# 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, May 13, 2024** | **7:00 PM** | **Amherst Municipal Building**

# I. IN MEMORY

# II. INVOCATION

# III. PLEDGE OF ALLEGIANCE

# IV. ROLL CALL:

7:00 PM Meeting called to order on May 13, 2024 at Amherst Municipal Building, 5583 Main Street, Williamsville, NY.

| Attendee Name | Organization | Title | Status | Arrived |
|---|---|---|---|---|
| Brian J. Kulpa | Town of Amherst | Supervisor | Present | |
| Shawn Lavin | Town of Amherst | Deputy Supervisor | Present | |
| Jacqualine Berger | 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 | |
| Dan Howard | Town of Amherst | Planning Director | Present | |
| Samuel A Alba | Town of Amherst | Sr. Deputy Town Attorney | Present | |
| Christopher P. Schregel | Town of Amherst | Traffic-Safety Coordinator | Present | |

# V. MINUTES APPROVAL

**1.** Monday, April 29, 2024

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

# VI. PROCLAMATIONS AND ANNOUNCEMENTS

# VII. PUBLIC HEARINGS

**Speakers will be limited to 3 minutes.**

**1. Resolution 2024-414**

## Brantwood Road & Kings Highway All-Way Stop

A public hearing to install additional stop signs at the intersection of Brantwood Road and Kings Highway:

> "The tee intersection of Brantwood Road and Kings Highway is hereby designated as an all-way stop intersection with stop signs installed on all approaches."

**5/13/2024**
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and unanimously approved 5-0. The public hearing was opened at 7:01 PM.

Chris Schregel, Traffic-Safety Coordinator, presented.

The following residents spoke:
Jim Mansour, 246 Brantwood Rd
Bob Drdul, 92 Chateau Ter
John Trabert, 234 Mt Vernon Rd
Ann Farmelo, 259 Brantwood Rd
David Howard, 194 Roycroft Blvd
Gary Dargush, 250 Brantwood Rd
Tom Weisbeck, 48 Drawbridge Ct
Chris Drongosky, Youngs Rd

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Lavin and unanimously approved 5-0. The public hearing was closed at 7:32 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and was approved via Roll Call vote 4-1 (nay, Berger).

| | |
|---|---|
| **RESULT:** | **ROLL CALL VOTE (ADOPTED) [4 TO 1]** |
| **MOVER:** | Brian J. Kulpa, Supervisor |
| **SECONDER:** | Shawn Lavin, Deputy Supervisor |
| **AYES:** | Kulpa, Lavin, Szukala, Marinucci |
| **NAYS:** | Berger |

**2. Resolution 2024-415**

## Intersection of Crosby Boulevard and Maynard Drive - Restrict Parking

A public hearing to restrict parking at the corner of Crosby Blvd. and Maynard Drive:

> "Parking is hereby restricted along the southern-most curve of the Crosby Blvd. and Maynard Drive intersection starting at a point 30 feet from the point of curvature on the west side of Crosby Blvd. to a point that is 165 feet from the point of beginning and approximately 50 feet beyond the curve's point of tangency on the west side of Maynard Drive."

**5/13/2024**

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and unanimously approved 5-0. The public hearing was opened at 7:33 PM.

Chris Schregel, Traffic-Safety Coordinator, presented.

The following residents spoke:
Bruce Brown, 159 Crosby Blvd
Jennifer Yap, 175 Crosby Blvd
Shelly Schratz, 1952 Kensington Ave
Bob Drdul, 92 Chateau Ter

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:48 PM.

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, Lavin, Berger, Szukala, Marinucci |

# VIII. DEVELOPMENT REVIEW ACTIONS

# 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 (6)**

**5. Amherst Government Financial Advisory Board**

Membership is full.

**6. Amherst Industrial Development Agency**

Membership is full.

**7. Amherst Veterans Committee (6)**

**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**

Membership is full.

**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 (2)**

21. **Library Board of Trustees (2)**

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

23. **Open Government Advisory Board (8)**

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 (2)**

29. **Youth Board**
    Adult vacancies (6), Youth vacancies (0)

30. **Zoning Board of Appeals**

## X. PUBLIC EXPRESSION

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

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 7:50 PM.

The following speakers addressed the Town Board:
Andrea Morgante, 253 Woodshire Ct - sound system
Shelly Schratz, 1952 Kensington Ave - streetlights
Bill Blake, 147 Fairlawn Rd - streetlights

Dennis Hoban, 216 California Dr - streetlights
Geri DiCosmo, 278 Meyer Rd - westwood, bonds and spending
Tom Weisbeck, 48 Drawbridge Ct - streetlights
David Prisaznuk, 260 Schoelles Rd - fire district taxes
Ann Marie Borgisi, 167 Caesar Blvd - taxes
Joe Voytovich, 35 Bucyrus Dr - bonds
Julie Styn, 49 Heritage Rd E - Amherst girls' softball
John Trabert, 234 Mt Vernon Rd - bonds & MusicalFare
Judy Ferraro, 213 Donna Lea Blvd - Royal Park project
Jane Cox, 4584 Harlem Rd - Town wide reassessment & Resolution 2024-420
Dave Howard, 194 Roycroft Blvd - golf course & MusicalFare
Dan Rider, 38 Garden Pkwy - Resolution 2024-419
Chris Drongosky, Youngs Rd - Resolution 2024-419
Paul Francavilla, 70 Cimarand Dr - water line issues
Don Smith, 201 N Long St - Resolution 2024-419
Matt Plunkett, 299 Northill Dr - MusicalFare
Deborah Kilbourn, 35 Arlington Rd - Town Attorney Office staff
Kathy Aquilina, 215 Maple Rd - MuiscalFare
Bob Drdul, 92 Chateau Ter - Benderson project on Main Street

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 9:04 PM.

## XI. CONSENT AGENDA

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

## XII. COUNCILMEMBER RESOLUTIONS

***A. SUPERVISOR KULPA:***

***B. DEPUTY SUPERVISOR LAVIN:***

***C. COUNCILMEMBER BERGER:***

***D. COUNCILMEMBER SZUKALA:***

**1. Resolution 2024-416**

### Appointment to FOIL Board

**BE IT RESOLVED** that the Town Board appoint Ben Ansell to the FOIL Board for a term ending December 31, 2028.

**5/13/2024**
Consent

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Michael Szukala, Councilmember |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

***E. COUNCILMEMBER MARINUCCI:***

**1. Resolution 2024-417**

## Appointment to Historic Preservation Commission

**WHEREAS,** the Town of Amherst created a Historic Preservation Commission to address and tend to matters related to preservation of the historic, architectural, and cultural landmarks, sites and districts within the Town of Amherst while working with the Building Commissioner, Planning Board and Zoning Board of Appeals; and

**WHEREAS,** appointments to this committee are voted on by the Amherst Town Board after resumes are reviewed by the committee chairperson and Commission Liaison to the Amherst Town Board; and

**WHEREAS**, Hallie Wright has expressed interest in serving on the HPC;

**NOW, THEREFORE, BE IT RESOLVED** that the Amherst Town Board appoints Hallie Wright to serve as Historian to the Amherst Historic Preservation Commission, for a term ending December 31, 2027.

**5/13/2024**
Consent

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Angela Marinucci, Councilmember |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

**2. Resolution 2024-418**

## Historic Preservation Grant Application

**WHEREAS,** the Town of Amherst became a Certified Local Government (CLG) for Historic Preservation on October 3, 1994; and

**WHEREAS,** the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) offers grants to CLG's for various Historic Preservation projects; and

**WHEREAS,** the specific purpose of the grant request is to secure funding for community and Commission training, educational outreach, and cultural resource survey work.

**NOW, THEREFORE, BE IT RESOLVED** that the Amherst Town Board authorizes the Amherst Historic Preservation Commission to prepare a grant application to the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) CLG Program no later than May 31, 2024, to request funding for the purposes as described above; and

**BE IT FURTHER RESOLVED** that the Amherst Town Supervisor is authorized to submit the FY2025 Grant application for an amount not to exceed ($30,000) to the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) and to execute a Project agreement with the State if the grant is awarded; and

**BE IT FURTHER RESOLVED** that if the grant application is approved, the recommended match of up to 50% of the project cost, not to exceed fifteen thousand dollars ($15000.00) will be provided through Town time, donated services and/or volunteer labor.

**5/13/2024**
Consent

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Angela Marinucci, Councilmember |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

# XIII. DEPARTMENT HEAD RESOLUTIONS AND REPORTS

***A. TOWN ATTORNEY:***

**1. Resolution 2024-419**

## Royal Park Project Exemption

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **Resolution Declaring the Town of Amherst Royal Park Project**

**Exempt From the Town of Amherst's Zoning Ordinance Under the County of Monroe Balancing of Interests Test**

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

**WHEREAS**, the Town of Amherst ("Town") is the owner of a parcel of real property constituting approximately 9.48 acres of land known as Royal Park that has been designated for municipal purposes ("subject premises"); and

**WHEREAS**, the Town is a municipal corporation duly organized and existing pursuant to the laws of the State of New York, and having those powers set forth in the New York Town Law and New York General Municipal Law with regard to providing recreational opportunities for residents of the Town of Amherst in promotion of the general health, welfare and safety of its citizenry; and

**WHEREAS**, the subject premises are located entirely within the incorporated limits of the Town of Amherst; and

**WHEREAS**, the Town of Amherst Town Board is the governing body of the Town of Amherst charged with executing and providing for the general health, welfare and safety of Town residents; and

**WHEREAS**, the Town of Amherst Planning Board is an agency of the Town of Amherst, whose members are appointed by the Town Board, and which is responsible for overseeing land use regulation as specified in Article 16 of the New York Town Law; and

**WHEREAS**, the Town of Amherst Town intends to build an Athletic Complex consisting of a multi-purpose field, tennis courts, pickleball courts, and related lighting, spectator area, locker rooms, shower facilities and restrooms, ticket/concession area, as well as a picnic pavilion, relocated playground, splash pad, rehabilitated basketball courts, loop trail and parking lots to be operated by the Town, all located at Royal Park ("Town of Amherst Royal Park Project"); and

**WHEREAS**, in connection with the Town of Amherst Royal Park Project, the Town of Amherst Town Board declared itself lead agency under SEQR, performed an analysis of the potential environmental impacts under SEQR, and duly issued a negative declaration on February 13, 2023, in connection with Bond Approval of the plan to develop the Town of Amherst Royal Park Project; and

**WHEREAS**, pursuant to the decision of the New York Court of Appeals in the *Matter of County of Monroe*, 72 N.Y.2d 338 (1988), a "balancing of public interests" is required to determine whether and to what extent the Amherst Town Board is exempt from the zoning and land use regulatory approval from the Town of Amherst Planning Board; and

**WHEREAS**, the *Matter of County of Monroe* balancing test identifies nine (9) separate factors to be considered to determine whether a specific project qualifies for immunity from land use regulations; and

**WHEREAS**, the Town has considered the balancing of interests test set forth in the *Matter of County of Monroe* case discussed in the attached Findings; and

**WHEREAS**, for the reasons set forth in the attached Findings, the Town finds that the Town of Amherst Royal Park Project, which is being developed for the community benefit, is exempt from the Town Zoning Ordinance.

**NOW THEREFORE BE IT RESOLVED**, in connection with the plan to develop the Town of Amherst Royal Park Project the Town Board reaffirms its determination of non-significance dated February 13, 2023; and

**BE IT FURTHER RESOLVED**, that the Town Board has analyzed, considered and discussed the factors as set forth in the *Matter of County of Monroe* in relation to the Town of Amherst Royal Park Project to take place on the subject premises and the Town of Amherst's land use regulations, and hereby adopts the Findings, a copy of which is attached hereto and made a part hereof, and hereby declares the Town-sponsored Town of Amherst Royal Park Project is exempt from the Zoning Ordinance of the Town of Amherst.

MAP:nmb
Attachment
c: Tim Koller, Deputy Town Clerk
(*w/attachment*, **Agenda Item - May 13, 2024**)

**5/13/2024**
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved via Roll Call vote 5-0.

| | |
|---|---|
| **RESULT:** | **ROLL CALL VOTE (ADOPTED) [UNANIMOUS]** |
| **MOVER:** | Brian J. Kulpa, Supervisor |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

**2. Resolution 2024-420**

## First Amendment to Lease Agreement with Northtown Automotive Companies (Original CRS #4154 - CRS #4802 (Amendment))

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **First Amendment To Lease Agreement With Northtown Automotive Companies (Original CRS# 4154/Amendment CRS # 4788)**

Kindly adopt a resolution authorizing the Supervisor to execute the attached First Amendment to the original Lease Agreement with Northtown Automotive Companies pending successful completion of the CRS.

Thank you for your consideration.

NMB:hs
Attachment
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item: May 13, 2024**)

**5/13/2024**
Consent

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

**3. Resolution 2024-421**

## USDA Property Access Request (Invasive Species) (CRS #4788)

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **USDA Property Access Request (CRS #4788)**
**Box Tree Moth Response**
**New York European Cherry Fruit Fly**
**Property Located At : All Town Properties**

Kindly adopt a resolution authorizing the Supervisor to execute the attached Property Access Request pending successful completion of the CRS.

The USDA is requesting that it be able to access Town properties for the purposes of treating the areas for the above invasive species.

Thank you for your consideration.

NMB:hs
Attachments
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item: May 13, 2024**)

**5/13/2024**
Consent

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

**4. Resolution 2024-422**

## Settlement of Article 7 Matter - 570 DAB 59, LLC V. Town of Amherst

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **Settlement of Article 7 Matter**
**570 DAB 59, LLC v. Town of Amherst**

Kindly adopt a resolution authorizing the following:

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

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

Thank you.

SAA:rms
Attachment
c: Tim Koller, Deputy Town Clerk
(*w/attachment,* **Agenda Item : May 13, 2024**)
Emily Murphy, Town Assessor

**5/13/2024**
Consent

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

***B. TOWN CLERK:***

**1. Resolution 2024-423**

## New Firefighter for Main-Transit Fire Department

New firefighter for the Main-Transit Fire Department lives in the Town of Clarence goes to school in the Main-Transit Fire district.

Luke Seplaki
5410 Center Pine Ln
Williamsville, NY 14221

**5/13/2024**
Consent

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

**2. Resolution 2024-424**

## New Firefighter for North Bailey Fire Company

New firefighter for the North Bailey Fire Company lives in the Town of Amherst and resides within the North Bailey fire district.

Matthew Bonner
10 Wedgewood Ter
Amherst, NY 14226

**5/13/2024**
Consent

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

## *C. ASSESSOR:*

## *D. BUILDING/BUILDING MAINTENANCE:*

## *E. CENTRAL ALARM:*

## *F. COMPTROLLER:*

### 1. Resolution 2024-425

# Budget Transfers and Amendments

**For May 13, 2024 Town Board Agenda**

To: Town Board
From: Office of Town Comptroller
Date: 05/08/2024
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 - 2024***

| ***FROM:*** | ***TO:*** |
|---|---|
| C8161.4531 Refuse - Totes $11,000 | C3621.2250 Refuse - Vehicles $11,000 |
| *To transfer funds to cover purchase of truck.* | |
| A1990.4000 Contingency $85,571.90 | A3641.1850 Lump Sum $30,936.15<br>A3641.8030 FICA $2,366.62<br>A3020.1000 Personal Services $48,554.70<br>A3020.8030 FICA $3,714.43 |
| *To transfer funds budgeted in contingency for retirements.* | |
| N2329.4000 CDBG Weatherization Services $2,668.50 | N2321.4000 CDBG Housing Rehab. $2,668.50 |
| *Requested per department.* | |
| G1990.4000 Sewer Contingency $140,000 | G9916.9000 Interfund Transfers $140,000 |
| *To transfer funds from Sewer Contingency into Plant 16 for transfer into KP1621 Disinfection Meter Screen project.* | |
| A6776.1000 SOS - Personal Services $22,684.35<br>A6776.8030 SOS - FICA $1,735.35<br>A6776.8050 SOS- Health Insurance $16,009.01<br>A6776.8051 SOS - Dental $54.98<br>A6776.8050 SOS - Vision $5.63 | A6773.1000 Personal Services $22,684.35<br>A6773.8030 FICA $1,735.35<br>A6773.8050 Health Insurance $16,009.01<br>A6773.8051 Dental $54.98<br>A6773.8052 Vision $5.63 |
| *To transfer funds from Senior Outreach Services into Nutrition for the hiring of a cook and removal of a full time case manager to part time case manager.* | |

***BUDGET AMENDMENTS - 2024***

| ***INCREASE:*** | ***INCREASE:*** |
|---|---|
| KP2204.02089 Amherst Central Park $545,318.00 | KP2204.4972 Construction Expense $545,318.00 |
| *To increase the budget for the 1st amendment to agreement with Erie County per Res 2024-371.* | |
| KP2225.04589 WPCF Bldg. 1- Federal Aid $1,875,318.43 | KP2225.4972 Construction Expense $1,875,318.43 |
| *To set-up the budget for WPCF Bldg. 1 through use of American Rescue Plan Act funding.* | |
| N2341.02785 AMH 1st Time Homebuyer-PI $3,490.13<br>N2340.02785 AMH HOME- PI $5,719.50 | N2341.4000 Contractual $3,490.13<br>N2340.4000 Contractual $5,719.50 |

N2354.02785 HOME Admin- PI $1,023.29 N2354.4003 10% Admin $1,023.29
*To recognize Community Development program income from 327 N. Westfield, Amherst*

N2323.02785 CDBG & VG- PI $31,312.00 N2323.4000 Contractual $31,312.00
N2325.02785 CDBG Admin- PI $7,828.00 N2325.1000 Personal Svcs $7,271.71
N2325.8030 FICA $556.29
*To recognize Community Development program income from 301 Coronation, Amherst.*

N2323.02785 CDBG & VG- PI $170.00 N2323.4000 Contractual $170.00
*To recognize Community Development program income from 169 Hillcrest, Amherst.*

KP1621.05031 Interfund Transfers $140,000 KP1621.4972 $140,000
*To setup budget for transfer from G9916.9000 for Disinfection Meter Screen project.*

**5/13/2024**
Consent

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

**2. Resolution 2024-426**

## Use of Opioid Settlement Funds

WHEREAS, Resolution 2023-484 established Trust Account T4035 Opioid Settlement,

WHEREAS, Trust Accounts requires Town Board Approval to spend funds,

WHEREAS, training provides staff or network programs and services regarding the capability of government to abate the opioid crisis,

WHEREAS, Schedule C Approved Uses, Section B Leadership, Planning, and Coordination and Section C Training as acceptable uses,

WHEREAS, the Amherst Town Court was approved by the Town Board on Resolution 2024-369 to attend a Drug Court Conference,

BE IT FURTHER RESOLVED, the Town Board approves the transfer NTE (not to exceed) $12,156.20 from the Trust account T4035 into A1113 Opioid Settlement to fund this training.

Budget Amendment - Increase:

A1113.05031 Opioid Settlements - Interfund Transfers NTE $12,156.20
A1113.4040 Opioid Settlements - Travel $8,736.20
A1113.4120 Opioid Settlements - Training $3,420.00

**5/13/2024**
Consent

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

*G. CONTRACT COMPLIANCE:*

**1. Resolution 2024-427**

## Award of Mini Bid #2024005 for (1) 2024 Chevy Silverado 2500 - CRS #4548

**WHEREAS,** Contract Compliance and Administration issued Mini-Bid #2024005 through NYS OGS for one (1) 2024 Chevy Silverado 2500; 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 Mini-Bid be awarded to DeNooyer Chevrolet, Inc. for their low bid of $65,993.81; and

**BE IT FURTHER RESOLVED,** The Town Board authorizes the Supervisor to sign the contract with DeNooyer Chevrolet, Inc.

**5/13/2024**
Consent

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

**2. Resolution 2024-428**

## Award Bid #2024018 Building Department Vehicles - CRS #4756

**WHEREAS,** the Contract Compliance and Administration Department received bids on April 18, 2024 for Bid #2024018 Building Department Vehicles; and

**WHEREAS,** the bid process resulted in a response 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 this bid to Delacy Ford; and

**BE IT FURTHER RESOLVED**, the Town Board authorizes the Building Department to trade in the vehicles listed in the table below:

| CAR # | YEAR | VIN | MAKE/MODEL | MILEAGE | Delacy Ford |
|---|---|---|---|---|---|
| BD-101 | 2018 | 1FMCU9GD5JUC00537 | FORD ESCAPE SE AWD | 41800 | $13,625.00 |
| BD-116 | 2017 | 1FMCU9GD9HUD25874 | FORD ESCAPE SE AWD | 40400 | $12,825.00 |
| BD-126 | 2018 | 1FMCU9GD9HUD25874 | FORD ESCAPE SE AWD | 43300 | $13,625.00 |
| BD-205 | 2019 | 1FMCU9GD4KUB98362 | FORD ESCAPE SE AWD | 41600 | $15,825.00 |
| | | **TOTAL** | | | **$55,900.00** |

**BE IT FURTHER RESOLVED,** the Town Board authorizes the Supervisor to sign the contract with Delacy Ford.

**5/13/2024**
Consent

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

**3. Resolution 2024-429**

## Award Bid #2024015 Town Wide Dumpsters - CRS #4784 & 4785

**WHEREAS,** the Contract Compliance and Administration Department received bids on March 28, 2024 for Bid #2024015 for Town Wide Dumpster Service; and

**WHEREAS,** the bid process resulted in a response 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 the bid to Modern Disposal Services, Inc. and Waste Management LLC, as per the attached bid tabulation; and

**BE IT FURTHER RESOLVED,** the Town Board authorizes the Supervisor to sign the contracts with Modern Disposal Services, Inc. and Waste Management LLC; and

**BE IT FURTHER RESOLVED,** that approval is pending successful completion of the Contract Routing System due to the fact that the current contract expires May 31st and we want to ensure there is no disruption in service.

