
Consent

FINANCIAL IMPACT:

Up to $5000.00

T2100

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

Brian J. Kulpa
Supervisor, Town of Amherst

Melissa Abel
Executive Director, Senior Center

Town of Amherst Center for Senior Services

Town Board Agenda Item for Monday, January 22, 2024

TO: The Honorable Amherst Town Board
Brian Kulpa, Town Supervisor
Councilmembers:
Jacqualine Berger
Shawn Lavin
Michael Szukala
Angela Marinucci

FROM : Melissa Abel, Director, Amherst Senior Services

SUBJECT : Request to use Trust and Agency Funds- Account T2100

DATE: January 7, 2024

I am requesting approval to spend up to a total of $5000.00 in Trust and Agency Funds, Account T2100 in 2024. These funds were donated to the Senior Center to be used for volunteer and program supplies, cards for members who are ill, decorations, caregiver support material, special events, etc., to benefit the Senior Center.

Please contact me directly should you have any questions or concerns.

Thank you.

Melissa Abel

Cc : Daryl Bramer, Comptroller, Town of Amherst
Nancy LeClair, Amherst Senior Services

Attachment: 2024 Trust and Agency request (RES-2024-104 : Request to Use Trust and Agency Funds)

370 John James Audubon Parkway~Amherst, New York~14228
Phone: 716-636-3050 Fax: 716-639-7572
AmherstCenterforSeniorServices.com

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Sewer/Plant 16
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 28508 **RESOLUTION 2024-105** **ADOPTED**

Payment Authorization HACH Company, Inc.

The Engineering Department, WPCF division is requesting that the Town Board authorize the payment of Hach Company invoices 13839207 and 13837436 for $20,490.28. These invoices were generated to purchase suspended solids probes and controllers via Hach (the sole source supplier) and NYSOGS contract PC67243 as noted on the original quote. Unbeknownst to the plant staff and also our Hach sales representative, the contract had expired a couple weeks prior to the provided quote.

The urgency for this order was that the equipment was used provide real time monitoring to assist the operations group with confirmatory data relative to the ongoing plant upset and deployed mitigation measures.

Funds for this request are available in KP1721-4972.

Thank you for considering this request.

1/22/2024
Consent

FINANCIAL IMPACT:

KP1721-4972; $20,490.28

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

HACH®
Be Right™

RECEIVED DEC 12 2023

INVOICE NUMBER 13839207
DATE: 12/05/2023
Page: 1

DETACH TOP PORTION AND RETURN WITH PAYMENT TO:

TOTAL: $19,785.09

Hach Company
2207 Collection Center Drive
Chicago, IL 60693
Phone: (800) 227-4224

Have you ordered online ?
Order at WWW.HACH.COM

13839201 000166173 00001978509 120523

Sort Seg: 389 Tray: DETACH HERE Original

SOLD TO
TOWN OF AMHERST
455 TONAWANDA CREEK RD
AMHERST, NY 14228-1297
United States

SHIP TO
TOWN OF AMHERST
455 TONAWANDA CREEK RD
AMHERST, NY 14228-1297
United States

INVOICE NO	13839207	DATE:	12/05/2023
PURCHASE ORDER NUMBER	2310782		
TERMS	Net 30 Days From Invoice Date		
FREIGHT			
CARRIER			
ACCOUNT	016617		
REF. NO.	320761417-2		

Remit to:
Hach Company
2207 Collection Center Drive
Chicago, IL 60693
Phone: (800) 227-4224

These commodities are sold, packaged, marked, and labeled for destinations in the United States. Exportation of these commodities may require special licensing, packaging, marking or labeling.

LN#	PRODUCT DESCRIPTION	ITEM NO.	QUANTITY	UNIT PRICE	EXT. PRICE
1	db TS-LINE sc/IMMERSION 50g/l WIPER SS **TRACKING NUMBERS: 787395840862* **ADDITIONAL INFO: Solitax ts-line sc Turbidity (0.001-4000 NTU) and Suspended Solids (0.001-50 g/L) immersion probe, with wiper, stainless steel*	LXV423.99.00100	2	6,575.63	13,151.26
2	SC4500 w/o plug Prognosys mAOutput 2DigSensors **ADDITIONAL INFO: SC4500 Controller, Prognosys, 5x mA Output, 2 digital Sensors, 100-240 VAC, without power cord*	LXV525.99A11551	2	2,964.32	5,928.64
3	POLE MOUNTING HARDWARE SOLIDS, 10CM BRACKET, SS PO **TRACKING NUMBERS: 787395840851* **ADDITIONAL INFO: Stainless Steel pole mounting Kit for Solitax sc and TSS sc Sensors*	LZY714.99.53120	1	705.19	705.19

ORDER CONTACT:
TOM DEAN
7166919771 x41
Notes:

SUBTOTAL	19,785.09
TAX	0.00
INVOICE TOTAL	19,785.09

An additional Supply Chain Surcharge, if applicable, has been included in the above pricing; more information can be found at https://www.hach.com/faq.
PURCHASE AND ACCEPTANCE OF PRODUCT(S) SUBJECT TO HACH COMPANY'S TERMS AND CONDITIONS OF SALE, PUBLISHED ON HACH COMPANY'S WEBSITE AT WWW.HACH.COM/TERMS. If you have a Service Agreement, it will automatically renew at the End Date for one year and at the anniversary of the End Date unless you notify Hach in writing by no later than ninety days before the End Date.
For order discrepancies or product exchanges please call 800-227-4224 or 970-669-3050 to obtain Return Authorization.

Environmental Test Systems · OTT Hydromet · SEA-BIRD COASTAL · OTHER BRANDS FROM HACH · MARSH · SIGMA

FEDERAL TAX

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

HACH®
Be Right™

RECEIVED DEC 12 2023

INVOICE NUMBER 13837436
DATE: 12/04/2023
Page: 1

TOTAL: $705.19

DETACH TOP PORTION AND RETURN WITH PAYMENT TO:

Hach Company
2207 Collection Center Drive
Chicago, IL 60693
Phone: (800) 227-4224

13837438 000166173 00000070519 120423

Have you ordered online ?
Order at WWW.HACH.COM

Sort Seg: 262 Tray: DETACH HERE Original

SOLD TO
TOWN OF AMHERST
455 TONAWANDA CREEK RD
AMHERST, NY 14228-1297
United States

SHIP TO
TOWN OF AMHERST
455 TONAWANDA CREEK RD
AMHERST, NY 14228-1297
United States

INVOICE NO	13837436	DATE:	12/04/2023
PURCHASE ORDER NUMBER	2310782		
TERMS	Net 30 Days From Invoice Date		
FREIGHT			
CARRIER			
ACCOUNT	016617		
REF. NO.	320761417-1		

Remit to:
Hach Company
2207 Collection Center Drive
Chicago, IL 60693
Phone: (800) 227-4224

These commodities are sold, packaged, marked, and labeled for destinations in the United States. Exportation of these commodities may require special licensing, packaging, marking or labeling.

LN#	PRODUCT DESCRIPTION	ITEM NO.	QUANTITY	UNIT PRICE	EXT. PRICE
1	POLE MOUNTING HARDWARE SOLIDS, 10CM BRACKET, SS PO	LZY714.99.53120	1	705.19	705.19

**TRACKING NUMBERS: 787405055710*
**ADDITIONAL INFO: Stainless Steel pole mounting Kit for Solitax sc and TSS sc Sensors*

ORDER CONTACT:
TOM DEAN
7166919771 x41
Notes:

SUBTOTAL	705.19
TAX	0.00
INVOICE TOTAL	705.19

An additional Supply Chain Surcharge, if applicable, has been included in the above pricing; more information can be found at https://www.hach.com/faq.
PURCHASE AND ACCEPTANCE OF PRODUCT(S) SUBJECT TO HACH COMPANY'S TERMS AND CONDITIONS OF SALE, PUBLISHED ON HACH COMPANY'S WEBSITE AT WWW.HACH.COM/TERMS. If you have a Service Agreement, it will automatically renew at the End Date for one year and at the anniversary of the End Date unless you notify Hach in writing by no later than ninety days before the End Date.
For order discrepancies or product exchanges please call 800-227-4224 or 970-669-3050 to obtain Return Authorization.

Environmental Test Systems · OTT Hydromet · SEA-BIRD COASTAL · HACH · OTHER BRANDS FROM HACH

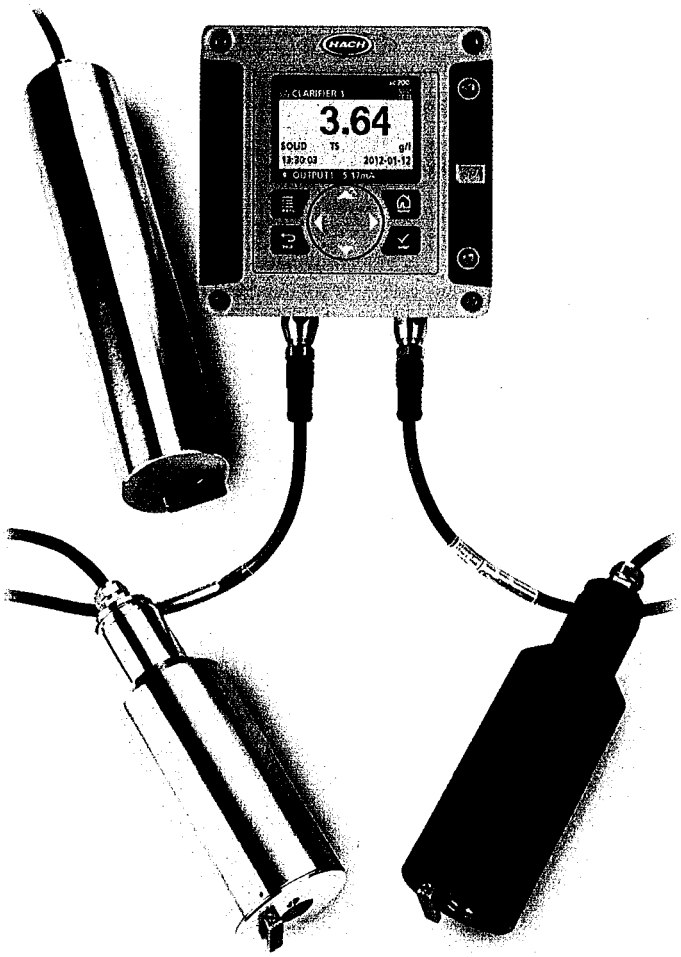
FEDERAL TAX

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

SOLITAX®sc TURBIDITY & SUSPENDED SOLIDS SENSORS

Applications

- Drinking Water
- Wastewater
- Beverage
- Industrial Water
- Power



PROGNOSYS™ READY

Accurate, color-independent suspended solids and turbidity measurements.

Greater Accuracy, Less Maintenance

Hach SOLITAX sc sensors provide accurate, color-independent measurement of turbidity and suspended solids in drinking water, wastewater and industrial process applications. A self-cleaning device prevents biological growth and interference of gas bubbles. This system's reliable performance and full data communication capability help improve process control and reduce treatment costs associated with polymer use, digester volume, and sludge handling.

Excellent Correlation to Laboratory Analysis

SOLITAX sc sensors show an exceptional correlation to laboratory analysis. On-line measurement not only saves time on manual analysis, but also provides critical real-time measurements that can be used to operate the plant more efficiently.

Fully Serviceable Sensors

Conventional turbidity and suspended solids sensors are potted and are discarded when they no longer function. SOLITAX sc sensors are fully serviceable, which often doubles the useful life of the sensor.

Easy One-point Calibration

Factory calibrated in conformity with DIN EN ISO 7027 for long-term calibration stability. Calibration is easy with a simple correction factor procedure.

Multi-channel, Multi-parameter System

Any two SOLITAX sc sensors can be installed on one Hach sc200 Controller. The same controller can also accommodate any combination of parameters. All of Hach's model sc sensors are "plug and play" with no complicated wiring or set-up procedure necessary.

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

Specifications*

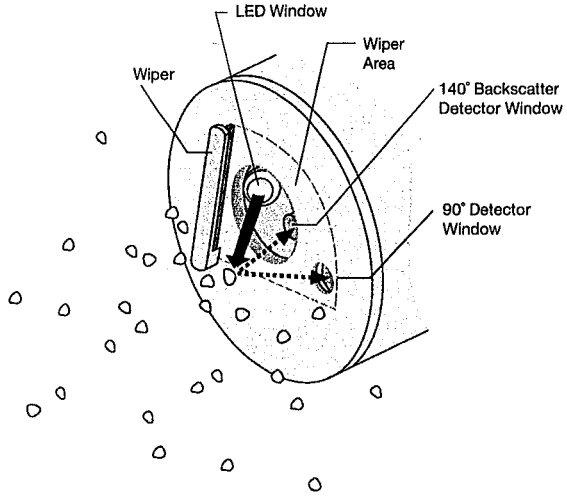
	For insertion in pipes		For immersion in open tanks		
Model	INSERTION inline sc	INSERTION highline sc	IMMERSION t-line sc	IMMERSION ts-line sc	IMMERSION hs-line sc
Parameter	Suspended Solids, Turbidity	Hight Range Suspended Solids, Turbidity	Turbidity	Suspended Solids, Turbidity	Hight Range Suspended Solids, Turbidity
Measuring Range Turbidity	0.001 to 4000 NTU	0.001 to 4000 NTU	0.001 to 4000 NTU	0.001 to 4000 NTU	0.001 to 4000 NTU
Measuring Range TSS-Content	0.001 mg/L to 50 g/L	0.001 mg/L to 500 g/L		0.001 mg/L to 50 g/L	0.001 mg/L to 500 g/L
Unit	Turbidity: User selectable—NTU, FNU, or TE/F Suspended Solids: User selectable—g/L, mg/L, ppm, or % solids				
Accuracy	Turbidity up to 1000 NTU; without calibration < 5% of the measured value ±0.01 NTU; with calibration < 1% of the measured value ±0.01 NTU				
Repeatability	Suspended solids content: < 3 %				
	Turbidity: < 1 %				
Response Time	1 s < T90 < 300 s (adjustable)				
Calibration Method	Turbidity: Formazin or STABLCAL Standard (at 800 NTU). Suspended Solids: Sample specific, based on gravimetric TSS analysis with a correction factor procedure.				
Certifications	CE certified to EN 61326-1, EN 61326/A1, EN 61326/A2, EN 61010-1				
Flow	Max. 3 m/s (the presence of air bubbles affects the measurement)				
Operating Temperature Range	0 to 40 °C (32 to 104°F)				
Pressure Limit	Stainless steel: 6 bar or 60 m (87 psi) PVC: 1 bar or 10 m (14.5 psi) Stainless steel: 6 bar or 60 m (87 psi) PVC: 1 bar or 10 m (14.5 psi)				
Material	Optics Carrier and Sleeve: stainless steel 1.4571 or black PVC Wiper Arm: stainless steel 1.4581; Wiper Blade: silicone (standard) Optional: Viton (LZX578); Wiper Shaft: stainless steel 1.4571 Threaded cable fitting: stainless steel 1.4305 or white PVC		Optics Carrier and Sleeve: stainless steel 1.4571 or black PVC Wiper Arm: stainless steel 1.4581; Wiper Blade: silicone (standard) Optional: Viton (LZX578); Wiper Shaft: stainless steel 1.4571 Threaded cable fitting: stainless steel 1.4305 or white PVC	
Weight Sensor	Insertion stainless steel: 2.4 kg (5.29 lb.)		Immersion stainless steel: 1.38 kg (3.0 lb.) Immersion PVC: 0.52 kg (1.2 lb.)		
Cable Length	10 m (optional extension cables available)				
					*Subject to change without notice

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

Principle of Operation

SOLITAX sc ts-line sensor with dual-beam optics and added backscatter detector

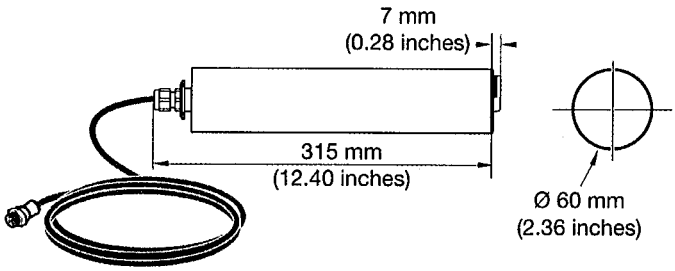
- Dual infrared light beams. LED light source transmits light at 45° to sensor face.
- Nephelometric photoreceptors detect light at 90° to the transmitted light beam.
- Backscatter photoreceptor (included on all models except the SOLITAX sc t-line) detects light at 140° to the transmitted light beam to measure suspended solids in heavily loaded sample streams.
- Self-cleaning wiper, optional.
- T-line probes measure turbidity only. TS, HS, inline, and highline sensors measure either turbidity or suspended solids.



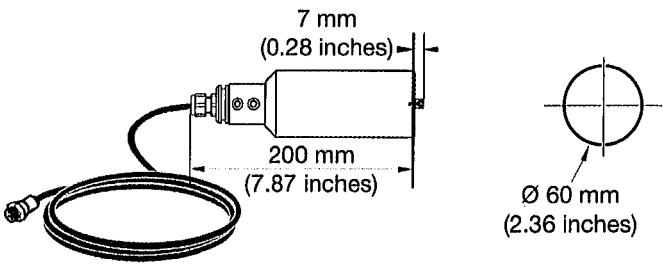
Dimensions

Hach SOLITAX sc sensors can be fixed to the rim of the tank for immersion applications or inserted directly through the sidewall of a pipeline for insertion applications. A variety of installation kits are available.

SOLITAX sc Insertion Probe

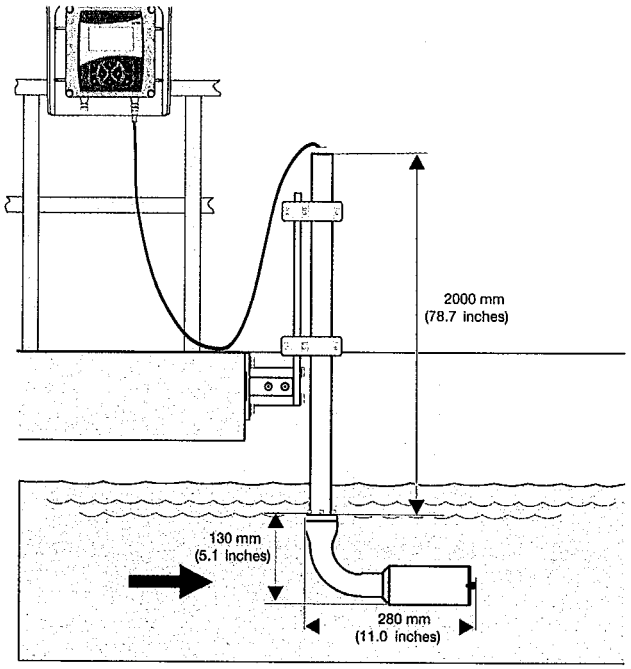


SOLITAX sc Immersion Probe

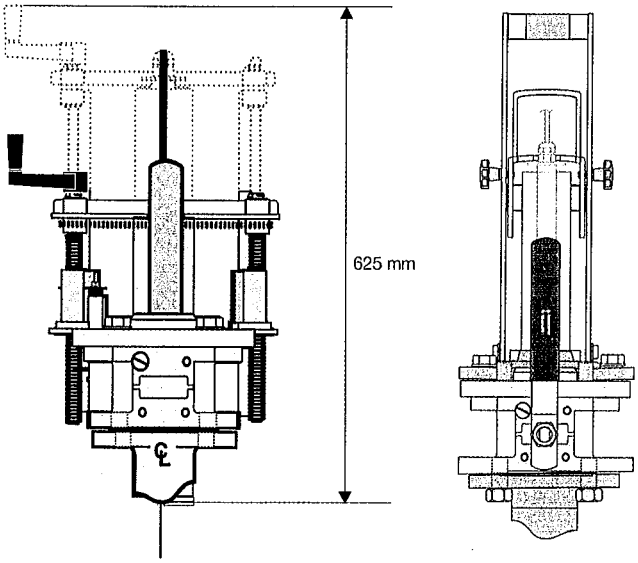


Installation / Mounting

Installation for mounting SOLITAX sc for immersion in open tanks. (Stainless steel pole mount kit, Prod. No. LZY714.99.53120)



Fixture with ball valve for mounting SOLITAX sc models inline and highline sensors in pipes., minimum pipe size 100 mm (4-in.) (Prod. No. LZX337, max pressure 6 bar; Prod. No. 936, max. pressure 1 bar.



Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

Ordering Information

Common Configurations: SOLITAX sc Turbidity and Suspended Solids Analyzers with sc200 controller and sensors shown

Immersion in Open Tanks Applications

2983400	Turbidity Analyzer, t-line sc, stainless steel with wiper (0.001 to 4000 NTU)
2983500	Turbidity and Suspended Solids Analyzer, ts-line sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
2983600	Turbidity and High Range Suspended Solids Analyzer, hs-line sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)

Insertion in Pipes Applications (includes insertion mounting kit)

2983700	Turbidity and Suspended Solids Analyzer, inline sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
2983900	Turbidity and High Range Suspended Solids Analyzer, highline sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)

NOTE:
1. *Power Cords must be ordered separately.*
2. *Fixed point installation kit or handrail mount kit must be ordered separately for all immersion analyzers.*

Individual SOLITAX sc Sensors

Immersion Sensors

LXV423.99.10000	Turbidity, t-line sc, PVC with wiper (0.001 to 4000 NTU)
LXV423.99.12000	Turbidity, t-line sc, PVC without wiper (0.001 to 4000 NTU)
LXV423.99.10100	Turbidity and Suspended Solids, ts-line sc, PVC with wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
LXV423.99.12100	Turbidity and Suspended Solids, ts-line sc, PVC without wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
LXV423.99.00100	Turbidity and Suspended Solids, ts-line sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
LXV423.99.02100	Turbidity and Suspended Solids, ts-line sc, stainless steel without wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
LXV423.99.10200	Turbidity and Suspended Solids, hs-line sc, PVC with wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)
LXV423.99.12200	Turbidity and Suspended Solids, hs-line sc, PVC without wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)
LXV423.99.00200	Turbidity and Suspended Solids, hs-line sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)
LXV423.99.02200	Turbidity and Suspended Solids, hs-line sc, stainless steel without wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)

Insertion Sensors

LXV424.99.00100	Turbidity and Suspended Solids, inline sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
LXV424.99.02100	Turbidity and Suspended Solids, inline sc, stainless steel without wiper (0.001 to 4000 NTU, 0.001 mg/L to 50 g/L)
LXV424.99.00200	Turbidity and Suspended Solids, highline sc, stainless steel with wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)
LXV424.99.02200	Turbidity and Suspended Solids, highline sc, stainless steel without wiper (0.001 to 4000 NTU, 0.001 mg/L to 500 g/L)

Installation Accessories

LZY714.99.53120	Stainless Steel pole mount kit for SOLITAX t-line, ts-line, and hs-line immersion sensors, including 10 cm base and 2 m pole with sensor adapter
5738400	Insertion Mounting Kit for inline and highline insertion sensors (ball valve safety armature and extraction system). Kit includes a 4 inch pre-coped Carbon Steel Flange. Non-coped flanges are available
AHA033NPT	Sensor Adapter, straight 1-1/2 FNPT
AHA034NPT	Sensor Adapter, elbow 1-1/2 FNPT 90°
MH236B00Z	Handrail Mounting Kit (for sensor to be used with either adapter above) includes 1.5-inch diameter by 7.5-ft long CPVC pipe and swivel/pivot/ pipe clamp assembly
LZX337	Stainless steel ball valve safety armature/ extraction fitting for in-line and hi-line probes w/o welding flange, maximum operating pressure 6 bar/87 psi
LZX936	Stainless steel ball valve armature, maximum operation pressure 1 bar/14.5 psi
LZX660	Non-coped stainless steel welding flange for insertion kit
LZX661	Non-coped carbon steel welding flange for insertion kit

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

HACH COMPANY World Headquarters: Loveland, Colorado USA

United States: 800-227-4224 tel 970-669-2932 fax orders@hach.com
Outside United States: 970-669-3050 tel 970-461-3939 fax int@hach.com
hach.com

LIT2472 Rev 8
C15 Printed in U.S.A.
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In the interest of improving and updating its equipment, Hach Company reserves the right to alter specifications to equipment at any time.

Be Right™

Quotation

uote Number: 100984593v1
e quote number at time of order to ensure
at you receive prices quoted

Hach
PO Box 608
Loveland, CO 80539-0608
Phone: (800) 227-4224
Email: quotes@hach.com
Website: www.hach.com

uote Date: 11/28/2023 Quote Expiration: 12/28/2023

OWN OF AMHERST
55 TONAWANDA CREEK RD
MHERST, NY 14228-1297

lame: Tom Dean
hone: (716) 691-9771
mail: tdean@amherst.ny.us

ıstomer Account Number : 016617
ıstomer Quote Reference: NY State Contract #PC67243

ıles Contact: Dominic Attardi Email: dattardi@hach.com Phone: 800-227-4224

PRICING QUOTATION

ine	Part Number	Description	Qty	Net Unit Price	Extended Price
	LXV423.99.00100	Solitax ts-line sc Turbidity (0.001-4000 NTU) and Suspended Solids (0.001-50 g/L) immersion probe, with wiper, stainless steel. Standard lead time 5 days.	2	6,575.63	13,151.26
	LZY714.99.53120	Stainless Steel pole mounting Kit for Solitax sc and TSS sc Sensors. Standard lead time 5 days.	2	705.19	1,410.38
	LXV525.99A11551	SC4500 Controller, Prognosys, 5x mA Output, 2 digital Sensors, 100-240 VAC, without power cord. Standard lead time 5 days.	2	2,964.32	5,928.64
				Grand Total	$ 20,490.28

TERMS OF SALE

reight: Prepaid By Shipper - Agreement

FCA: Hach's facility

LL LEAD TIMES ARE ESTIMATED AND NOT GUARANTEED.

l purchases of Hach Company products and/or services are expressly and without limitation subject to Hach Company's Terms & Conditions of Sale ("Hach TC
rein by reference and published on Hach Company's website at www.hach.com/terms. Hach TCS are contained directly and/or by reference in Hach's offer, order acknowledgment,

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

ich TCS: (i) Buyer's issuance of a purchase order document against Hach's offer, (ii) acknowledgement of Buyer's order by Hach, or (iii) commencement of any performan
rsuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract

om the provisions of the Hach TCS are not part of the Contract.

ie to International regulations, a U.S. Department of Commerce Export License may be required. Hach reserves the right to approve specific shipping agents. Wooden boxes suitable
r ocean shipment are extra. Specify final destination to ensure proper documentation and packing suitable for international transport. In addition, Hach may require : 1). A statement
intended end-use; 2).Certification that the intended end-use does not relate to proliferation of weapons of mass destruction (prohibited nuclear end use, chemical / biological
apons, missile technology); and 3). Certification that the goods will not be diverted contrary to U.S. and/or applicable laws in force in Buyer's jurisdiction.

RDER TERMS:
rms are Subject to Credit Review
order for Hach to process the order as quickly as possible, please provide the following information.
omplete Billing address.
omplete Shipping address.
art numbers and quantities of items being ordered.
lease reference the quotation number on your purchase order

he order is over $25,000 Hach will also require the following additional information.
ricing
urchase Order Number
reight terms and INCO term FOB Origin or FCA Shipping Point
equired delivery date
endor name should specify "Hach Company" with the Loveland address:
o Hach, PO Box 389, Loveland, CO 80539
redit terms of payment. Default payment terms are Net 30.
ndicate if order needs to ship complete or if it can ship partial.
ax status
pecial invoicing instructions

les tax is not included on quote. Applicable sales tax will be added to the invoice based on the U.S. destination, if applicable provide a resale/exemption certificate.
ipments will be prepaid and added to invoices unless otherwise specified.
uipment quoted operates with standard U.S. supply voltage.
ch standard terms and conditions apply to all sales.
ditional terms and conditions apply to orders for service partnerships.
ces do not include delivery of product. Reference attached Freight Charge Schedule and Collect Handling Fees.
is Quote is good for a one time purchase
tual and/or on-site training must be scheduled/completed within 30 days of order, or the price will be subject to change.

ales Contact:
ame: Dominic Attardi
itle: Regional Sales Manager
hone: 800-227-4224
mail: dattardi@hach.com

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

HACH COMPANY

Headquarters
P.O. Box 389
5600 Lindbergh Drive
Loveland, CO 80539-0389

Purchase Orders
PO Box 608
Loveland, CO 80539-0608

WebSite: www.hach.com

U.S.A.
Phone: 800-227-4224
Fax: 970-669-2932
E-Mail: orders@hach.com
quotes@hach.com
techhelp@hach.com

Export
Phone: 970-669-3050
Fax: 970-461-3939
Email: intl@hach.com

Remittance
2207 Collections Center Drive
Chicago, IL 60693

Wire Transfers
Bank of America
231 S. LaSalle St.
Chicago, IL 60604
Account: 8765602385
Routing (ABA): 071000039

Be Right™

Quotation Addendum

ADVANTAGES OF WORKING WITH HACH

Hach Service

Protect your investment & peace of mind
- ✓ A global partner who understands your needs
- ✓ Delivers timely, high-quality service you can trust
- ✓ Provides team of unique experts to help you maximize instrument uptime
- ✓ Ensure data integrity
- ✓ Maintain operational stability
- ✓ Reduce compliance risk

www.hach.com/service-contracts

Pick&Ship™

Pick&Ship™ Program offers a better way to keep your supplies in stock
- ✓ **Convenience** of one purchase order for the entire year
- ✓ **Flexibility** to change, cancel or create new orders
- ✓ **Savings** from locking in prices & thus avoiding price surges and rush charges
- ✓ **Peace of mind** with automatic, reliable shipments just as you need them

www.Hach.com/pickandship

Technical Support

Provides post-sale instrumentation and application support
- ✓ Hach's highly skilled Technical Support staff is dedicated to helping you resolve technical issues before, during and after the sale.
- ✓ Available via phone, e-mail, or live online chat at Hach.com!
- ✓ Fast access to answers at https://support.hach.com
- ✓ Toll-free phone: 800-227-4224
- ✓ E-mail: techhelp@hach.com

www.Hach.com

ADVANTAGES OF SIMPLIFIED SHIPPING AND HANDLING

Safe & Fast Delivery
- ✓ Receive tracking numbers on your order acknowledgement
- ✓ Hach will assist with claims if an order is lost or damaged in shipment

Save Time – Less Hassle
- ✓ No need to set up deliveries for orders or to schedule pickup
- ✓ Hach ships order as product is available, at no additional charge, when simplified shipping and handling is used.

Save Money
- ✓ No additional invoice to process – save on time and administrative costs
- ✓ Only pay shipping once, even if multiple shipments are required

STANDARD SIMPLIFIED SHIPPING AND HANDLING CHARGES [1, 2, 3, 4] *Pricing Effective 6/3/2023*

Total Price of Merchandise Ordered	Standard Surface (Mainland USA)	Second Day Delivery (Mainland USA)	Next Day Delivery (Mainland USA)	Second Day Delivery (Alaska & Hawaii)	Next Day Delivery (Alaska & Hawaii)	**Collect** [4] Handling Fee *Effective 6/3/2023*
$0.00 - $49.99	$10.00	$25.01	$46.64	$40.14	$76.30	$8.00
$50.00 - $149.99	$12.00	$35.37	$66.74	$50.72	$96.42	$8.00
$150.00 - $349.99	$14.00	$37.35	$76.08	$51.51	$98.85	$8.00
$350.00 - $649.99	$16.00	$41.84	$83.20	$52.30	$101.27	$8.00
$650.00 - $949.99	$16.00	$50.69	$104.55	$61.58	$119.19	$8.00
$950.00 - $1,999.99	$28.00	$59.54	$125.90	$70.86	$137.10	$8.00
$2,000.00 - $3,999.99	$28.00	$73.62	$153.60	$84.76	$164.64	$8.00
$4,000.00 - $5,999.99	$50.00	$87.69	$181.30	$98.66	$192.18	$8.00
$6,000.00 - $7,999.99	$60.00	$101.39	$209.64	$110.51	$213.06	$8.00
$8,000.00 - $9,999.99	$90.00	$151.46	$295.96	$162.06	$307.35	$8.00
Over $10,000	1.0% of Net Order Value	1.8% of Net Order Value	2.8% of Net Order Value	1.8% of Net Order Value	2.8% of Net Order Value	$8.00

1 Shipping & Handling charges shown are only applicable to orders billing and shipping to U.S. destinations. Shipping & Handling charges will be prepaid and added to invoice. Shipping & Handling for the Pick&Ship Program is charged on each shipment release and is based on the total price of each shipment release. Shipping & Handling charges are subject to change without notice.

2 Additional Shipping & Handling charges will be applied to orders containing bulky and/or especially heavy orders. Refrigerated and all weather Samplers do not qualify for simplified Shipping & Handling charges, and are considered heavy products. Dissolved Oxygen Sensors can be damaged if exposed to temps below freezing, causing sensor failure. Must be shipped over night or 2nd day air during the cold weather months.

3 Orders shipping to Alaska or Hawaii: Additional Shipping & Handling charges may be applied at time of order processing. Second Day and Next Day delivery is not available to all destinations.

4 Hach Company will assess a collect handling fee on orders with collect shipping terms. This handling fee covers the additional costs that Hach Company incurs from processing and managing collect shipments.

Due to variations in component characteristics, regulatory transportation requirements and/or associated shipping and handling costs, individual kit components may or may not be packaged together in a single carton at time of final packaging and shipping.

SALES TAX

Sales Tax is not included in the attached quotation. Applicable sales and usage taxes will be added to your invoice, at the time of order, based on U.S. goods, unless a valid resale/exemption certificate for destination state is provided to the above address or fax number, attention of the Tax Dept.

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

TERMS & CONDITIONS OF SALE FOR HACH COMPANY PRODUCTS AND SERVICES

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Hach Company of Loveland, Colorado ("Hach") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated herein, the term "Hach" includes only Hach Company and none of its affiliates. Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Hach and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Hach and Buyer which apply to this offer and any resulting order or contract for the sale of Hach's goods and/or services ("Products").

1. APPLICABLE TERMS & CONDITIONS: These Terms & Conditions of Sale are contained directly and/or by reference in Hach's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

2. CANCELLATION: Buyer may cancel goods orders subject to fair charges for Hach's expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Buyer returns such goods to Hach at Buyer's expense within thirty (30) days of delivery and in the same condition as received. Buyer may cancel service orders on ninety (90) day's prior written notice and refunds will be prorated based on the duration of the service plan. Inspections and re-instatement fees may apply upon cancellation or expiration of service programs. Seller may cancel all or part of any order prior to delivery without liability if the order includes any Products that Seller determines may not comply with export, safety, local certification, or other applicable compliance requirements.

3. DELIVERY: Delivery will be accomplished FCA Hach's facility located in Ames, Iowa or Loveland, Colorado, United States (Incoterms 2010). Legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. Hach will use commercially reasonable efforts to deliver the Products ordered herein within the time specified on the face of this Contract or, if no time is specified, within Hach's normal lead-time necessary for Hach to deliver the Products sold hereunder. Upon prior agreement with Buyer and for an additional charge, Hach will deliver the Products on an expedited basis. Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

4. INSPECTION: Buyer will promptly inspect and accept any Products delivered pursuant to this Contract after receipt of such Products. In the event the Products do not conform to any applicable specifications, Buyer will promptly notify Hach of such nonconformance in writing. Hach will have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer will be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by Hach within thirty (30) days of delivery.

5. PRICES & ORDER SIZES: All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Products. Buyer will either pay any and all such charges or provide Hach with acceptable exemption certificates, which obligation survives performance under this Contract. Hach reserves the right to establish minimum order sizes and will advise Buyer accordingly.

6. PAYMENTS: All payments must be made in U.S. dollars. For Internet orders, the purchase price is due at the time and manner set forth at www.hach.com. Invoices for all other orders are due and payable NET 30 DAYS from date of the invoice without regard to delays for inspection or transportation, with payments to be made by check to Hach at the above address or by wire transfer to the account stated on the front of Hach's invoice, or for customers with no established credit, Hach may require cash or credit card payment in advance of delivery. In the event payments are not made or not made in a timely manner, Hach may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with-order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% (one and one half percent) per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Products for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees; or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Hach or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to Hach in its reasonable discretion, Hach may require cash payment or other security. If Buyer fails to meet these requirements, Hach may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due Hach. Buyer grants Hach a security interest in the Products to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords Hach all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment. See ¶20 for further wire transfer requirements.

7. LIMITED WARRANTY: Hach warrants that Products sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific goods purchased, which for most Hach instruments is for a period of twelve (12) months from delivery. Hach warrants that services furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Parts provided by Hach in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Hach shall become the property of Hach. No warranties are extended to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. **All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded.** The sole remedy for Products not meeting this Limited Warranty is replacement, credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Hach is willing to provide such replacement, credit or refund.

8. INDEMNIFICATION: Indemnification applies to a party and to such party's successors-in-interest, assignees, affiliates, directors, officers, and employees ("Indemnified Parties"). Hach is responsible for and will defend, indemnify and hold harmless the Buyer Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to Hach's breach of the Limited Warranty. Buyer is responsible for and will defend, indemnify and hold harmless the Hach Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to negligence, misuse or misapplication of any goods or services, violations of law, or the breach of any provision of this Contract by the Buyer, its affiliates, or those employed by, controlled by or in privity with them. Buyer's workers' compensation immunity, if any, does not preclude or limit its indemnification obligations.

9. PATENT PROTECTION: Subject to all limitations of liability provided herein, Hach will, with respect to any Products of Hach's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any U.S. patent (or European patent for Products that Hach sells to Buyer for end use in a member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Hach does not undertake the defense thereof, provided that Buyer promptly notifies

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Hach of such suit and offers Hach either (i) full and exclusive control of the defense of such suit when Products of Hach only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Hach are also involved. Hach's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Hach's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Hach will, at its own expense and at its option, either procure for Buyer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Hach for patent infringement by the Products. Further, to the same extent as set forth in Hach's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Hach for patent infringement related to (x) any goods manufactured to the Buyer's design, (y) services provided in accordance with the Buyer's instructions, or (z) Hach's Products when used in combination with any other devices, parts or software not provided by Hach hereunder.

10. TRADEMARKS AND OTHER LABELS: Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

11. SOFTWARE AND DATA. All licenses to Hach's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media and/or included as an Appendix to these Terms & Conditions of Sale. Except to the extent such express licenses conflict with the remainder of this paragraph, the following also applies relative to Hach's software: Hach grants Buyer only a personal, non-exclusive license to access and use the software provided by Hach with Products purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Products. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). In connection with Buyer's use of Products, Hach may obtain, receive, or collect data or information, including data produced by the Products. In such cases, Buyer grants Hach a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data, or to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and R&D activities of Hach and its affiliates.

12. PROPRIETARY INFORMATION; PRIVACY: "Proprietary Information" means any information, technical data or know-how in whatever form, whether documented, contained in machine readable or physical components, mask works or artwork, or otherwise, which Hach considers proprietary, including but not limited to service and maintenance manuals. Buyer and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Hach and will not transfer or disclose it without Hach's prior written consent, or use it for the manufacture, procurement, servicing or calibration of Products or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it. All such Proprietary Information remains Hach's property. No right or license is granted to Buyer or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent right or other proprietary right of Hach, except for the limited use licenses implied by law. Hach will manage Customer's information and personal data in accordance with its Privacy Policy, located at http://www.hach.com/privacypolicy.

13. CHANGES AND ADDITIONAL CHARGES: Hach reserves the right to make design changes or improvements to any products of the same general class as Products being delivered hereunder without liability or obligation to incorporate such changes or improvements to Products ordered by Buyer unless agreed upon in writing before the Products' delivery date. Services which must be performed as a result of any of the following conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Hach; (b) damage resulting from improper use or handling, accident, neglect, power surge, or operation in an environment or manner in which the instrument is not designed to operate or is not in accordance with Hach's operating manuals; (c) the use of parts or accessories not provided by Hach; (d) damage resulting from acts of war, terrorism or nature; (e) services outside standard business hours; (f) site prework not complete per proposal; or (g) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

14. SITE ACCESS / PREPARATION / WORKER SAFETY / ENVIRONMENTAL COMPLIANCE: In connection with services provided by Hach, Buyer agrees to permit prompt access to equipment. Buyer assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Buyer is the operator and in full control of its premises, including those areas where Hach employees or contractors are performing service, repair and maintenance activities. Buyer will ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services. Buyer is the generator of any resulting wastes, including without limitation hazardous wastes. Buyer is solely responsible to arrange for the disposal of any wastes at its own expense. Buyer will, at its own expense, provide Hach employees and contractors working on Buyer's premises with all information and training required under applicable safety compliance regulations and Buyer's policies. If the instrument to be serviced is in a Confined Space, as that term is defined under OSHA regulations, Buyer is solely responsible to make it available to be serviced in an unconfined space. Hach service technicians will not work in Confined Spaces. In the event that a Buyer requires Hach employees or contractors to attend safety or compliance training programs provided by Buyer, Buyer will pay Hach the standard hourly rate and expense reimbursement for such training attended. The attendance at or completion of such training does not create or expand any warranty or obligation of Hach and does not serve to alter, amend, limit or supersede any part of this Contract.

15. LIMITATIONS ON USE: Buyer will not use any Products for any purpose other than those identified in Hach's catalogs and literature as intended uses. Unless Hach has advised the Buyer in writing, in no event will Buyer use any Products in drugs, food additives, food or cosmetics, or medical applications for humans or animals. In no event will Buyer use in any application any Product that requires FDA 510(k) clearance unless and only to the extent the Product has such clearance. Buyer will not sell, transfer, export or re-export any Hach Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Hach Products or technology in any facility which engages in activities relating to such weapons. Unless the "ship-to" address is in California, U.S.A., the Products are not intended for sale in California and may lack markings required by California Proposition 65; accordingly, unless Buyer has ordered Products specifying a California ship-to address, Buyer will not sell or deliver any Hach Products for use in California. Any warranty granted by Hach is void if any goods covered by such warranty are used for any purpose not permitted hereunder.

16. EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS: Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Buyer will comply with all laws and regulations applicable to the installation or use of all Products, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Hach, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract. Hach asks Buyer to "*Speak Up!*" if aware of any violation of law, regulation or our Standards of Conduct ("SOC") in relation to this Contract. See www.ethicspoint.veralto.com and Integrity and compliance – Veralto for a copy of the SOC and for access to our Helpline portal.

17. RELATIONSHIP OF PARTIES: Buyer is not an agent or representative of Hach and will not present itself as such under any circumstances unless and to

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the extent it has been formally screened by Hach's compliance department and received a separate duly-authorized letter from Hach setting forth the scope and limitations of such authorization.