**5/13/2024**
Consent

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

**4. Resolution 2024-430**

## Agreement to Upgrade MUNIS Financial Management System - CRS #4804

**WHEREAS,** an upgrade to the MUNIS Financial Management System to a hosted solution and addition of a Content Manager Core module is being requested, which will allow for future enhancements to the overall system, including an integrated Time and Attendance module and Revenue Management module for more timely reporting of revenues from the various departments, as well as other potential enhancements; and

**WHEREAS,** the attached quote will be prorated for a 6-month period, and a credit will be received for approximately 50% (6 months) of the Town's current license agreement with MUNIS, bringing the total additional expenditure to $60,804.89;

**WHEREAS,** funds for this upgrade were appropriated for this purpose and are available in the 2024 Comptroller's budget; and

**NOW, THEREFORE, BE IT RESOLVED,** the Town Board authorizes the Supervisor to sign the Agreement with Tyler Technologies; and

**BE IT FURTHER RESOLVED,** that approval is subject to successful completion of the Contract Routing System in order to schedule implementation and testing of the project prior to the heaviest workload of the 2025 Budget.

**5/13/2024**
Consent

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

**5. Resolution 2024-431**

## Extension of Elevator Maintenance & Repair Service Contract through OMNIA - CRS #4704

**WHEREAS,** Kone, Inc. has agreed to extend the contract for Elevator Maintenance & Repair Service (OMNIA contract EV2516) (Original CRS #1478);

**NOW, THEREFORE, BE IT RESOLVED,** the Town Board approves a one-year extension of the contract with Kone, Inc. for the period July 1, 2024 through June 30, 2025; and

**BE IT FURTHER RESOLVED,** the Town Board authorizes the Supervisor to sign the contract extension with Kone, Inc.

**5/13/2024**
Consent

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

***H. COURT:***

***I. ECONOMIC DEVELOPMENT:***

***J. EMERGENCY SERVICES:***

***K. ENGINEERING SERVICES:***

**1. Resolution 2024-432**

## Erie County Water Authority Request Proposal for Installation of One (1) Fire Hydrant New Road (CR 186) – Phase 1; Between Dodge Rd. & Smith Rd.

We are hereby requesting authorization to have one (1) fire hydrant installed at the above location.

During the course of waterline construction, the Erie County Water Authority is required to install one additional fire hydrant at the above location to satisfy current design standards regarding hydrant spacing on a public potable water distribution system. Under the Lease Management Agreement, a Resolution from the Town Board is required for Erie County Water Authority to do this installation. The Town is to pay the annual maintenance fee of $160.80 per fire hydrant for a total of $160.80.

May we have your approval for the installation of one (1) additional fire hydrant?

**5/13/2024**
Consent

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

**2. Resolution 2024-433**

## Installation of Street Lighting Muir Woods/Aspen Heights/Audubon Extension TOA Job No: 2005.008B

We are hereby requesting authorization for the installation of nine (9) street lights at the above referenced location.

During the course of construction, the Town of Amherst requires the developer to install street lighting along new public roadways. Following installation, the proposed lighting will be accepted by the Town for ownership and maintenance. As such, National Grid requires a Town Board resolution authorizing the installation of the proposed street lighting.

May we have your approval for the installation of nine (9) street lights?

**5/13/2024**
Consent

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

**3. Resolution 2024-434**

## Installation of Street Lighting Miller's Crossing – Phase 1 and 2 TOA Job No: 2018.043

We are hereby requesting authorization for the installation of nine (9) street lights at the above referenced location.

During the course of construction, the Town of Amherst requires the developer to install street lighting along new public roadways. Following installation, the proposed lighting will be accepted by the Town for ownership and maintenance. As such, National Grid requires a Town Board resolution authorizing the installation of the proposed street lighting.

May we have your approval for the installation of nine (9) street lights?

| | |
|---|---|
| **RESULT:** | **WITHDRAWN** |

**4. Resolution 2024-435**

## Change Order #1 & Final –Ground Breaking Solutions LLC.– General Construction Contract Audubon Golf Course Driving Range Expansion TOA Job # 2000.085H CRS No. 4791

We are requesting the Town Board Consider approval of this resolution authorizing the Supervisor to sign the above referenced Change Order, which increases the overall contract by $5,000.00. This change will cover the costs associated with providing additional labor and materials to adjust and raise the existing grade to meet elevations for the designed concrete pad expansion.

Please note that the above request is contingent pending successful completion of the contract review procedure.

Funding for this contract shall be from project account KP2215.4972

Thank you for considering this request.

**5/13/2024**
Consent

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

**5. Resolution 2024-436**

## Award of Bid –J.R. Swanson Plumbing Co. Inc.– Mechanical Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the two (2) bids received (bid tabulation attached), we recommend award of this contract to J.R.Swanson Plumbing Co. Inc., 413 103rd Street, Niagara Falls, NY 14304, in the amount of $110,200.00. Funding for this contract shall be from account KP2303.4972.

Thank you for considering this request.

**5/13/2024**
Consent

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

**6. Resolution 2024-437**

## Award of Bid –M.K.S. Plumbing Corp.– Plumbing Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the five (5) bids received (bid tabulation attached), we recommend award of this contract to M.K.S. Plumbing Corp., 19 Ransier Drive, West Seneca, NY 14224 in the amount of $248,000.00. Funding for this contract shall be from account KP2303.4972.

Thank you for considering this request.

**5/13/2024**
Consent

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

**7. Resolution 2024-438**

## Award of Bid –Industrial Power and Lighting Corp.– Electrical Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the three (3) bids received (bid tabulation attached), we recommend award of this contract to Industrial Power and Lighting Corp., 60 Depot Street, Buffalo, NY 14206, in the amount of $443,700.00. Funding for this contract shall be from account KP2303.4972.

Thank you for considering this request.

**5/13/2024**
Consent

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

**8. Resolution 2024-439**

## Award of Bid –Allgaier Construction Corp.– General Construction Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the three (3) bids received (bid tabulation attached), we recommend award of this contract to Allgaier Construction Corp., 10080 County Road, Clarence Center, NY 14032, in the amount of $1,469,400.00 to include the Base Bid and Alternate Bid Item No.6. Funding for this contract shall be from account KP2303.4972.

**5/13/2024**
Consent

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

**9. Resolution 2024-440**

## Award of Bid –Louis Del Prince & Sons, Inc.– Site/Utility Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the six (6) of bids received (bid tabulation attached), we recommend award of this contract to Louis Del Prince & Sons, Inc., 580 Cayuga Road, Cheektowaga, NY 14225, in the amount of $6,490,400.00 to include the Base Bid and Alternate Bid Item Nos. 1,3,5, & 7.

Please note that Alternate No. 4, for two (2) new Pickleball courts is not being awarded at this time. A grant from Senator Ryan for these courts is being finalized and the Town Board will be approached at a later date to award that work to this contractor once that grant is fully approved.

Funding for this contract shall be as per the following:

| | |
|---|---|
| Account KP1826.4972 | $ 61,337.50 |
| Account KP2303.4972 | $6,429,062.50 |
| Total: | $6,490,400.00 |

Thank you for considering this request.

**5/13/2024**
Consent

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

---

***L. FINANCE:***

**1. Resolution 2024-441**

## Authorize Travel

**BE IT RESOLVED,** that travel is hereby authorized for attendance at the Negotiation for City Leaders program through the Bloomberg Harvard City Leadership Initiative, being held June 2-7 in Cambridge, Massachusetts. Program fees, travel, lodging and some meal costs are covered by Bloomberg Philanthropies. One representative from each of the following departments is authorized to attend: Finance, Human Resources, Law.

**5/13/2024**
Consent

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

---

***M. HIGHWAY***

**1. Resolution 2024-442**

## Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co CRS #4770

NOW THEREFORE BE IT RESOLVED, that the Town of Amherst is approved to piggyback on the County of Erie - Construction and Maintenance Materials Contract with Pavilion Drainage Supply Co for guide railing, median barrier and concrete barriers.

The Erie County and Pavilion Drainage Supply Co is Bid Reference #240045-004. Sections 568, 587 and E606 for guide railing, median barriers and concrete barriers. Contract term is 4/1/24 through 3/31/2025.

NOW THEREFORE BE FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this contract. This contract is contingent upon the successful completion of the Contract Routing System (CRS #4770) and the Town Attorney approval.

**5/13/2024**
Consent

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

**2. Resolution 2024-443**

## Authorize Supervisor to Sign Joe Johnson Equipment Inc Contract Extension - CRS #4794

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 1/2/2024 through 01/02/2025.

This contract is subject to the Contract Routing System (CRS #4794) extension and the approval of the Town Attorney.

**5/13/2024**
Consent

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

*N. HUMAN RESOURCES:*

**1. Resolution 2024-444**

## Interim Release-New York Liquidation Bureau

Please authorize the Supervisor to sign the Interim Release from New York Liquidation Bureau on behalf of the Reliance Insurance Company which reimburses the Town the sum of $21,961.25 from the Excess Workers' Compensation Policy.

**5/13/2024**
Consent

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

**2. Resolution 2024-445**

## Extended Sick Leave of Absence Without Pay/Highway Department

Please authorize an Extended Sick Leave of Absence Without Pay to an employee at the Highway Department. Effective May 14, 2024 through November 30, 2024 for Douglas Riley.

**5/13/2024**
Consent

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

**3. Resolution 2024-446**

## Project Manager - PT/Central Fire Alarm

Please appoint a Project Manager - PT to the Central Fire Alarm Office. Provisional, pending satisfactory completion of a Civil Service Examination. Effective May 14, 2024 at an hourly rate of $50.00, not to exceed $35,000 annually for James Koeppel.

**5/13/2024**
Consent

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

**4. Resolution 2024-447**

## Public Safety Dispatcher-PT/Police Department

Please appoint a Public Safety Dispatcher - PT to the Police Department. Effective May 14, 2024, Temporary, $19.50 ph, Step 1 for Jordan Cooper.

Contingent upon completing all pre-employment requirements.

**5/13/2024**
Consent

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

**5. Resolution 2024-448**

## Wastewater Treatment Plant Operator "A"/Engineering-Wastewater Treatment Plant

Please appoint a Wastewater Treatment Plant Operator to the Engineering Department-Wastewater Treatment Plant, Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII, effective May 14, 2024, at an hourly rate of $31.15, Grade V, Step 5 for Justin Russell.

This is a promotion for an employee who is currently serving as a Wastewater Treatment Plant Operator-Trainee and has acquired his 3A License.

**5/13/2024**
Consent

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

**6. Resolution 2024-449**

## General Crew Chief/Refuse Department

Please appoint a General Crew Chief to the Refuse Department. Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary of $75,629, Grade 18, Step E for Ryan Licata.

Contingent upon completing all pre-employment requirements.

This is a promotion for an employee currently serving as Sr. Refuse Control Officer.

**5/13/2024**
Consent

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

**7. Resolution 2024-450**

## Senior Refuse Control Officer/Refuse Department

Please appoint a Senior Refuse Control Officer to the Highway Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary $69,097, Grade 15, Step F for James Lawida.

Contingent upon completing all pre-employment requirements.

This is a promotion for an employee currently serving as Refuse Control Officer.

**5/13/2024**
Consent

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

**8. Resolution 2024-451**

## Police Captain/Police Department

Please appoint a Police Captain to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary of $117,997 for John Miller.

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

**5/13/2024**
Consent

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

**9. Resolution 2024-452**

## Police Lieutenant (4 Positions)/Police Department

Please appoint four (4) Police Lieutenants to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary of $107,214 for Patrick Luvender, John Michael Murphy, Matthew Dunford and Timothy Wilson.

These are promotions for employees currently serving as Police Officers.
Replacing an employee recently promoted and vacancies.

**5/13/2024**
Consent

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

***O. INFORMATION TECHNOLOGY:***

***P. PLANNING:***

**1. Resolution 2024-453**

## To Authorize the Supervisor to Sign an Agreement with the Harrison Studio for the Preparation of the 5 Year Consolidated Plan for the ACT Consortium CRS #4799

**WHEREAS**, the Towns of Amherst, Tonawanda, and Cheektowaga as participants in the (ACT) HOME Consortium are required by the federal Department of Housing and Urban Development (HUD) to prepare a Five-Year Consolidated Plan, and

**WHEREAS**, said plan will set forth the goals and activities to lead the Consortium through the next five years in the activities and expenditures of HOME Investment Partnerships Grant funds, and

**WHEREAS**, these goals and accomplishments will benefit those residents of the Town whose income is low to moderate by providing affordable, safe and secure housing and also offer the opportunity of affordable homeownership, and

**WHEREAS**, said Five Year Consolidated Plan will be consistent with the guidelines established by the federal Department of Housing and Urban Development; and

**WHEREAS**, the Town of Amherst will act as lead agency for coordinating the preparation of the Consolidated Plan by the consultants of The Harrison Studio; now therefore be it

**RESOLVED**, that the Town Board authorizes the Town Supervisor, subject to successful completion of the contract routing process, to enter into a contract for $43,000 with The Harrison Studio to coordinate the preparation of the Five Year (2024-29) Consolidated Plan on behalf of the ACT HOME Consortium.

**5/13/2024**
Consent

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

*Q. POLICE:*

**1. Resolution 2024-454**

## Master Services Agreement: Installation of LPR Flock Group, Inc. (CRS #4703)

**TOWN BOARD AGENDA ITEM : MAY 13, 2024**

**TO:** **Town Board**

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

**RE:** **Master Services Agreement: Installation of LPR Flock Group, Inc. (CRS #4703)**

Kindly adopt a resolution authorizing the Supervisor to adopt and execute an agreement between the Town of Amherst (Police) and Flock Group, Inc. (CRS #4703) with regard to the above-entitled matter. Approval of this agreement is contingent upon the successful completion of the Contract Routing Process.

Thank you.

SPC: msl
C: Tim Koller, Deputy Town Clerk (Agenda Item: May 13, 2024)

| | |
|---|---|
| **RESULT:** | **WITHDRAWN** |

**2. Resolution 2024-455**

## Memorandum of Understanding Use of Amherst Police Department Community Policing and Training Facility: United States Coast Guard-Buffalo (CRS #4783)

**TOWN BOARD AGENDA ITEM : MAY 13, 2024**

**TO:** **Town Board**

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

**RE: Memorandum of Understanding**
**Use of Amherst Police Department Community Policing and Training Facility: United States Coast Guard-Buffalo (CRS #4783)**

Kindly adopt a resolution authorizing the Supervisor to adopt and execute the attached Memorandum of Understanding between the Town of Amherst (Police) and United States Coast Guard-Buffalo, with regard to the above-entitled matter. This MOU has successfully completed the Contract Routing Process.

Thank you.

SPC: msl
Attachment
C: Tim Koller, Deputy Town Clerk (Agenda Item: May 13, 2024)

**5/13/2024**
Consent

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

---

***R. SENIOR SERVICES:***

**1. Resolution 2024-456**

## Erie County Congregate Dining Services CRS #4772

We respectfully request Town Board permission to authorize the Supervisor to sign the Contract Amendment to the agreement between the Town of Amherst (Senior Services) and Erie County Senior Services upon successful completion of the Routing Process.

**5/13/2024**
A motion to approve was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and approved via Roll Call vote 4-0-1 (abstain, Marinucci).

| | |
|---|---|
| **RESULT:** | **ROLL CALL VOTE (ADOPTED) [4 TO 0]** |
| **MOVER:** | Brian J. Kulpa, Supervisor |
| **SECONDER:** | Shawn Lavin, Deputy Supervisor |
| **AYES:** | Kulpa, Lavin, Berger, Szukala |
| **ABSTAIN:** | Marinucci |

***S. SEWER/PLANT 16:***

***T. YOUTH AND RECREATION:***

**1. Resolution 2024-457**

## Travel Authorization

Authorize Eric Guzdek and Linda Groff to attend the USA Hockey Annual Congress in Denver, CO from 6/4-6/9/24. All expenses will be paid by the NYS Amateur Hockey Association.

**5/13/2024**
Consent

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

**2. Resolution 2024-458**

## Sound System Repair - CRS #4736

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and AAA Sound & Video LLC for service, repair and replacement of sound equipment at the Northtown Center.

**5/13/2024**
Consent

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

**3. Resolution 2024-459**

## Grant Disbursement Agreement (DASNY) - CRS #4762

Authorize the Supervisor to sign a Grant Disbursement Agreement between the Town of Amherst and DASNY for the installation of a playground at the Audubon Library, pending successful completion of the contract routing process.

**5/13/2024**
Consent

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

**4. Resolution 2024-460**

### User Agreement (Car Show) - CRS #4767

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and the Rotary Club of Williamsville to use the parking lot of the Northtown Center at Amherst for a charity car show On August 11, 2024.

**5/13/2024**
Consent

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

## XIV. UNFINISHED BUSINESS

## XV. COMMUNICATIONS

**1. Communication 2024-34**

### Amherst Symphony Orchestra Request for Fee Waiver

Request from The Amherst Symphony Orchestra seeking permission to place signs and a waiver of sign permit fees.

Response from the Building Commissioner is attached.

**5/13/2024**
Consent

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

**2. Communication 2024-35**

## Boulevard Federal Credit Union Request for Fee Waiver

Request from the Boulevard Federal Credit Union seeking a waiver of the fire prevention permit fees for their 4th annual craft show/fundraiser for WNY Heroes on Saturday, August 17, 2024.

Response from the Building Commissioner is attached.

**5/13/2024**
Consent

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

**3. Communication 2024-36**

## AAUW Buffalo Branch Request for Fee Waiver

AAUW Buffalo Branch is requesting a waiver from a Sign Permit Fee for their annual Book Sale. The Building Commissioner response is also attached.

**5/13/2024**
Consent

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

**4. Communication 2024-37**

## Correspondence from Sean Hopkins, Esq.

Letter from Sean Hopkins, Esq. regarding the pending SA Zoning Report.

**5/13/2024**
Referred to Town Attorney & Planning

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

**5. Communication 2024-38**

## Correspondence from Sean Hopkins, Esq.

Letter from Sean Hopkins, Esq. regarding the formation of the Regency Commons Water Works Corp. in connection with the proposed residential subdivision at 166 Klein Road.

**5/13/2024**
Referred to Town Attorney, Planning and to request a resolution to be placed on next Town Board agenda

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

**6. Communication 2024-39**

## Correspondence from Joe Rubino

Letter from Joe Rubino regarding the proposed rezoning of 1789 Dodge Road.

**5/13/2024**
Referred to Town Attorney

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

**7. Communication 2024-40**

## Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs. Francina Spoth, Amherst Town Clerk Et Al.

**5/13/2024**
Referred to Town Attorney

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

**8. Communication 2024-41**

## Notice of Claim: Philip Colson Vs. Town of Amherst

**5/13/2024**
Referred to Town Attorney

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

**9. Communication 2024-42**

## Notice of Claim: State Farm Mutual Automobile Insurance Company A/S/O Mario Avarello Vs. Town of Amherst

**5/13/2024**
Referred to Town Attorney

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

# XVI. PUBLIC IMPROVEMENT PERMITS

**1. Resolution 2024-461**

## Public Improvement Permit No. 3113 Street Lights – Muir Woods – Audubon Extension 2005.008B/SP-2020-13

Attached please find an application for a Street Lighting Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $15,150.00.

We are sending two (2) checks to the Comptroller's Office, one for $150.00 to be retained as a Permit Fee and one in the amount of $15,000.00 which will be held in escrow to cover the inspection costs.

At this time, we are asking for your approval of the application for PIP No. 3113.

Thank you for considering this request.

**5/13/2024**
Consent

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

**2. Resolution 2024-462**

## Public Improvement Permit No. 3118 Street Lights – Miller's Crossing Subdivision Phase 1 & 2 2018.043/SUB-2018-02

Attached please find an application for a Street Lighting Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $8,650.00.

We are sending two (2) checks to the Comptroller's Office, one for $150.00 to be retained as a Permit Fee and one in the amount of $8,500.00 which will be held in escrow to cover the inspection costs.

At this time, we are asking for your approval of the application for PIP No. 3118.

Thank you for considering this request.

| | |
|---|---|
| **RESULT:** | **WITHDRAWN** |

# XVII. SUSPENSION OF RULES

Supervisor Kulpa moved to open Suspension of Rules to bring forth 1 unlisted item. The motion was seconded by Councilmember Berger and unanimously approved 5-0. Suspension of Rules was opened at 9:13 PM.

There being no further business requiring Suspension of Rules, Supervisor Kulpa moved to close, seconded by Councilmember Berger and unanimously approved 5-0. Suspension of Rules was closed at 9:13 PM.

**1. Resolution 2024-463**

## Rescinding Resolution 2024-266 Adopted March 25, 2024 Authorizing the Construction of a New Theater Located at Amherst Central Park

**Suspension to Town Board Agenda Item May 13, 2024**

**TO:** Amherst Town Board

**FROM:** Brian Kulpa, Supervisor

**DATE:** May 13, 2024

**RE:** **Rescinding Resolution 2024-266 Adopted March 25, 2024 Authorizing the Construction of a New Theater Located at Amherst Central Park**

RESOLUTION OF THE TOWN OF AMHERST, NEW YORK, ADOPTED MAY 13, 2024, RESCINDING A BOND RESOLUTION ADOPTED MARCH 25, 2024, AUTHORIZING THE CONSTRUCTION OF A NEW THEATER LOCATED IN AMHERST CENTRAL PARK, STATING THE ESTIMATED TOTAL MAXIMUM COST THEREOF IS $11,000,000, APPROPRIATING SAID AMOUNT FOR SUCH PURPOSE, AND AUTHORIZING THE ISSUANCE OF BONDS IN THE PRINCIPAL AMOUNT OF $11,000,000 TO FINANCE SAID APPROPRIATION

THE TOWN BOARD OF THE TOWN OF AMHERST, IN THE COUNTY OF ERIE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said Town Board) AS FOLLOWS:

Section 1. The bond resolution of the Town of Amherst, in the County of Erie, New York (herein called the "Town"), adopted by the Town Board of the Town on March 25, 2024, which authorized the issuance of $11,000,000 in obligations of the Town ($8,500,000 in serial bonds and $2,500,000 in bond anticipation notes issued in anticipation of payment from a tenant) for the construction of a new theater located in Amherst Central Park, is hereby rescinded. No bonds or bond anticipation notes have been heretofore issued pursuant thereto. The amount of borrowing authorization hereby rescinded is $11,000,000.

**5/13/2024**
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, Lavin, Berger, 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 9:14 PM.

The following speakers addressed the Town Board:
Tom Weisbeck, 48 Drawbridge Ct - streetlights
Bill Blake, 147 Fairlawn Rd - streetlights & public service commission
Chris Drongosky, Youngs Rd - Royal Parkway project
Jina Gentry, 65 Bissell Dr - MusicalFare & spending
Deborah Kilbourn, 35 Arlington Rd - Royal Parkway project
Dan Rider, 38 Garden Pkwy - Royal Parkway project
Don Smith, 201 N Long St - listening to residents
Shelly Schratz, 1952 Kensington Ave - why aren't Town Department Heads at the meetings

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 9:35 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 May 13, 2024 was adjourned at 9:38 PM.

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 29008 **RESOLUTION 2024-414** **ROLL CALL VOTE (ADOPTED)**

# Brantwood Road & Kings Highway All-Way Stop

A public hearing to install additional stop signs at the intersection of Brantwood Road and Kings Highway:

> "The tee intersection of Brantwood Road and Kings Highway is hereby designated as an all-way stop intersection with stop signs installed on all approaches."

**5/13/2024**
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and unanimously approved 5-0. The public hearing was opened at 7:01 PM.

Chris Schregel, Traffic-Safety Coordinator, presented.

The following residents spoke:
Jim Mansour, 246 Brantwood Rd
Bob Drdul, 92 Chateau Ter
John Trabert, 234 Mt Vernon Rd
Ann Farmelo, 259 Brantwood Rd
David Howard, 194 Roycroft Blvd
Gary Dargush, 250 Brantwood Rd
Tom Weisbeck, 48 Drawbridge Ct
Chris Drongosky, Youngs Rd

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Lavin and unanimously approved 5-0. The public hearing was closed at 7:32 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and was approved via Roll Call vote 4-1 (nay, Berger).

| | |
|---|---|
| **RESULT:** | **ROLL CALL VOTE (ADOPTED) [4 TO 1]** |
| **MOVER:** | Brian J. Kulpa, Supervisor |
| **SECONDER:** | Shawn Lavin, Deputy Supervisor |
| **AYES:** | Kulpa, Lavin, Szukala, Marinucci |
| **NAYS:** | Berger |

Calvin & Mindy Warren
258 Brantwood Road
Amherst, NY 14226

May 6, 2024

Amherst Town Board
Main Street
Williamsville, NY 14221

Dear Amherst Town Board,

We have received a letter regarding the public hearing that you will be holding on May 13, 2024 to install additional stop signs at the intersection of Brantwood Road and Kings Highway. We are unable to attend the meeting but wanted to voice our firm opposition to the installation of these proposed additional stop signs.

Through speaking with a member of the Amherst Traffic Safety Department we have learned that the volume of traffic traveling through the Kings Highway and Brantwood Road intersection does not meet or exceed the set forth minimum volume threshold, which is used in determining whether or not installation of additional stop signs such as these is necessary. Given this information, we see no reason why the Amherst Town Board should depart from the established rules, degrade the aesthetic beauty of multiple household's front yards by installing stop signs in them, and increase the amount of road noise experienced by the 10 or more households in the vicinity (from vehicles braking & accelerating), all just to satisfy the request of a single or few households pushing this proposal.

It has come to our attention that the main reason for this proposal is to slow down vehicles traveling on Brantwood Road between its intersection with Kings Highway and Westmoreland Road, thereby making it safer for children to walk and play. While this might sound good, please consider the negative consequences I previously stated, among others, as well as the fact that we have a 30-mph speed limit on Brantwood Road, the volume of traffic is low, and there is already a four-way stop at the intersection of Brantwood Road and Westmoreland Road, not far from this intersection. Furthermore, just about every house on the street has a fenced in back yard and there are tons of acres of safe open public space a few hundred feet away for children to play in.

In summary, the installation of these additional stops signs simply does not make sense and we ask that you deny this proposal. Decades have passed without these proposed stop signs and it hasn't resulted in anyone's detriment.

Sincerely,

Calvin & Mindy Warren

MAY 8 2024 AM 10:2

Attachment: warren response (RES-2024-414 : Brantwood Road & Kings Highway All-Way Stop)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 29009 **RESOLUTION 2024-415** **ADOPTED**

# Intersection of Crosby Boulevard and Maynard Drive - Restrict Parking

A public hearing to restrict parking at the corner of Crosby Blvd. and Maynard Drive:

> "Parking is hereby restricted along the southern-most curve of the Crosby Blvd. and Maynard Drive intersection starting at a point 30 feet from the point of curvature on the west side of Crosby Blvd. to a point that is 165 feet from the point of beginning and approximately 50 feet beyond the curve's point of tangency on the west side of Maynard Drive."

**5/13/2024**
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and unanimously approved 5-0. The public hearing was opened at 7:33 PM.

Chris Schregel, Traffic-Safety Coordinator, presented.

The following residents spoke:
Bruce Brown, 159 Crosby Blvd
Jennifer Yap, 175 Crosby Blvd
Shelly Schratz, 1952 Kensington Ave
Bob Drdul, 92 Chateau Ter

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Berger and unanimously approved 5-0. The public hearing was closed at 7:48 PM.

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, Lavin, Berger, Szukala, Marinucci |

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Councilmembers
Initiated by: **Michael Szukala**
Co-Sponsored by:

DOC ID: 28987 **RESOLUTION 2024-416** **ADOPTED**

# Appointment to FOIL Board

**BE IT RESOLVED** that the Town Board appoint Ben Ansell to the FOIL Board for a term ending December 31, 2028.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

None

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Michael Szukala, Councilmember |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Councilmembers
Initiated by: **Angela Marinucci**
Co-Sponsored by:

DOC ID: 28966 **RESOLUTION 2024-417** **ADOPTED**

# Appointment to Historic Preservation Commission

**WHEREAS,** the Town of Amherst created a Historic Preservation Commission to address and tend to matters related to preservation of the historic, architectural, and cultural landmarks, sites and districts within the Town of Amherst while working with the Building Commissioner, Planning Board and Zoning Board of Appeals; and

**WHEREAS,** appointments to this committee are voted on by the Amherst Town Board after resumes are reviewed by the committee chairperson and Commission Liaison to the Amherst Town Board; and

**WHEREAS**, Hallie Wright has expressed interest in serving on the HPC;

**NOW, THEREFORE, BE IT RESOLVED** that the Amherst Town Board appoints Hallie Wright to serve as Historian to the Amherst Historic Preservation Commission, for a term ending December 31, 2027.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

None.

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Angela Marinucci, Councilmember |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Councilmembers
Initiated by: **Angela Marinucci**
Co-Sponsored by:

DOC ID: 28967 **RESOLUTION 2024-418** **ADOPTED**

# Historic Preservation Grant Application

**WHEREAS,** the Town of Amherst became a Certified Local Government (CLG) for Historic Preservation on October 3, 1994; and

**WHEREAS,** the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) offers grants to CLG's for various Historic Preservation projects; and

**WHEREAS,** the specific purpose of the grant request is to secure funding for community and Commission training, educational outreach, and cultural resource survey work.

**NOW, THEREFORE, BE IT RESOLVED** that the Amherst Town Board authorizes the Amherst Historic Preservation Commission to prepare a grant application to the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) CLG Program no later than May 31, 2024, to request funding for the purposes as described above; and

**BE IT FURTHER RESOLVED** that the Amherst Town Supervisor is authorized to submit the FY2025 Grant application for an amount not to exceed ($30,000) to the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) and to execute a Project agreement with the State if the grant is awarded; and

**BE IT FURTHER RESOLVED** that if the grant application is approved, the recommended match of up to 50% of the project cost, not to exceed fifteen thousand dollars ($15000.00) will be provided through Town time, donated services and/or volunteer labor.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Total Town match not to exceed $15000.00 (50% of the grant amount) to consist of Town Staff time, donated services and/or volunteer labor.

| | |
|---|---|
| **RESULT:** | **ADOPTED [UNANIMOUS]** |
| **MOVER:** | Angela Marinucci, Councilmember |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 28993 **RESOLUTION 2024-419** **ROLL CALL VOTE (ADOPTED)**

# Royal Park Project Exemption

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **Resolution Declaring the Town of Amherst Royal Park Project Exempt From the Town of Amherst's Zoning Ordinance Under the County of Monroe Balancing of Interests Test**

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

**WHEREAS**, the Town of Amherst ("Town") is the owner of a parcel of real property constituting approximately 9.48 acres of land known as Royal Park that has been designated for municipal purposes ("subject premises"); and

**WHEREAS**, the Town is a municipal corporation duly organized and existing pursuant to the laws of the State of New York, and having those powers set forth in the New York Town Law and New York General Municipal Law with regard to providing recreational opportunities for residents of the Town of Amherst in promotion of the general health, welfare and safety of its citizenry; and

**WHEREAS**, the subject premises are located entirely within the incorporated limits of the Town of Amherst; and

**WHEREAS**, the Town of Amherst Town Board is the governing body of the Town of Amherst charged with executing and providing for the general health, welfare and safety of Town residents; and

**WHEREAS**, the Town of Amherst Planning Board is an agency of the Town of Amherst, whose members are appointed by the Town Board, and which is responsible for overseeing land use regulation as specified in Article 16 of the New York Town Law; and

**WHEREAS**, the Town of Amherst Town intends to build an Athletic Complex consisting of a multi-purpose field, tennis courts, pickleball courts, and related lighting, spectator area, locker rooms, shower facilities and restrooms, ticket/concession area, as well as a picnic pavilion, relocated playground, splash pad, rehabilitated basketball courts, loop trail and parking lots to be operated by the Town, all located at Royal Park ("Town of Amherst Royal Park Project"); and

**WHEREAS**, in connection with the Town of Amherst Royal Park Project, the Town of Amherst Town Board declared itself lead agency under SEQR, performed an analysis of the potential environmental impacts under SEQR, and duly issued a negative declaration on February 13, 2023, in connection with Bond Approval of the plan to develop the Town of Amherst Royal Park Project; and

**WHEREAS**, pursuant to the decision of the New York Court of Appeals in the *Matter of County of Monroe*, 72 N.Y.2d 338 (1988), a "balancing of public interests" is required to determine whether and to what extent the Amherst Town Board is exempt from the zoning and land use regulatory approval from the Town of Amherst Planning Board; and

**WHEREAS**, the *Matter of County of Monroe* balancing test identifies nine (9) separate factors to be considered to determine whether a specific project qualifies for immunity from land use regulations; and

**WHEREAS**, the Town has considered the balancing of interests test set forth in the *Matter of County of Monroe* case discussed in the attached Findings; and

**WHEREAS**, for the reasons set forth in the attached Findings, the Town finds that the Town of Amherst Royal Park Project, which is being developed for the community benefit, is exempt from the Town Zoning Ordinance.

**NOW THEREFORE BE IT RESOLVED**, in connection with the plan to develop the Town of Amherst Royal Park Project the Town Board reaffirms its determination of non-significance dated February 13, 2023; and

**BE IT FURTHER RESOLVED**, that the Town Board has analyzed, considered and discussed the factors as set forth in the *Matter of County of Monroe* in relation to the Town of Amherst Royal Park Project to take place on the subject premises and the Town of Amherst's land use regulations, and hereby adopts the Findings, a copy of which is attached hereto and made a part hereof, and hereby declares the Town-sponsored Town of Amherst Royal Park Project is exempt from the Zoning Ordinance of the Town of Amherst.

MAP:nmb
Attachment
c: Tim Koller, Deputy Town Clerk
(*w/attachment*, **Agenda Item - May 13, 2024**)

**5/13/2024**
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved via Roll Call vote 5-0.

**FINANCIAL IMPACT:**

None for the purposes of this resolution.

| | |
|---|---|
| **RESULT:** | **ROLL CALL VOTE (ADOPTED) [UNANIMOUS]** |
| **MOVER:** | Brian J. Kulpa, Supervisor |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, Szukala, Marinucci |

# FINDINGS

The Town of Amherst has determined that the Town of Amherst Royal Park Project ("Project") is exempt from municipal land use regulations subject to the balancing of public interest test set forth in *Matter of County of Monroe v City of Rochester*, 72 NY2d 338 (1988). In the seminal case, *County of Monroe*, the Court of Appeals established a nine (9) factor balancing test for determining whether a proposed municipal activity is exempt from application of local land use regulations. The Court identified nine (9) factors to be weighed in making a determination. Those nine (9) factors include:

> "the nature and scope of the instrumentality seeking immunity, the kind of function or land use involved, the extent of the public interest to be served thereby, the effect local land use regulation would have upon the enterprise concerned[,] and the impact upon legitimate local interests . . . the applicant's legislative grant of authority, alternative locations for the facility in less restrictive zoning areas, and alternative methods of providing the needed improvement . . . [and] intergovernmental participation in the project development process and an opportunity to be heard." 72 NY2d at 343 (internal citations and quotations omitted).

With respect to the factors of the *County of Monroe* balancing test, the Project is exempt from the Town Zoning Ordinance for the following reasons:

- The nature and scope of the instrumentality seeking immunity. The Town of Amherst Town Board is the body primarily responsible for the legislative and executive functions of the Town of Amherst. The Town of Amherst Planning Board is an agency of the Town of Amherst, whose members are appointed by the Amherst Town Board. The two bodies are not of equivalent authority and status.

- The kind of function or land use involved. The Town proposes to construct and use the subject premises for a public Athletic Complex consisting of a multi-purpose field, tennis courts, pickleball courts, and related lighting, spectator area, locker rooms, shower facilities and restrooms, ticket and concession areas, as well as a picnic pavilion, relocated playgrounds, splash pad, rehabilitated basketball courts, loop trail and parking lots. This use is expressly permitted pursuant to the New York Town Law and New York General Municipal Law and the Town Zoning Ordinance. It is well settled law in New York State that the classification of a particular use as a permitted use, or even as a special use, in a zoning district, is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood. *Twin County Recycling Corp. v Yevoli*, 90 NY2d 1000, 1001 (1997). Moreover, the Park will not generate significant negative impacts, such as odors, traffic, air pollution, or light pollution. The project will implement state of the art LED field and tennis court lighting which will provide controlled lighting, not "floodlights". Such controllable LED sports lighting is capable of creating a brilliantly focused field for players and spectators, and a welcomed curtain of darkness for neighbors, with less energy consumption and lower operating costs. The construction of the Project on Town-owned land will not result in any change in the Town's function or the associated land use.

Attachment: Resolution re zoning immunity - Royal Park 2024 FINAL - Findings 5.8.24 (RES-2024-419 : Royal Park Project Exemption)

- The extent of the public interest to be served. The Project will serve a vital, public purpose by providing safe, reliable recreational space for all Town residents.

- The effect local land use regulation would have upon the enterprise concerned. The application of local land use controls to the Project may prevent or significantly delay construction, increase construction costs and/or cause the project not to be completed thereby negatively impact the community. The potential negative impacts to the community include increased time and expense to complete the Project as well as deprivation of access to safe and reliable recreational space.

- The impact of legitimate local interests. The Project will not substantially impact legitimate Town interests because it is located on Town-owned land in the Town. The Project will create minimal noise or vibration due to the proposed use of a sound system for the playfield that will be designed to provide volume and clarity as required for athletes and spectators at the field. However, the placement, orientation, and trajectory of speakers is intended to mitigate sound migration where it is not desired. The project will not increase population density, will not create any demand on municipal facilities, will not create any environmental problems, and is generally screened from adjacent land uses through a combination of landscaping to supplement the existing resident's trees and privacy fencing planned along parking and playfield limits.

- The applicant's legislative grant of authority. The Town is a duly organized municipal subdivision and the Town Board maintains legislative authority to provide for the general health, welfare and safety of Town residents.

- Alternative locations for the facility in less restrictive zoning areas. There presently exist Town Park facilities at the subject premises and same are permitted pursuant to the Town of Amherst Zoning Ordinance. The subject premises are the most feasible location within the Town of Amherst and represent the most reasonable and efficient use of Town owned property in furtherance of the objectives of increased recreational opportunities for residents within the Town and partnership with nearby University. There are no feasible alternate locations in this neighborhood, which meet the recreational objectives of the Town of Amherst Royal Park Project.

- Alternative methods of providing the needed improvement. There are no feasible alternate methods of providing the improvement, which meet the recreational objectives of the Town of Amherst Royal Park Project in furtherance of the goals of increased recreational opportunities for residents within the Town and partnership with nearby University.

- Intergovernmental participation in the project development process and an opportunity to be heard. The financing of the Project was determined by the Town of Amherst Town Board, as lead agency, to be an Unlisted action under SEQRA. The Town's meetings where it discussed and deliberated on the Project have been open to the public. Any required approvals of regulatory agencies will be obtained.

Attachment: Resolution re zoning immunity - Royal Park 2024 FINAL - Findings 5.8.24 (RES-2024-419 : Royal Park Project Exemption)

In conclusion, the *County of Monroe* balancing test demonstrates the Project is critical to provide enhanced recreational space to Town Residents. Based on such a balancing, the Project is exempt from local land use regulations.

Attachment: Resolution re zoning immunity - Royal Park 2024 FINAL - Findings 5.8.24 (RES-2024-419 : Royal Park Project Exemption)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Attorney
Initiated by: **Samuel A Alba**
Co-Sponsored by:

DOC ID: 28984 **RESOLUTION 2024-420** **ADOPTED**

# First Amendment to Lease Agreement with Northtown Automotive Companies (Original CRS #4154 - CRS #4802 (Amendment))

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **First Amendment To Lease Agreement With Northtown Automotive Companies (Original CRS# 4154/Amendment CRS # 4788)**

Kindly adopt a resolution authorizing the Supervisor to execute the attached First Amendment to the original Lease Agreement with Northtown Automotive Companies pending successful completion of the CRS.

Thank you for your consideration.

NMB:hs
Attachment
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item: May 13, 2024**)

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Revenue - Amended to increase rent from $3,000/month to $4,000/month - A7120.02410

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

# LEASE AGREEMENT

THIS FIRST LEASE AMENDMENT (the "Agreement" or "Lease Agreement") made as of this 1st day of May, 2024, by and between **NORTHTOWN AUTOMOTIVE COMPANIES, INC.** (the "TENANT") with an address of 1135 Millersport Highway, Amherst, New York 14226 and **TOWN OF AMHERST**, (the "LANDLORD") with an address of 5583 Main Street, Williamsville, New York 14221.

**W I T N E S S E T H :**

In consideration of the premises, representation, warranties, and mutual covenants set forth herein, the Landlord and the Tenant agree as follows:

**WHEREAS,** on or about May 1, 2023, the TENANT and the LANDLORD entered into a one-year lease agreement wherein the parties agreed to terms and conditions related to the use, operation and responsibilities of the parties allowing TENANT to store vehicles in certain designated areas on the premises pursuant to the written lease ("Lease Agreement").

**WHEREAS,** the LANDLORD and the TENANT desire to amend the Lease Agreement to provide for a month-to-month tenancy at an increased rent amount and to define the vehicle storage area restrictions.

**NOW AND THEREFORE**, the TENANT and the LANDLORD desire to enter this First amendment upon the following terms and conditions.

1. Commencement Date. May 1, 2024.

2. Modification. Except as hereby expressly modified and supplemented**,** all terms of the May 1, 2023 lease between the LANDLORD and the TENANT remain in full force and effect, and this First Amendment of all of its terms, provisions and conditions shall be deemed to be part of the Lease Agreement.