18. FORCE MAJEURE: Hach is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control of, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Hach by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Hach may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

19. NON ASSIGNMENT AND WAIVER: Buyer will not transfer or assign this Contract or any rights or interests hereunder without Hach's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

20. FUNDS TRANSFERS (PAYMENTS): Buyer and Hach both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new or changed bank transfer or mailing instructions by calling Hach at +1-970-663-1377 and speaking with Hach's Credit Manager before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

21. LIMITATION OF LIABILITY: None of the Hach Indemnified Parties will be liable to any Buyer Indemnified Parties under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of any Buyer Indemnified Parties' customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Hach Indemnified Parties arising out of the performance or nonperformance hereunder or Hach's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Hach for Products delivered hereunder.

22. APPLICABLE LAW AND DISPUTE RESOLUTION: The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Colorado, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Hach and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of Colorado, U.S.A. if Buyer has minimum contacts with Colorado and the U.S., (ii) elsewhere in the U.S. if Buyer has minimum contacts with the U.S. but not Colorado, or (iii) in a neutral location if Buyer does not have minimum contacts with the United States.

23. ENTIRE AGREEMENT, TERM & MODIFICATION: These Terms & Conditions of Sale constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. Upon thirty (30) days prior written notice, Hach may, in its sole discretion, elect to terminate any order for the sale of Products and provide a pro-rated refund for any pre-payment of undelivered Products. No change to or modification of these Terms & Conditions shall be binding upon Hach unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Hach. Hach rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether or not such terms or conditions materially alter the Terms & Conditions herein and irrespective of Hach's acceptance of Buyer's order for the described goods and services.

24. APPENDICES: If checked, the following Appendices are attached hereto and incorporated by reference into these Terms & Conditions of Sale:

☐ CLAROS SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT

* * *

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Hach Company
Lot 1 Equipment & Instruments

March 6, 2023

SKU/Part Number	Product Name/Description	List Price	NYS Discount	NYS Net Price
LZX414.00.73000	RAIL MOUNTING ASSEMBLY, SONATAX	$ 1,195.00	3.00%	$ 1,159.15
LZX416	MISC HARDWARE F/PROBE INST KIT OPTIQ	$ 136.00	3.00%	$ 131.92
LZX450	SEDIMENTER	$ 3,095.00	3.00%	$ 3,002.15
LZX461	Einbauarmatur	$ 701.00	3.00%	$ 679.97
LZX549	CONTACTING COND, 0.1 CELL, 42MM LGTH	$ 635.00	3.00%	$ 615.95
LZX660	WELDING FLANGE IN-LINE PROBES SS 1.4571	$ 260.00	3.00%	$ 252.20
LZX661	WELDING FLANGE,IN-LINE PROBES,C-STEEL, C22.8, 1.0460	$ 130.00	3.00%	$ 126.10
LZX676	HOLDER, CONTROL UNIT (FILTRAX)	$ 584.00	3.00%	$ 566.48
LZX866	db NITRATAX CLEA SC 5MM FLOWTHRU CELL	$ 3,506.00	3.00%	$ 3,400.82
LZX867	db NITRATAX PLUS SC 5MM FLOWTHRU CELL	$ 3,506.00	3.00%	$ 3,400.82
LZX868	db FLOW THROUGH UNIT F/UVAS 50MM	$ 3,141.00	3.00%	$ 3,046.77
LZX869	db NITRATAX PLUS SC 2MM FLOWTHRU CELL	$ 3,506.00	3.00%	$ 3,400.82
LZX885	ee 12 mm pH combination electrode for	$ 338.00	3.00%	$ 327.86
LZX888	ORPpH combination electrodefor LXV426	$ 598.00	3.00%	$ 580.06
LZX890	Replacement ORP electrode	$ 507.00	3.00%	$ 491.79
LZX908	PLUG, SEALING	$ 6.10	3.00%	$ 5.91
LZX914.99.11110	CHAIN MOUNT KIT, FP360sc, 5M	$ 586.00	3.00%	$ 568.42
LZX914.99.11200	CHAIN MOUNT KIT, STAINLESS STEEL, LDO2	$ 765.00	3.00%	$ 742.05
LZX914.99.11300	Kettenhalterung - Edelstahl, 5m	$ 823.00	3.00%	$ 798.31
LZX914.99.12400	KIT, CHAIN MOUNT, NH4Dsc PROBE	$ 615.00	3.00%	$ 596.55
LZX936	BALL VALVE ARMATURE FOR SOLITAX INLINE & HIGHLINE	$ 2,068.00	3.00%	$ 2,005.96
LZX957	HARDWARE, MTG. CONTROLLER W SUNROOF	$ 755.00	3.00%	$ 732.35
LZX958	SUNROOF, CONTROLLER	$ 257.00	3.00%	$ 249.29
LZX961	SUNSHIELD SC200	$ 272.00	3.00%	$ 263.84
LZX961.54	SC100 PLASTIC SUNSHIELD	$ 275.00	3.00%	$ 266.75
LZY203	MASTER LINK SET FOR SOLITAX sc	$ 44.35	3.00%	$ 43.01
LZY285	KIT, MTG HRDWARE,RAIL MT,AMTAX sc W/	$ 1,164.00	3.00%	$ 1,129.08
LZY286	KIT, MTG HRDWARE,STAND MT,AMTAX sc	$ 1,216.00	3.00%	$ 1,179.52
LZY287	KIT, MTG HRDWARE,STAND MT,AMTAX sc	$ 1,113.00	3.00%	$ 1,079.61
LZY316	KIT, MTG HRDWARE,RAIL MT, AMTAX sc	$ 1,113.00	3.00%	$ 1,079.61
LZY362	KIT, SCREW, M5 WITH ALLEN KEY	$ 11.79	3.00%	$ 11.43
LZY429	HRDW SET, 4 SCKT-HD SCREWS W WSHRS	$ 27.69	3.00%	$ 26.85
LZY548	FASTENING PARTS FOR PROTECTIONPLATE	$ 73.59	3.00%	$ 71.38
LZY616	FLANGE SET,SS FOR FP 360 SC INSERTION MOUNTING HW	$ 556.00	3.00%	$ 539.32
LZY630.00.10000	SS BALL VALVE SAFETY ARM. TSS sc INLINE, SS KIT	$ 4,546.00	3.00%	$ 4,409.62
LZY630.00.11000	SS BALL VALVE SAFETY ARM. TSS sc INLINE, CS KIT	$ 4,434.00	3.00%	$ 4,300.98
LZY630.00.12000	Sicherheitseinbauarmatur /o.Flansch	$ 4,338.00	3.00%	$ 4,207.86
LZY630.00.20000	SS Ball VALVE SAFE ARM. TSS EX1 sc INLINE, SS KIT	$ 4,546.00	3.00%	$ 4,409.62
LZY630.00.21000	SS Ball VALVE SAFE.ARM. TSS EX1 sc INLINE, CS KIT	$ 4,434.00	3.00%	$ 4,300.98
LZY630.00.22000	BALL VALVE SAFETY ARMATURE FOR TSS EX1 sc INLINE	$ 4,338.00	3.00%	$ 4,207.86
LZY630.00.30000	ff BALL VALVE MNT. FP360 W SS FL. SET	$ 6,139.00	3.00%	$ 5,954.83
LZY630.00.31000	ff BALL VALVE MNT. FP360 W C-S FL. SET	$ 5,925.00	3.00%	$ 5,747.25
LZY630.00.32000	ff BALL VALVE MOUNTING HARDWARE, FP360sc	$ 5,695.00	3.00%	$ 5,524.15
LZY669	db FLOW CELLKIT, FP360sc, PANEL, HOSES	$ 3,674.00	3.00%	$ 3,563.78
LZY714.99.00030	EXTENSION POLE 1M, STAINLESS STEEL, FOR LZY714.99.	$ 412.00	3.00%	$ 399.64
LZY714.99.00040	EXTENSION POLE 1.8M, STAINLESS STEEL, FOR LZY714	$ 492.00	3.00%	$ 477.24
LZY714.99.00050	IMMERSION POLE WITH SIDE HOLE, 2M, STAINLESS STEEL	$ 337.00	3.00%	$ 326.89
LZY714.99.00060	INSTALLATION PIPE 2M W WELDED HINGE	$ 374.00	3.00%	$ 362.78
LZY714.99.00100	END CAP BLACK FOR 40MM MOUNTING TUBES	$ 20.99	3.00%	$ 20.36
LZY714.99.02000	BRACKET 24CM, INCL. PLATE AND 2 SETS POLE CLAMPS	$ 549.00	3.00%	$ 532.53
LZY714.99.03000	BRACKET 10CM, INCL. PLATE AND 2 SETS POLE CLAMPS	$ 464.00	3.00%	$ 450.08
LZY714.99.32220	POLE MOUNTING HARDWARE NISE, 24CM BRACKET, SS	$ 904.00	3.00%	$ 876.88
LZY714.99.32320	POLE MOUNTING HARDWARE AN-ISE, 24CM BRACKET, SS PO	$ 890.00	3.00%	$ 863.30
LZY714.99.32620	POLE MOUNTING HARDWARE AISE, 24CM BRACKET, SS POLE	$ 917.00	3.00%	$ 889.49
LZY714.99.42020	POLE MOUNTING HARDWARE FILTERPROBE/FILTRAX, 24CM B	$ 810.00	3.00%	$ 785.70
LZY714.99.42120	POLE MOUNTING HARDWARE SONATAX, 24CM BRACKET, SS P	$ 790.00	3.00%	$ 766.30
LZY714.99.43050	POLE MOUNTING HARDWARE FILTRAX, 10CM BRACKET, SS P	$ 708.00	3.00%	$ 686.76
LZY714.99.50000	Probe adapter 90 Degree SS	$ 138.00	3.00%	$ 133.86
LZY714.99.52120	POLE MOUNTING HARDWARE SOLIDS, 24CM BRACKET, SS PO	$ 783.00	3.00%	$ 759.51
LZY714.99.52220	POLE MOUNTING HARDWARE NITRAT, 24CM BRACKET, SS PO	$ 788.00	3.00%	$ 764.36
LZY714.99.52520	POLE MOUNTING HARDWARE ORGANIC, 24CM BRACKET, SS P	$ 746.00	3.00%	$ 723.62
LZY714.99.53120	POLE MOUNTING HARDWARE SOLIDS, 10CM BRACKET, SS PO	$ 727.00	3.00%	$ 705.19
LZY714.99.53220	POLE MOUNTING HARDWARE NITRATAX, 10CM BRACKET, SS	$ 735.00	3.00%	$ 712.95
LZY714.99.53520	POLE MOUNTING HARDWARE UVAS, 10CM BRACKET, SS POLE	$ 694.00	3.00%	$ 673.18
LZY714.99.60000	PIVOT EXTENSION, 35CM POLE & PROTECTION SHIELD	$ 290.00	3.00%	$ 281.30
LZY714.99.62160	POLE MOUNTING HW - SONATAX PIVOT, SS POLE 2M+0.35M	$ 945.00	3.00%	$ 916.65
LZY714.99.70000	PIVOT EXTENSION, 100CM POLE & PROTECTION SHIELD	$ 333.00	3.00%	$ 323.01
LZY714.99.72160	POLE MOUNTING HW - SONATAX PIVOT, SS POLE 2M + 1M	$ 945.00	3.00%	$ 916.65
LZY714.99.90000	Tube adapter for swivel mount LZY714	$ 57.09	3.00%	$ 55.37
LZY722	PROBE ADAPTER FOR ANISE	$ 1,236.00	3.00%	$ 1,198.92
LZY771	SEDIMENTER FOR AISE, NISE AND AN-ISE sc	$ 3,146.00	3.00%	$ 3,051.62

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

Hach Company
Lot 1 Equipment & Instruments

March 6, 2023

SKU/Part Number	Product Name/Description	List Price	NYS Discount	NYS Net Price
LXV421.99.11112	AMTAX W. FILTRATION PROBE 5 M (115V)	$ 26,501.00	3.00%	$ 25,705.97
LXV421.99.12112	AMTAX W FILTRATION PROBE 10M, 115V	$ 29,292.00	3.00%	$ 28,413.24
LXV421.99.13002	db AMTAX sc AMMONIA ANLZR 115-230V,1 CH	$ 21,878.00	3.00%	$ 21,221.66
LXV421.99.13012	AMTAX 1 CHAN CONT SAMPLE 115-230V	$ 21,816.00	3.00%	$ 21,161.52
LXV421.99.14002	AMTAX sc AMMONIA ANLZR 115-230V,2 CH	$ 22,879.00	3.00%	$ 22,192.63
LXV421.99.14012	AMTAX 2 CHANNEL CONT. SAMPLE 230V	$ 22,780.00	3.00%	$ 22,096.60
LXV421.99.14112	AMTAX INDOOR 2 CHAN, 115V	$ 22,780.00	3.00%	$ 22,096.60
LXV421.99.21012	AMTAX INDOOR sc MR (1-100 MG/L)	$ 28,085.00	3.00%	$ 27,242.45
LXV421.99.21112	AMTAX INDOOR sc MB2 (1-100 MG/L) FILTRATION 5M , 115V	$ 28,078.00	3.00%	$ 27,235.66
LXV421.99.43002	db AMTAX SC (0.02-5 MG/L NH4-N), 1 CHAN	$ 20,867.00	3.00%	$ 20,240.99
LXV422.53.33001	PHOSPHAX sc LR outdoor, 110-230V, 1 CH, continuous sample prep. (EN)	$ 24,941.00	3.00%	$ 24,192.77
LXV422.99.10011	PHOSPHAX INDOOR sc MB1 (0,05-15 MG/L) FOR FILTRATION PROBE	$ 21,303.00	3.00%	$ 20,663.91
LXV422.99.10012	PHOSPHAX INDOOR sc MB 1 (0,05-15 MG/L)	$ 21,303.00	3.00%	$ 20,663.91
LXV422.99.10112	PHOSPHAX INDOOR sc MR1 (0,05-15MG/L), 115V	$ 20,661.00	3.00%	$ 20,041.17
LXV422.99.11012	PHOSPHAX INDOOR sc MR1(0,05-15MG/L), 230V	$ 26,993.00	3.00%	$ 26,183.21
LXV422.99.11112	PHOSPHAX INDOOR sc , MR1 (0,05-13MG/L), 5M, 115V	$ 26,993.00	3.00%	$ 26,183.21
LXV422.99.12012	AMTAX INDOOR sc MR1 (0,05-20MGL) W/FILTR. PROBE 10M 230V	$ 26,635.00	3.00%	$ 25,835.95
LXV422.99.13002	db PHOSPHAX sc PHOSP ANLZ 115-230V,1 CH	$ 22,047.00	3.00%	$ 21,385.59
LXV422.99.14002	PHOSPHAX sc PHOSP ANLZ 115-230V,2 CH	$ 23,056.00	3.00%	$ 22,364.32
LXV422.99.23002	PHOSPHAX sc PHOSP ANLZ 115-230V,1 CH	$ 22,047.00	3.00%	$ 21,385.59
LXV422.99.24002	PHOSPHAX sc PHOSP ANLZ 115-230V,2 CH	$ 23,056.00	3.00%	$ 22,364.32
LXV422.99.33001	KTO PHOSPHAX sc LR outdoor, 110-230V, 1 CH, continuous sample preparation	$ 25,461.00	3.00%	$ 24,697.17
LXV422.99.33011	KTO PHOSPHAX sc LR indoor, 110-230V, 1 CH, continuous sample preparation	$ 23,862.00	3.00%	$ 23,146.14
LXV423.99.00100	db TS-LINE sc/IMMERSION 50g/l WIPER SS	$ 6,779.00	3.00%	$ 6,575.63
LXV423.99.00200	db HS-LINE sc/IMMERSION 500g/l WIPER SS	$ 7,500.00	3.00%	$ 7,275.00
LXV423.99.02100	TS-LINE sc/IMMER 50g/l w/o WIPER SS	$ 6,680.00	3.00%	$ 6,479.60
LXV423.99.02200	HS-LINE sc/IMMER 500g/l w/o WIPER SS	$ 7,401.00	3.00%	$ 7,178.97
LXV423.99.10000	db T-LINE sc/IMMERS 4000NTU WIPER PVC	$ 5,506.00	3.00%	$ 5,340.82
LXV423.99.10100	db TS-LINE sc/IMMERSION 50g/l WIPER PVC	$ 6,779.00	3.00%	$ 6,575.63
LXV423.99.10200	db HS-LINE sc/IMMERS 500g/l WIPER PVC	$ 7,500.00	3.00%	$ 7,275.00
LXV423.99.12000	T-LINE sc/IMRS 4000NTU w/o WIPER PVC	$ 5,385.00	3.00%	$ 5,223.45
LXV423.99.12100	TS-LINE sc/IMRS 50g/l w/o WIPER PVC	$ 6,358.00	3.00%	$ 6,167.26
LXV423.99.12200	HS-LINE sc/IMRS 500g/l w/o WIPER PVC	$ 7,039.00	3.00%	$ 6,827.83
LXV424.99.00100	db INLINE sc/INSERTION 50g/l WIPER SS	$ 7,069.00	3.00%	$ 6,856.93
LXV424.99.00200	db HIGHLINE sc/INSERT 500g/l WIPER SS	$ 8,592.00	3.00%	$ 8,334.24
LXV424.99.02100	INLINE sc/INSERT 50g/l w/o WIPER SS	$ 6,981.00	3.00%	$ 6,771.57
LXV424.99.02200	HIGHLINE sc/INSERT 500g/l w/oWIPER SS	$ 8,482.00	3.00%	$ 8,227.54
LXV426.99.10001	1200-S pH sc-Sonde	$ 1,661.00	3.00%	$ 1,611.17
LXV426.99.20001	1200-S sc ORP probe	$ 1,809.00	3.00%	$ 1,754.73
LXV428.99.00001	3798-S sc Digital inductive conductivity sensor, 10m cable	$ 1,335.00	3.00%	$ 1,294.95
LXV429.99.01000	ff FILTERPROBE sc,5M HEATED HOSE,230VAC	$ 6,600.00	3.00%	$ 6,402.00
LXV429.99.01100	db ff FILTERPROBE sc,5M HEATED HOSE,115V	$ 6,704.00	3.00%	$ 6,502.88
LXV429.99.02000	ff FILTERPROBE sc,10M HEATED HOSE,230V	$ 7,991.00	3.00%	$ 7,751.27
LXV429.99.02100	db ff FILTERPROBE sc,10M HEATED HOSE,115V	$ 7,991.00	3.00%	$ 7,751.27
LXV430.99.00001	aa 9184sc HOCL FREE CHLORINE SENSOR	$ 5,434.00	3.00%	$ 5,270.98
LXV431.99.00002	db SONATAX sc SLUDGE LEVEL PROBE	$ 4,080.00	3.00%	$ 3,957.60
LXV432.99.00001	9184sc TFC FREE CHLORINE ANALYZER	$ 7,761.00	3.00%	$ 7,528.17
LXV433.99.00001	9185sc O3 OZONE SENSOR	$ 6,387.00	3.00%	$ 6,195.39
LXV434.99.00001	9187sc ClO2 CHLORINE DIOXIDE SENSOR	$ 6,208.00	3.00%	$ 6,021.76
LXV440.53.10002	AISE SC W RFID (USA)	$ 9,363.00	3.00%	$ 9,082.11
LXV440.53.10012	AISE SC W/O RFID (USA)	$ 9,363.00	3.00%	$ 9,082.11
LXV440.53.20002	NISE SC W RFID (USA)	$ 8,850.00	3.00%	$ 8,584.50
LXV440.53.20012	NISE SC W/O RFID (USA)	$ 8,850.00	3.00%	$ 8,584.50
LXV440.99.00002	aa AN-ISE sc, HACH SENSOR w/RFID	$ 13,864.00	3.00%	$ 13,448.08
LXV440.99.00012	db AN-ISEsc, HACH, NO RFID	$ 13,864.00	3.00%	$ 13,448.08
LXV440.99.10002	KTO: AISE SC W RFID W CARTRIDGE	$ 10,522.00	3.00%	$ 10,206.34
LXV440.99.10012	KTO: AISE SC W/O RFID W CARTRIDGE	$ 10,522.00	3.00%	$ 10,206.34
LXV440.99.20002	KTO: NISE SC W RFID W CARTRIDGE	$ 9,981.00	3.00%	$ 9,681.57
LXV440.99.20012	KTO: NISE SC W/O RFID W CARTRIDGE	$ 9,981.00	3.00%	$ 9,681.57
LXV441.99.11102	db FP360sc, 500ppb, SS, 10M, W/O CLEAN	$ 24,867.00	3.00%	$ 24,120.99
LXV441.99.11202	FP360sc, 500ppb, SS 10M, W/CLEANING	$ 25,361.00	3.00%	$ 24,600.17
LXV441.99.11302	FP360sc, 500ppb, SS, 1.5M, W/O CLEAN	$ 24,867.00	3.00%	$ 24,120.99
LXV441.99.12102	FP360sc, 500ppb, Ti, 10M, W/O CLEAN	$ 28,171.00	3.00%	$ 27,325.87
LXV441.99.12202	FP360sc, 500ppb, Ti, 10M, W/CLEANING	$ 28,669.00	3.00%	$ 27,808.93
LXV441.99.12302	FP360sc, 500ppb, Ti, 1.5M, W/O CLEAN	$ 28,171.00	3.00%	$ 27,325.87
LXV441.99.21102	FP360sc, 5000ppb, SS, 10M, W/O CLEAN	$ 25,361.00	3.00%	$ 24,600.17
LXV441.99.21202	FP360sc, 5000ppb, SS, 10M, W/CLEANING	$ 25,361.00	3.00%	$ 24,600.17
LXV441.99.21302	FP360sc, 5000ppb, SS, 1.5M W/O CLEAN	$ 24,867.00	3.00%	$ 24,120.99
LXV441.99.22102	FP360sc, 5000ppb, Ti, 10M, W/O CLEAN	$ 28,171.00	3.00%	$ 27,325.87