3. Effect. This First Amendment shall be deemed effective upon its execution on behalf of the parties.

4. Execution. This First Amendment may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

5. Term of Lease. The lease will continue on a month-to-month basis terminable on 30 days written notice from the LANDLORD to the TENANT.

6. Payment**.** The monthly rental payment shall increase from $3,000.00 per month to $4,000.00 per month commencing retroactively on May 1, 2024.

7. Storage of Vehicles. Vehicles may only be stored as defined in **Exhibit "A"** of the Lease Agreement with the exception that the TENANT may now store vehicles on the tennis court

Attachment: NorthtownAutoLeaseAmend.5.13.24 (RES-2024-420 : First Amendment to Lease Agreement with Northtown Automotive

area. Permission to store vehicles on the tennis court area is in the sole discretion of the LANDLORD and can be revoked at any time. If revoked, the TENANT must remove the vehicles parked on the tennis court within 3 business days.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be duly executed by their duly authorized officers and/or agents as of the day and year first set forth above.

TENANT: NORTHTOWN AUTOMOTIVE COMPANIES

By: _____
Name: Richard Pieri
Title: Director of Operations

LANDLORD: TOWN OF AMHERST

By: _____
Name: Brian Kulpa
Title: Town Supervisor

Attachment: NorthtownAutoLeaseAmend.5.13.24 (RES-2024-420 : First Amendment to Lease Agreement with Northtown Automotive

# EXHIBIT OF PARKING LOTS IN USE
# *TENANT ACKNOWLEDGES VEHICLES ARE NO LONGER PERMITTED ON THE TENNIS COURT IDENTIFIED IN BLUE*



Attachment: NorthtownAutoLeaseAmend.5.13.24 (RES-2024-420 : First Amendment to Lease Agreement with Northtown Automotive

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 28981 **RESOLUTION 2024-421** **ADOPTED**

# USDA Property Access Request (Invasive Species) (CRS #4788)

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **USDA Property Access Request (CRS #4788)**
**Box Tree Moth Response**
**New York European Cherry Fruit Fly**
**Property Located At : All Town Properties**

Kindly adopt a resolution authorizing the Supervisor to execute the attached Property Access Request pending successful completion of the CRS.

The USDA is requesting that it be able to access Town properties for the purposes of treating the areas for the above invasive species.

Thank you for your consideration.

NMB:hs
Attachments
c: Tim Koller, Deputy Town Clerk *(w/attachment*, **Agenda Item: May 13, 2024**)

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

None for the purposes of this resolution.

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

USDA

United States Department of Agriculture

**Year: 2024**

Grid Number: _____

Box Tree Moth and
European Cherry Fruit Fly
Response

**Property Access Request**

United States Department of Agriculture is requesting permission to trap for an invasive pest, the Box Tree Moth (BTM) and/or the European Cherry Fruit Fly (ECFF) on your property.

- ☐ USDA has my permission to place a BTM/ECFF trap or traps on my property. I understand that the trap(s) will be serviced at least every 3 weeks and will be removed on or before November 30th.
- ☐ Trap service notification is not necessary.
- ☐ I would like to be notified each time trap service is performed.
- ☐ USDA does not have permission to place a BTM/ECFF trap or traps on my property.

Property Location(s): ALL PROPERTIES.

Authority Granted By: BRIAN J. KULPA TOWN SUPERVISOR
*Printed Name*

*Signature* *Date*

Phone Number: 716.631.7032

United States Department of Agriculture
Animal and Plant Health Inspection Service
Plant Protection and
Quarantine
801 Richfield St. Building A
Lockport, NY 14094
1-800-249-2363
www.aphis.usda.gov

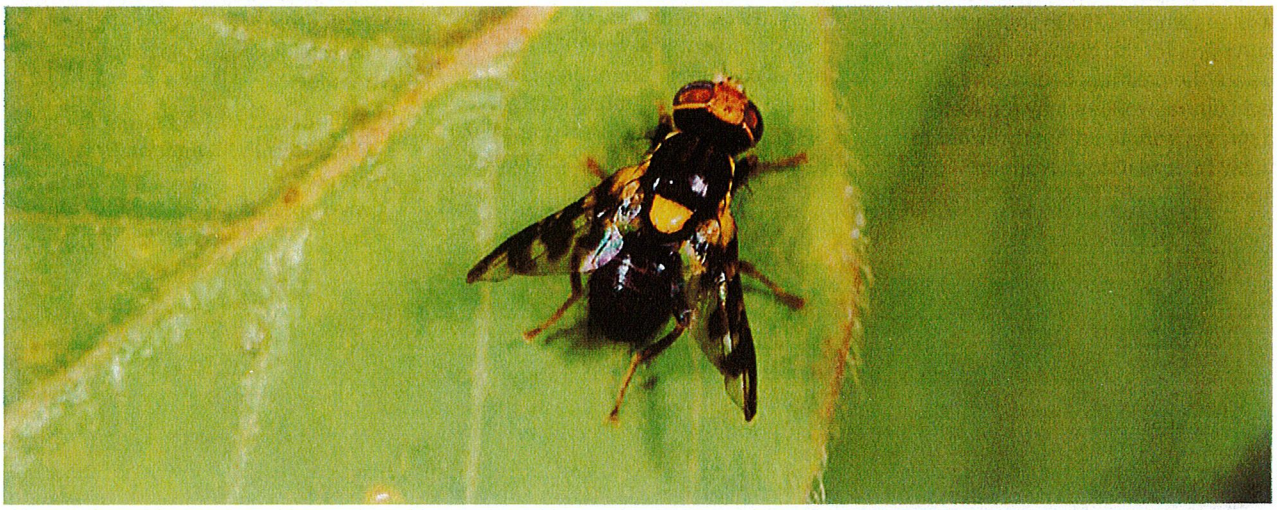
Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

USDA
United States Department of Agriculture

# Pest Alert

Animal and Plant Health Inspection Service
Plant Protection and Quarantine

## European Cherry Fruit Fly *(Rhagoletis cerasi)*



Adult European cherry fruit fly *(Biopix, S.D. Lund, www.biopix.com)*

European cherry fruit fly is the most serious pest of cherries in Europe. The fly attacks ripening fruit, causing it to rot and fall off the tree. In heavily infested areas, the fly can destroy up to 100 percent of cherry and other host plants if left uncontrolled.

### Distribution

European cherry fruit fly is found throughout Europe and in parts of West and Central Asia. In 2016, Canada confirmed this pest on wild honeysuckle at several sites in Ontario. In 2017, the United States found European cherry fruit fly on traps hung in wild honeysuckle plants and sweet cherry trees along the Niagara River in New York. This was the first U.S. detection of European cherry fruit fly.

### Damage

European cherry fruit fly attacks only the fruit of its host plants. Larvae-infested fruit may have dark soft spots or appear wilted or shriveled. As mature larvae emerge from the fruit, they may leave behind visible exit holes.

If European cherry fruit fly becomes established in the United States, it could affect U.S. access to foreign cherry markets and cause lower prices and economic losses for U.S. cherry growers.

### Host Range and At-Risk Areas of the United States

European cherry fruit fly prefers sweet cherries and honeysuckle, but may also attack tart cherries. If this pest establishes itself in New York and spreads to other parts of the country, it could threaten commercial cherry production along the Pacific Coast (California, Oregon, and Washington), in the Northeast (Maryland, New York, and Pennsylvania), and in several Western and Central States (Colorado, Michigan, New Mexico, and Utah).

### Appearance and Life Cycle

Adult flies range in length from 1/8 to 3/16 of an inch (3.5–4.0 millimeters). Both males and females are mostly black with yellow to orange heads. A large yellow dot is visible on their backs. The wings are transparent with dark bands.

Adults typically emerge from May to July and have an average lifespan of 2 to 4 weeks. Females usually lay one egg beneath the skin of each piece of fruit. Once they hatch from the eggs, the larvae develop inside the fruit and feed for up to 6 weeks. As the larvae develop, they damage the fruit pulp. Mature larvae exit the fruit through emergence holes, drop to the ground, and burrow into the soil. Once in the soil, they pupate within a few days and overwinter in the soil underneath or near the host plant.

### Preventing Fruit Fly Spread

When U.S. Department of Agriculture (USDA) or State agriculture officials find an infestation of invasive fruit flies that could damage crops in this country, State regulatory officials first establish an intrastate quarantine to prevent the pest's spread within that State. USDA then establishes a parallel interstate quarantine to keep the

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

pest from spreading to other States. Together, these quarantines allow State and Federal officials to control and suppress the outbreak locally and regulate the movement of host fruits, nursery plants, and other items that could harbor the pest. These efforts help protect growers in other vulnerable parts of the country.

## What You Can Do

Please cooperate with agricultural workers who may be in your area surveying for the pest. In areas where the pest has been found, agricultural workers may request approval from the property owner to apply treatment to prevent the spread.

When traveling, declare all food, live animals, and plant or animal products to a U.S. Customs and Border Protection officer or agriculture specialist at the first port of entry. If your items are generally allowed, the inspector will check them to make sure they are free from pests and disease.

If you travel to Canada, be advised that you may not bring cherries from Ontario into the United States. Cherries from other Canadian provinces are allowed if they are accompanied by a receipt or other document that confirms the fruit's origin. For more information, view the Federal Order: www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/2017/DA-2017-15.pdf.

## Learn More

To learn more, visit USDA's exotic fruit fly Web site (www.aphis.usda.gov/plant-health/ff) or contact:

- **The New York State Integrated Pest Management Program**
  nysipm.cornell.edu/agriculture/fruits
- **Your local Extension office**
  www.nifa.usda.gov/Extension
- **Your State department of agriculture**
  www.nationalplantboard.org/member
- **The nearest USDA Animal and Plant Health Inspection Service office**
  www.aphis.usda.gov/planthealth/sphd

PPQ-18-001
Issued November 2017

USDA is an equal opportunity provider, employer, and lender.

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

USDA Animal and Plant Health Inspection Service
U.S. DEPARTMENT OF AGRICULTURE

# Questions and Answers

## 2024 European Cherry Fruit Fly Survey in New York

**What is the European cherry fruit fly (ECFF), and why is it a threat?**

ECFF (*Rhagoletis cerasi L.*) is a serious pest of cherries. The fly damages ripening fruit, causing it to rot and fall off the tree. In heavily infested areas, the fly can destroy all ripening cherries if left uncontrolled. The pest can spread to new areas through the transport of infested fresh cherries, soil, or fruit from host plants. The U.S. Department of Agriculture (USDA) first found European cherry fruit fly on traps hung along the Niagara River in New York's Niagara County in 2017.

**What is the ECFF survey?**

USDA's Animal and Plant Health Inspection Service (APHIS) and New York's State Department of Agriculture and Markets (NYS AGM) will hang approximately 2,000 traps across Western and Central New York, which is under quarantine for ECFF. APHIS will also hang traps outside the ECFF quarantine in areas that are at higher risk for the pest's spread.



**What do the traps look like?**

The yellow panel trap is a rectangular cardboard trap coated on both sides with a mixture of a nontoxic glue and a food bait. The traps are about 9 inches long and hang vertically in trees.

**Do the traps really catch the fruit flies?**

The trap helps detect new infestations and monitors the insect's spread. It is not meant to catch fruit flies to reduce populations.

**How do the traps work?**

Adult fruit flies are attracted to the ammonium acetate food bait that's on the trap. If the flies land on the trap, they will get stuck in the nontoxic glue. APHIS and NYS AGM service the traps at least every 2 weeks to replace the bait and collect insects.

**If a trap is in my area, does that mean ECFF is there?**

No. If you see a trap in your community, it does not mean ECFF is present. It just means we are looking for ECFF in your area. The goal of the survey is to determine where the insect is and monitor its spread.

**What were the results of the 2023 survey in New York?**

The 2023 survey found 271 ECFF in 40 trap locations. These results helped guide decisions on trap placement for the 2024 survey.

**Where will traps be set this year?**

For the 2024 season, surveyors will place traps along the edge of the quarantined areas in Western and Central New York. APHIS will also hang traps in selected areas in Michigan and Pennsylvania.

**How can I help?**

Please allow APHIS and NYS AGM surveyors access to your property to place and check traps. Residents with questions can contact the ECFF program office by calling 1-800-249-2363 or emailing ppq.ecff@usda.gov. Learn more at www.aphis.usda.gov/hungrypests/ecff.

USDA is an equal opportunity provider, employer, and lender.
January 2024



Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

USDA Animal and Plant Health Inspection Service
U.S. DEPARTMENT OF AGRICULTURE

# Pest Alert

Plant Protection and Quarantine

## Box Tree Moth *(Cydalima perspectalis)*

The box tree moth is an invasive pest that primarily feeds and completes its life cycle on boxwood species *(Buxus* spp*)*. In its native range, it also feeds on burning bush *(Euonymus alatus)*, Japanese spindletree *(E. japonicus)*, purple holly (*Ilex chinensis*), and orange jessamine *(Murraya paniculata)* once all nearby boxwoods are completely defoliated.

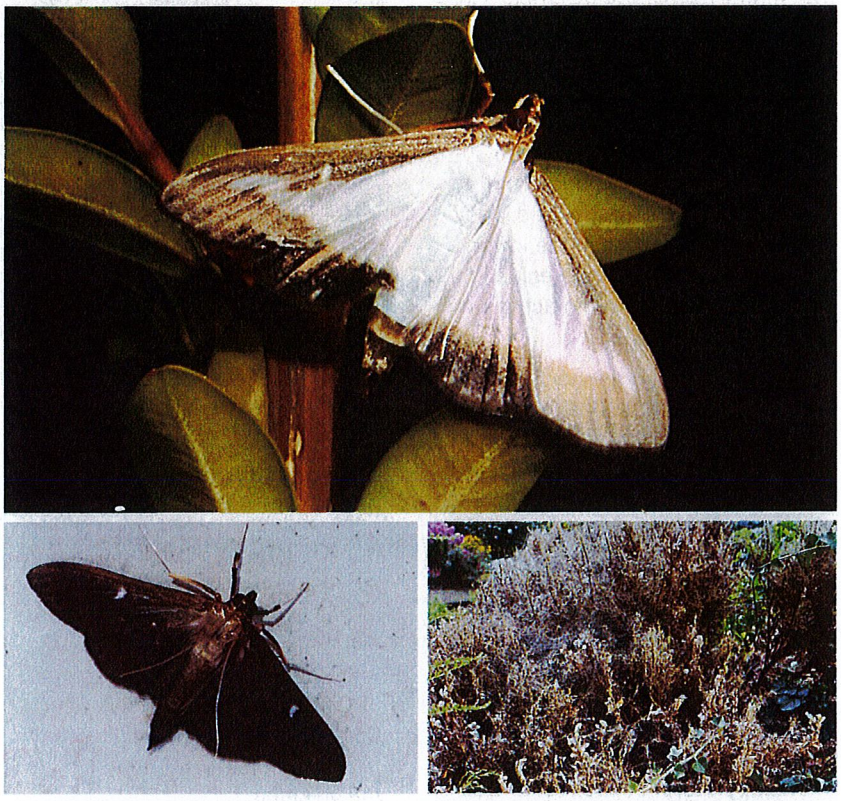
### Distribution and Spread

The box tree moth is native to temperate and subtropical regions in Asia. It was first reported in Europe in 2007, after which it spread rapidly across European countries and into Western Asia and Northern Africa. In 2018, it was documented in Canada, and in 2021, the U.S. Department of Agriculture (USDA) confirmed the presence of the moth in Niagara County, NY, near the Canadian border. The rate of spread for the box tree moth has varied since its introduction in Europe, with some cases peaking at 96 miles per year. Long distance movement of the box tree moth across Europe occurred primarily through the movement of infested boxwood plantings.

Box tree moths are highly mobile and are good fliers. Natural spread of this moth in Europe is about 3 to 6 miles per year. One analysis from Europe concluded that natural dispersal from continental Europe to the United Kingdom was possible, suggesting sustained adult flights of over 20 miles.

### Damage

In 2014, boxwood made up 15 percent of broadleaf evergreen sales in the United States, and the estimated value was $126 million (USDA-NASS, 2015). Boxwoods are typically planted as ornamentals and used for edging, as hedges, and/or clipped into different shapes to make topiaries. The box tree moth can cause heavy defoliation of boxwood plants if populations are left unchecked. Defoliation of existing and new growth can kill the plant. If no foliage is available, larvae have been observed feeding on the bark, which can cause branches or the entire plant to die.



Adult moths (top and bottom left), damage (bottom)

### Description

Adult box tree moths generally have white bodies with a brown head and abdomen. Their wings are white and slightly iridescent, with an irregular thick brown border spanning 1.6 to 1.8 inches. Some adults have completely brown wings with a small white streak on each forewing. Males and females show both colorations.

The eggs are pale yellow and average 0.04 inches in size. They are laid in flat clusters of about 5 to 20 on the underside of boxwood leaves. As they mature, a black spot appears marking the larval head.

Newly hatched larvae have black heads and are green to yellow in color. As they age, dark brown stripes develop on the body. The most mature larvae are about 1.6 inches long and have thin white and thick black stripes and black dots outlined in white along the length of the body.

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

Pupae develop inside a silk cocoon and are 0.6 to 0.8 inches long. They are initially green, with black stripes on the back, and turn brown as they mature.

## Life Cycle

Adult female box tree moths lay their eggs singly or in clusters of about 5 to 20 in a gelatinous mass on the underside of boxwood leaves. Box tree moths overwinter as larvae. Once temperatures rise, overwintering larvae emerge and typically begin feeding in March, continuing until they pupate in late April to early May. As they develop, they spin silken webs to hold leaves together and create protected areas to feed. They tend to feed on leaves in the lower portion of host plants but reside in the upper portion and remain active until September or October.

Pupation occurs on the host leaves in silk cocoons. If the boxwood host is defoliated, pupation may occur away from the host plant using leaves from the surrounding area. Pupae will typically first appear in April or May and will be present continuously through the summer and into the fall, depending on the local climate and timing of generations.

Adults first emerge from the overwintering generation between April and July, depending on climate and temperature. Subsequent generations are active between June and October. Adults typically live for 2 weeks after emergence.



Caterpillars, webbing, and frass (top); pupa (bottom left); magnified egg masses (bottom right)

## Where To Look

Signs of damage may not appear at the beginning of an infestation because young larvae hide among twigs and leaves. Larvae skeletonize the leaves and feed on the bark, causing defoliation and dryness, leading to the plant's death. Signs of feeding include green-black frass (excrement) and webbing.

The female moths lay their eggs on the underside of the leaves of boxwoods.

## Report Your Findings

If you find an insect that you suspect is the box tree moth in New York, please submit an online report to have the specimen identified properly: **www.arcg.is/1Df8Se.**

For questions, please call USDA at 1-800-249-2363. You may also contact your local Extension office or State Plant Regulatory Official.

To locate an Extension specialist near you, go to the USDA website at **www.nifa.usda.gov/Extension**. A directory of State Plant Regulatory Officials is available on the National Plant Board website at **www.nationalplantboard.org/membership**.

APHIS 81-35-040
Revised March 2022

USDA is an equal opportunity provider, employer, and lender.

*Credits:* Light-colored adult moth, caterpillar, and damage photos courtesy of Matteo Maspero and Andrea Tantardini, Centro MiRT - Fondazione Minoprio [IT]. Pupa photo courtesy of Ilya Mityushev, Department of Plant Protection of the Russian State Agrarian University - Moscow Timiryazev Agricultural Academy. Dark brown adult moth courtesy of Colette Walter, www.lepiforum.de/webbbs/images/forum_2/pic13983.jpg.

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

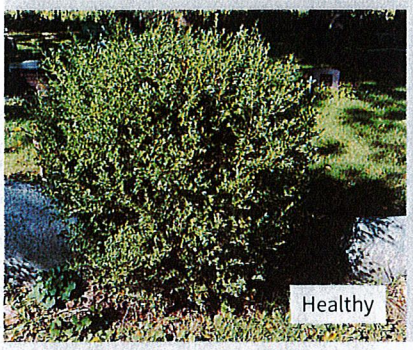
USDA Animal and Plant Health Inspection Service
U.S. DEPARTMENT OF AGRICULTURE

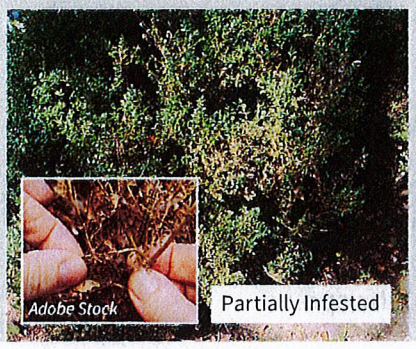
Plant Protection and Quarantine

# New York Residents: Check Your Boxwoods for the Box Tree Moth!

The box tree moth *(Cydalima perspectalis)* is an invasive pest that can kill boxwoods if left unchecked. We need your help to keep it from spreading. Here's what to look for:

**Brown Leaves and Defoliation** (look for missing sections of leaves or skeletonized leaves)







**Caterpillars and Webbing** (young caterpillars hide among twigs/leaves, can grow to 1.5")







*Matteo Maspero and Andrea Tantardini, Centro MiRT - Fondazione Minoprio (IT)*

**Frass**
(sawdust-like insect excrement)



**Pupa**
(may be wrapped in webbing)



**Adult Moths**
(hard to spot; most active at night))




Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

# Do Your Part To Stop the Box Tree Moth

## 1. Find and Report

If you live **outside Niagara County** and find any signs of infestation, take a picture and report it online at **https://arcg.is/1Df8Se** or scan the QR code.

If you live **inside Niagara County**, you don't need to report your findings. But keep checking regularly for this pest to protect your boxwoods.

## 2. Cooperate With Agriculture Officials

Agriculture officials may ask for permission to access your property so we can visually inspect your boxwood plants or place box tree moth traps. Please cooperate with us! This work is important to stop the spread.



## 3. Protect Your Boxwoods

Remove infested branches or, for heavy infestations, cut the boxwood from its base (it should grow back from its roots). Discard all boxwood debris by double-bagging it in plastic and putting it with your household trash.

For more information, and a list of insecticides known to be effective against destructive caterpillars, go to **www.aphis.usda.gov/planthealth/box-tree-moth** (click on "Resources"). You can also contact your County Cooperative Extension office (**cals.cornell.edu/cornell-cooperative-extension/local-offices**) for treatment options specific to your needs:

**Niagara County:** (716) 433-8839, niagara@cornell.edu

**Erie County:** (716) 652-5400, erie@cornell.edu

**Orleans County:** (585) 798-4265, orleans@cornell.edu

**Genesee County:** (585) 343-3040, genesee@cornell.edu

## Questions?

Call the U.S. Department of Agriculture (USDA) at 1-800-249-2363.

APHIS-22-009 | Revised July 2022

USDA is an equal opportunity provider, employer, and lender.

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

# Insecticide Options for Box Tree Moth Management

Steven Frank – North Carolina State University
Dan Gilrein – Cornell Cooperative Extension of Suffolk County
Matthew Havers – IR-4 Project, Rutgers University
Cristi Palmer – IR-4 Project, Rutgers University

This fact sheet contains a preliminary list of insecticide options for managing box tree moth in nurseries and landscapes. Since its discovery in Europe, very few insecticides have been evaluated for efficacy against box tree moth since most are not permitted for use on ornamental horticulture plants in Europe. Following is a selection of active ingredients found in commercial products labeled for caterpillar management likely to be effective against box tree moth. A few of these are also found in home garden formulations.

The box tree moth, *Cydalima perspectalis*, feeds primarily on boxwoods (*Buxus* spp.) though it has been reported on a few other hosts (*Euonymus*, *Ilex*, *Murraya*). It is native to China, Korea, and other parts of Asia. Box tree moth was introduced into Europe in 2007 and rapidly spread across the continent, and in 2018 it was found in Ontario, Canada, the first detection in North America. Box tree moth is not known to be established in the US, but the risk of introduction is high. Moths can fly over two miles, and moths or caterpillars could travel on plants shipped across the border.

Box tree moths are up to 4 cm and have two color morphs. The morph seen in Canada has white wings with brown borders. The brown morph also found in Europe is almost entirely dark brown with characteristic white specks on the forewings. Males can be monitored with pheromone traps. Caterpillars are up to 2 cm and yellow to lime green with dark stripes. They eat boxwood leaves and bark and can quickly defoliate and even kill large hedges. Caterpillars also create unsightly webbing and frass within plant canopies which protects them from predators and could reduce spray coverage and insecticide efficacy.




Box tree moth, white morph. Szabolcs Sáfián, University of West Hungary, Bugwood.org



Late-instar box tree moth caterpillar with webbing. S.D. Frank, NCSU




Box tree moth damage. S.D. Frank, NCSU

Many insecticides (Table 1) are labeled for control of caterpillars. Some broad-spectrum materials, such as some pyrethroids and carbaryl, may flare spider mites or other pests. Note label cautions concerning environmental and non-target risks.

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

Table 1. A selection of insecticides labeled for caterpillar management in nursery and/or landscape sites where boxwoods are grown. Re-entry intervals (REI) apply to production (nursery, greenhouse) uses.

| Active | IRAC MOA | Example products[1] | Notes |
|---|---|---|---|
| Azadirachtin | UK | Azatin O, Azatrol, others | Use site varies by product. Available in organic-compatible formulations. Biopesticide. Most have 4 hour REI. |
| Carbaryl | 1A | Sevin, Carbaryl | Broad spectrum, harmful to beneficial insects, may cause secondary pest outbreaks. 12-hour REI. |
| Acephate | 1B | Orthene, Acephate | Only certain caterpillars on the label. Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. 24-hour REI. |
| Bifenthrin | 3A | OnyxPro, Talstar, others | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. Most products 12 hour REI. |
| Cyfluthrin, *beta*-cyfluthrin | 3A | Decathlon, Tempo, others | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. Most products 12 hour REI. |
| *Lambda*-cyhalothrin | 3A | Scimitar, others | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. Most products 24 hour REI. |
| Deltamethrin | 3A | Suspend | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. Most products 12 hour REI. |
| Fenpropathrin | 3A | Tame | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. Few caterpillars labeled on ornamentals. Most products 24 hour REI. |
| *Tau*-fluvalinate | 3A | Mavrik | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. For container nursery stock, outdoor plantings, greenhouse use. Most products 12 hour REI. |
| Permethrin | 3A | Astro, Perm-Up | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. Most products 12 hour REI. |
| Pyrethrins | 3A | Tersus, Pyganic, others | Broad spectrum, harmful to beneficials, may cause secondary pest outbreaks. Most products 12 hour REI. Some organic-compatible products available. |
| Acetamiprid | 4A | TriStar, others | Verify efficacy for target caterpillars. Low toxicity to honey bees used alone. Acetamiprid is used for sucking insects and boxwood leafminer. EPA reduced-risk for ornamentals. 12-hr REI. |
| Spinosad | 5 | Conserve, Entrust, others | Used for caterpillars in greenhouses, nurseries, landscapes. Works on contact and through ingestion. Homeowner formulations available. Entrust is organic-compatible. 4-hr REI. |
| Spinetoram + sulfoxaflor | 5 + 4C | XXpire | For use in greenhouses and nurseries but not landscapes. Not registered in NY or CA. 12-hr REI. |
| *Bacillus thuringiensis kurstaki* and *B. t. aizawai* | 11 | Dipel Pro DF, Javelin, Deliver (Btk); XenTari, Agree (Bta); others | Bt *kurstaki* products are used in Europe for BTM management and appear to be effective. Must be ingested; apply when caterpillars are actively feeding. Biopesticide. 4-hr REI. |
| Diflubenzuron | 15 | Dimilin 4L, Adept | Use site varies by product. Labeled only for certain caterpillars and other pests. 12-hour REI. |
| Tebufenozide | 18 | Confirm | For Christmas trees. EPA reduced-risk for ornamentals. 4-hour REI. |
| Methoxyfenozide | 18 | Intrepid | Not for use in NY. Labeled for certain caterpillars. 4-hour REI. |
| Indoxacarb | 22A | Provaunt | For landscape use only. |
| Chlorantraniliprole | 28 | Acelepryn | Foliar spray for caterpillars (systemic use for clearwing borers). Nursery, greenhouse & landscape use. Relatively low toxicity for bees and workers. EPA reduced-risk for ornamentals. No signal word on the Acelepryn label. 4-hr REI |
| Cyantraniliprole | 28 | Mainspring GNL | Foliar spray or systemic drench for caterpillars in greenhouses, nurseries, landscapes. No outdoor uses in NY. EPA reduced-risk for nursery & greenhouse ornamentals. Note bee advisory. 4-hr REI |
| Cyclaniliprole | 28 | Sarisa | Can be used in greenhouses, nurseries; not for residential use. Note bee advisory. Flonicamid combination broadens efficacy for aphids, psyllids and other sucking insects. 4-hr REI |
| Cyclaniliprole + flonicamid | 28 + 29 | Pradia | |

[1]Products listed are examples for informational purposes and are not recommendations. There may be other formulations and generics. Verify product registration, uses, restrictions, and pollinator warnings before applying. More information here: https://content.ces.ncsu.edu/southeastern-us-pest-control-guide-for-nursery-crops-and-landscape-plantings.

**Cornell Cooperative Extension Offices**
Niagara County Cooperative Extension: 716-433-8839/niagara@cornell.edu | Erie County Cooperative Extension: 716-652-5400/erie@cornell.edu
Orleans County Cooperative Extension: 585-798-4265/orleans@cornell.edu | Genesee County Cooperative Extension: 585-343-3040/genesee@cornell.edu

Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

USDA
Animal Plant Health Inspection Service
Emergency & Regulatory Compliance Services
Investigative & Enforcement Service
Animal Health Enforcement & Tort Claim Branch
250 Marquette Ave Suite 410
Minneapolis, MN 55401

To Whom It May Concern:

The United States Department of Agriculture (USDA) as an agency of the Federal government is a self-insured entity.

The Federal Tort Claims Act (28 U.S. C. 1346(b), 2671 et seq) is the legal mechanism for compensating persons injured or property damaged by a negligent or wrongful act of a Federal employee, when committed within the scope of their employment.

Employees of the USDA are Federal employees and would be covered by Federal workers' compensation insurance if injured while in the performance of their duties.

I hope this information is satisfactory and meets your requirements for proof of insurance. If you have any questions or concerns, you may contact me at Area Code (612) 336-3269.

Sincerely,

ELIZABETH JOHNSON GROTH

Digitally signed by ELIZABETH JOHNSON GROTH
Date: 2022.08.31 07:53:40 -05'00'

Elizabeth Groth
Legal Administrative Specialist



Attachment: USDA.PropertyAccessRequest-05012024151811 (RES-2024-421 : USDA Property Access Request (Invasive Species) (CRS# 4788))

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Attorney
Initiated by: **Samuel A Alba**
Co-Sponsored by:

DOC ID: 28958 **RESOLUTION 2024-422** **ADOPTED**

# Settlement of Article 7 Matter - 570 DAB 59, LLC V. Town of Amherst

**AGENDA ITEM : MAY 13TH, 2024**

**TO:** **Town Board**

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

**DATE:** **May 8, 2024**

**RE:** **Settlement of Article 7 Matter**
**570 DAB 59, LLC v. Town of Amherst**

Kindly adopt a resolution authorizing the following:

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

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

Thank you.

SAA:rms
Attachment
c: Tim Koller, Deputy Town Clerk
(*w/attachment,* **Agenda Item : May 13, 2024**)
Emily Murphy, Town Assessor

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Assessment

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

At an IAS Term of the Supreme Court of the State of New York, held for the County of Erie, Buffalo, New York on the __ day of _____, 2024.

**PRESENT: HON. GERALD J. GREENAN**

**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF ERIE**

IN THE MATTER OF THE APPLICATION FOR REVIEW UNDER ARTICLE 7 OF THE REAL PROPERTY TAX LAW OF A TAX ASSESSMENT BY 570 DAB 59, LLC

**CONSENT ORDER AND JUDGMENT**

Petitioner,

-vs.-

**Index No.: 809110/2023**

THE BOARD OF ASSESSMENT REVIEW FOR THE TOWN OF AMHERST; THE ASSESSOR OF THE TOWN OF AMHERST; and THE TOWN OF AMHERST, NEW YORK

Respondents.

For Review of the Assessment of Certain Real Property known as 3122 Sheridan Drive in the said Town of Amherst for the 2023-24 Tax Year.

---

**WHEREAS** Petitioner has heretofore commenced the within proceedings under Article 7 of the Real Property Tax Law to review the assessment of a certain parcel of real property located at and known as 3122 Sheridan Drive (SBL #67.06-1-16.1) in the Town of Amherst, County of Erie and State of New York for the tax year 2023-24, and

**WHEREAS** this proceeding has duly come before an IAS Term of this Court, and Kavinoky Cook LLP, Scott C. Becker, Esq., of counsel, having appeared for the Petitioner, Samuel A. Alba, Esq., Town of Amherst Counsel, having appeared for the Respondent Town of Amherst and Gross Shuman, P.C., John K. Rottaris, Esq., of counsel, having appeared for the Intervenor-Respondent Sweet Home Central School District of Amherst and Tonawanda, and the parties having agreed to a



Attachment: 570 DAB 59, LLC Consent Order and Judgment (RES-2024-422 : Settlement of Article 7 Matter - 570 DAB 59, LLC V. Town of

settlement of this proceeding, it is hereby

**STIPULATED, ORDERED and ADJUDGED**, that the assessment on the property designated as SBL #67.06-1-16.1 on the tax assessment roll of the Town of Amherst for the following tax year, has been and shall remain as follows:

| Assessment Year | Assessment |
|---|---|
| 2023-24 | $1,590,000 |

and it is further

**STIPULATED, ORDERED and ADJUDGED**, that the assessment on the property designated as SBL #67.06-1-16.1 on the tax assessment roll of the Town of Amherst for the following tax years, shall be as follows:

| Assessment Year | Assessment |
|---|---|
| 2024-25 | $2,000,000 |
| 2025-26 | $2,000,000 |
| 2026-27 | $2,000,000 |

and it is further

**STIPULATED, ORDERED and ADJUDGED,** that the assessments as reduced, corrected and adjusted herein are fair, equitable and proper for the purposed of this settlement, and it is further

**STIPULATED, ORDERED and ADJUDGED**, that the officer or officers having custody of the aforesaid assessment rolls and the tax rolls of the Town of Amherst shall make or cause to be made upon the proper books and records of said Town the entries, changes and corrections necessary to conform said assessments to such corrected and reduced valuations that the appropriate financial officers are hereby directed and authorized to calculate and disburse any resulting refunds of taxes, and it is further

**STIPULATED, ORDERED and ADJUDGED,** that the parties stipulate that the provisions of Real Property Tax Law Sections 727 (2)(a) and 727 (2)(b) shall not apply to the terms of this

Attachment: 570 DAB 59, LLC Consent Order and Judgment (RES-2024-422 : Settlement of Article 7 Matter - 570 DAB 59, LLC V. Town of

settlement. All other provisions of Real Property Tax Law Section 727 shall apply to the terms of this settlement, and it is further

**STIPULATED, ORDERED and ADJUDGED**, that Petitioner shall have the right to seek specific enforcement of this Consent Order and Judgment by whatever means provided by law, and it is further

**STIPULATED, ORDERED and ADJUDGED**, that this Consent Order and Judgment hereby constitutes and represents the entire understanding and agreement among the parties and the full settlement of the assessment review proceeding herein, that there are no costs or disbursements awarded to, by, or against any party and that upon compliance with the terms of this Consent Order and Judgment, the above proceeding shall be, and the same hereby is, settled and discontinued with prejudice, and it is further

**STIPULATED, ORDERED and ADJUDGED,** that this Consent Order and Judgment may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Signing and entry of the within Order and
Judgment is hereby consented to:

KAVINOKY COOK LLP

Dated: _____

By: _____
Scott C. Becker, Esq.
*Attorneys for Petitioner*
726 Exchange Street, Suite 800
Buffalo, New York 14210

TOWN OF AMHERST

Dated:_____

By: _____
Samuel A. Alba, Esq.
Senior Deputy Attorney
*Attorney for Respondent, Town of Amherst*
5583 Main Street
Williamsville, New York 14221



Attachment: 570 DAB 59, LLC Consent Order and Judgment (RES-2024-422 : Settlement of Article 7 Matter - 570 DAB 59, LLC V. Town of

Dated: MARCH 22, 2024

GROSS SHUMAN, P.C.

By: _____

John K. Rottaris, Esq.
*Attorneys for Intervenor-Respondent,*
*Sweet Home Central School District of*
*Amherst and Tonawanda*
465 Main Street, Suite 600
Buffalo, New York 14203

SO ORDERED:

_____

HON. GERALD J. GREENAN

ENTER:

0000052/0037254/625587



Attachment: 570 DAB 59, LLC Consent Order and Judgment (RES-2024-422 : Settlement of Article 7 Matter - 570 DAB 59, LLC V. Town of

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 28969 **RESOLUTION 2024-423** **ADOPTED**

# New Firefighter for Main-Transit Fire Department

New firefighter for the Main-Transit Fire Department lives in the Town of Clarence goes to school in the Main-Transit Fire district.

Luke Seplaki
5410 Center Pine Ln
Williamsville, NY 14221

**5/13/2024**
Consent

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

# TOWN OF AMHERST
# VOLUNTEER FIRE DEPARTMENT MEMBERSHIP
# RESIDENCY VERIFICATION FORM

Applicant Name: Luke Seplaki

Applicant Home Address: 5410 center pine lane

Under penalty of perjury I, Luke Seplaki affirm I am an applicant to be a member of the, main-Transit FD (fire dept.) and my address of residence is listed above.

☐ My address is in the fire distract I've applied to or territory which is afforded protection by the fire department of the fire district or fire company pursuant to contract.

☒ My address is outside the district or territory that provides protection by the fire district or company, but is in the vicinity of my occupation, in which I will be able to render active service as a volunteer. My occupation address is:

full time student

Signature of Applicant: Luke C Seplaki

I have verified the applicant's address or employment, where applicable, by examining their driver's license or other suitable document such as a utility bill, lease or pay stub.

Signature:

Title: SENIOR CAPTAIN

Date: 5/6/24

**Submit this completed form to:**
Amherst Town Clerk
5583 Main Street
Williamsville, NY 14221

Attachment: Seplaki L Residency Form 2024 (RES-2024-423 : New Firefighter for Main-Transit Fire Department)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 28986 **RESOLUTION 2024-424** **ADOPTED**

# New Firefighter for North Bailey Fire Company

New firefighter for the North Bailey Fire Company lives in the Town of Amherst and resides within the North Bailey fire district.

Matthew Bonner
10 Wedgewood Ter
Amherst, NY 14226

**5/13/2024**
Consent

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

North Bailey Fire Company
966 Sweet Home Road
Amherst, New York 14226

Phone: (716) 836-9571
Fax: (716) 836-9599
www.northbaileyfire.com

William Richter
President

Jeffrey Cutler
Chief

May 7, 2024

Town Clerks Office
5583 Main St
Williamsville, NY 14221

To; The Amherst Town Board

We wish to submit the following individual for active membership in the North Bailey Fire Company. We request this to be done at the Town Boards earliest convenience.

Matthew Bonner
10 Wedgewood Ter
Amherst, NY 14226

Respectfully Submitted
Robin A. Hicks
Robin Hicks, Treasurer
Jeffrey Cutler, Chief

MAY 7 2024 PM3:3

Attachment: DOC050824-05082024103656 (RES-2024-424 : New Firefighter for North Bailey Fire Company)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 28985 **RESOLUTION 2024-425** **ADOPTED**

# Budget Transfers and Amendments

**For May 13, 2024 Town Board Agenda**

To: Town Board
From: Office of Town Comptroller
Date: 05/08/2024
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 - 2024***

| ***FROM:*** | ***TO:*** |
|---|---|
| C8161.4531 Refuse - Totes $11,000 | C3621.2250 Refuse - Vehicles $11,000 |
| *To transfer funds to cover purchase of truck.* | |
| A1990.4000 Contingency $85,571.90 | A3641.1850 Lump Sum $30,936.15<br>A3641.8030 FICA $2,366.62<br>A3020.1000 Personal Services $48,554.70<br>A3020.8030 FICA $3,714.43 |
| *To transfer funds budgeted in contingency for retirements.* | |
| N2329.4000 CDBG Weatherization Services $2,668.50 | N2321.4000 CDBG Housing Rehab. $2,668.50 |
| *Requested per department.* | |
| G1990.4000 Sewer Contingency $140,000 | G9916.9000 Interfund Transfers $140,000 |
| *To transfer funds from Sewer Contingency into Plant 16 for transfer into KP1621 Disinfection Meter Screen project.* | |
| A6776.1000 SOS - Personal Services $22,684.35<br>A6776.8030 SOS - FICA $1,735.35<br>A6776.8050 SOS- Health Insurance $16,009.01<br>A6776.8051 SOS - Dental $54.98<br>A6776.8050 SOS - Vision $5.63 | A6773.1000 Personal Services $22,684.35<br>A6773.8030 FICA $1,735.35<br>A6773.8050 Health Insurance $16,009.01<br>A6773.8051 Dental $54.98<br>A6773.8052 Vision $5.63 |
| *To transfer funds from Senior Outreach Services into Nutrition for the hiring of a cook and removal of a full time case manager to part time case manager.* | |

***BUDGET AMENDMENTS - 2024***

| ***INCREASE:*** | ***INCREASE:*** |
|---|---|
| KP2204.02089 Amherst Central Park $545,318.00 | KP2204.4972 Construction Expense $545,318.00 |
| *To increase the budget for the 1st amendment to agreement with Erie County per Res 2024-371.* | |
| KP2225.04589 WPCF Bldg. 1- Federal Aid $1,875,318.43 | KP2225.4972 Construction Expense $1,875,318.43 |
| *To set-up the budget for WPCF Bldg. 1 through use of American Rescue Plan Act funding.* | |
| N2341.02785 AMH 1st Time Homebuyer-PI $3,490.13<br>N2340.02785 AMH HOME- PI $5,719.50<br>N2354.02785 HOME Admin- PI $1,023.29 | N2341.4000 Contractual $3,490.13<br>N2340.4000 Contractual $5,719.50<br>N2354.4003 10% Admin $1,023.29 |
| *To recognize Community Development program income from 327 N. Westfield, Amherst* | |

N2323.02785 CDBG & VG- PI $31,312.00 N2323.4000 Contractual $31,312.00
N2325.02785 CDBG Admin- PI $7,828.00 N2325.1000 Personal Svcs $7,271.71
N2325.8030 FICA $556.29
*To recognize Community Development program income from 301 Coronation, Amherst.*

N2323.02785 CDBG & VG- PI $170.00 N2323.4000 Contractual $170.00
*To recognize Community Development program income from 169 Hillcrest, Amherst.*

KP1621.05031 Interfund Transfers $140,000 KP1621.4972 $140,000
*To setup budget for transfer from G9916.9000 for Disinfection Meter Screen project.*

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

See Descriptions.