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

Hach Company
Lot 1 Equipment & Instruments

March 6, 2023

SKU/Part Number	Product Name/Description	List Price	NYS Discount	NYS Net Price
LXV525.97KTO058	KTO: CL17sc STANDPIPE KIT W/ SC4500 2 CH	$ 7,055.00	3.00%	$ 6,843.35
LXV525.97KTO059	KTO: CL17sc STANDPIPE KIT W/ SC4500 1 CH	$ 6,957.00	3.00%	$ 6,748.29
LXV525.97KTO060	KTO: CL17sc STANDPIPE KIT W/ SC4500 2 CH 24VDC	$ 7,266.00	3.00%	$ 7,048.02
LXV525.97KTO061	KTO: CL17sc STANDPIPE KIT W/ SC4500 1 CH 24VDC	$ 7,167.00	3.00%	$ 6,951.99
LXV525.99A01501	SC4500 w/o plug mAOutput 1DigSensor	$ 2,968.00	3.00%	$ 2,878.96
LXV525.99A01551	SC4500 w/oPlug mAOutput 2 digital Sensors	$ 3,056.00	3.00%	$ 2,964.32
LXV525.99A02501	SC4500 w/o plug ProfibusDP 1DigSensor	$ 3,719.00	3.00%	$ 3,607.43
LXV525.99A02551	SC4500 w/o plug ProfibusDP 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A05501	SC4500 w/o plug Modbus TCP+LAN 1DigSensor	$ 3,719.00	3.00%	$ 3,607.43
LXV525.99A05551	SC4500 w/o plug Modbus TCP+LAN 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A0B551	SC4500 w/o plug Network mA Output 2 digital Sensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A0C551	SC4500 w/oPlug LAN+Profibus 2 digital Sensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A0F541	SC4500 w/o plug LAN+Profinet 1DigSensor 1mAInput	$ 4,145.00	3.00%	$ 4,020.65
LXV525.99A0F551	SC4500 w/o plug LAN+Profinet 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99A0G541	SC4500 w/o plug LAN+Ethernet IP 1DigSensor 1mAInput	$ 4,145.00	3.00%	$ 4,020.65
LXV525.99A0G551	SC4500 w/o plug LAN+Ethernet IP 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99A11401	SC4500 w/o plug Prognosys mAOutput 1mAInput	$ 2,930.00	3.00%	$ 2,842.10
LXV525.99A11441	SC4500 w/o plug Prognosys mAOutput 2mAInputs	$ 2,980.00	3.00%	$ 2,890.60
LXV525.99A11501	SC4500 w/o plug Prognosys mAOutput 1DigSensor	$ 2,968.00	3.00%	$ 2,878.96
LXV525.99A11541	SC4500 w/o plug Prognosys mAOutput 1DigSensor 1mAInput	$ 3,018.00	3.00%	$ 2,927.46
LXV525.99A11551	SC4500 w/o plug Prognosys mAOutput 2DigSensors	$ 3,056.00	3.00%	$ 2,964.32
LXV525.99A12401	SC4500 w/o plug Prognosys ProfibusDP 1mAInput	$ 3,681.00	3.00%	$ 3,570.57
LXV525.99A12441	SC4500 w/o plug Prognosys ProfibusDP 2mAInputs	$ 3,732.00	3.00%	$ 3,620.04
LXV525.99A12501	SC4500 w/o plug Prognosys ProfibusDP 1DigSensor	$ 3,719.00	3.00%	$ 3,607.43
LXV525.99A12541	SC4500 w/o plug Prognosys ProfibusDP 1DigSensor 1mAInput	$ 3,770.00	3.00%	$ 3,656.90
LXV525.99A12551	SC4500 w/o plug Prognosys ProfibusDP 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A15501	SC4500 w/o plug Prognosys Modbus TCP+LAN 1DigSensor	$ 3,719.00	3.00%	$ 3,607.43
LXV525.99A15551	SC4500 w/o plug Prognosys Modbus TCP+LAN 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A16441	SC4500 w/o plug Prognosys Profinet 2mAInputs	$ 4,258.00	3.00%	$ 4,130.26
LXV525.99A16501	SC4500 w/o plug Prognosys Profinet 1DigSensor	$ 4,013.00	3.00%	$ 3,892.61
LXV525.99A16541	SC4500 w/o plug Prognosys Profinet 1DigSensor 1mAInput	$ 4,220.00	3.00%	$ 4,093.40
LXV525.99A16551	SC4500 w/o plug Prognosys Profinet 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99A17441	SC4500 w/o plug Prognosys Ethernet IP 2mAInputs	$ 4,258.00	3.00%	$ 4,130.26
LXV525.99A17541	SC4500 w/o plug Prognosys Ethernet IP 1DigSensor 1mAInput	$ 4,220.00	3.00%	$ 4,093.40
LXV525.99A17551	SC4500 w/o plug Prognosys Ethernet IP 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99A1A551	SC4500 w/o plug Prognosys LAN 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A1B441	SC4500 w/o plug Prognosys LAN+mAOutput 2mAInputs	$ 3,803.00	3.00%	$ 3,688.91
LXV525.99A1B541	SC4500 w/o plug Prognosys LAN+mAOutput 1 dig Sensor 1mA Input	$ 3,770.00	3.00%	$ 3,656.90
LXV525.99A1B551	SC4500 w/o plug Prognosys LAN+mAOutput 2 digital Sensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A1C551	SC4500 w/o plug Prognosys LAN+Profibus 2 digital Sensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99A1F441	SC4500 w/o plug Prognosys LAN+Profinet 2mAInputs	$ 4,258.00	3.00%	$ 4,130.26
LXV525.99A1F541	SC4500 w/o plug Prognosys LAN+Profinet 1DigSensor 1mAInput	$ 4,145.00	3.00%	$ 4,020.65
LXV525.99A1F551	SC4500 w/o plug Prognosys LAN+Profinet 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99A1G441	SC4500 w/o plug Prognosys LAN+Ethernet IP 2mAInputs	$ 4,258.00	3.00%	$ 4,130.26
LXV525.99A1G541	SC4500 w/o plug Prognosys LAN+Ethernet IP 1DigSensor 1mAInput	$ 4,145.00	3.00%	$ 4,020.65
LXV525.99A1G551	SC4500 w/o plug Prognosys LAN+Ethernet IP 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99AA0441	SC4500 w/o plug Claros No output 2mAInputs	$ 2,607.00	3.00%	$ 2,528.79
LXV525.99AA0541	SC4500 w/o plug Claros No output 1DigSensor 1mAInput	$ 2,577.00	3.00%	$ 2,499.69
LXV525.99AA0551	SC4500 w/o plug Claros No output 2DigSensors	$ 2,547.00	3.00%	$ 2,470.59
LXV525.99AA1401	SC4500 w/o plug Claros mAOutput 1mAInput	$ 2,930.00	3.00%	$ 2,842.10
LXV525.99AA1441	SC4500 w/o plug Claros mAOutput 2mAInputs	$ 2,980.00	3.00%	$ 2,890.60
LXV525.99AA1501	SC4500 w/o plug Claros mAOutput 1DigSensor	$ 2,968.00	3.00%	$ 2,878.96
LXV525.99AA1541	SC4500 w/o plug Claros mAOutput 1DigSensor 1mAInput	$ 3,018.00	3.00%	$ 2,927.46
LXV525.99AA1551	SC4500 w/o plug Claros mAOutput 2DigSensors	$ 3,056.00	3.00%	$ 2,964.32
LXV525.99AA2501	SC4500 w/o plug Claros ProfibusDP 1DigSensor	$ 3,719.00	3.00%	$ 3,607.43
LXV525.99AA2551	SC4500 w/o plug Claros ProfibusDP 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99AA5501	SC4500 w/o plug Claros Modbus TCP+LAN 1DigSensor	$ 3,719.00	3.00%	$ 3,607.43
LXV525.99AA5551	SC4500 w/o plug Claros Modbus TCP+LAN 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99AA6501	SC4500 w/o plug Claros Profinet 1DigSensor	$ 4,013.00	3.00%	$ 3,892.61
LXV525.99AA6541	SC4500 w/o plug Claros Profinet 1DigSensor 1mAInput	$ 4,220.00	3.00%	$ 4,093.40
LXV525.99AA6551	SC4500 w/o plug Claros Profinet 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99AA7501	SC4500 w/o plug Claros Ethernet IP 1DigSensor	$ 3,412.00	3.00%	$ 3,309.64
LXV525.99AA7541	SC4500 w/o plug Claros Ethernet IP 1DigSensor 1mAInput	$ 4,220.00	3.00%	$ 4,093.40
LXV525.99AA7551	SC4500 w/o plug Claros Ethernet IP 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54
LXV525.99AAA551	SC4500 w/o plug Claros LAN 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99AAB541	SC4500 w/o plug Claros LAN+mAOutput 1DigSensor 1mAInput	$ 3,767.00	3.00%	$ 3,653.99
LXV525.99AAB551	SC4500 w/o plug Claros LAN+mAOutput 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99AAC551	SC4500 w/o plug Claros LAN+ProfibusDP 2DigSensors	$ 3,807.00	3.00%	$ 3,692.79
LXV525.99AAF501	SC4500 w/o plug Claros LAN+Profinet 1DigSensor	$ 4,013.00	3.00%	$ 3,892.61
LXV525.99AAF541	SC4500 w/o plug Claros LAN+Profinet 1DigSensor 1mAInput	$ 3,516.00	3.00%	$ 3,410.52
LXV525.99AAF551	SC4500 w/o plug Claros LAN+Profinet 2DigSensors	$ 4,182.00	3.00%	$ 4,056.54

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

Hach Company
Lot 1 Equipment & Instruments

March 6, 2023

SKU/Part Number	Product Name/Description	List Price	NYS Discount	NYS Net Price
LXV421.99.11112	AMTAX W. FILTRATION PROBE 5 M (115V)	$ 26,501.00	3.00%	$ 25,705.97
LXV421.99.12112	AMTAX W FILTRATION PROBE 10M, 115V	$ 29,292.00	3.00%	$ 28,413.24
LXV421.99.13002	db AMTAX sc AMMONIA ANLZR 115-230V,1 CH	$ 21,878.00	3.00%	$ 21,221.66
LXV421.99.13012	AMTAX 1 CHAN CONT SAMPLE 115-230V	$ 21,816.00	3.00%	$ 21,161.52
LXV421.99.14002	AMTAX sc AMMONIA ANLZR 115-230V,2 CH	$ 22,879.00	3.00%	$ 22,192.63
LXV421.99.14012	AMTAX 2 CHANNEL CONT. SAMPLE 230V	$ 22,780.00	3.00%	$ 22,096.60
LXV421.99.14112	AMTAX INDOOR 2 CHAN, 115V	$ 22,780.00	3.00%	$ 22,096.60
LXV421.99.21012	AMTAX INDOOR sc MR (1-100 MG/L)	$ 28,085.00	3.00%	$ 27,242.45
LXV421.99.21112	AMTAX INDOOR sc MB2 (1-100 MG/L) FILTRATION 5M , 115V	$ 28,078.00	3.00%	$ 27,235.66
LXV421.99.43002	db AMTAX SC (0.02-5 MG/L NH4-N), 1 CHAN	$ 20,867.00	3.00%	$ 20,240.99
LXV422.53.33001	PHOSPHAX sc LR outdoor, 110-230V, 1 CH, continuous sample prep. (EN)	$ 24,941.00	3.00%	$ 24,192.77
LXV422.99.10011	PHOSPHAX INDOOR sc MB1 (0,05-15 MG/L) FOR FILTRATION PROBE	$ 21,303.00	3.00%	$ 20,663.91
LXV422.99.10012	PHOSPHAX INDOOR sc MB 1 (0,05-15 MG/L)	$ 21,303.00	3.00%	$ 20,663.91
LXV422.99.10112	PHOSPHAX INDOOR sc MR1 (0,05-15MG/L), 115V	$ 20,661.00	3.00%	$ 20,041.17
LXV422.99.11012	PHOSPHAX INDOOR sc MR1(0,05-15MG/L), 230V	$ 26,993.00	3.00%	$ 26,183.21
LXV422.99.11112	PHOSPHAX INDOOR sc , MR1 (0,05-13MG/L), 5M, 115V	$ 26,993.00	3.00%	$ 26,183.21
LXV422.99.12012	AMTAX INDOOR sc MR1 (0,05-20MGL) W/FILTR. PROBE 10M 230V	$ 26,635.00	3.00%	$ 25,835.95
LXV422.99.13002	db PHOSPHAX sc PHOSP ANLZ 115-230V,1 CH	$ 22,047.00	3.00%	$ 21,385.59
LXV422.99.14002	PHOSPHAX sc PHOSP ANLZ 115-230V,2 CH	$ 23,056.00	3.00%	$ 22,364.32
LXV422.99.23002	PHOSPHAX sc PHOSP ANLZ 115-230V,1 CH	$ 22,047.00	3.00%	$ 21,385.59
LXV422.99.24002	PHOSPHAX sc PHOSP ANLZ 115-230V,2 CH	$ 23,056.00	3.00%	$ 22,364.32
LXV422.99.33001	KTO PHOSPHAX sc LR outdoor, 110-230V, 1 CH, continuous sample preparation	$ 25,461.00	3.00%	$ 24,697.17
LXV422.99.33011	KTO PHOSPHAX sc LR indoor, 110-230V, 1 CH, continuous sample preparation	$ 23,862.00	3.00%	$ 23,146.14
LXV423.99.00100	db TS-LINE sc/IMMERSION 50g/l WIPER SS	$ 6,779.00	3.00%	$ 6,575.63
LXV423.99.00200	db HS-LINE sc/IMMERSION 500g/l WIPER SS	$ 7,500.00	3.00%	$ 7,275.00
LXV423.99.02100	TS-LINE sc/IMMER 50g/l w/o WIPER SS	$ 6,680.00	3.00%	$ 6,479.60
LXV423.99.02200	HS-LINE sc/IMMER 500g/l w/o WIPER SS	$ 7,401.00	3.00%	$ 7,178.97
LXV423.99.10000	db T-LINE sc/IMMERS 4000NTU WIPER PVC	$ 5,506.00	3.00%	$ 5,340.82
LXV423.99.10100	db TS-LINE sc/IMMERSION 50g/l WIPER PVC	$ 6,779.00	3.00%	$ 6,575.63
LXV423.99.10200	db HS-LINE sc/IMMERS 500g/l WIPER PVC	$ 7,500.00	3.00%	$ 7,275.00
LXV423.99.12000	T-LINE sc/IMRS 4000NTU w/o WIPER PVC	$ 5,385.00	3.00%	$ 5,223.45
LXV423.99.12100	TS-LINE sc/IMRS 50g/l w/o WIPER PVC	$ 6,358.00	3.00%	$ 6,167.26
LXV423.99.12200	HS-LINE sc/IMRS 500g/l w/o WIPER PVC	$ 7,039.00	3.00%	$ 6,827.83
LXV424.99.00100	db INLINE sc/INSERTION 50g/l WIPER SS	$ 7,069.00	3.00%	$ 6,856.93
LXV424.99.00200	db HIGHLINE sc/INSERT 500g/l WIPER SS	$ 8,592.00	3.00%	$ 8,334.24
LXV424.99.02100	INLINE sc/INSERT 50g/l w/o WIPER SS	$ 6,981.00	3.00%	$ 6,771.57
LXV424.99.02200	HIGHLINE sc/INSERT 500g/l w/oWIPER SS	$ 8,482.00	3.00%	$ 8,227.54
LXV426.99.10001	1200-S pH sc-Sonde	$ 1,661.00	3.00%	$ 1,611.17
LXV426.99.20001	1200-S sc ORP probe	$ 1,809.00	3.00%	$ 1,754.73
LXV428.99.00001	3798-S sc Digital inductive conductivity sensor, 10m cable	$ 1,335.00	3.00%	$ 1,294.95
LXV429.99.01000	ff FILTERPROBE sc,5M HEATED HOSE,230VAC	$ 6,600.00	3.00%	$ 6,402.00
LXV429.99.01100	db ff FILTERPROBE sc,5M HEATED HOSE,115V	$ 6,704.00	3.00%	$ 6,502.88
LXV429.99.02000	ff FILTERPROBE sc,10M HEATED HOSE,230V	$ 7,991.00	3.00%	$ 7,751.27
LXV429.99.02100	db ff FILTERPROBE sc,10M HEATED HOSE,115V	$ 7,991.00	3.00%	$ 7,751.27
LXV430.99.00001	aa 9184sc HOCL FREE CHLORINE SENSOR	$ 5,434.00	3.00%	$ 5,270.98
LXV431.99.00002	db SONATAX sc SLUDGE LEVEL PROBE	$ 4,080.00	3.00%	$ 3,957.60
LXV432.99.00001	9184sc TFC FREE CHLORINE ANALYZER	$ 7,761.00	3.00%	$ 7,528.17
LXV433.99.00001	9185sc O3 OZONE SENSOR	$ 6,387.00	3.00%	$ 6,195.39
LXV434.99.00001	9187sc ClO2 CHLORINE DIOXIDE SENSOR	$ 6,208.00	3.00%	$ 6,021.76
LXV440.53.10002	AISE SC W RFID (USA)	$ 9,363.00	3.00%	$ 9,082.11
LXV440.53.10012	AISE SC W/O RFID (USA)	$ 9,363.00	3.00%	$ 9,082.11
LXV440.53.20002	NISE SC W RFID (USA)	$ 8,850.00	3.00%	$ 8,584.50
LXV440.53.20012	NISE SC W/O RFID (USA)	$ 8,850.00	3.00%	$ 8,584.50
LXV440.99.00002	aa AN-ISE sc, HACH SENSOR w/RFID	$ 13,864.00	3.00%	$ 13,448.08
LXV440.99.00012	db AN-ISEsc, HACH, NO RFID	$ 13,864.00	3.00%	$ 13,448.08
LXV440.99.10002	KTO: AISE SC W RFID W CARTRIDGE	$ 10,522.00	3.00%	$ 10,206.34
LXV440.99.10012	KTO: AISE SC W/O RFID W CARTRIDGE	$ 10,522.00	3.00%	$ 10,206.34
LXV440.99.20002	KTO: NISE SC W RFID W CARTRIDGE	$ 9,981.00	3.00%	$ 9,681.57
LXV440.99.20012	KTO: NISE SC W/O RFID W CARTRIDGE	$ 9,981.00	3.00%	$ 9,681.57
LXV441.99.11102	db FP360sc, 500ppb, SS, 10M, W/O CLEAN	$ 24,867.00	3.00%	$ 24,120.99
LXV441.99.11202	FP360sc, 500ppb, SS 10M, W/CLEANING	$ 25,361.00	3.00%	$ 24,600.17
LXV441.99.11302	FP360sc, 500ppb, SS, 1.5M, W/O CLEAN	$ 24,867.00	3.00%	$ 24,120.99
LXV441.99.12102	FP360sc, 500ppb, Ti, 10M, W/O CLEAN	$ 28,171.00	3.00%	$ 27,325.87
LXV441.99.12202	FP360sc, 500ppb, Ti, 10M, W/CLEANING	$ 28,669.00	3.00%	$ 27,808.93
LXV441.99.12302	FP360sc, 500ppb, Ti, 1.5M, W/O CLEAN	$ 28,171.00	3.00%	$ 27,325.87
LXV441.99.21102	FP360sc, 5000ppb, SS, 10M, W/O CLEAN	$ 25,361.00	3.00%	$ 24,600.17
LXV441.99.21202	FP360sc, 5000ppb, SS, 10M, W/CLEANING	$ 25,361.00	3.00%	$ 24,600.17
LXV441.99.21302	FP360sc, 5000ppb, SS, 1.5M W/O CLEAN	$ 24,867.00	3.00%	$ 24,120.99
LXV441.99.22102	FP360sc, 5000ppb, Ti, 10M, W/O CLEAN	$ 28,171.00	3.00%	$ 27,325.87

Attachment: HACH PDF (RES-2024-105 : Payment Authorization)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28488 **RESOLUTION 2024-106** **ADOPTED**

Advertising Agreement and Trade - CRS #4516

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Bee Publications, Inc. for monthly publication of the Northtown Center at Amherst skate calendar.

1/22/2024
Consent

FINANCIAL IMPACT:

A7253.4025; $5,048.00

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

Bee Group Newspapers

WNY s Leading Suburban Newspapers

Memo To: Northtown Center at Amherst/Town of Amherst

Memo From: Trey Measer, Publisher

Memo Date: December 12, 2023

Subject: ADVERTISING AGREEMENT AND TRADE

Bee Publications will...

- Publish eight (8) full pages in 2024 free of charge for the Town of Amherst in The Amherst Bee
- Ads will be in black and white

Town of Amherst will...