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 28979 **RESOLUTION 2024-426** **ADOPTED**

# Use of Opioid Settlement Funds

WHEREAS, Resolution 2023-484 established Trust Account T4035 Opioid Settlement,

WHEREAS, Trust Accounts requires Town Board Approval to spend funds,

WHEREAS, training provides staff or network programs and services regarding the capability of government to abate the opioid crisis,

WHEREAS, Schedule C Approved Uses, Section B Leadership, Planning, and Coordination and Section C Training as acceptable uses,

WHEREAS, the Amherst Town Court was approved by the Town Board on Resolution 2024-369 to attend a Drug Court Conference,

BE IT FURTHER RESOLVED, the Town Board approves the transfer NTE (not to exceed) $12,156.20 from the Trust account T4035 into A1113 Opioid Settlement to fund this training.

Budget Amendment - Increase:

A1113.05031 Opioid Settlements - Interfund Transfers NTE $12,156.20
A1113.4040 Opioid Settlements - Travel $8,736.20
A1113.4120 Opioid Settlements - Training $3,420.00

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Transfer from T4035 Opioid Settlement Funds.

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28493 **RESOLUTION 2024-427** **ADOPTED**

# Award of Mini Bid #2024005 for (1) 2024 Chevy Silverado 2500 - CRS #4548

**WHEREAS,** Contract Compliance and Administration issued Mini-Bid #2024005 through NYS OGS for one (1) 2024 Chevy Silverado 2500; 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 Mini-Bid be awarded to DeNooyer Chevrolet, Inc. for their low bid of $65,993.81; and

**BE IT FURTHER RESOLVED,** The Town Board authorizes the Supervisor to sign the contract with DeNooyer Chevrolet, Inc.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

C3621-2250; $65,993.81

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

# Award 23166 Summary of Mini-Bid Responses Received for Mini-Bid # 2024005

**Revision Date:** Revised 10/26/2023

## Summary of Vehicles Built to Specifications offered by Contractors

| Rank | Bidder (#) | Mini-Bid # | Contractor | Contract # | Total # of Vehicles | Total Price for Mini-Bid | Model Year | Make | Model and Trim Level |
|---|---|---|---|---|---|---|---|---|---|
| 1 | Bidder (2) | 2024005 | DeNooyer Chevrolet, Inc | PC69048 | 1 | $65,993.81 | 2024 | Chevrolet | Silverado 2500HD Crew |

## Summary of All Pre-Existing Inventory Vehicles offered by Contractors

| Rank | Bidder (#) | Mini-Bid # | Contractor | Contract # | Total # of Vehicles | Total Price for Mini-Bid |
|---|---|---|---|---|---|---|
| 1 | Bidder | OGS 23166- | G AND H AUTO GROUP DBA MOHAWK CHEVROLET | PC69382 | 1 | $76,013.70 |

## Summary of each Pre-Existing Inventory Vehicle offered by Contractors

Attachment: 2024005 bid analysis (RES-2024-427 : Award of Mini Bid #2024005 for (1) 2024 Chevy

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28893 **RESOLUTION 2024-428** **ADOPTED**

# Award Bid #2024018 Building Department Vehicles - CRS #4756

**WHEREAS,** the Contract Compliance and Administration Department received bids on April 18, 2024 for Bid #2024018 Building Department Vehicles; and

**WHEREAS,** the bid process resulted in a response 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 this bid to Delacy Ford; and

**BE IT FURTHER RESOLVED**, the Town Board authorizes the Building Department to trade in the vehicles listed in the table below:

| CAR # | YEAR | VIN | MAKE/MODEL | MILEAGE | Delacy Ford |
|---|---|---|---|---|---|
| BD-101 | 2018 | 1FMCU9GD5JUC00537 | FORD ESCAPE SE AWD | 41800 | $13,625.00 |
| BD-116 | 2017 | 1FMCU9GD9HUD25874 | FORD ESCAPE SE AWD | 40400 | $12,825.00 |
| BD-126 | 2018 | 1FMCU9GD9HUD25874 | FORD ESCAPE SE AWD | 43300 | $13,625.00 |
| BD-205 | 2019 | 1FMCU9GD4KUB98362 | FORD ESCAPE SE AWD | 41600 | $15,825.00 |
| | | **TOTAL** | | | **$55,900.00** |

**BE IT FURTHER RESOLVED,** the Town Board authorizes the Supervisor to sign the contract with Delacy Ford.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

B3620-2200; $62,100.00

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

| Bid #2024018 Building Department Vehicles | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Low Bidder | | Vendor Name: | C. Basil Ford | | Legacy Brothers | | Northtown Hyundai | | Delacy Ford | |
| Item # | QTY | | Unit Price | Total Price | Unit Price | Total Price | Unit Price | Total Price | Unit Price | Total Price |
| | | **Option #1 - 4 Vehicles** | | | | | | | | |
| 1a | 4 | 2024 or newer Ford Bronco Sport Big Bend with the convenience package (or equivalent) | $30,352.93 | $121,411.72 | $40,107.00 | $160,428.00 | $29,135.50 | $116,542.00 | $29,500.00 | $118,000.00 |
| 1b | 4 | Total for Trades - Vehicles 1, 2, 3 & 4 (see page 5) | | $49,500.00 | | $12,000.00 | | $52,500.00 | | $55,900.00 |
| | | **NET TOTAL – Total of 1a - Total of 1b** | | $71,911.72 | | $148,428.00 | | $64,042.00 | | $62,100.00 |
| | | | | | | | | | | |
| | | **Option #2 – 3 Vehicles** | | | | | | | | |
| 2a | 3 | 2024 or newer Ford Bronco Sport Big Bend with the convenience package (or equivalent) | NO BID | NO BID | $38,773.00 | $116,319.00 | $29,135.50 | $87,406.50 | $29,500.00 | $88,500.00 |
| 2b | 3 | Total for Trades - Vehicles 1, 2 & 3 (see page 5) | | | | $8,000.00 | | $38,000.00 | | $40,075.00 |
| | | **NET TOTAL – Total of 2a - Total of 2b** | | | | $108,319.00 | | $49,406.50 | | $48,425.00 |
| | | | | | | | | | | |
| | | Please fill in individual vehicle trade-in amounts on the trade-in table located on page 5 | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | No Additional Charges Will Be Allowed | | | | | | | | |

**NOTES:**

Legacy Brothers: Option 1: Incorrect Net Total of $144,428.00. Correct Net Total is $148,428.00; Option 2: Incorrect total of $116,321.00. Correct Total is $116.319.00

Legacy Brothers: Option 2: Incorrect Net Total of $108,321.00. Correct Net Total is $108,319.00.

Northtown Hyundai: Northtown bid 2024 Hyundai Kona Sel AWD vehicles

Attachment: Bid Tab 2024018 Building Department Vehicles (RES-2024-428 : Award Bid #2024018

| Options 1 and 2 – Vehicle Trades: | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | C. Basil Ford | Legacy Brothers | Northtown Hyundai | Delacy Ford |
| ORDER FOR TRADE | CAR # | YEAR | VIN | MAKE/MODEL | COLOR | MILEAGE | Trade In Amount | Trade In Amount | Trade In Amount | Trade In Amount |
| 1 | BD-101 | 2018 | 1FMCU9GD5JUC00537 | FORD ESCAPE SE AWD | BLUE | 41,800 | $12,500.00 | $3,000.00 | $13,000.00 | $13,625.00 |
| 2 | BD-116 | 2017 | 1FMCU9GD9HUD25874 | FORD ESCAPE SE AWD | GRAY | 40,400 | $11,250.00 | $2,000.00 | $12,000.00 | $12,825.00 |
| 3 | BD-126 | 2018 | 1FMCU9GD9HUD25874 | FORD ESCAPE SE AWD | BLUE | 43,300 | $12,250.00 | $3,000.00 | $13,000.00 | $13,625.00 |
| 4 | BD-205 | 2019 | 1FMCU9GD4KUB98362 | FORD ESCAPE SE AWD | BLACK | 41,600 | $13,500.00 | $4,000.00 | $14,500.00 | $15,825.00 |
| | | | | | | | $49,500.00 | $12,000.00 | $52,500.00 | $55,900.00 |
| *In order of priority for trade in purposes | | | | | | | | | | |

Attachment: Bid Tab 2024018 Building Department Vehicles (RES-2024-428 : Award Bid #2024018

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28954 **RESOLUTION 2024-429** **ADOPTED**

# Award Bid #2024015 Town Wide Dumpsters - CRS #4784 & 4785

**WHEREAS,** the Contract Compliance and Administration Department received bids on March 28, 2024 for Bid #2024015 for Town Wide Dumpster Service; and

**WHEREAS,** the bid process resulted in a response 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 the bid to Modern Disposal Services, Inc. and Waste Management LLC, as per the attached bid tabulation; and

**BE IT FURTHER RESOLVED,** the Town Board authorizes the Supervisor to sign the contracts with Modern Disposal Services, Inc. and Waste Management LLC; and

**BE IT FURTHER RESOLVED,** that approval is pending successful completion of the Contract Routing System due to the fact that the current contract expires May 31st and we want to ensure there is no disruption in service.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Town Wide; Various Accounts; Amount TBD

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

## Bid #2024015 Townwide Dumpster Service

| Low Bid | | | | | | | | Modern Disosal | | | | Waste Management | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ID | Units | Size | Freq/wk | Type | Location | Billing | Service Period (Months) | Delivery Fee (Seasonal Only) | Monthly Rental | Per Pickup (Including Disposal) | Total Annual Cost | Delivery Fee (Seasonal Only) | Monthly Rental | Per Pickup (Including Disposal) | Total Annual Cost |
| **SMALL CONTAINERS - FULL YEAR SERVICE** | | | | | | | | | | | | | | | |
| H-4 | 4 | 95 G | 1 | Recycling | Northtown Center - 1615 Amherst Manor Dr. | Youth & Rec | 12 | N/A | $120.00 | $6.98 | $1,440.00 | N/A | $70.00 | $0.00 | $840.00 |
| H-16 | 4 | 95 G | 1 | Recycling | Clearfield Community Center - 730 Hopkins Rd. | Youth & Rec | 12 | N/A | $120.00 | $6.98 | $1,440.00 | N/A | $110.00 | $0.00 | $1,320.00 |
| G-2 | 1 | 8 CY | 0.5 | OCC | Waste Water Treatment Plant - 455 Tonawanda Creek Rd. | WWTP | 12 | N/A | $80.00 | $37.21 | $960.00 | N/A | $85.00 | $0.00 | $1,020.00 |
| C-2 | 1 | 8 CY | 1 | OCC | Center For Senior - 370 John James Audubon Pkwy. | Senior Center | 12 | N/A | $135.00 | $31.40 | $1,620.00 | N/A | $165.00 | $0.00 | $1,980.00 |
| H-3 | 1 | 8 CY | 1 | OCC | Northtown Center - 1615 Amherst Manor Dr. | Youth & Rec | 12 | N/A | $135.00 | $31.40 | $1,620.00 | N/A | $165.00 | $0.00 | $1,980.00 |
| B-3 | 1 | 2 CY | 1 | Trash | Eggertsville/Snyder Library - 4622 Main St. | Library | 12 | N/A | $85.00 | $19.77 | $1,020.00 | N/A | $90.00 | $0.00 | $1,080.00 |
| B-1 | 1 | 3 CY | 1 | Trash | Audubon Library - 350 John James Audubon Pkwy. | Library | 12 | N/A | $105.00 | $24.42 | $1,260.00 | N/A | $100.00 | $0.00 | $1,200.00 |
| B-2 | 1 | 3 CY | 1 | Trash | Clearfield Library - 770 Hopkins Rd. | Library | 12 | N/A | $105.00 | $24.42 | $1,260.00 | N/A | $100.00 | $0.00 | $1,200.00 |
| A-4 | 1 | 4 CY | 1 | Trash | Smith Road Maintenance - 500 Smith Rd. | Building Maintenance | 12 | N/A | $105.00 | $24.42 | $1,260.00 | N/A | $110.00 | $0.00 | $1,320.00 |
| A-6 | 1 | 4 CY | 1 | Trash | Williamsville Youth & Family Center - 5005 Sheridan Dr. | Building Maintenance | 12 | N/A | $105.00 | $24.42 | $1,260.00 | N/A | $115.00 | $0.00 | $1,380.00 |
| D-2 | 1 | 4 CY | 1 | Trash | Engineering Department - 1100 N Forest Rd. | Engineering | 12 | N/A | $105.00 | $24.42 | $1,260.00 | N/A | $110.00 | $0.00 | $1,320.00 |
| A-1 | 1 | 4 CY | 2 | Trash | Town Hall - 5583 Main St. | Building Maintenance | 12 | N/A | $197.00 | $22.91 | $2,364.00 | N/A | $220.00 | $0.00 | $2,640.00 |
| A-5 | 1 | 6 CY | 1 | Trash | Harlem Rd. Community Center - 4255 Harlem Rd. | Building Maintenance | 12 | N/A | $124.00 | $28.84 | $1,488.00 | N/A | $135.00 | $0.00 | $1,620.00 |
| H-5 | 1 | 6 CY | 1 | Trash | Eggertsville Community Center - 4110 Bailey Ave. | Youth & Rec | 12 | N/A | $124.00 | $28.84 | $1,488.00 | N/A | $135.00 | $0.00 | $1,620.00 |
| H-6 | 1 | 6 CY | 1 | Trash | North Amherst Recreation Center - 4415 Millersport Hwy. | Youth & Rec | 12 | N/A | $124.00 | $28.84 | $1,488.00 | N/A | $135.00 | $0.00 | $1,620.00 |
| H-7 | 1 | 6 CY | 1 | Trash | Clearfield Community Center - 730 Hopkins Rd. | Youth & Rec | 12 | N/A | $124.00 | $28.84 | $1,488.00 | N/A | $135.00 | $0.00 | $1,620.00 |
| A-3 | 1 | 8 CY | 0.5 | Trash | Police Dept - 4220 Bailey Ave. | Building Maintenance | 12 | N/A | $90.00 | $41.86 | $1,080.00 | N/A | $90.00 | $0.00 | $1,080.00 |
| D-1 | 1 | 8 CY | 1 | Trash | Engineering Department - 1100 N Forest Rd. | Engineering | 12 | N/A | $155.00 | $36.05 | $1,860.00 | N/A | $155.00 | $0.00 | $1,860.00 |
| A-2 | 1 | 8 CY | 2 | Trash | Police Dept HQ - 500 John James Audubon Pkwy. | Building Maintenance | 12 | N/A | $295.00 | $34.30 | $3,540.00 | N/A | $290.00 | $0.00 | $3,480.00 |
| G-1 | 1 | 8 CY | 2 | Trash | Waste Water Treatment Plant - 455 Tonawanda Creek Rd. | WWTP | 12 | N/A | $295.00 | $34.60 | $3,540.00 | N/A | $290.00 | $0.00 | $3,480.00 |
| E-1 | 1 | 8 CY | 3 | Trash | Highway Dept. - 1042 N. Forest Rd. | Highway | 12 | N/A | $405.00 | $31.40 | $4,860.00 | N/A | $410.00 | $0.00 | $4,920.00 |
| H-1 | 1 | 8 CY | 3 | Trash | Northtown Center - 1615 Amherst Manor Dr. | Youth & Rec | 12 | N/A | $405.00 | $31.40 | $4,860.00 | N/A | $410.00 | $0.00 | $4,920.00 |
| C-1 | 1 | 10 CY | 1 | Trash | Center For Senior - 370 John James Audubon Pkwy. | Senior Center | 12 | N/A | $165.00 | $38.37 | $1,980.00 | N/A | $180.00 | $0.00 | $2,160.00 |
| H-2 | 1 | 8 CY | 2 | Compacted Trash | Northtown Center - 1615 Amherst Manor Dr. | Youth & Rec | 12 | N/A | $708.00 | $82.33 | $8,496.00 | N/A | $850.00 | $0.00 | $10,200.00 |
| **SMALL CONTAINERS - SEASONAL SERVICE** | | | | | | | | | | | | | | | |
| H-10 | 1 | 8 CY | 1 | OCC | FAA Wehrle Baseball Field - 1868 Wehrle Dr. | Youth & Rec | 5 | | $135.00 | $31.40 | $675.00 | | $165.00 | $0.00 | $825.00 |
| H-12 | 1 | 8 CY | 1 | OCC | Lou Gehrig Baseball Field - 50 Dann Rd. | Youth & Rec | 5 | | $135.00 | $31.40 | $675.00 | | $165.00 | $0.00 | $825.00 |
| H-8 | 1 | 8 CY | 1 | Trash | Kingsgate Park Little League - 460 Wehrle Dr. | Youth & Rec | 5 | | $160.00 | $37.21 | $800.00 | | $165.00 | $0.00 | $825.00 |
| H-9 | 1 | 8 CY | 1 | Trash | FAA Wehrle Baseball Field - 1868 Wehrle Dr. | Youth & Rec | 5 | | $160.00 | $37.21 | $800.00 | | $165.00 | $0.00 | $825.00 |
| H-11 | 3 | 8 CY | 1 | Trash | Lou Gehrig Baseball Field - 50 Dann Rd. | Youth & Rec | 5 | | $400.00 | $93.02 | $2,000.00 | | $430.00 | $0.00 | $2,150.00 |
| H-15 | 1 | 8 CY | 2 | Trash | Audubon Golf Course - 500 Maple Rd. | Youth & Rec (Bill to Amherst Golf Management LLC) | 7 | | $305.00 | $35.47 | $2,135.00 | | ~~$165.00~~ | ~~$0.00~~ | ~~$1,155.00~~ |
| | | | | | | **TOTAL SMALL CONTAINER SERVICE:** | | | | | **$60,017.00** | | | | **$62,465.00** |
| | | | | | | | | | | | | | | | |
| **ROLL OFF SERVICE** | | | | | | | Quantity | | | Unit Cost | Annual Cost | | Unit Cost | | Annual Cost |
| One time delivery fee (any size roll off container) | | | | | | | 1 | | | $110.00 | $110.00 | | $100.00 | | $100.00 |
| Swap or removal fee (any size roll off container) | | | | | | | 13 | | | $260.00 | $3,380.00 | | $200.00 | | $2,600.00 |
| Per ton disposal of acceptable non-hazardous solid waste (any size roll off container) | | | | | | | 156 | | | $52.00 | $8,112.00 | | $80.00 | | $12,480.00 |
| Monthly container rental fee (any size roll off container) | | | | | | | 8 | | | $100.00 | $800.00 | | $50.00 | | $400.00 |
| | | | | | | **TOTAL ROLL OFF SERVICE:** | | | | | **$12,402.00** | | | | **$15,580.00** |
| | | | | | | | | | | | | | | | |
| | | | | | | **GRAND TOTAL:** | | | | | **$72,419.00** | | | | $78,045.00 |

**NOTES:**

Modern Disposal: Confirmed with bidder that Per Pickup cost is included in the monthly rental. The Total Annual Cost is correct as submitted.

Waste Management: Item A4 - Smith Road Maintenance and Item D2 - Town of Amherst Engineering Department were miscalculated. Waste Management had $1,200 and it should be $1,320 for each line.

Waste Management: Item H-15 advised that they cannot hold this price.

Attachment: Bid Analysis - Bid 2024015 - Town Wide Dumpster Service (RES-2024-429 : Award Bid

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28991 **RESOLUTION 2024-430** **ADOPTED**

# Agreement to Upgrade MUNIS Financial Management System - CRS #4804

**WHEREAS,** an upgrade to the MUNIS Financial Management System to a hosted solution and addition of a Content Manager Core module is being requested, which will allow for future enhancements to the overall system, including an integrated Time and Attendance module and Revenue Management module for more timely reporting of revenues from the various departments, as well as other potential enhancements; and

**WHEREAS,** the attached quote will be prorated for a 6-month period, and a credit will be received for approximately 50% (6 months) of the Town's current license agreement with MUNIS, bringing the total additional expenditure to $60,804.89;

**WHEREAS,** funds for this upgrade were appropriated for this purpose and are available in the 2024 Comptroller's budget; and

**NOW, THEREFORE, BE IT RESOLVED,** the Town Board authorizes the Supervisor to sign the Agreement with Tyler Technologies; and

**BE IT FURTHER RESOLVED,** that approval is subject to successful completion of the Contract Routing System in order to schedule implementation and testing of the project prior to the heaviest workload of the 2025 Budget.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

A1310-4110; $60,804.89

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



# SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

**SECTION A – DEFINITIONS**

- **"Agreement"** means this Software as a Service Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client**" means the Town of Amherst, New York.
- **"Data"** means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Users"** means the number of users that are authorized to use the SaaS Services. The Defined Users for the Agreement are as identified in the Investment Summary. If Exhibit A contains Enterprise Permitting & Licensing labeled software, defined users mean the maximum number of named users that are authorized to use the Enterprise Permitting & Licensing labeled modules as indicated in the Investment Summary.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date by which both your and our authorized representatives have signed the Agreement.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the products and services attached as Exhibit A.





Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

- **"Invoicing and Payment Policy"** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **"Order Form"** means an ordering document that includes a quote or investment summary and specifying the items to be provided by Tyler to Client, including any addenda and supplements thereto.
- **"SaaS Fees"** means the fees for the SaaS Services identified in the Investment Summary.
- **"SaaS Services"** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **"SLA"** means the service level agreement. A copy of our current SLA is attached hereto as Exhibit C.
- **"Support Call Process"** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 1 to Exhibit C.
- **"Third Party Hardware"** means the third party hardware, if any, identified in the Investment Summary.
- **"Third Party Products"** means the Third Party Software and Third Party Hardware.
- **"Third Party SaaS Services"** means software as a service provided by a third party, if any, identified in the Investment Summary.
- **"Third Party Services"** means the third party services, if any, identified in the Investment Summary.
- **"Third Party Software"** means the third party software, if any, identified in the Investment Summary.
- **"Third Party Terms"** means, if any, the end user license agreement(s) or similar terms for the Third Party Products or other parties' products or services, as applicable, and attached or indicated at Exhibit D.
- **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.
- **"Tyler Software"** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **"we", "us", "our"** and similar terms mean Tyler.
- **"you"** and similar terms mean Client.

**SECTION B – SAAS SERVICES**

1. Rights Granted. We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(9). The foregoing notwithstanding, to the extent we have sold you perpetual licenses for Tyler Software, if and listed in the Investment Summary, for which you are receiving SaaS Services, your rights to use such Tyler Software are perpetual, subject to the terms and conditions of this Agreement including, without limitation, Section B(4). We will make any such



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

software available to you for download.

2. SaaS Fees. You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Users and amount of Data Storage Capacity. You may add additional users or additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).

3. Ownership.

   3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.

   3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.

   3.3 You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.

4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.

5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(9), below, the SLA and our then current Support Call Process.

6. SaaS Services.

   6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 21. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. The scope of audit coverage varies for some Tyler Software solutions. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information. If our SaaS Services are provided using a 3rd party data center, we will provide available compliance reports for that data center.



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

6.2 You will be hosted on shared hardware in a Tyler data center or in a third-party data center. In either event, databases containing your Data will be dedicated to you and inaccessible to our other customers.

6.3 Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event of a data center failure, we reserve the right to employ our disaster recovery plan for resumption of the SaaS Services. In that event, we commit to a Recovery Point Objective ("RPO") of 24 hours and a Recovery Time Objective ("RTO") of 24 hours. RPO represents the maximum duration of time between the most recent recoverable copy of your hosted Data and subsequent data center failure. RTO represents the maximum duration of time following data center failure within which your access to the Tyler Software must be restored.

6.4 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.

6.5 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.

6.6 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.

6.7 We provide secure Data transmission paths between each of your workstations and our servers.

6.8 Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

6.9 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to

supply the current status of our PCI DSS compliance program in the form of an official Attestation of Compliance, which can be found at https://www.tylertech.com/about-us/compliance, and in the event of any change in our status, will comply with applicable notice requirements.

**SECTION C – PROFESSIONAL SERVICES**

1. Professional Services. We will provide you the various implementation-related services itemized in the Investment Summary.

2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.

3. Additional Services. The Investment Summary contains the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.

4. Cancellation. If you cancel services less than four (4) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) daily fees associated with cancelled professional services if we are unable to reassign our personnel and (b) any non-refundable travel expenses already incurred by us on your behalf. We will make all reasonable efforts to reassign personnel in the event you cancel within four (4) weeks of scheduled commitments.

5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.

6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us.

7. Background Checks. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.

8. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).

9. Maintenance and Support. For so long as you timely pay your SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:

   9.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy);

   9.2 provide support during our established support hours;

   9.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;

   9.4 make available to you all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and

   9.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

**SECTION D – THIRD PARTY PRODUCTS**



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.

2. Third Party Software. As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.

3. Third Party Products Warranties.

   3.1 We are authorized by each Developer to grant access to the Third Party Software.

   3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.

   3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.

4. Third Party Services. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

**SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES**

1. Invoicing and Payment. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).

2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

**SECTION F – TERM AND TERMINATION**

1. Term. The initial term of this Agreement is July 1, 2024 – December 31, 2024, unless earlier terminated as set forth below. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at our then-current SaaS Fees unless



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.

2. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).

   2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.

   2.2 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).

   2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.

   2.4 Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

**SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE**

1. Intellectual Property Infringement Indemnification.

   1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

   1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.

   1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.

1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of PCI-DSS requirements or a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

**3. DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT UNDERSTANDS AND AGREES THAT TYLER DISCLAIMS ANY LIABILITY FOR ERRORS THAT RELATE TO USER ERROR.**

**4. LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(1), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF**



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

**LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).**

5. **EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

6. Insurance. During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least $1,000,000; (b) Automobile Liability of at least $1,000,000; (c) Professional Liability of at least $1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least $5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

**SECTION H – GENERAL TERMS AND CONDITIONS**

1. Additional Products and Services. You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.

2. Optional Items. Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.

3. Dispute Resolution. You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.

4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.

6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.

7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.

8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.

9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.

10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.

11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.

12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.

13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

each and every term of this Agreement thereafter.

14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.

15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.

17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
    (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
    (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
    (c) a party receives from a third party who has a right to disclose it to the receiving party; or
    (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

18. Quarantining of Client Data. Some services provided by Tyler require us to be in possession of your Data. In the event we detect malware or other conditions associated with your Data that are reasonably suspected of putting Tyler resources or other Tyler clients' data at risk, we reserve the absolute right to move your Data from its location within a multi-tenancy Tyler hosted environment to an isolated "quarantined" environment without advance notice. Your Data will remain in such quarantine for a period of at least six (6) months during which time we will review the Data, and all traffic associated with the Data, for signs of malware or other similar issues. If no issues are detected through such reviews during the six (6) month period of quarantine, we will coordinate with you the restoration of your Data to a non-quarantined environment. In the event your Data



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

must remain in quarantine beyond this six (6) month period through no fault of Tyler's, we reserve the right to require payment of additional fees for the extended duration of quarantine. We will provide an estimate of what those costs will be upon your request.

19. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.

20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.

21. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.

22. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.

23. Data & Insights Solution Terms. Your use of certain Tyler solutions includes Tyler's Data & Insights data platform. Your rights, and the rights of any of your end users, to use Tyler's Data & Insights data platform is subject to the Data & Insights SaaS Services Terms of Service, available at https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service. By signing a Tyler Agreement or Order Form, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.

24. Contract Documents. This Agreement includes the following exhibits:

| | |
|---|---|
| Exhibit A | Investment Summary |
| Exhibit B | Invoicing and Payment Policy |
| | Schedule 1: Business Travel Policy |
| Exhibit C | Service Level Agreement |
| | Schedule 1: Support Call Process |
| Exhibit D | Third Party Terms |

[SIGNATURE PAGE FOLLOWS]

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

By:_____

Name:_____

Title:_____

Date:_____

Address for Notices:
Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Chief Legal Officer

Town of Amherst, New York

By:_____

Name:_____

Title:_____

Date:_____

Address for Notices:
Town of Amherst
5583 Main Street, Suite 1
Amherst, NY 14221-5499
Attention: _____

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -



# Exhibit A
# Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date, despite any expiration date in the Investment Summary that may have lapsed as of the Effective Date.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -



| | |
|---|---|
| Quoted By: | Jennifer Barns |
| Quote Expiration: | 10/31/24 |
| Quote Name: | Town of Amherst - ERP - Tyler Hosted |
| Saas Term | 1.00 |

**Sales Quotation For:**

Town of Amherst
Suite 1
5583 Main Street
Amherst NY 14221-5499

**Shipping Address:**

**Tyler SaaS and Related Services**

| Description | Qty | Imp. Hours | Annual Fee |
|---|---|---|---|
| Financial Management | | | |
| Accounting/GL/BG/AP | 1 | 0 | $ 59,752.00 |
| Purchase Orders | 1 | 0 | $ 17,926.00 |
| Human Resources Management | | | |
| Payroll | 1 | 0 | $ 24,103.00 |
| Content Management | | | |
| Content Manager Core includes Onboarding | 1 | 64 | $ 25,709.00 |
| Additional | | | |
| Enterprise ERP Office | 1 | 0 | $ 12,051.00 |
| Forms Processing Doc Origin Software | 1 | 0 | $ 10,017.00 |
| Subscription Fees | | | |
| Concurrent Users | 1 | 0 | $ 20,000.00 |



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade

| | | | |
|---|---|---|---|
| **TOTAL** | **64** | **$ 169,558.00** | |

**Professional Services**

| Description | Quantity | Unit Price | Ext Discount | Extended Price | Maintenance |
|---|---|---|---|---|---|
| Project Management | 8 | $ 200.00 | $ 0.00 | $ 1,600.00 | $ 0.00 |
| Project Planning Services | 1 | $ 7,192.00 | $ 0.00 | $ 7,192.00 | $ 0.00 |
| Remote Implementation | 64 | $ 200.00 | $ 0.00 | $ 12,800.00 | $ 0.00 |
| **TOTAL** | | | | **$ 21,592.00** | **$ 0.00** |

| **Summary** | **One Time Fees** | **Recurring Fees** |
|---|---|---|
| Total Tyler License Fees | $ 0.00 | $ 0.00 |
| Total SaaS | $ 0.00 | $ 169,558.00 |
| Total Tyler Services | $ 21,592.00 | $ 0.00 |
| Total Third-Party Hardware, Software, Services | $ 0.00 | $ 0.00 |
| **Summary Total** | **$ 21,592.00** | **$ 169,558.00** |
| **Contract Total** | **$ 191,150.00** | |

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held
For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: _____ Date: _____

Print Name: _____ P.O.#: _____

*All Primary values quoted in US Dollars*



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade

**Comments**

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms:

- License fees for Tyler and third party software are invoiced upon the earlier of (i) deliver of the license key or (ii) when Tyler makes such software available for download by the Client;
- Fees for hardware are invoiced upon delivery;
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware;
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software available for download by the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the Agreement, with renewals invoiced annually thereafter in accord with the Agreement.
- Fees for services included in this sales quotation shall be invoiced as indicated below.
    - Implementation and other professional services fees shall be invoiced as delivered.
    - Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
    - Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion module, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion module.
    - Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
    - If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
    - Notwithstanding anything to the contrary stated above, the following payment terms shall apply to services fees specifically for migrations: Tyler will invoice Client 50% of any Migration Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Unless otherwise indicated on this Sales quotation, annual services will be invoiced in advance, for annual terms commencing on the date this sales quotation is signed by the Client. If

listed annual service(s) is an addition to the same service presently existing under the Agreement, the first term of the added annual service will be prorated to expire coterminous with the existing annual term for the service, with renewals to occur as indicated in the Agreement.

- Expenses associated with onsite services are invoiced as incurred.

Tyler's quote contains estimates of the amount of services needed, based on our preliminary understanding of the scope, level of engagement, and timeline as defined in the Statement of Work (SOW) for your project. The actual amount of services required may vary, based on these factors.

Tyler's pricing is based on the scope of proposed products and services contracted from Tyler. Should portions of the scope of products or services be altered by the Client, Tyler reserves the right to adjust prices for the remaining scope accordingly.

Unless otherwise noted, prices submitted in the quote do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy.

Tyler's prices do not include applicable local, city or federal sales, use excise, personal property or other similar taxes or duties, which you are responsible for determining and remitting. Installations are completed remotely but can be done onsite upon request at an additional cost.

In the event Client cancels services less than four (4) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the cancelled services if Tyler is unable to re-assign its personnel.

The Implementation Hours included in this quote assume a work split effort of 70% Client and 30% Tyler.

Implementation Hours are scheduled and delivered in four (4) or eight (8) hour increments.

Tyler provides onsite training for a maximum of 12 people per class. In the event that more than 12 users wish to participate in a training class or more than one occurrence of a class is needed, Tyler will either provide additional days at then-current rates for training or Tyler will utilize a Train-the-Trainer approach whereby the client designated attendees of the initial training can thereafter train the remaining users.

Content Manager Core includes up to 1TB of storage. Should additional storage be needed it may be purchased as needed at an annual fee of $5,000 per TB.

Financial library includes: 1 A/P check, 1 EFT/ACH, 1 Purchase order, 1099M, 1099INT, 1099S, and 1099G.

Project Management includes project planning, kickoff meeting, status calls, task monitoring, verification and transition to support.

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade

Tyler's form library prices are based on the actual form quantities listed, and assume the forms will be provided according to the standard Enterprise ERP form template. Any forms in addition to the quoted amounts and types, including custom forms or forms that otherwise require custom programming, are subject to an additional fee. Please also note that use of the Tyler Forms functionality requires the use of approved printers as well. You may contact Tyler's support team for the most current list of approved printers. Any forms included in this quote are based on the standard form templates provided. Custom forms, additional forms and any custom programming are subject to additional fees not included in this quote. The additional fees would be quoted at the time of request, generally during the implementation of the forms. Please note that the form solution provided requires the use of approved printers. You may contact Tyler's support team for the most current list of approved printers.

Standard Project Management responsibilities include project plan creation, initial stakeholder presentation, bi-weekly status calls, updating of project plan task statuses, and go-live planning activities.

In the event Client acquires from Tyler any edition of Content Manager software other than Enterprise Edition, the license for Content Manager is restricted to use with Tyler applications only. If Client wishes to use Content Manager software with non-Tyler applications, Client must purchase or upgrade to Content Manager Enterprise Edition.

**Implementation Hours:**
**Time & Attendance - 128**
**Content Manager Core - 64**
**Payroll/HR Improvements - 40**

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

# Exhibit B
# Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

**Invoicing**: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. SaaS Fees. SaaS Fees for the initial term shall be invoiced on the commencement of the initial term as set forth in Section F (1) of this Agreement. Your SaaS fees for the initial term shall be based on the annual rates set forth in the Investment Summary. Thereafter, SaaS Fees shall be invoiced on an annual basis. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates.

2. Other Tyler Software and Services.
   2.1 *Implementation and Other Professional Services (including training)*: Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
   2.2 *Consulting Services*: If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon your acceptance of the Best Practice Recommendations, by module, and 50% upon your acceptance of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.
   2.3 *Conversions*: Fixed-fee conversions are invoiced 50% upon initial delivery of the converted Data, by conversion option, and 50% upon Client acceptance to load the converted Data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.
   2.4 *Requested Modifications to the Tyler Software*: Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in this Agreement.
   2.5 *Other Fixed Price Services*: Other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
   2.6 *Other Fixed Price Services*: Other fixed price services are invoiced as delivered, at the rates

set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.

*2.7 Web Services*: Annual fees for web services are payable in advance, commencing upon the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

2.8 *Annual Services*: Unless otherwise indicated in this Exhibit B, fees for annual services are due annually, in advance, commencing on the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

3. Third Party Products and Hardware.
   3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.
   3.2 *Third Party Software Maintenance*: The first year maintenance fee for the Third Party Software is invoiced when we make it available to you for downloading. Subsequent annual maintenance fees for Third Party Software are invoiced annually, in advance, at then-current rates, upon each anniversary thereof.
   3.3 *Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.
   3.4 *Hardware Maintenance*: The first year maintenance fee for Hardware is invoiced upon delivery of the hardware. Subsequent annual maintenance fees for hardware are invoiced annually, in advance, at then-current rates, upon each anniversary thereof.
   3.5 *Third Party Services:* Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary. For the avoidance of doubt, Finite Matters will invoice Client directly for any services fees for Pattern Stream.
   3.6 *Third Party SaaS*: Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party's then-current rates.

4. Transaction Fees. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in the Investment Summary and may be increased by Tyler upon notice of no less than thirty (30) days.

5. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

6. Credit for Prepaid Maintenance and Support Fees for Tyler Software. Client will receive a credit for the maintenance and support fees prepaid for the Tyler Software for the time period commencing on the first day of the SaaS Term.



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

**Payment.** Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting AR@tylertech.com.

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -



# Exhibit B
# Schedule 1
# Business Travel Policy

1. Air Travel

A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within $100 (each way) of the lowest logical fare. If a net savings of $200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

| | |
|---|---|
| Depart before 12:00 noon | Lunch and dinner |
| Depart after 12:00 noon | Dinner |

Return Day

| | |
|---|---|
| Return before 12:00 noon | Breakfast |
| Return between 12:00 noon & 7:00 p.m. | Breakfast and lunch |
| Return after 7:00 p.m.* | Breakfast, lunch and dinner |

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

| | |
|---|---|
| Breakfast | 15% |
| Lunch | 25% |
| Dinner | 60% |

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

5. Internet Access – Hotels and Airports

   Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to $10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

   All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

   When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

   The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

   Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -



# Exhibit C
# SERVICE LEVEL AGREEMENT

## I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process. This SLA does not apply to any Third Party SaaS Services. All other support services are documented in the Support Call Process.

**II. Definitions.** Except as defined below, all defined terms have the meaning set forth in the Agreement.

*Actual Attainment:* The percentage of time the Tyler Software is available during a calendar month, calculated as follows: (Service Availability – Downtime) ÷ Service Availability.

*Client Error Incident*: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

*Downtime*: Those minutes during Service Availability, as defined below, when all users cannot launch, login, search or save primary data in the Tyler Software. Downtime does not include those instances in which only a Defect is present.

*Emergency Maintenance Window:* (1) maintenance that is required to patch a critical security vulnerability; (2) maintenance that is required to prevent an imminent outage of Service Availability; or (3) maintenance that is mutually agreed upon in writing by Tyler and the Client.

*Planned Downtime:* Downtime that occurs during a Standard or Emergency Maintenance window.

*Service Availability:* The total number of minutes in a calendar month that the Tyler Software is capable of receiving, processing, and responding to requests, excluding Planned Downtime, Client Error Incidents, denial of service attacks and Force Majeure. Service Availability only applies to Tyler Software being used in the live production environment.

*Standard Maintenance:* Routine maintenance to the Tyler Software and infrastructure. Standard Maintenance is limited to five (5) hours per week.

## III. Service Availability

a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support case number.

b. Our Responsibilities



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of Planned Downtime, a Client Error Incident, denial of service attack or Force Majeure). We will also work with you to resume normal operations.

c. Client Relief

Our targeted Attainment Goal is 100%. You may be entitled to credits as indicated in the Client Relief Schedule found below. Your relief credit is calculated as a percentage of the SaaS Fees paid for the calendar month.

In order to receive relief credits, you must submit a request through one of the channels listed in our Support Call Process within fifteen days (15) of the end of the applicable month. We will respond to your relief request within thirty (30) day(s) of receipt.

The total credits confirmed by us will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Credits are only payable when Actual Attainment results in eligibility for credits in consecutive months and only for such consecutive months.

| Client Relief Schedule | |
|---|---|
| **Actual Attainment** | **Client Relief** |
| 99.99% - 98.00% | Remedial action will be taken |
| 97.99% - 95.00% | 4% |
| Below 95.00% | 5% |

## IV. Maintenance Notifications

We perform Standard Maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

Not all maintenance activities will cause application unavailability. However, if Tyler anticipates that activities during a Standard or Emergency Maintenance window may make the Tyler Software unavailable, we will provide advance notice, as reasonably practicable, that the Tyler Software will be unavailable during the maintenance window.

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

# Exhibit C
# Schedule 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 | Labor Day |
| Martin Luther King, Jr. Day | Thanksgiving Day |
| Memorial Day | Day after Thanksgiving |
| Independence Day | Christmas 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 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. |



Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

| Priority Level | Characteristics of Support Incident | Resolution Targets* |
|---|---|---|
| 2<br>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<br>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. |
| 4<br>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: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

# Exhibit D
# Third Party Terms

DocOrigin Terms. Your use of Tyler Forms software and forms is subject to the DocOrigin End User License Agreement available for download here: https://eclipsecorp.us/eula/. By signing a Tyler Agreement or Order Form including Tyler forms software or forms, or accessing, installing, or using Tyler Forms software or forms, you agree that you have read, understood, and agree to such terms.

ThinPrint Terms. Your use of Tyler Forms software and forms is subject to the End User License Agreement terms for ThinPrint Engine, ThinPrint License Server, and Connected Gateway found here: https://www.thinprint.com/en/legal-notes/eula/. By signing a Tyler Agreement or Order Form, or accessing, installing, or using Tyler Forms software or forms, you agree that you have read, understood, and agree to such terms.