- Purchase four (4) full page advertisements in The Amherst Bee Newspaper in the 2024 calendar year at the full promotional rate of $1,262 per paid ad. The first month of each quarter will be the paid ad by Town of Amherst and this ad will be pre-paid each quarter in January, April, July, and October

- Town of Amherst will display the Bee's advertising message on the panel boards at each of the three (3) score boards at the Northtown Center at Amherst in exchange for the free advertising space above in The Amherst Bee

- Supply copy for each advertisement in a timely manner, so we may prepare the advertisement for print; Bee to do ad design included in this agreement

Contract effective: January 1, 2024 through December 31, 2024

	Trey Measer
Town of Amherst	**Bee Publications, Inc.**
	12/13/23
Date	**Date**

Attachment: Ad Agreement and Trade Bee Publications (RES-2024-106 : Advertising Agreement and Trade - CRS #4516)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28518 **RESOLUTION 2024-107** **ADOPTED**

Advertising Agreement (Bee Publications) - CRS #4491

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Bee Publications, Inc. for Amherst Youth & Community Coalition advertising under the Town of Amherst Drug Free Communities grant.

1/22/2024
Consent

FINANCIAL IMPACT:

A7256.4110; $4,885.70

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

Bee Group Newspapers

Address
5564 Main Street
Williamsville, NY 14221-5410

Tel: (716) 632-4700
Fax: (716) 633-8601
Web: www.beenews.com

ADVERTISING AGREEMENT

Business Name: Amherst Youth & Community Coalition Account #: 80038

Business Address: Town of Amherst, 1615 Amherst Manor Drive

City: Williamsville St.: NY Zip: 14221

Business Phone: 716-631-7132 ext. 7521 Fax:

Email: rmccarthy2@amherst.ny.us Website:

Advertising Contact Name: Roseanne McCarthy Cell Phone:

Emergency Contact Information (after hours):

Home Address: Phone:

City: St.: Zip:

☒ **Frequency Agreement:** **Rate Book #:** 72
I hereby agree to use a minimum of two column inches of display advertising for a minimum of 13 ads up to 25 ads within 52 weeks beginning 3/6/2024 .

☐ **Regional Agreement:** **Rate Book #:**
I hereby agree to use a minimum of two column inches of Regional display advertising for a minimum of _____ ads up to _____ ads within _____ weeks beginning _____.

☐ **Special Sections Agreement:** **Rate Book #:**
I hereby agree to use a minimum of _____ special sections within the next twelve months beginning _____. (Attach list of sections)

☐ **Community Directory Agreement:** **Rate Book #:**
I hereby agree to use a minimum of _____ Community Directories within the next twelve months beginning _____.

☒ **Special Agreement for:**
combination of quarter page, front page flag and bottom banner ads and one sticky note. Investment of $4,885.70

NOTES:
1) Contracts not completed as written will be re-billed at earned rates.
2) Contract effective with first publication day after signed by both parties.
3) Contract will not be made retroactive.

Terms of Agreement

I understand that if I do not use the agreed space as stated above, I will be re-billed at the earned rate as per the rate card.

If any action or proceeding is to be commenced to collect the indebtedness, the advertiser agrees to pay Bee Publications Inc. 25% of the unpaid balance for its reasonable attorney fees in connection with such action or proceeding. If supplied above, I grant Bee Publications Inc. permission to fax or e-mail me or my company information on advertising, new promotions, spec ads, proposals and billing with regards to my account. See Publisher's Regulations printed on the other side for additional terms and conditions that apply to this agreement.

☒ Signature: ☒ Date:

☒ Print Name: ☒ Title:

Bee Representative: Brenda L. Denk / Kara Damon Measer Sales #: 07

Accepted for Bee Publications Inc. by: Date:

Attachment: Bee Group Newspapers (RES-2024-107 : Advertising Agreement (Bee Publications) - CRS #4491)

PUBLISHER'S REGULATIONS:

By submitting or requesting publication of any advertisement the customer agrees to the following Publisher's Regulations:

1. Bee Publications Inc. Reserves the right to reject or cancel any advertisement at any time. All advertising is subject to final approval by management before publication will be considered.
2. Advertiser and/or advertising agency will indemnify and hold harmless Bee Publications Inc., its officers, agents, employees and contractors, for all contents supplied to publisher, including text, representations, and illustrations of advertisements printed, and for defamation, invasion of privacy, copyright infringement, plagiarism, and, in the case of pre-printed inserts, deficient postage.
3. Cancellations and/or changes in copy will not be accepted by publisher after closing deadlines.
4. Bee Publications Inc. shall not be liable for failure to print, publish or circulate all or any part of any issue in which an advertisement accepted by the publisher is contained if failure is due to acts of God or government, strikes, accidents, lack of newsprint or other circumstances beyond the control of Bee Publications Inc.
5. Bee Publications Inc. shall not be liable for errors or omissions in, or failure to insert, any advertisement, for which it may be responsible, beyond cost of actual space occupied or failure to insert occurred. Advertiser will be entitled to refund of advertisement price or insertion in next issue, at advertiser's option.
6. Position cannot be guaranteed. No credit or allowance will be given for position. Specific page(s) or other provisions will be considered as requests only. We will make every effort to honor position requests as possible depending on make-up and space available.
7. Credit or adjustment will be allowed for the first insertion only. It is the advertiser's responsibility to check the correctness of their advertisement and notify Bee Publications Inc. at once of any errors before the next publication date. No credit will be allowed for additional insertions of the same advertisement.
8. If any action or proceeding is to be commenced to collect the indebtedness, the advertiser agrees to pay Bee Publications Inc. twenty-five (25%) percent of the unpaid balance due for its reasonable attorney or collection agency fees in connection with such action for proceedings.
9. Unless advertiser makes written objection within 30 days from the rendering of any bill, statement or invoice for advertising published, such bill, statement or invoice shall be conclusive as to the correctness of the items therein and shall constitute an account stated.
10. Customer agrees to "Terms of Sale" as published including a 2% per month service charge on all amounts over 30 days past due.
11. Any rate adjustment will be made effective by giving 30 days written notice for contract advertisers. In event of such increase the advertiser may, at their option, immediately cancel their agreement without being re-billed at higher non-contract rates. Continuation of advertising at new rates shall constitute acceptance of the rate adjustment.
12. If for any reason, including failure to pay bill in full within terms, the advertiser does not use the contracted space within the specified period, they will be re-billed at the correct rate for advertising space actually used.

TERMS OF SALE

a). All rates listed are Retail-Non-Commissionable

b). All bills are due net 30 days from billing date

c). All rates are per column inch, per insertion.

d). 2% per month service charge will apply to accounts over 30 days. Minimum monthly service charge on accounts over 30 days is $2.00 per month

e). Unless advertiser makes written objection within 30 days from the rendering of any bill for advertising published, such bill shall be conclusive as to the correctness of the items therein and shall constitute an account stated

f). If any action or proceeding is to be commenced to collect the indebtedness, the advertiser agrees to pay Bee Publications Inc. twenty-five percent (25%) of the unpaid balance due for its reasonable attorney fees in connection with such action or proceedings

g). Contract advertising over 60 days past due subject to adjustment to Open Rate or actual earned rate at time of adjustment

h). Minimum of two column inches for contract rates.

i). Return check fee $35.00 per occurrence.

Attachment: Bee Group Newspapers (RES-2024-107 : Advertising Agreement (Bee Publications) - CRS #4491)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28523 **RESOLUTION 2024-108** **ADOPTED**

Authorization to Pay Vendor

WHEREAS, due to a miscommunication between multiple departments working on the same project, Huron Sprinklers was asked to winterize the newly constructed fields at the North Amherst Recreation Center, and

WHEREAS, Huron Sprinklers has performed work for the Town of Amherst in the past, and

WHEREAS, Huron Sprinklers did not at the time have a contract to perform such work, and

WHEREAS, this was not discovered until after the work was completed, and

WHEREAS, the work was completed satisfactorily and without incident, and

WHEREAS, the Youth & Recreation Department is in the process of securing a competitive contract for such work in the future,

NOW THEREFORE BE IT RESOLVED that the Amherst Town Board authorizes the payment of $550.00 via PO 2316642 to Huron Sprinklers.

1/22/2024
Consent

FINANCIAL IMPACT:

A 7143.4220: $550.00 (2023 funds)

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

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28529 **RESOLUTION 2024-109** **ADOPTED**

NARCE Travel Authorization

Authorize Eric Guzdek, Brian Bush and Linda Groff to travel to the North American Rink Conference & Expo in Milwaukee, WI from 5/20-5/24/2024 to complete training.

1/22/2024
Consent

FINANCIAL IMPACT:

A 7253.4040: $5,442.80

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

TRAVEL EXPENSE APPROVAL/REIMBURSEMENT FORM

REVISED 05/08/2023

- [ ] 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
- [X] Travel out of New York State - Department Head Approval and Town Board Approval

NAME	Employee #	Department	Phone Number
Eric Guzdek	4327	Youth & Rec	(716) 631-7132

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
5/20/2024	5/24/2024	Milwaukee, WI	North American Rink Conference & Expo (Attending as Board of Director to the U.S. Ice Rink Association)

Expenses	Estimated	Budget A/C #	Actual
Transportation:			
Mileage @ $0.655			
Tolls			
Parking			
Local Transportation (bus/taxi)			
Plane/Rail/Bus	$0.00		
Lodging:			
4 # nights @ $0.00	$0.00		
Meals:			
3 IRS Per Diem Per Day $0.00	$0.00		
2 1st & Last Day of Travel @ 75%	$0.00		
0 # Breakfasts @ $0.00	$0.00		
0 # Lunches @ $0.00	$0.00		
0 # Dinners @ $0.00	$0.00		
0 # Incidentals @ $0.00	$0.00		
Registration/Conference Fee	$0.00		
Other			
Subtotal	$0.00		N/A
Contingency - 10% of subtotal or $200	$0.00		N/A
TOTAL	$0.00		

Request Approved By:

Mary Diana Ruhl

Department Head Signature

January 10, 2024

Date

Town Board :

Date of Town Board Approval

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: NARCE Travel Requests (RES-2024-109 : NARCE Travel Authorization)

TRAVEL EXPENSE APPROVAL/REIMBURSEMENT FORM

REVISED 05/08/2023

- [ ] 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
- [X] Travel out of New York State - Department Head Approval and Town Board Approval

NAME	Employee #	Department	Phone Number
Brian Bush	9568	Youth & Rec	(716) 631-7132

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
5/20/2024	5/24/2024	Milwaukee, WI	North American Rink Conference & Expo (Last class to receive Certified Ice Technician designation)

Expenses	Estimated	Budget A/C #	Actual
Transportation:			
Mileage @ $0.655			
Tolls			
Parking			
Local Transportation (bus/taxi)			
Plane/Rail/Bus	$825.00		
Lodging:			
4 # nights @ $159.00	$636.00		
Meals:			
3 IRS Per Diem Per Day $64.00	$192.00		
2 1st & Last Day of Travel @ 75%	$96.00		
0 # Breakfasts @ $0.00	$0.00		
0 # Lunches @ $0.00	$0.00		
0 # Dinners @ $0.00	$0.00		
0 # Incidentals @ $0.00	$0.00		
Registration/Conference Fee	$725.00		
Other			
Subtotal	$2,474.00		N/A
Contingency - 10% of subtotal or $200	$247.40		N/A
TOTAL	$2,721.40		

Request Approved By:

Mary Dana Polli

Department Head Signature

January 10, 2024

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

Town Board :

Date of Town Board Approval

Attachment: NARCE Travel Requests (RES-2024-109 : NARCE Travel Authorization)

TRAVEL EXPENSE APPROVAL/REIMBURSEMENT FORM

REVISED 05/08/2023

- [ ] 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
- [X] Travel out of New York State - Department Head Approval and Town Board Approval

NAME	Employee #	Department	Phone Number
Linda Groff	9420	Youth & Rec	(716) 631-7132

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
5/20/2024	5/24/2024	Milwaukee, WI	North American Rink Conference & Expo (Last class to receive Certified Rink Administrator designation)

Expenses	Estimated	Budget A/C #	Actual
Transportation:			
Mileage @ $0.655			
Tolls			
Parking			
Local Transportation (bus/taxi)			
Plane/Rail/Bus	$825.00		
Lodging:			
4 # nights @ $159.00	$636.00		
Meals:			
3 IRS Per Diem Per Day $64.00	$192.00		
2 1st & Last Day of Travel @ 75%	$96.00		
0 # Breakfasts @ $0.00	$0.00		
0 # Lunches @ $0.00	$0.00		
0 # Dinners @ $0.00	$0.00		
0 # Incidentals @ $0.00	$0.00		
Registration/Conference Fee	$725.00		
Other			
Subtotal	$2,474.00		N/A
Contingency - 10% of subtotal or $200	$247.40		N/A
TOTAL	$2,721.40		

Request Approved By:

Department Head Signature

January 10, 2024
Date

Town Board :

Date of Town Board Approval

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: NARCE Travel Requests (RES-2024-109 : NARCE Travel Authorization)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28530 **RESOLUTION 2024-110** **ADOPTED**

CADCA Travel Authorization

Authorize Anne Rohrer to attend the CADCA National Leadership Forum in National Harbor, MD from 1/29/24-2/2/24 as a requirement of the town's Drug Free Communities grant. Also authorize reimbursement of expenses to non-town employee Sally Yageric who is attending as a member of the town-sponsored Amherst Youth & Community Coalition.

1/22/2024
Consent

FINANCIAL IMPACT:

A 7256: up to $5,635.22 (designated grant funds)

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

TRAVEL EXPENSE APPROVAL/REIMBURSEMENT FORM

REVISED 05/08/2023

[ ] 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

[X] Travel out of New York State - Department Head Approval and Town Board Approval

NAME	Employee #	Department	Phone Number
Anne Rohrer	**7123**	**Youth & Rec**	**(716) 631-7132**

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
1/29/2024	**2/2/2024**	**National Harbor, MD**	**CADCA (Community Drug Coalitions of America) National Leadership Forum**

Expenses	**Estimated**	**Budget A/C #**	**Actual**
Transportation:			
Mileage @ $0.67			
Tolls			
Parking			
Local Transportation (bus/taxi)	**$300.00**		
Plane/Rail/Bus	**$265.96**		
Lodging:			
4 # nights @ **$336.00**	**$1,344.00**		
Meals:			
2 IRS Per Diem Per Day **$59.00**	**$118.00**		
2 1st & Last Day of Travel @ 75%	**$88.50**		
0 # Breakfasts @ **$0.00**	**$0.00**		
0 # Lunches @ **$0.00**	**$0.00**		
0 # Dinners @ **$0.00**	**$0.00**		
0 # Incidentals @ **$0.00**	**$0.00**		
Registration/Conference Fee	**$745.00**		
Other			
Subtotal	**$2,561.46**		N/A
Contingency - 10% of subtotal or $200	**$256.15**		N/A
TOTAL	**$2,817.61**		

Request Approved By:

Department Head Signature

January 10, 2024
Date

Town Board :

Date of Town Board Approval

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: Rohrer CADCA Travel (RES-2024-110 : CADCA Travel Authorization)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
DOC ID: 28497

COMMUNICATION 2024-4

APPROVED

Request for Public Hearing - Modification to Amend SEQRA Findings for 1565, 1575-1659 & 1641-1703 Niagara Falls Boulevard

Request from James Boglioli, Esq. for a public hearing regarding a modification to Amend SEQRA Findings for 1565, 1575-1659 & 1641-1703 Niagara Falls Boulevard.

This hearing has been scheduled for February 26th.

1/22/2024
Consent

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

BENDERSON DEVELOPMENT
570 DELAWARE AVENUE
BUFFALO, NY 14202
716.886.0211.P 716.886.2269.F

January 4, 2024

VIA E-Mail and REGULAR E-MAIL
Francina J. Spoth, Town Clerk & Receiver of Taxes
Amherst Municipal Building
5583 Main Street
Williamsville, NY 14221

RE: Request a Modification to Amended SEQRA Findings. Z-1996-02B
1565, 1575-1659 & 1641-1703 Niagara Falls Blvd
The Boulevard Shopping Center (BDP# 2245)

Dear Ms. Spoth:

In connection with the above-referenced application, on November 16, 2023, the Planning Board considered the request to remove signage restrictions on the Findings Statement for Boulevard Consumer Square and recommended that it be approved by the Town Board. We respectfully request that this matter be placed on a public hearing before the Town Board. If there are any questions regarding this letter, please feel free to contact me at (716) 878-9626 or jamesboglioli@benderson.com.

Thank you,
BENDERSON DEVELOPMENT COMPANY, LLC

James A. Boglioli

James A. Boglioli, Esq.
Director, Right to Build – Northeast US

Cc: Daniel C. Howard, AICP
Planning Director

Attachment: 2245 Town Clerk Letter 01-04-24 (002) (COM-2024-4 : Request for Public Hearing - Modification to Amend SEQRA Findings for

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
DOC ID: 28480

COMMUNICATION 2024-5 **APPROVED**

Fee Request Waiver - Windermere Boulevard Elementary School

Request from Windermere Boulevard Elementary School seeking a waiver of the fire prevention permit fee for a pancake breakfast to be held on February 3, 2024.

The Building Commissioner response is attached.

1/22/2024
Consent

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

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: January 9, 2024

TO: Town Board

FROM: Mark S. Berke, P.E., Commissioner of Building

RE: Request for Waiver of Fire Prevention Permit Fee for Pancake Breakfast at the Windermere Boulevard School

In response to the letter received January 9, 2024, from Joshua Briggs, Windermere Boulevard Family Life Coordinator, regarding a Pancake Breakfast to be held on February 3, 2024 at the Windermere Boulevard Elementary School, this memo serves to recommend approval of this request to waive the fee associated with a fire prevention permit.

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
Timothy Koller, Town Clerk

Attachment: Windermere School Fire Prevention Permit Fee Waiver_1-9-24 (COM-2024-5 : Fee Request Waiver - Windermere Boulevard

Amherst Town Board
5583 Main St
Williamsville, NY 14221

Dear Town Board Members,

I am writing on behalf of the Windermere Boulevard Elementary School PTA. We are preparing for our annual pancake breakfast which will be held on Saturday February 3, 2024 from 9am-11:30am in the cafeteria at the school.

In order to operate the propane griddles necessary to prepare the items we must obtain a permit and have the connections checked prior to operation.

We are asking for the consideration of having the permit fee waived in order to keep the costs down as this is not a fundraiser but a school; social; event.

Please feel free to contact me should any further information be needed.

With respect,

Joshua Briggs, Family Life Coordinator,

Attachment: Windermere Request (COM-2024-5 : Fee Request Waiver - Windermere Boulevard Elementary School)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
DOC ID: 28494

COMMUNICATION 2024-6 **REFERRED**

Resident Correspondence

Letter submitted by Sabine Kutt.

1/22/2024
Referred to Town Attorney

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

Amherst, January 15th 2024

Letter to the Amherst town board members Kulpa, Berger, Marinucci, Szukala, Lavin

Dear board members,

Herr is my letter to you, clocked in by deputy town clerk Timothy Koller. These questions are presented to you so that you can respond at the next town board meeting on the 22nd of January 2024.

Sincerely,
Sabine Kutt
The Village Green

Mr. Kulpa:

1. Is the override of the tax cap only for 2024? Or is this something we have to expect again in the future?
2. At what time intervals will our homes be reassessed in the next 20 years?

Ms. Marinucci:

I have a very simple yes or no question for you.

1. If you had to vote today, whether you would vote yes or no for the NYS tax cap override, what would your answer be: yes or no?

Ms. Berger:

1. What was the financial value of the contingency in the LED contract?
2. Why did you not make the contractor absorb the risk?
3. How many contracts has the town with contractors and how many of these contracts have a contingency?

- Mr. Lavin:

1. I have read the amendment to enhance financial transparency. There is no word about when the 4-year financial plan will be made available to the public. How will the public be notified when the plan is posted on the website?
2. Will the public also be notified about the monthly Budget Monitoring Report?
3. How is the public made part of the process and decision making?

Attachment: S Kutt letter (COM-2024-6 : Resident Correspondence)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28519 **RESOLUTION 2024-111** **ADOPTED**

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4551

The Engineering Department is requesting approval of the contract between the Town of Amherst and Nussbaumer & Clarke, Inc. This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

FINANCIAL IMPACT:

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees.

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

TOWN OF AMHERST
PROFESSIONAL DESIGN SERVICES AGREEMENT
2024-2026 PUBLIC & PRIVATE IMPROVEMENT PERMIT INSPECTION SERVICES

This document is a MODIFIED version of EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.
Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers, or is based in part on excerpts from copyrighted EJCDC documents.
Those portions of the text that originated in copyrighted EJCDC documents remain subject to the copyright.

THIS IS AN AGREEMENT effective as of **January 22, 2024** ("Effective Date") between the

Town of Amherst ("Owner") and

Nussbaumer & Clarke Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Public and Private Improvement Permits (PIP) Inspection Services

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Professional Services associated with the construction administration and full-time inspection services of Public and Private Improvement Permits.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. Any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

3. Any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations;

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

G. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods,

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

H. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

I. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

J. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer's services do not include providing legal advice or representation.

L. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

M. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

A. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations and one electronic record version of such Drawings (AutoCad format) and Specifications (MS Word format).

B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

6.04 *Electronic Transmittals*

A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

B. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

A. Engineer shall procure and maintain insurance as set forth by the Town of Amherst in Exhibit E. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insured with respect to such liability insurance purchased and maintained by Contractor for the Project.

C. Engineer shall each deliver to the other certificates of insurance evidencing the coverage indicated in Exhibit E. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

6.06 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C shall appear in the Construction Contract Documents.

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

6.07 *Environmental Condition of Site*

A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.08 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the State of New York.

6.09 *Records Retention*

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

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2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services;

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interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. *Engineer*—The individual or entity named as such in this Agreement.

21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—the Town of Amherst. Unless indicated otherwise, this is the entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

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28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

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B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer's Services.

B. Exhibit B, Owner's Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

E. Exhibit E, Insurance Requirements.

F. Exhibit F, Special Provisions

8.02 *Total Agreement*

A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **Town of Amherst**

By: _____

Brian J. Kulpa

Supervisor

Date Signed: _____

Engineer: **Nussbaumer & Clarke Inc.**

By: _____

Print name: **Michael T Marino, P.E.**

Title: **Chief Executive Office**

Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

_____

State of: **New York**

Address for Owner's receipt of notices:

Town of Amherst
5583 Main Street
Williamsville, NY 14221

Address for Engineer's receipt of notices:

Nussbaumer & Clarke Inc.

3556 Lake Shore Road, Suite 500

Buffalo, NY 14219

Designated Representative (Paragraph 8.03.A):

Jessica Boudreau, P.E.

Project Manager

Phone Number: (716) 631-7154

E-Mail Address: jboudreau@amherst.ny.us

Designated Representative (Paragraph 8.03.A):

_____

Title: _____

Phone Number: _____

E-Mail Address: _____

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES 2024-2026 Public & Private Improvement Permit Inspection

A1.01 *Phase I - Study and Report Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

    a. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.

    b. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.

3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.

7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

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9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."

11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.

12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.

14. Perform or provide the following other Study and Report Phase tasks or deliverables:

    a. Conduct field edit(s) of the supplied data as required to supplement and verify information.

    b. Prepare preliminary design plans for each alternate, and meet with Town Engineering staff to review the proposed designed improvements.

    c. Prepare preliminary design plans in AutoCAD format from the project base maps to include plan views, profiles, details, general construction notes, tables, title sheet and location map. All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

15. Specific additional project tasks and/or deliverables:

a. Prepare preliminary/schematic design report including; descriptions of proposed floor plan, all associated systems, utilities, required utility stabilizations or relocations. A narrative of applicable codes and design parameters, and opinion of probable cost.

16. Furnish **three (3)** copies of the Report and any other Study and Report Phase deliverables to Owner within **thirty (30)** days of the Effective Date and review it with Owner. Within **five (5)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

17. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish three (3) copies of the revised Report and any other Study and Report Phase deliverables to the Owner within fifteen (15) days of receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Phase II - Preliminary Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Report and any other Study and Report Phase deliverables the Engineer shall:

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1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.

3. Utilize Town-provided plans, ~~field surveys and topographic and utility mapping~~ for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then ~~at a minimum~~ the utility mapping may ~~will~~ include Engineer contacting utility owners for verification of the Town-provided utility information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the project design.

6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

    a. Utilize existing digital and plan data supplied by the town (digital orthophotos, tax parcel boundaries, DTM data, building outlines, pavement edges, topographic survey and/or record drawing information) to prepare base mapping of the project area.

    b. Conduct field edit(s) of the supplied data and record drawing information as required to supplement and verify information.

    c. Prepare preliminary design plans of existing and proposed improvements, and meet with Town Engineering staff to review the proposed designed improvements.

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d. Prepare preliminary design plans in AutoCAD format from the project base maps ~~to include plan views, profiles, details, general construction notes, tables, title sheet and location map.~~ All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

e. The Engineer shall provide all drawing and specifications, as required.

f. Non-technical portion of the specifications will be prepared using the Owner's standard specifications (Division 0).

10. Furnish **three (3)** review copies of the Preliminary Design Phase documents, Construction Cost Estimate, and any other Preliminary Design Phase deliverables to Owner within **thirty (30)** days of authorization to proceed with this phase, and review them with Owner. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **three (3)** copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **fifteen (15)** days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Phase III - Final Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Preliminary Design Phase documents the Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the preliminary construction cost estimate.

5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

6. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

7. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

8. Perform or provide the following other Final Design Phase tasks or deliverables:

a. Prepare and furnish **three (3)** copies of 90% complete design plans and bidding specifications for review by the Owner within **fifteen (15)** days of authorization to

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proceed with this phase. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments for revisions.

b. Revise the design plans and bidding specifications in accordance with comments and instructions from all applicable agencies, as appropriate, and submit final copies of the design plans and bidding specifications, a revised opinion of probable Construction Cost, and any other required deliverables to the Owner within **ten (10)** calendar days after receipt of all applicable agency review comments and instructions.

c. Prepare the bid documents with an itemized list of work to be performed. The itemized list will consist of all items in the "technical specifications" listed in the Preliminary Design Phase, [refer to Section A.1.02, A, 9]. Bidding will be based on each item on the itemized list. Contract award will be based on "all" or "a portion of" the items.

B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **three (3)**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Phase IV - Bidding or Negotiating Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents to prospective contractors, and attend pre-bid conferences.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.

3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.

4. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.

5. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

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6. Prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals.

7. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

8. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

   a. Provide **fifteen (15)** sets of final construction documents for bidding.

   b. Address any questions from potential bidders and issue any necessary addendums to the contract documents promptly and prior to Bid opening.

   c. Assist Owner in connection with Bid protests, or renegotiating contracts for construction, materials, equipment, or services.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

A1.05 *Phase V - Construction Phase*

A. ~~Upon successful completion of the Bidding and Negotiating Phase~~, Engineer shall:

~~1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.~~

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D**.**

~~3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.~~

4. *Pre-Construction Conference:* Hold a pre-construction conference prior to commencement of Work at the Site.

5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

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~~7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~

8. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, or at a **minimum** of **two (2)** inspection visits per week during construction, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

   b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

10. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

11. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes

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referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

12. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

13. *Change Orders:* Recommend Change Orders to Owner, as appropriate, and prepare Change Orders as required.

14. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

15. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

16. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

17. *Inspections and Tests:*

    a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

    b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

    c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

18. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change

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Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

~~19. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~

~~a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).~~

~~b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~

20. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.16. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

21. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final

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certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

22. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

    a. Make visits to the site at **part-time** intervals appropriate to the various phases and nature of construction to observe the progress and quality of the construction work and to determine, in general if the results of the construction work are in accordance with the Drawings and Specifications. Where construction does not comply with Plans and Specifications, notify Owner of such deficiencies or non-complying construction and report to the Owner any work not adequately corrected with recommendations to assist the Owner to obtain compliance of the construction with the Plans and Specifications. On the basis of his on-site observations as an Engineer, he shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the Contractor; but does not guarantee the performance of the Contractor.

    b. Attend scheduled construction progress meetings and issue minutes.

    c. The Engineer is not responsible for the construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work. The Engineer is not responsible for the Contractor's failure to execute the work in accordance with the construction Contract.

    d. Notify the Owner of all permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the Owner for its correction and; at the request of the Owner have recommendations implemented by the Contractor.

    e. [List any additional tasks or deliverables.]

23. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

24. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

25. ***Prior to the start of construction inspections, the Engineer shall inform the Town of their anticipated inspector, their NICET level, anticipated schedule, and whether they believe the available budget will provide enough funding necessary for the work proposed.***

26. ***Engineer shall invoice the Town monthly and notify the Town as soon as possible if the budgeted amount for inspections based on received PIP permit fees will not be adequate to cover inspection required. It is the responsibility of the Engineer to track inspection budget and shall not exceed budgeted amount without prior approval.***

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B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Phase VI - Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:

a. Following completion of construction, the Engineer shall furnish the Owner and Design Engineer with a set of inspection records, drawings, waterline ties, sketches and all other field records for preparation of record drawings showing those changes made during the Construction Contract execution or during the construction process, based upon the Engineer's Project Representative's notes and executed Change Orders.

b. Testing & final certifications/approvals from involved agencies.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services will be paid for by Owner as indicated in Exhibit C.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for preparation or review of environmental assessments; review and evaluation of the effects on the design requirements for the Project of any documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, or Owner's schedule; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are due to any causes beyond Engineer's control.

3. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

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4. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

5. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.

6. Overtime work requiring higher than regular rates.

7. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

8. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Change Orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project.

3. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

4. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Give instructions to Engineer regarding Owner's procurement of construction services, Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents. Furnish copies of all design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents. Owner shall have responsibility for the final content of (1) such bidding-related documents, and (2) those portions of any Construction Contract other than the design, and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, and insurance advisors with respect to the drafting and content of such documents.

C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish, or otherwise make available such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Utility and topographic mapping and surveys.
4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

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F. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through the Contractor.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

M. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

N. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

O. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

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P. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Q. Perform or provide the following: [ ] ***[List any other Owner responsibilities here.]***

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation For Basic Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultants' charges, if any.

2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Consultants' charges.

3. Engineer's Standard Hourly Rates are attached to this Exhibit C as Appendix 1.

4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.4 incorporates all labor, overhead, profit, and Engineer's Consultants' charges.

6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, ~~plus Reimbursable Expenses and Engineer's Consultants' charges.~~

~~7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of **January 1, 2022** to reflect equitable changes in the compensation payable to Engineer.~~

C2.02 *Deleted*

C2.03 *Other Provisions Concerning Payment*

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.0**.

B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon

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notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

D. To the extent necessary to verify Engineer’s charges and upon Owner’s timely request, Engineer shall make copies of such records available to Owner at cost.

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Appendix 1: Standard Hourly Rates Schedule

C2.06 Compensation for Standard Hourly Rates for *Basic Services – Standard Hourly Rates Method of Payment*

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.
3. Approval required from Town of Amherst for use of any 'Officer/Principal' rate.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Officer / Principal	$ __170.00_ /hour
Senior Project Engineer	$ __155.00_ /hour
Project Manager	$ __145.00_ /hour
Project Engineer	$ __100.00_ /hour
Construction Administrator	$ _155.00_ /hour
NICET IV	$ __125.00_ /hour
NICET III	$ __115.00_ /hour
NICET II	$ ___90.00_ /hour

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Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 *Resident Project Representative*

A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5. *Liaison:*

   a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

   b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

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c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.

7. *Shop Drawings and Samples:*

   a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

   b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

   c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.

8. *Proposed* M*odifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work:*

   a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

   b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and

   c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

    a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

    b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

    c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

    d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

    e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

11. *Records*:

    a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.

    b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

    c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

    d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

    e. Maintain records for use in preparing Project documentation.

    f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

    a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

    b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

    c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

    d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

~~13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion*:

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement and Exhibit F.

ACORD CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)

PRODUCER
Broker Name
Address
Address
Phone

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 POLICIES BELOW.

INSURED
Insured Name
Address
Address
Phone

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Insurance Company	
INSURER B: Insurance Company	
INSURER C: Insurance Company	
INSURER D:	
INSURER E:	

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADDL INSD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [ ] PRO-JECT [ ] LOC	#####	mm/dd/yy	mm/dd/yy	EACH OCCURRENCE $1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ 50,000 MED EXP (Any one person) $ 10,000 PERSONAL & ADV INJURY $1,000,000 GENERAL AGGREGATE $2,000,000 PRODUCTS - COMP/OP AGG $2,000,000
A		AUTOMOBILE LIABILITY [X] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	#####	mm/dd/yy	mm/dd/yy	COMBINED SINGLE LIMIT (Ea accident) $1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT $ OTHER THAN AUTO ONLY: EA ACC $ AGG $
A	X	EXCESS/UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS-MADE DEDUCTIBLE RETENTION $	#####	mm/dd/yy	mm/dd/yy	EACH OCCURRENCE $5,000,000 AGGREGATE $5,000,000 $ $ $
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	#####	mm/dd/yy	mm/dd/yy	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT $100,000 E.L. DISEASE - EA EMPLOYEE $100,000 E.L. DISEASE - POLICY LIMIT $500,000
B		OTHER Professional Liability	#####	mm/dd/yy	mm/dd/yy	$1,000,000/$2,000,000
C		Pollution Liability (if required)	#####	mm/dd/yy	mm/dd/yy	$5,000,000/$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Town of Amherst is named as an additional insured on a primary and non-contributory basis. Workers Compensation includes owners.

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, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Broker Signature

ACORD 25 (2001/08) © ACORD CORPORATION 1988

SAMPLE

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

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. Consultant shall ensure all its subconsultant s, if any, have obtained all the above insurances and shall also assure that any policy procured by any subconsultant or sub-subconsultant shall name the Town as an additional insured on a primary and non-contributory basis. A failure by Consultant to assure that any policy procured by any subconsultant or sub-subconsultant 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

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

related to the prosecution of a breach of the insurance procurement requirements suit regardless of whether the Town is successful in said suit.

(e) A failure by Consultant 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 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.

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

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 __January 22, 2024__. 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:

_____
Print Name of Company

By: _____
Signature

_____
Printed name

Date:_____

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

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: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn To Before Me This

_____ Day of _____, 20___

_____
Notary Public

Attachment: PIP Term Agreement 2024-2026_Nussbaumer 4 (RES-2024-111 : Proposal for Professional Engineering Services)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28520 **RESOLUTION 2024-112** **ADOPTED**

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4553

The Engineering Department is requesting approval of the contract between the Town of Amherst and Marquis Engineering, PC. This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

FINANCIAL IMPACT:

The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

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

TOWN OF AMHERST
PROFESSIONAL DESIGN SERVICES AGREEMENT
2024-2026 PUBLIC & PRIVATE IMPROVEMENT PERMIT INSPECTION SERVICES

This document is a MODIFIED version of EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.
Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers, or is based in part on excerpts from copyrighted EJCDC documents.
Those portions of the text that originated in copyrighted EJCDC documents remain subject to the copyright.

THIS IS AN AGREEMENT effective as of **January 22, 2024** ("Effective Date") between the

Town of Amherst ("Owner") and

Marquis Engineering, P.C. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Public and Private Improvement Permits (PIP) Inspection Services

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Professional Services associated with the construction administration and full-time inspection services of Public and Private Improvement Permits.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. Any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

3. Any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations;

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

G. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods,

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

H. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

I. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

J. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer's services do not include providing legal advice or representation.

L. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

M. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

A. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations and one electronic record version of such Drawings (AutoCad format) and Specifications (MS Word format).

B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

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6.04 *Electronic Transmittals*

A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

B. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

A. Engineer shall procure and maintain insurance as set forth by the Town of Amherst in Exhibit E. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insured with respect to such liability insurance purchased and maintained by Contractor for the Project.

C. Engineer shall each deliver to the other certificates of insurance evidencing the coverage indicated in Exhibit E. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

6.06 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C shall appear in the Construction Contract Documents.

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6.07 *Environmental Condition of Site*

A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.08 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the State of New York.

6.09 *Records Retention*

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

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2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services;

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interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. *Engineer*—The individual or entity named as such in this Agreement.

21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—the Town of Amherst. Unless indicated otherwise, this is the entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

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28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

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B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer’s Services.

B. Exhibit B, Owner’s Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

E. Exhibit E, Insurance Requirements.

F. Exhibit F, Special Provisions

8.02 *Total Agreement*

A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **Town of Amherst**

By: _____

Brian J. Kulpa

Supervisor

Date Signed: _____

Engineer: **Marquis Engineering, P.C.**

By: _____

Print name: **Keith Marquis, P.E.**

Title: **President**

Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

_____

State of: **New York**

Address for Owner's receipt of notices:

Town of Amherst
5583 Main Street
Williamsville, NY 14221

Address for Engineer's receipt of notices:

Marquis Engineering, P.C.

3739 Seneca Street

West Seneca, NY 14127

Designated Representative (Paragraph 8.03.A):

Jessica Boudreau, P.E.

Project Manager

Phone Number: (716) 631-7154

E-Mail Address: jboudreau@amherst.ny.us

Designated Representative (Paragraph 8.03.A):

_____

Title: _____

Phone Number: _____

E-Mail Address: _____

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES 2024-2026 Public & Private Improvement Permit Inspection

A1.01 *Phase I - Study and Report Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

    a. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.

    b. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.

3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.

7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

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9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."

11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.

12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.

14. Perform or provide the following other Study and Report Phase tasks or deliverables:

    a. Conduct field edit(s) of the supplied data as required to supplement and verify information.

    b. Prepare preliminary design plans for each alternate, and meet with Town Engineering staff to review the proposed designed improvements.

    c. Prepare preliminary design plans in AutoCAD format from the project base maps to include plan views, profiles, details, general construction notes, tables, title sheet and location map. All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

15. Specific additional project tasks and/or deliverables:

    a. Prepare preliminary/schematic design report including; descriptions of proposed floor plan, all associated systems, utilities, required utility stabilizations or relocations. A narrative of applicable codes and design parameters, and opinion of probable cost.

16. Furnish **three (3)** copies of the Report and any other Study and Report Phase deliverables to Owner within **thirty (30)** days of the Effective Date and review it with Owner. Within **five (5)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

17. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish three (3) copies of the revised Report and any other Study and Report Phase deliverables to the Owner within fifteen (15) days of receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Phase II - Preliminary Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Report and any other Study and Report Phase deliverables the Engineer shall:

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1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.

3. Utilize Town-provided plans, ~~field surveys and topographic and utility mapping~~ for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then ~~at a minimum~~ the utility mapping may ~~will~~ include Engineer contacting utility owners for verification of the Town-provided utility information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the project design.

6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

    a. Utilize existing digital and plan data supplied by the town (digital orthophotos, tax parcel boundaries, DTM data, building outlines, pavement edges, topographic survey and/or record drawing information) to prepare base mapping of the project area.

    b. Conduct field edit(s) of the supplied data and record drawing information as required to supplement and verify information.

    c. Prepare preliminary design plans of existing and proposed improvements, and meet with Town Engineering staff to review the proposed designed improvements.

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d. Prepare preliminary design plans in AutoCAD format from the project base maps ~~to include plan views, profiles, details, general construction notes, tables, title sheet and location map.~~ All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

e. The Engineer shall provide all drawing and specifications, as required.

f. Non-technical portion of the specifications will be prepared using the Owner's standard specifications (Division 0).

10. Furnish **three (3)** review copies of the Preliminary Design Phase documents, Construction Cost Estimate, and any other Preliminary Design Phase deliverables to Owner within **thirty (30)** days of authorization to proceed with this phase, and review them with Owner. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **three (3)** copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **fifteen (15)** days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Phase III - Final Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Preliminary Design Phase documents the Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the preliminary construction cost estimate.

5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

6. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

7. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

8. Perform or provide the following other Final Design Phase tasks or deliverables:

a. Prepare and furnish **three (3)** copies of 90% complete design plans and bidding specifications for review by the Owner within **fifteen (15)** days of authorization to

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proceed with this phase. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments for revisions.

b. Revise the design plans and bidding specifications in accordance with comments and instructions from all applicable agencies, as appropriate, and submit final copies of the design plans and bidding specifications, a revised opinion of probable Construction Cost, and any other required deliverables to the Owner within **ten (10)** calendar days after receipt of all applicable agency review comments and instructions.

c. Prepare the bid documents with an itemized list of work to be performed. The itemized list will consist of all items in the "technical specifications" listed in the Preliminary Design Phase, [refer to Section A.1.02, A, 9]. Bidding will be based on each item on the itemized list. Contract award will be based on "all" or "a portion of" the items.

B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **three (3)**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Phase IV - Bidding or Negotiating Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents to prospective contractors, and attend pre-bid conferences.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.

3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.

4. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.

5. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

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6. Prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals.

7. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

8. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

   a. Provide **fifteen (15)** sets of final construction documents for bidding.

   b. Address any questions from potential bidders and issue any necessary addendums to the contract documents promptly and prior to Bid opening.

   c. Assist Owner in connection with Bid protests, or renegotiating contracts for construction, materials, equipment, or services.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

A1.05 *Phase V - Construction Phase*

A. ~~Upon successful completion of the Bidding and Negotiating Phase~~, Engineer shall:

~~1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.~~

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D**.**

~~3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.~~

4. *Pre-Construction Conference:* Hold a pre-construction conference prior to commencement of Work at the Site.

5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

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~~7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~

8. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, or at a **minimum** of **two (2)** inspection visits per week during construction, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

   b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

10. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

11. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes

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referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

12. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

13. *Change Orders:* Recommend Change Orders to Owner, as appropriate, and prepare Change Orders as required.

14. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

15. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

16. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

17. *Inspections and Tests:*

    a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

    b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

    c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

18. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change

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Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

19. ~~*Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~

    a. ~~Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).~~

    b. ~~By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~

20. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.16. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

21. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final

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certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

22. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

    a. Make visits to the site at **part-time** intervals appropriate to the various phases and nature of construction to observe the progress and quality of the construction work and to determine, in general if the results of the construction work are in accordance with the Drawings and Specifications. Where construction does not comply with Plans and Specifications, notify Owner of such deficiencies or non-complying construction and report to the Owner any work not adequately corrected with recommendations to assist the Owner to obtain compliance of the construction with the Plans and Specifications. On the basis of his on-site observations as an Engineer, he shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the Contractor; but does not guarantee the performance of the Contractor.

    b. Attend scheduled construction progress meetings and issue minutes.

    c. The Engineer is not responsible for the construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work. The Engineer is not responsible for the Contractor's failure to execute the work in accordance with the construction Contract.

    d. Notify the Owner of all permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the Owner for its correction and; at the request of the Owner have recommendations implemented by the Contractor.

    e. [List any additional tasks or deliverables.]

23. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

24. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

25. ***Prior to the start of construction inspections, the Engineer shall inform the Town of their anticipated inspector, their NICET level, anticipated schedule, and whether they believe the available budget will provide enough funding necessary for the work proposed.***

26. ***Engineer shall invoice the Town monthly and notify the Town as soon as possible if the budgeted amount for inspections based on received PIP permit fees will not be adequate to cover inspection required. It is the responsibility of the Engineer to track inspection budget and shall not exceed budgeted amount without prior approval.***

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B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Phase VI - Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:

a. Following completion of construction, the Engineer shall furnish the Owner and Design Engineer with a set of inspection records, drawings, waterline ties, sketches and all other field records for preparation of record drawings showing those changes made during the Construction Contract execution or during the construction process, based upon the Engineer's Project Representative's notes and executed Change Orders.

b. Testing & final certifications/approvals from involved agencies.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services will be paid for by Owner as indicated in Exhibit C.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for preparation or review of environmental assessments; review and evaluation of the effects on the design requirements for the Project of any documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, or Owner's schedule; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are due to any causes beyond Engineer's control.

3. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

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4. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

5. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.

6. Overtime work requiring higher than regular rates.

7. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

8. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Change Orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project.

3. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

4. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Give instructions to Engineer regarding Owner's procurement of construction services, Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents. Furnish copies of all design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents. Owner shall have responsibility for the final content of (1) such bidding-related documents, and (2) those portions of any Construction Contract other than the design, and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, and insurance advisors with respect to the drafting and content of such documents.

C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish, or otherwise make available such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Utility and topographic mapping and surveys.
4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

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F. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through the Contractor.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

M. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

N. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

O. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

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P. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Q. Perform or provide the following: [ ] ***[List any other Owner responsibilities here.]***

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation For Basic Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultants' charges, if any.

2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Consultants' charges.

3. Engineer's Standard Hourly Rates are attached to this Exhibit C as Appendix 1.

4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.4 incorporates all labor, overhead, profit, and Engineer's Consultants' charges.

6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, ~~plus Reimbursable Expenses and Engineer's Consultants' charges.~~

~~7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of **January 1, 2022** to reflect equitable changes in the compensation payable to Engineer.~~

C2.02 *Deleted*

C2.03 *Other Provisions Concerning Payment*

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.0**.

B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon

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notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

D. To the extent necessary to verify Engineer’s charges and upon Owner’s timely request, Engineer shall make copies of such records available to Owner at cost.

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Appendix 1: Standard Hourly Rates Schedule

C2.06 Compensation for Standard Hourly Rates for *Basic Services – Standard Hourly Rates Method of Payment*

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.
3. Approval required from Town of Amherst for use of any 'Officer/Principal' rate.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Officer / Principal	$ 170.00 /hour
Senior Project Engineer	$ 155.00 /hour
Project Manager	$ 145.00 /hour
Project Engineer	$ 100.00 /hour
Construction Administrator	$ 155.00 /hour
NICET IV	$ 125.00 /hour
NICET III	$ 115.00 /hour
NICET II	$ 90.00 /hour

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 *Resident Project Representative*

A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5. *Liaison:*

   a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

   b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.

7. *Shop Drawings and Samples:*

   a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

   b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

   c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.

8. *Proposed* M*odifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work:*

   a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

   b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and

   c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

    a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

    b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

    c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

    d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

    e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

11. *Records*:

    a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.

    b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

    c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

    d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

    e. Maintain records for use in preparing Project documentation.

    f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

    a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

    b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

    c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

    d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

~~13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion*:

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement and Exhibit F.

ACORD CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)

PRODUCER
Broker Name
Address
Address
Phone

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 POLICIES BELOW.

INSURERS AFFORDING COVERAGE | NAIC #

INSURED
Insured Name
Address
Address
Phone

INSURER A: Insurance Company
INSURER B: Insurance Company
INSURER C: Insurance Company
INSURER D:
INSURER E:

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC	#####	mm/dd/yy	mm/dd/yy	EACH OCCURRENCE $1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ 50,000 MED EXP (Any one person) $ 10,000 PERSONAL & ADV INJURY $1,000,000 GENERAL AGGREGATE $2,000,000 PRODUCTS - COMP/OP AGG $2,000,000
A		AUTOMOBILE LIABILITY [X] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	#####	mm/dd/yy	mm/dd/yy	COMBINED SINGLE LIMIT (Ea accident) $1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT $ OTHER THAN AUTO ONLY: EA ACC $ AGG $
A	X	EXCESS/UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS-MADE DEDUCTIBLE RETENTION $	#####	mm/dd/yy	mm/dd/yy	EACH OCCURRENCE $5,000,000 AGGREGATE $5,000,000 $ $ $
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	#####	mm/dd/yy	mm/dd/yy	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT $100,000 E.L. DISEASE - EA EMPLOYEE $100,000 E.L. DISEASE - POLICY LIMIT $500,000
B		OTHER Professional Liability	#####	mm/dd/yy	mm/dd/yy	$1,000,000/$2,000,000
C		Pollution Liability (if required)	#####	mm/dd/yy	mm/dd/yy	$5,000,000/$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Town of Amherst is named as an additional insured on a primary and non-contributory basis. Workers Compensation includes owners.

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, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Broker Signature

ACORD 25 (2001/08) © ACORD CORPORATION 1988

SAMPLE

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

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. Consultant shall ensure all its subconsultant s, if any, have obtained all the above insurances and shall also assure that any policy procured by any subconsultant or sub-subconsultant shall name the Town as an additional insured on a primary and non-contributory basis. A failure by Consultant to assure that any policy procured by any subconsultant or sub-subconsultant 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

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

related to the prosecution of a breach of the insurance procurement requirements suit regardless of whether the Town is successful in said suit.

(e) A failure by Consultant 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 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.

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

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 __January 22, 2024__. 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:

_____
Print Name of Company

By: _____
Signature

_____
Printed name

Date:_____

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

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: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn To Before Me This

_____ Day of _____, 20___

_____
Notary Public

Attachment: PIP Term Agreement 2024-2026_Marquis 3 (RES-2024-112 : Proposal for Professional Engineering Services)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28521 **RESOLUTION 2024-113** **ADOPTED**

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4552

The Engineering Department is requesting approval of the contract between the Town of Amherst and Greenman-Pedersen, Inc. (GPI). This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

FINANCIAL IMPACT:

The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

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

TOWN OF AMHERST
PROFESSIONAL DESIGN SERVICES AGREEMENT
2024-2026 PUBLIC & PRIVATE IMPROVEMENT PERMIT INSPECTION SERVICES

This document is a MODIFIED version of EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.
Copyright © 2014 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers, or is based in part on excerpts from copyrighted EJCDC documents.
Those portions of the text that originated in copyrighted EJCDC documents remain subject to the copyright.

THIS IS AN AGREEMENT effective as of **January 22, 2024** ("Effective Date") between the

Town of Amherst ("Owner") and

Greenman-Pedersen, Inc. (GPI) ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Public and Private Improvement Permits (PIP) Inspection Services

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Professional Services associated with the construction administration and full-time inspection services of Public and Private Improvement Permits.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. Any development that affects the scope or time of performance of Engineer's services;

2. the presence at the Site of any Constituent of Concern; or

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

3. Any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations;

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

G. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods,

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techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

H. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

I. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

J. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer's services do not include providing legal advice or representation.

L. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

M. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

A. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations and one electronic record version of such Drawings (AutoCad format) and Specifications (MS Word format).

B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

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6.04 *Electronic Transmittals*

A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

B. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

A. Engineer shall procure and maintain insurance as set forth by the Town of Amherst in Exhibit E. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insured with respect to such liability insurance purchased and maintained by Contractor for the Project.

C. Engineer shall each deliver to the other certificates of insurance evidencing the coverage indicated in Exhibit E. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

6.06 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C shall appear in the Construction Contract Documents.

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6.07 *Environmental Condition of Site*

A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.08 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the State of New York.

6.09 *Records Retention*

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

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2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services;

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interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. *Engineer*—The individual or entity named as such in this Agreement.

21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—the Town of Amherst. Unless indicated otherwise, this is the entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

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28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

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B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer’s Services.

B. Exhibit B, Owner’s Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

E. Exhibit E, Insurance Requirements.

F. Exhibit F, Special Provisions

8.02 *Total Agreement*

A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **Town of Amherst**

By: _____

Brian J. Kulpa

Supervisor

Date Signed: _____

Engineer: **Greenman-Pedersen, Inc.**

By: _____

Print name: **Kenneth Zollitsch, LEED AP**

Title: **Vice President**

Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

_____

State of: **New York**

Address for Owner's receipt of notices:

Town of Amherst
5583 Main Street
Williamsville, NY 14221

Address for Engineer's receipt of notices:

Greenman-Pedersen, Inc.

4950 Genesee Street, Suite 100

Buffalo, NY 14225

Designated Representative (Paragraph 8.03.A):

Jessica Boudreau, P.E.

Project Manager

Phone Number: (716) 631-7154

E-Mail Address: jboudreau@amherst.ny.us

Designated Representative (Paragraph 8.03.A):

_____

Title: _____

Phone Number: _____

E-Mail Address: _____

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES 2024-2026 Public & Private Improvement Permit Inspection

A1.01 *Phase I - Study and Report Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

    a. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.

    b. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.

3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.

7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

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9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."

11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.

12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.

14. Perform or provide the following other Study and Report Phase tasks or deliverables:

    a. Conduct field edit(s) of the supplied data as required to supplement and verify information.

    b. Prepare preliminary design plans for each alternate, and meet with Town Engineering staff to review the proposed designed improvements.

    c. Prepare preliminary design plans in AutoCAD format from the project base maps to include plan views, profiles, details, general construction notes, tables, title sheet and location map. All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

15. **Specific additional project tasks and/or deliverables:**

    a. Prepare preliminary/schematic design report including; descriptions of proposed floor plan, all associated systems, utilities, required utility stabilizations or relocations. A narrative of applicable codes and design parameters, and opinion of probable cost.

16. Furnish **three (3)** copies of the Report and any other Study and Report Phase deliverables to Owner within **thirty (30)** days of the Effective Date and review it with Owner. Within **five (5)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

17. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish three (3) copies of the revised Report and any other Study and Report Phase deliverables to the Owner within fifteen (15) days of receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Phase II - Preliminary Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Report and any other Study and Report Phase deliverables the Engineer shall:

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1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.

3. Utilize Town-provided plans, ~~field surveys and topographic and utility mapping~~ for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then ~~at a minimum~~ the utility mapping may ~~will~~ include Engineer contacting utility owners for verification of the Town-provided utility information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the project design.

6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

    a. Utilize existing digital and plan data supplied by the town (digital orthophotos, tax parcel boundaries, DTM data, building outlines, pavement edges, topographic survey and/or record drawing information) to prepare base mapping of the project area.

    b. Conduct field edit(s) of the supplied data and record drawing information as required to supplement and verify information.

    c. Prepare preliminary design plans of existing and proposed improvements, and meet with Town Engineering staff to review the proposed designed improvements.

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d. Prepare preliminary design plans in AutoCAD format from the project base maps ~~to include plan views, profiles, details, general construction notes, tables, title sheet and location map.~~ All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

e. The Engineer shall provide all drawing and specifications, as required.

f. Non-technical portion of the specifications will be prepared using the Owner's standard specifications (Division 0).

10. Furnish **three (3)** review copies of the Preliminary Design Phase documents, Construction Cost Estimate, and any other Preliminary Design Phase deliverables to Owner within **thirty (30)** days of authorization to proceed with this phase, and review them with Owner. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **three (3)** copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **fifteen (15)** days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Phase III - Final Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Preliminary Design Phase documents the Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the preliminary construction cost estimate.

5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

6. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

7. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

8. Perform or provide the following other Final Design Phase tasks or deliverables:

a. Prepare and furnish **three (3**) copies of 90% complete design plans and bidding specifications for review by the Owner within **fifteen (15)** days of authorization to

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proceed with this phase. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments for revisions.

b. Revise the design plans and bidding specifications in accordance with comments and instructions from all applicable agencies, as appropriate, and submit final copies of the design plans and bidding specifications, a revised opinion of probable Construction Cost, and any other required deliverables to the Owner within **ten (10)** calendar days after receipt of all applicable agency review comments and instructions.

c. Prepare the bid documents with an itemized list of work to be performed. The itemized list will consist of all items in the "technical specifications" listed in the Preliminary Design Phase, [refer to Section A.1.02, A, 9]. Bidding will be based on each item on the itemized list. Contract award will be based on "all" or "a portion of" the items.

B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **three (3)**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Phase IV - Bidding or Negotiating Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents to prospective contractors, and attend pre-bid conferences.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.

3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.

4. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.

5. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

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6. Prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals.

7. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

8. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

   a. Provide **fifteen (15)** sets of final construction documents for bidding.

   b. Address any questions from potential bidders and issue any necessary addendums to the contract documents promptly and prior to Bid opening.

   c. Assist Owner in connection with Bid protests, or renegotiating contracts for construction, materials, equipment, or services.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

A1.05 *Phase V - Construction Phase*

A. ~~Upon successful completion of the Bidding and Negotiating Phase~~, Engineer shall:

~~1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.~~

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D**.**

~~3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.~~

4. *Pre-Construction Conference:* Hold a pre-construction conference prior to commencement of Work at the Site.

5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

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~~7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~

8. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, or at a **minimum** of **two (2)** inspection visits per week during construction, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

   b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

10. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

11. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes

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referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

12. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

13. *Change Orders:* Recommend Change Orders to Owner, as appropriate, and prepare Change Orders as required.

14. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

15. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

16. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

17. *Inspections and Tests:*

    a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

    b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

    c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

18. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change

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Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

19. ~~*Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~

    a. ~~Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).~~

    b. ~~By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~

20. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.16. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

21. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final

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certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

22. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

    a. Make visits to the site at **part-time** intervals appropriate to the various phases and nature of construction to observe the progress and quality of the construction work and to determine, in general if the results of the construction work are in accordance with the Drawings and Specifications. Where construction does not comply with Plans and Specifications, notify Owner of such deficiencies or non-complying construction and report to the Owner any work not adequately corrected with recommendations to assist the Owner to obtain compliance of the construction with the Plans and Specifications. On the basis of his on-site observations as an Engineer, he shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the Contractor; but does not guarantee the performance of the Contractor.

    b. Attend scheduled construction progress meetings and issue minutes.

    c. The Engineer is not responsible for the construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work. The Engineer is not responsible for the Contractor's failure to execute the work in accordance with the construction Contract.

    d. Notify the Owner of all permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the Owner for its correction and; at the request of the Owner have recommendations implemented by the Contractor.

    e. [List any additional tasks or deliverables.]

23. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

24. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

25. ***Prior to the start of construction inspections, the Engineer shall inform the Town of their anticipated inspector, their NICET level, anticipated schedule, and whether they believe the available budget will provide enough funding necessary for the work proposed.***

26. ***Engineer shall invoice the Town monthly and notify the Town as soon as possible if the budgeted amount for inspections based on received PIP permit fees will not be adequate to cover inspection required. It is the responsibility of the Engineer to track inspection budget and shall not exceed budgeted amount without prior approval.***

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B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Phase VI - Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:

a. Following completion of construction, the Engineer shall furnish the Owner and Design Engineer with a set of inspection records, drawings, waterline ties, sketches and all other field records for preparation of record drawings showing those changes made during the Construction Contract execution or during the construction process, based upon the Engineer's Project Representative's notes and executed Change Orders.

b. Testing & final certifications/approvals from involved agencies.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services will be paid for by Owner as indicated in Exhibit C.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for preparation or review of environmental assessments; review and evaluation of the effects on the design requirements for the Project of any documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, or Owner's schedule; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are due to any causes beyond Engineer's control.

3. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

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4. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

5. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.

6. Overtime work requiring higher than regular rates.

7. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

8. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Change Orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project.

3. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

4. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Give instructions to Engineer regarding Owner's procurement of construction services, Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents. Furnish copies of all design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents. Owner shall have responsibility for the final content of (1) such bidding-related documents, and (2) those portions of any Construction Contract other than the design, and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, and insurance advisors with respect to the drafting and content of such documents.

C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish, or otherwise make available such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Utility and topographic mapping and surveys.
4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

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F. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.

2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.

3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.

4. Placement and payment for advertisement for Bids in appropriate publications.

G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through the Contractor.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

M. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

N. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

O. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

P. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Q. Perform or provide the following: [ ] ***[List any other Owner responsibilities here.]***

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation For Basic Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultants' charges, if any.

2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Consultants' charges.

3. Engineer's Standard Hourly Rates are attached to this Exhibit C as Appendix 1.

4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.4 incorporates all labor, overhead, profit, and Engineer's Consultants' charges.

6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, ~~plus Reimbursable Expenses and Engineer's Consultants' charges.~~

~~7. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of **January 1, 2022** to reflect equitable changes in the compensation payable to Engineer.~~

C2.02 *Deleted*

C2.03 *Other Provisions Concerning Payment*

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.0**.

B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

D. To the extent necessary to verify Engineer’s charges and upon Owner’s timely request, Engineer shall make copies of such records available to Owner at cost.

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

Appendix 1: Standard Hourly Rates Schedule

C2.06 Compensation for Standard Hourly Rates for *Basic Services – Standard Hourly Rates Method of Payment*

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.
3. Approval required from Town of Amherst for use of any 'Officer/Principal' rate.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Officer / Principal	$ __170.00_ /hour
Senior Project Engineer	$ __155.00_ /hour
Project Manager	$ __145.00_ /hour
Project Engineer	$ __100.00_ /hour
Construction Administrator	$ _155.00_ /hour
NICET IV	$ __125.00_ /hour
NICET III	$ __115.00_ /hour
NICET II	$ ___90.00_ /hour

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 *Resident Project Representative*

A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5. *Liaison:*

   a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

   b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

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c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.

7. *Shop Drawings and Samples:*

   a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

   b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

   c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.

8. *Proposed* M*odifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work:*

   a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

   b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and

   c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

    a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

    b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

    c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

    d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

    e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

11. *Records*:

    a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.

    b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

    c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

    d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

    e. Maintain records for use in preparing Project documentation.

    f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

    a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

    b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

    c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

    d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

~~13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion*:

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.

4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.

5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.

7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.

8. Authorize Owner to occupy the Project in whole or in part.

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement and Exhibit F.

ACORD CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)

PRODUCER
Broker Name
Address
Address
Phone

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 POLICIES BELOW.

INSURERS AFFORDING COVERAGE | NAIC #

INSURED
Insured Name
Address
Address
Phone

INSURER A: Insurance Company
INSURER B: Insurance Company
INSURER C: Insurance Company
INSURER D:
INSURER E:

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [ ] PRO-JECT [ ] LOC	#####	mm/dd/yy	mm/dd/yy	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 $ 50,000 $ 10,000 $1,000,000 $2,000,000 $2,000,000
A		AUTOMOBILE LIABILITY [X] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS	#####	mm/dd/yy	mm/dd/yy	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
A	X	EXCESS/UMBRELLA LIABILITY [X] OCCUR [ ] CLAIMS-MADE DEDUCTIBLE RETENTION $	#####	mm/dd/yy	mm/dd/yy	EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000 $ $ $
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	#####	mm/dd/yy	mm/dd/yy	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$100,000 $100,000 $500,000
B		OTHER Professional Liability	#####	mm/dd/yy	mm/dd/yy	$1,000,000/$2,000,000	
C		Pollution Liability (if required)	#####	mm/dd/yy	mm/dd/yy	$5,000,000/$5,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Town of Amherst is named as an additional insured on a primary and non-contributory basis. Workers Compensation includes owners.

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, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Broker Signature

ACORD 25 (2001/08) © ACORD CORPORATION 1988

SAMPLE

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

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. Consultant shall ensure all its subconsultant s, if any, have obtained all the above insurances and shall also assure that any policy procured by any subconsultant or sub-subconsultant shall name the Town as an additional insured on a primary and non-contributory basis. A failure by Consultant to assure that any policy procured by any subconsultant or sub-subconsultant 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

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

related to the prosecution of a breach of the insurance procurement requirements suit regardless of whether the Town is successful in said suit.

(e) A failure by Consultant 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 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.

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

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 __January 22, 2024__. 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:

_____
Print Name of Company

By: _____
Signature

_____
Printed name

Date:_____

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

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: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Sworn To Before Me This

_____ Day of _____, 20___

_____
Notary Public

Attachment: PIP Term Agreement 2024-2026_GPI (RES-2024-113 : Proposal for Professional Engineering Services)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28522 **RESOLUTION 2024-114** **ADOPTED**

Proposal for Professional Engineering Services Public & Private Improvement Permit (PIP) Inspection Services T.O.A. Project No. 2024.004 CRS No. 4550

The Engineering Department is requesting approval of the contract between the Town of Amherst and DiDonato Associates. This contract serves as a 3-year rate agreement to perform Private and Public Improvement Permit (PIP) inspection services, on an "as-needed" basis, on behalf of the Town. The fee structure for inspections is set by the Town's PIP Inspection Permit program.

Funds for these consultant services will be collected from developers by the Engineering Department as Public and Private Improvement Inspection Permit fees. The fees will be placed in an escrow account established by the Town Comptroller and will be paid to consultants following project completion. The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

Thank you for considering this request.

1/22/2024
Consent

FINANCIAL IMPACT:

The entire cost of inspection services is funded through the fee collection, with no financial impact to the Town.

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

TOWN OF AMHERST
PROFESSIONAL DESIGN SERVICES AGREEMENT
2024-2026 PUBLIC & PRIVATE IMPROVEMENT PERMIT INSPECTION SERVICES

This document is a MODIFIED version of EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.
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THIS IS AN AGREEMENT effective as of **January 22, 2024** ("Effective Date") between the

Town of Amherst ("Owner") and

DiDonato Associates ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Public and Private Improvement Permits (PIP) Inspection Services

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Professional Services associated with the construction administration and full-time inspection services of Public and Private Improvement Permits.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

A. Owner shall have the responsibilities set forth herein and in Exhibit B.

B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.

C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:

1. Any development that affects the scope or time of performance of Engineer's services;
2. the presence at the Site of any Constituent of Concern; or

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3. Any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.

B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

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5.03 *Opinions of Total Project Costs*

A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.

D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

E. *Compliance with Laws and Regulations, and Policies and Procedures:*

1. Engineer and Owner shall comply with applicable Laws and Regulations.

2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:

   a. changes after the Effective Date to Laws and Regulations;

   b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

   c. changes after the Effective Date to Owner-provided written policies or procedures.

F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.

G. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods,

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techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

H. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.

I. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.

J. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

K. Engineer's services do not include providing legal advice or representation.

L. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.

M. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

A. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations and one electronic record version of such Drawings (AutoCad format) and Specifications (MS Word format).

B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

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6.04 *Electronic Transmittals*

A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

B. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

A. Engineer shall procure and maintain insurance as set forth by the Town of Amherst in Exhibit E. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insured with respect to such liability insurance purchased and maintained by Contractor for the Project.

C. Engineer shall each deliver to the other certificates of insurance evidencing the coverage indicated in Exhibit E. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.

6.06 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C shall appear in the Construction Contract Documents.

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6.07 *Environmental Condition of Site*

A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.

B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.

D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.

F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.08 *Controlling Law*

A. This Agreement is to be governed by the Laws and Regulations of the State of New York.

6.09 *Records Retention*

A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:

1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

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2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.

5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.

7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.

10. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.

12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.

13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services;

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interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.

17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

20. *Engineer*—The individual or entity named as such in this Agreement.

21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.

22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

23. *Owner*—the Town of Amherst. Unless indicated otherwise, this is the entity that will enter into any Construction Contracts concerning the Project.

24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.

27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.

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28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

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B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

A. Exhibit A, Engineer's Services.

B. Exhibit B, Owner's Responsibilities.

C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.

D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.

E. Exhibit E, Insurance Requirements.

F. Exhibit F, Special Provisions

8.02 *Total Agreement*

A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;

3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: **Town of Amherst**

By: _____

Brian J. Kulpa

Supervisor

Date Signed: _____

Engineer: **DiDonato Associates**

By: _____

Print name: **John DiDonato, P.E.**

Title: **President**

Date Signed: 11/12/24

Engineer License or Firm's Certificate No. (if required):

066666

State of: **New York**

Address for Owner's receipt of notices:

Town of Amherst
5583 Main Street
Williamsville, NY 14221

Address for Engineer's receipt of notices:

DiDonato Associates

689 Main Street

Buffalo, NY 14203

Designated Representative (Paragraph 8.03.A):

Jessica Boudreau, P.E.

Project Manager

Phone Number: (716) 631-7154

E-Mail Address: jboudreau@amherst.ny.us

Designated Representative (Paragraph 8.03.A):

Pradeep Simlote

Title: Project Manager

Phone Number: 716 656 1900

E-Mail Address: psimlote@didonato.cc

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES **2024-2026 Public & Private Improvement Permit Inspection**

A1.01 *Phase I - Study and Report Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.

    a. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.

    b. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify [ ] alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.

2. Identify potential solution(s) to meet Owner's Project requirements, as needed.

3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.

4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.

6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.

7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.

8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.

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9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.

10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."

11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.

12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.

13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.

14. Perform or provide the following other Study and Report Phase tasks or deliverables:

    a. Conduct field edit(s) of the supplied data as required to supplement and verify information.

    b. Prepare preliminary design plans for each alternate, and meet with Town Engineering staff to review the proposed designed improvements.

    c. Prepare preliminary design plans in AutoCAD format from the project base maps to include plan views, profiles, details, general construction notes, tables, title sheet and location map. All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

15. **Specific additional project tasks and/or deliverables:**

    a. **Prepare preliminary/schematic design report including; descriptions of proposed floor plan, all associated systems, utilities, required utility stabilizations or relocations. A narrative of applicable codes and design parameters, and opinion of probable cost.**

16. Furnish **three (3)** copies of the Report and any other Study and Report Phase deliverables to Owner within **thirty (30)** days of the Effective Date and review it with Owner. Within **five (5)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

17. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish three (3) copies of the revised Report and any other Study and Report Phase deliverables to the Owner within fifteen (15) days of receipt of Owner's comments.

B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 *Phase II - Preliminary Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Report and any other Study and Report Phase deliverables the Engineer shall:

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1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.

3. Utilize Town-provided plans, ~~field surveys and topographic and utility mapping~~ for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then ~~at a minimum~~ the utility mapping may ~~will~~ include Engineer contacting utility owners for verification of the Town-provided utility information.

4. Visit the Site as needed to prepare the Preliminary Design Phase documents.

5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project-related data and information, for Engineer's use in the project design.

6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.

7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.

8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:

    a. Utilize existing digital and plan data supplied by the town (digital orthophotos, tax parcel boundaries, DTM data, building outlines, pavement edges, topographic survey and/or record drawing information) to prepare base mapping of the project area.

    b. Conduct field edit(s) of the supplied data and record drawing information as required to supplement and verify information.

    c. Prepare preliminary design plans of existing and proposed improvements, and meet with Town Engineering staff to review the proposed designed improvements.

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d. Prepare preliminary design plans in AutoCAD format from the project base maps ~~to include plan views, profiles, details, general construction notes, tables, title sheet and location map.~~ All design work is to be preformed in accordance with the requirements of the Building Code of New York State.

e. The Engineer shall provide all drawing and specifications, as required.

f. Non-technical portion of the specifications will be prepared using the Owner's standard specifications (Division 0).

10. Furnish **three (3)** review copies of the Preliminary Design Phase documents, Construction Cost Estimate, and any other Preliminary Design Phase deliverables to Owner within **thirty (30)** days of authorization to proceed with this phase, and review them with Owner. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner **three (3)** copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within **fifteen (15)** days after receipt of Owner's comments.

B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Phase III - Final Design Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After written acceptance by Owner of the Preliminary Design Phase documents the Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.

2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.

3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.

4. Advise Owner of any recommended adjustments to the preliminary construction cost estimate.

5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

6. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

7. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.

8. Perform or provide the following other Final Design Phase tasks or deliverables:

a. Prepare and furnish **three (3)** copies of 90% complete design plans and bidding specifications for review by the Owner within **fifteen (15)** days of authorization to

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proceed with this phase. Within **ten (10)** days of receipt, Owner shall submit to Engineer any comments for revisions.

b. Revise the design plans and bidding specifications in accordance with comments and instructions from all applicable agencies, as appropriate, and submit final copies of the design plans and bidding specifications, a revised opinion of probable Construction Cost, and any other required deliverables to the Owner within **ten (10)** calendar days after receipt of all applicable agency review comments and instructions.

c. Prepare the bid documents with an itemized list of work to be performed. The itemized list will consist of all items in the "technical specifications" listed in the Preliminary Design Phase, [refer to Section A.1.02, A, 9]. Bidding will be based on each item on the itemized list. Contract award will be based on "all" or "a portion of" the items.

B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.

C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **three (3)**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.04 *Phase IV - Bidding or Negotiating Phase (THESE SERVICES ARE NOT INCLUDED AT THIS TIME)*

A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents to prospective contractors, and attend pre-bid conferences.

2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.

3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.

4. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.

5. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

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6. Prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals.

7. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.

8. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:

   a. Provide **fifteen (15)** sets of final construction documents for bidding.

   b. Address any questions from potential bidders and issue any necessary addendums to the contract documents promptly and prior to Bid opening.

   c. Assist Owner in connection with Bid protests, or renegotiating contracts for construction, materials, equipment, or services.

B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors.

A1.05 *Phase V - Construction Phase*

A. ~~Upon successful completion of the Bidding and Negotiating Phase~~, Engineer shall:

~~1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.~~

2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.

~~3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.~~

4. *Pre-Construction Conference:* Hold a pre-construction conference prior to commencement of Work at the Site.

5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.

6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

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~~7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.~~

8. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:

   a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, or at a **minimum** of **two (2)** inspection visits per week during construction, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

   b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

10. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.

11. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes

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referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

12. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

13. *Change Orders:* Recommend Change Orders to Owner, as appropriate, and prepare Change Orders as required.

14. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.

15. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

16. *Substitutes and "Or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.

17. *Inspections and Tests:*

    a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.

    b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.

    c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.

18. *Change Proposals and Claims:* (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change

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Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.

~~19. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:~~

~~a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).~~

~~b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.~~

20. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.16. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

21. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final

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certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

22. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:

    a. Make visits to the site at **part-time** intervals appropriate to the various phases and nature of construction to observe the progress and quality of the construction work and to determine, in general if the results of the construction work are in accordance with the Drawings and Specifications. Where construction does not comply with Plans and Specifications, notify Owner of such deficiencies or non-complying construction and report to the Owner any work not adequately corrected with recommendations to assist the Owner to obtain compliance of the construction with the Plans and Specifications. On the basis of his on-site observations as an Engineer, he shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the Contractor; but does not guarantee the performance of the Contractor.

    b. Attend scheduled construction progress meetings and issue minutes.

    c. The Engineer is not responsible for the construction means, methods, techniques, sequences or procedures, time of performance, programs or for any safety precautions in connection with the construction work. The Engineer is not responsible for the Contractor's failure to execute the work in accordance with the construction Contract.

    d. Notify the Owner of all permanent work which does not conform to the result required in the Construction Contract, prepare a written report describing any apparent non-conforming permanent work and make recommendations to the Owner for its correction and; at the request of the Owner have recommendations implemented by the Contractor.

    e. [List any additional tasks or deliverables.]

23. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor that the Work is acceptable to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

24. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

25. ***Prior to the start of construction inspections, the Engineer shall inform the Town of their anticipated inspector, their NICET level, anticipated schedule, and whether they believe the available budget will provide enough funding necessary for the work proposed.***

26. ***Engineer shall invoice the Town monthly and notify the Town as soon as possible if the budgeted amount for inspections based on received PIP permit fees will not be adequate to cover inspection required. It is the responsibility of the Engineer to track inspection budget and shall not exceed budgeted amount without prior approval.***

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B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

A1.06 *Phase VI - Post-Construction Phase*

A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:

1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:

a. Following completion of construction, the Engineer shall furnish the Owner and Design Engineer with a set of inspection records, drawings, waterline ties, sketches and all other field records for preparation of record drawings showing those changes made during the Construction Contract execution or during the construction process, based upon the Engineer's Project Representative's notes and executed Change Orders.

b. Testing & final certifications/approvals from involved agencies.

B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services will be paid for by Owner as indicated in Exhibit C.

1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for preparation or review of environmental assessments; review and evaluation of the effects on the design requirements for the Project of any documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, or Owner's schedule; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are due to any causes beyond Engineer's control.

3. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

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4. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.

5. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.

6. Overtime work requiring higher than regular rates.

7. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).

8. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 *Additional Services Not Requiring Owner's Written Authorization*

A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.

1. Services in connection with Change Orders to reflect changes requested by Owner.

2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; and services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project.

3. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.

4. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

Attachment: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.

B. Give instructions to Engineer regarding Owner's procurement of construction services, Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents. Furnish copies of all design and construction standards, Owner's standard forms, general conditions, supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents. Owner shall have responsibility for the final content of (1) such bidding-related documents, and (2) those portions of any Construction Contract other than the design, and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, and insurance advisors with respect to the drafting and content of such documents.

C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.

D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish, or otherwise make available such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:

1. Property descriptions.
2. Zoning, deed, and other land use restrictions.
3. Utility and topographic mapping and surveys.
4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
7. Data or consultations as required for the Project but not otherwise identified in this Agreement.

E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.

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F. Provide, as required for the Project:

1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
4. Placement and payment for advertisement for Bids in appropriate publications.

G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through the Contractor.

H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

M. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

N. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.

O. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.

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P. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

Q. Perform or provide the following: [ ] ***[List any other Owner responsibilities here.]***

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER'S RESPONSIBILITIES

C2.01 *Compensation For Basic Services – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer's Consultants' charges, if any.

2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Consultants' charges.

3. Engineer's Standard Hourly Rates are attached to this Exhibit C as Appendix 1.

4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

5. **The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.4 incorporates all labor, overhead, profit, and Engineer's Consultants' charges.**

6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, ~~plus Reimbursable Expenses and Engineer's Consultants' charges.~~

7. ~~The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1, 2022 to reflect equitable changes in the compensation payable to Engineer.~~

C2.02 *Deleted*

C2.03 *Other Provisions Concerning Payment*

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of **1.0**.

B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.

2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon

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notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.

D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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Appendix 1: Standard Hourly Rates Schedule

C2.06 Compensation for Standard Hourly Rates for *Basic Services – Standard Hourly Rates Method of Payment*

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.
3. Approval required from Town of Amherst for use of any 'Officer/Principal' rate.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Officer / Principal	$ 170.00 /hour
Senior Project Engineer	$ 155.00 /hour
Project Manager	$ 145.00 /hour
Project Engineer	$ 100.00 /hour
Construction Administrator	$ 155.00 /hour
NICET IV	$ 125.00 /hour
NICET III	$ 115.00 /hour
NICET II	$ 90.00 /hour

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Article 1 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 1 - SERVICES OF ENGINEER

D1.01 *Resident Project Representative*

A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.

B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.

C. The duties and responsibilities of the RPR are as follows:

1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.

2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

5. *Liaison:*

   a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.

   b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.

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c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.

6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.

7. *Shop Drawings and Samples:*

   a. Record date of receipt of Samples and Contractor-approved Shop Drawings.

   b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.

   c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.

8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.

9. *Review of Work; Defective Work:*

   a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

   b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and

   c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

    a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

    b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.

    c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

    d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.

    e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

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11. *Records*:

    a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.

    b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

    c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

    d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.

    e. Maintain records for use in preparing Project documentation.

    f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

12. *Reports:*

    a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.

    b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.

    c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.

    d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.

~~13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.~~

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion*:

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a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.

b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement and Exhibit F.

ACORD CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)

PRODUCER
Broker Name
Address
Address
Phone

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 POLICIES BELOW.

INSURED
Insured Name
Address
Address
Phone

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Insurance Company	
INSURER B: Insurance Company	
INSURER C: Insurance Company	
INSURER D:	
INSURER E:	

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [ ] PRO-JECT [ ] LOC	00###	mm/dd/yy	mm/dd/yy	EACH OCCURRENCE $1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ 50,000 MED EXP (Any one person) $ 10,000 PERSONAL & ADV INJURY $1,000,000 GENERAL AGGREGATE $2,000,000 PRODUCTS - COMP/OP AGG $2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	#####	mm/dd/yy	mm/dd/yy	COMBINED SINGLE LIMIT (Ea accident) $1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT $ OTHER THAN AUTO ONLY: EA ACC $ AGG $
A	X EXCESS LIABILITY X OCCUR [ ] CLAIMS-MADE DEDUCTIBLE RETENTION $	#####	mm/dd/yy	mm/dd/yy	EACH OCCURRENCE $5,000,000 AGGREGATE $5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	#####	mm/dd/yy	mm/dd/yy	X WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT $100,000 E.L. DISEASE - EA EMPLOYEE $100,000 E.L. DISEASE - POLICY LIMIT $500,000
B	OTHER Professional Liability	#####	mm/dd/yy	mm/dd/yy	$1,000,000/$2,000,000
C	Pollution Liability (if required)	#####	mm/dd/yy	mm/dd/yy	$5,000,000/$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

The Town of Amherst is named as an additional insured on a primary and non-contributory basis. Workers Compensation includes owners.

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, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
AUTHORIZED REPRESENTATIVE
Broker Signature

ACORD 25 (2001/08) © ACORD CORPORATION 1988

SAMPLE

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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. Consultant shall ensure all its subconsultant s, if any, have obtained all the above insurances and shall also assure that any policy procured by any subconsultant or sub-subconsultant shall name the Town as an additional insured on a primary and non-contributory basis. A failure by Consultant to assure that any policy procured by any subconsultant or sub-subconsultant 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

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related to the prosecution of a breach of the insurance procurement requirements suit regardless of whether the Town is successful in said suit.

(e) A failure by Consultant 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 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.

Attachment: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

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 January 22, 2024. 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:

DiDonato Associates Engineering & Architecture PC

Print Name of Company

By: _____
Signature

John DiDonato

Printed name

Date: 1/12/24

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

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: DiDonato Associates Engineering & Architecture PC.

Signature: _____

Print Name: John DiDonato

Title: President

Date: 1/12/24

Sworn To Before Me This

12th Day of January, 2024

_____
Notary Public

STEPHEN G. AURELI
Notary Public, State of New York
Reg. No. 01AU6398715
Qualified in Erie County
My Commission Expires October 7, 2027

Attachment: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/11/2024

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 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	CONTACT NAME: Jennifer Dissette
Promark Partners Insurance Services 7 Limestone Dr. Williamsville NY 14221	PHONE (A/C, No, Ext): (716) 633-8401 FAX (A/C, No): (716) 633-8429 E-MAIL ADDRESS: jdissette@promarkinsurance.com

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
DiDonato Associates, Engineering & Architecture, PC 689 Main St Buffalo NY 14203-1404	INSURER A: Hartford Underwriters Ins Co	30104
	INSURER B: Hartford Ins. Co. of IL	38288
	INSURER C: Hartford Accident & Indemnity Co	22357
	INSURER D: The Hartford	19682
	INSURER E: Hartford Life & Accident Insurance Co	70815
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL233316928 **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 X Includes contractual liab GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC OTHER:	X		01SBAAR4E26	3/1/2023	3/1/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	X		01UECFH8070	3/1/2023	3/1/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000	X		01SBAAR4E26	3/1/2023	3/1/2024	EACH OCCURRENCE AGGREGATE	$ 8,000,000 $ 8,000,000
C	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		01WECAR4ED2	3/1/2023	3/1/2024	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
D	Professional Liability			OH 0436228-23	3/1/2023	3/1/2024	Per Claim/Aggregate	$5m/$5m
E	Disability			LNY631991	1/1/2024	1/1/2025	NYS DBL	Statutory

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Public and Private Improvement Permits (PIP) Inspection Services
Town of Amherst is an additional insured on a primary and non-contributory basis for the general liability only in regards to services provided by the named insured when required by written contract.
Professional Liability limits shown are per claim and aggregate for all projects of the named insured.

CERTIFICATE HOLDER

jboudreau@amherst.ny.us

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

C Alderson/JDISSE

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Attachment: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

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)

DIDONATO & ASSOCIATES P.E., P.C.
689 MAIN STREET
BUFFALO, NY 14203

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

1c. Federal Employer Identification Number of Insured or Social Security Number

161382582

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)

Town of Amherst
5583 Main St.
Williamsville, NY 14221

3a. Name of Insurance Carrier

HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY

3b. Policy Number of Entity Listed in Box 1a

LNY631991001

3c. Policy effective period

01-01-2024 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:

- [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 01-11-2024 By *Elizabeth Tello*

(Signature of insurance carrier's authorized representative or NYS licensed insurance agent of that insurance carrier)

Telephone Number (212) 553-8074 Name and Title: ELIZABETH TELLO – ASSISTANT DIRECTOR, STATUTORY 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 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: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

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: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

STATE OF NEW YORK

WORKERS' COMPENSATION BOARD

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name and address of Insured (Use street address only) **DiDonato Associates, Engineering & Architecture, P.C.** **689 Main Street** **Buffalo, NY 14203** *Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e. a Wrap-Up Policy)*	1b. Business Telephone Number of Insurance (716)656-1900 1c. NYS Unemployment Insurance Employer Registration Number of Insured 1d. Federal Employer Identification Number of Insured 161382582
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as Certificate Holder) **Town of Amherst** **5583 Main Street** **Williamsville NY 14221**	3a. Name of Insurance Carrier RLI Insurance Company 3b. Policy Number of entity listed in box "1a" 01WECAR4ED2 3c. Policy effective period 3/1/2023 To 3/1/2024 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 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 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 will also notify the above certificate holder within 10 days IF a policy is canceled 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 indicate 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..***

Please Note: Upon the 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: Thomas N. Alderson

(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Thomas N. Alderson 3/28/2023

(Signature) (Date)

Title: President

Telephone Number of authorized representative or licensed agent of insurance carrier: 716-633-8401

***Please Note:** Only insurance carriers and their licensed agents are authorized to issue the C-105.2 form. Insurance brokers are NOT authorized to issue it*

C-105.2 (9-07)

Attachment: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

Workers' Compensation Law

Section 57. Restrictions 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.

C-105.2 (9-07) Reverse

Attachment: PIP Term Agreement 2024-2026_Didonato 1 (RES-2024-114 : Proposal for Professional Engineering Services)

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

Francina J. Spoth
Town Clerk

Meeting: 01/22/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 28537 **RESOLUTION 2024-115** **ADOPTED**

Firefighter Cancer Benefit Program 2024 CRS ID #4557

Suspension to Town Board Agenda Item January 22, 2024

TO: Town Board

FROM: Michael Szukala, Councilmember

DATE: January 19, 2024

RE: **Firefighter Cancer Benefit Program 2024 CRS ID #4557**

WHEREAS, the New York State legislature mandated cancer coverage for volunteer firefighters effective January 1, 2019,

WHEREAS, the Amherst Town Board adopted on December 10, 2018 Resolution 2018-1292 approving basic mandated cancer coverage from The Hartford Life and Accident Insurance Company,

NOW THEREFORE BE IT RESOLVED, that the Amherst Town Board approves the renewal of the Basic Cancer Coverage through The Hartford Life and Accident Insurance Company Policy Number 681360 administered by AIS Administrators and payment of the total amount of $41,451.43. Approval is pending successful completion of the Contract Routing System process due to the fact that the policy went into effect January 1, 2024.

1/22/2024
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

FINANCIAL IMPACT:

F 8055 $41,451.43

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