Attachment: Amherst NY Tyler ERP SaaS Agreement 050824 (RES-2024-430 : Agreement to Upgrade MUNIS Financial Management System -

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28782 **RESOLUTION 2024-431** **ADOPTED**

# Extension of Elevator Maintenance & Repair Service Contract through OMNIA - CRS #4704

**WHEREAS,** Kone, Inc. has agreed to extend the contract for Elevator Maintenance & Repair Service (OMNIA contract EV2516) (Original CRS #1478);

**NOW, THEREFORE, BE IT RESOLVED,** the Town Board approves a one-year extension of the contract with Kone, Inc. for the period July 1, 2024 through June 30, 2025; and

**BE IT FURTHER RESOLVED,** the Town Board authorizes the Supervisor to sign the contract extension with Kone, Inc.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Town Wide; Various Accounts; Amount TBD

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

# TOWN OF AMHERST
Erie County, New York

**SUPERVISOR**
Brian J. Kulpa
716-631-7032

**COUNCILMEMBERS**
Jacqualine Berger
Shawn Lavin
Angela Marinucci
Michael Szukala

March 4, 2024

Kone, Inc.
2700 BiState Drive, Suite 100
Kansas City, MO 64108
Attn: Kaitlyn Schaughnessy

**Re: CRS 1478 – Elevator Maintenance and Repair Service (OMNIA contract EV2516)**

Dear Ms. Schaughnessy:

The Town of Amherst wishes to extend this agreement for an additional contract period, through June 30, 2025, under the same prices, terms and conditions as the original agreement.

Extension is provided for per Page 6 of 7 in the Agreement document. This offer is for your immediate consideration and acceptance. Please indicate below whether you agree to extend or do not wish to extend. Please respond **within seven days upon receipt of this request.**

If you wish to extend, please return three (3) originals to:
Town of Amherst Contract Compliance Department
5583 Main Street
Williamsville, NY 14221

After approval and execution by the Town of Amherst, a fully signed copy will be returned to you for your files.

---

✓ Yes, I agree to extend _____ No, I do not wish to extend

Company Name: KONE Inc.

Representative (Please print): Kaitlyn Shaughnessy Title: Senior Sales Consultant

Signature: Kaitlyn Shaughnessy Date: March 4, 2024

Acceptance by the Town of Amherst:

Brian Kulpa, Supervisor Date



Attachment: Kone Signed Extension Agreement (RES-2024-431 : Extension of Elevator Maintenance & Repair Service Contract through OMNIA

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28995 **RESOLUTION 2024-432** **ADOPTED**

# Erie County Water Authority Request Proposal for Installation of One (1) Fire Hydrant New Road (CR 186) – Phase 1; Between Dodge Rd. & Smith Rd.

We are hereby requesting authorization to have one (1) fire hydrant installed at the above location.

During the course of waterline construction, the Erie County Water Authority is required to install one additional fire hydrant at the above location to satisfy current design standards regarding hydrant spacing on a public potable water distribution system. Under the Lease Management Agreement, a Resolution from the Town Board is required for Erie County Water Authority to do this installation. The Town is to pay the annual maintenance fee of $160.80 per fire hydrant for a total of $160.80.

May we have your approval for the installation of one (1) additional fire hydrant?

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

The Town is to pay the annual maintenance fee of $160.80 per fire hydrant for a total of $160.80.

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28996 **RESOLUTION 2024-433** **ADOPTED**

# Installation of Street Lighting Muir Woods/Aspen Heights/Audubon Extension TOA Job No: 2005.008B

We are hereby requesting authorization for the installation of nine (9) street lights at the above referenced location.

During the course of construction, the Town of Amherst requires the developer to install street lighting along new public roadways. Following installation, the proposed lighting will be accepted by the Town for ownership and maintenance. As such, National Grid requires a Town Board resolution authorizing the installation of the proposed street lighting.

May we have your approval for the installation of nine (9) street lights?

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

NA

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28997 **RESOLUTION 2024-434** **WITHDRAWN**

# Installation of Street Lighting Miller's Crossing – Phase 1 and 2 TOA Job No: 2018.043

We are hereby requesting authorization for the installation of nine (9) street lights at the above referenced location.

During the course of construction, the Town of Amherst requires the developer to install street lighting along new public roadways. Following installation, the proposed lighting will be accepted by the Town for ownership and maintenance. As such, National Grid requires a Town Board resolution authorizing the installation of the proposed street lighting.

May we have your approval for the installation of nine (9) street lights?

**FINANCIAL IMPACT:**

NA

| | |
|---|---|
| **RESULT:** | **WITHDRAWN** |

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 28999 **RESOLUTION 2024-435** **ADOPTED**

# Change Order #1 & Final –Ground Breaking Solutions LLC.– General Construction Contract Audubon Golf Course Driving Range Expansion TOA Job # 2000.085H CRS No. 4791

We are requesting the Town Board Consider approval of this resolution authorizing the Supervisor to sign the above referenced Change Order, which increases the overall contract by $5,000.00. This change will cover the costs associated with providing additional labor and materials to adjust and raise the existing grade to meet elevations for the designed concrete pad expansion.

Please note that the above request is contingent pending successful completion of the contract review procedure.

Funding for this contract shall be from project account KP2215.4972

Thank you for considering this request.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Funding for this contract shall be from project account KP2215.4972

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

***Town of Amherst***
***Change Order***

| **PROJECT:** | **CONTRACT INFORMATION:** | **CHANGE ORDER INFORMATION:** |
|---|---|---|
| *Audubon Golf Course Driving Range Expansion* | *Contract For: General Construction* | Change Order Number: 01 |
| *TOA Proj. No. 2000.085H* | *Date: March 25, 2024* | |
| **OWNER:** | **ENGINEER:** | **CONTRACTOR:** |
| Town of Amherst | Town of Amherst Engineering Department | Ground Breaking Solutions, LLC. |
| 5583 Main St. | 1100 North Forest Rd. | 1019 Blakely Road |
| Williamsville, NY 14221 | Williamsville, NY 14221 | East Aurora, NY 14052 |

**The Contract is changed as follows:**

*Providing labor, equipment, and material excluding millings to provide additional fill to raise existing grades to meet designed elevations of new concrete slab. Additional final grading, topsoil and seeding to appropriately shed water away from concrete pad at area of raised grade.*

| | | |
|---|---|---|
| The original Contract Sum was | | **$ 38,000.00** |
| The net change by previously authorized Change Orders | | **$ 0.00** |
| The Contract Sum prior to this Change Order was | | **$ 38,000.00** |
| The Contract Sum will be **[increased]** ~~**[decreased]**~~ by this Change Order in the amount of | | **$ 5,000.00** |
| The new Contract Sum, including this Change Order, will be | | **$ 43,000.00** |
| The Contract Time will be changed by | ( 0 ) days. | |
| The new date of Substantial Completion shall now be: | N/A | |

*NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.*

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

| **Town of Amherst Engineering Department** | **Ground Breaking Solutions, LLC.** | **Town of Amherst** |
|---|---|---|
| **ARCHITECT/ENGINEER** | **CONTRACTOR** | **OWNER** |
| **SIGNATURE** | **SIGNATURE** | **SIGNATURE** |
| **PRINTED NAME AND TITLE** | **PRINTED NAME AND TITLE** | **PRINTED NAME AND TITLE** |
| **DATE** | **DATE** | **DATE** |

Attachment: Change Order 1 -Ground Breaking Solutions Backup (RES-2024-435 : Change Order #1 & Final –Ground Breaking Solutions LLC.–

# Proposal

4/15/2024

Audubon Golf Course

500 Maple Road

Buffalo, New York 14221

716-984-9434

Jeremy Burger, P.E.

Ground Breaking Solutions, LLC

1019 Blakeley Road,

East Aurora, New York 14052

Mike Hitzel,

Due to the elevation differences between the drawings and field conditions Ground Breaking Solutions LLC proposes to raise the existing grade to the design elevation by installing millings supplied by the Town of Amherst. We will slope the grade from existing to propose appropriately to shed the water away from the concrete. Lastly we will topsoil and seed. The Proposal is for labor and equipment and materials excluding the millings.

Lump sum cost $5,000.00

Thank you,

Jeremy Burger, P.E.

Ground Breaking Solutions LLC

Attachment: Change Order 1 -Ground Breaking Solutions Backup (RES-2024-435 : Change Order #1 & Final –Ground Breaking Solutions LLC.–

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 29000 **RESOLUTION 2024-436** **ADOPTED**

# Award of Bid –J.R. Swanson Plumbing Co. Inc.– Mechanical Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the two (2) bids received (bid tabulation attached), we recommend award of this contract to J.R.Swanson Plumbing Co. Inc., 413 103rd Street, Niagara Falls, NY 14304, in the amount of $110,200.00. Funding for this contract shall be from account KP2303.4972.

Thank you for considering this request.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Funding for this contract shall be from account KP2303.4972.

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

# Royal Park Sports Complex

*Bid Tabulation / May 6, 2024*

T.O.A. Job No. 2019.055

## Mechanical Construction Contract

| No. | Bidder | Bid Bond (Y / N) | Base Bid Total | Total |
|---|---|---|---|---|
| 1 | J.R Swanson Plumbing Co. Inc. | Y | $110,200.00 | $110,200.00 |
| 2 | Parise Mechanical Inc. | Y | $112,300.00 | $112,300.00 |

Attachment: Royal Park Bid Tab - MC (RES-2024-436 : Award of Bid –J.R. Swanson Plumbing Co. Inc.– Mechanical Contract)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 29001 **RESOLUTION 2024-437** **ADOPTED**

# Award of Bid –M.K.S. Plumbing Corp.– Plumbing Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the five (5) bids received (bid tabulation attached), we recommend award of this contract to M.K.S. Plumbing Corp., 19 Ransier Drive, West Seneca, NY 14224 in the amount of $248,000.00. Funding for this contract shall be from account KP2303.4972.

Thank you for considering this request.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Funding for this contract shall be from account KP2303.4972.

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

# Royal Park Sports Complex

*Bid Tabulation / May 6, 2024*

T.O.A. Job No. 2019.055

## Plumbing Construction Contract

| No. | Bidder | Bid Bond (Y / N) | Base Bid Total | Total |
|---|---|---|---|---|
| 1 | MKS Plumbing | Y | $248,000.00 | $248,000.00 |
| 2 | J.R. Swanson Plumbing Co. Inc. | Y | $277,730.00 | $277,730.00 |
| 3 | MLP Plumbing and Mechancial | Y | $333,900.00 | $333,900.00 |
| 4 | Willett Builders Inc. | Y | $344,000.00 | $344,000.00 |
| 5 | Camtech Plumbing and Mechanical | Y | $559,000.00 | $559,000.00 |

Attachment: Royal Park Bid Tab PC (RES-2024-437 : Award of Bid –M.K.S. Plumbing Corp.– Plumbing Contract)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 29002 **RESOLUTION 2024-438** **ADOPTED**

# Award of Bid –Industrial Power and Lighting Corp.– Electrical Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the three (3) bids received (bid tabulation attached), we recommend award of this contract to Industrial Power and Lighting Corp., 60 Depot Street, Buffalo, NY 14206, in the amount of $443,700.00. Funding for this contract shall be from account KP2303.4972.

Thank you for considering this request.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Funding for this contract shall be from account KP2303.4972.

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

# Royal Park Sports Complex

*Bid Tabulation / May 6, 2024*

T.O.A. Job No. 2019.055

## Electrical Construction Contract

| No. | Bidder | Bid Bond (Y / N) | Base Bid Total | Total |
|---|---|---|---|---|
| 1 | Industrial Power and Lighting Corp. (IPL) | Y | $443,700.00 | $443,700.00 |
| 2 | CIR Electrical Construction Corp. | Y | $645,000.00 | $795,000.00 |
| 3 | Frey Electric Construction Co. Inc. | Y | $716,000.00 | $758,000.00 |

Attachment: Royal Park Bid Tab - EC (RES-2024-438 : Award of Bid –Industrial Power and Lighting Corp.– Electrical Contract)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 29003 **RESOLUTION 2024-439** **ADOPTED**

# Award of Bid –Allgaier Construction Corp.– General Construction Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the three (3) bids received (bid tabulation attached), we recommend award of this contract to Allgaier Construction Corp., 10080 County Road, Clarence Center, NY 14032, in the amount of $1,469,400.00 to include the Base Bid and Alternate Bid Item No.6. Funding for this contract shall be from account KP2303.4972.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Funding for this contract shall be from account KP2303.4972.

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

# Royal Park Sports Complex

*Bid Tabulation / May 6, 2024*

T.O.A. Job No. 2019.055

## General Construction Contract

| No. | Bidder | Bid Bond (Y / N) | Base Bid Total | Alternate No. 6 Roof Dormers | Total |
|---|---|---|---|---|---|
| 1 | Allgaier Construction Corp | Y | $1,388,000.00 | $81,400.00 | $1,469,400.00 |
| 2 | Sicoli Construction Services Inc. | Y | $1,387,600.00 | $143,400.00 | $1,531,000.00 |
| 3 | Willett Builders Inc. | Y | $2,600,000.00 | $240,000.00 | $2,840,000.00 |
| | | | | | |

Attachment: Royal Park Bid Tab - GC (RES-2024-439 : Award of Bid –Allgaier Construction Corp.– General Construction Contract)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 29004 **RESOLUTION 2024-440** **ADOPTED**

# Award of Bid –Louis Del Prince & Sons, Inc.– Site/Utility Contract Royal Park Sports Complex Improvements TOA Project No. 2019.055

On May 6, 2024, bids were received for the above referenced project. After review of the six (6) of bids received (bid tabulation attached), we recommend award of this contract to Louis Del Prince & Sons, Inc., 580 Cayuga Road, Cheektowaga, NY 14225, in the amount of $6,490,400.00 to include the Base Bid and Alternate Bid Item Nos. 1,3,5, & 7.

Please note that Alternate No. 4, for two (2) new Pickleball courts is not being awarded at this time. A grant from Senator Ryan for these courts is being finalized and the Town Board will be approached at a later date to award that work to this contractor once that grant is fully approved.

Funding for this contract shall be as per the following:

| | |
|---|---|
| Account KP1826.4972 | $ 61,337.50 |
| Account KP2303.4972 | $6,429,062.50 |
| Total: | $6,490,400.00 |

Thank you for considering this request.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

Funding for this contract shall be as per the following:

| | |
|---|---|
| Account KP1826.4972 | $ 61,337.50 |
| Account KP2303.4972 | $6,429,062.50 |
| Total: | $6,490,400.00 |

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

**Royal Park Sports Complex**

*Bid Tabulation / May 6, 2024*

T.O.A. Job No. 2019.055

Anticipated item to be awarded

Alternate not taken

**Site Utility Construction Contract**

| No. | Bidder | Bid Bond (Y / N) | Base Bid Total | Alternate No.01 Basketball Court Improvements | Alternate No.2 Four Tennis Courts | Alternate No. 3 Six Tennis Courts | Alternate No. 4 Pickle Ball Courts | Alternate No. 5 Climber Play Equipment | Alternate No. 7 Scoreboard Elec. Team Names | Total |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | Louis Del Prince & Sons, Inc. | Y | $5,479,000.00 | $30,000.00 | $654,000.00 | $943,000.00 | $91,700.00 | $31,700.00 | $6,700.00 | $6,490,400.00 |
| 2 | American Paving and Excavating Inc. | Y | $5,680,000.00 | $24,450.00 | $704,138.00 | $1,001,556.00 | $91,616.00 | $26,683.00 | $6,001.00 | $6,830,306.00 |
| 3 | Anastasi Trucking Inc. | Y | $6,315,000.00 | $33,800.00 | $665,300.00 | $969,600.00 | $83,500.00 | $274,000.00 | $5,500.00 | $7,681,400.00 |
| 4 | Pinto Construction Services | Y | $6,423,950.00 | $49,500.00 | $737,000.00 | $1,075,000.00 | $125,000.00 | $40,000.00 | $6,500.00 | $7,719,950.00 |
| 5 | Occhino Corp | Y | $6,987,300.00 | $53,850.00 | $758,900.00 | $1,180,800.00 | $118,700.00 | $70,800.00 | $5,111.00 | $8,416,561.00 |
| 6 | Scott Lawn and Yard | Y | $7,688,714.50 | $55,180.00 | $724,800.00 | $1,083,250.00 | $124,380.00 | $202,002.50 | NA | $9,153,527.00 |

Attachment: Royal Park Bid Tab - SU (RES-2024-440 : Award of Bid –Louis Del Prince & Sons, Inc.–

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Finance
Initiated by: **Lynda Juul**
Co-Sponsored by: **Supervisor Brian J. Kulpa**

DOC ID: 28948 **RESOLUTION 2024-441** **ADOPTED**

# Authorize Travel

**BE IT RESOLVED,** that travel is hereby authorized for attendance at the Negotiation for City Leaders program through the Bloomberg Harvard City Leadership Initiative, being held June 2-7 in Cambridge, Massachusetts. Program fees, travel, lodging and some meal costs are covered by Bloomberg Philanthropies. One representative from each of the following departments is authorized to attend: Finance, Human Resources, Law.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

NTE $477.95 per person (budget is available in each department)

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28950 **RESOLUTION 2024-442** **ADOPTED**

# Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co CRS #4770

NOW THEREFORE BE IT RESOLVED, that the Town of Amherst is approved to piggyback on the County of Erie - Construction and Maintenance Materials Contract with Pavilion Drainage Supply Co for guide railing, median barrier and concrete barriers.

The Erie County and Pavilion Drainage Supply Co is Bid Reference #240045-004. Sections 568, 587 and E606 for guide railing, median barriers and concrete barriers. Contract term is 4/1/24 through 3/31/2025.

NOW THEREFORE BE FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this contract. This contract is contingent upon the successful completion of the Contract Routing System (CRS #4770) and the Town Attorney approval.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

A3310 - 4430 - TBD

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

# AGREEMENT

Let this document stand as an Agreement between PAVILION DRAINAGE SUPPLY CO., INC. And the Town of Amherst permitting the Town of Amherst to participate in the purchase of :

COUNTY OF ERIE-CONSTRUCTION AND MAINTENANCE MATERIALS
BID REFERENCE # 240045-004
4/1/2024 through 3/31/2025

SECTION 568 AND 587 - BRIDGE RAILING AND RECONSTRUCTION
SECTION E606 - Guide Railing, Median Barrier and Concrete Barrier
Pages 28, 29, 38, 39, 40 and 41

from Pavilion Drainage Supply Co., Inc. under Erie County Construction and Maintenance Specifications of BID REFERENCE #240045-004 for the period from 4/1/2024 TO 3/31/2025.

Agreed to and Accepted by:

**PAVILION DRAINAGE SUPPLY CO., INC.**

By: Philip J Plass
Signature

Philip S. Plass I
Print Name

President
Title

Date: 4-17-24

Agreed to and Accepted by:

**TOWN OF AMHERST**

By: _____
Brian Kulpa
Supervisor

Date: _____





Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# COUNTY OF ERIE
# DIVISION OF PURCHASE
# 95 FRANKLIN STREET
# BUFFALO, NEW YORK 14202

**Bids for Construction and Maintenance Materials**
**For use by Erie County Department of Public Works,**
**Division of Highways**

**Submitted in accordance with New York State Specification**
**For the Year From April 1, 2024 – March 31, 2025**

# BID NO.: 240045-004

Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

| | | |
|---|---|---|
| Pavilion Drainage Supply Co., Inc.<br>PO Box 219<br>6630 Ellicott Street Rd<br>Pavilion, New York 14525 | 585.584.3261 | 28, 29, 38- 41 |
| Robinson Paving, Inc.<br>PO Box 266<br>11525 Big Tree Road<br>East Aurora, New York 14052 | 716.687.1045 | 54, 90, 93, 96, 99, 102, 105, 108, 111, 114, 117, 120, 123 |
| Schneck's Tree Removal, Inc.<br>2861 Southwestern Blvd<br>Orchard Park, New York 14127 | 716.675.7098 | 46 |
| Suit Kote Corporation<br>1911 Lorings Crossing Road<br>Cortland, New York 13045<br><br>505 Como Park Blvd.<br>Buffalo, New York 14227 | 607.753.1100<br>716.683.8850 | 13, 15-17, 21-23, 25, 26, 68-73, 90, 93, 96, 99, 102, 105, 108, 111, 114, 117, 120, 123 |
| Tree Works of WNY, Inc.<br>5379 Oakridge Drive<br>Hamburg, New York 14075<br>4.5 S. Fisher Rd.<br>Lackawanna, New York 14218 | 716.770.8652 | 46 |





Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# 2024 Summer Maintenance Bid

| SECTION 568 | | | Pavilion Drainage Supply Co., Inc. |
|---|---|---|---|
| Item No. | Item Desc. | Pay Unit | Bid Price |
| 568.50 | Steel Bridge Railing (Two-Rail) | Foot | $286.75 |
| 568.51 | Steel Bridge Railing (Four-Rail) | Foot | $488.75 |
| 568.52 | Steel Bridge Railing (Five-Rail) | Foot | $564.50 |
| 568.53 | Steel Bridge Railing (Two-Rail) with Handrail | Foot | $368.00 |
| 568.54 | Steel Bridge Railing (Three-Rail) | Foot | $368.00 |
| 568.70 | Transition Bridge Railing | Foot | $380.00 |



Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# 2024 Summer Maintenance Bid

| SECTION 587 | | | Pavilion Drainage Supply Co., Inc. |
|---|---|---|---|
| **Item No.** | **Item Desc.** | **Pay Unit** | **Bid Price** |
| 587.05010015 | Bridge Steel Bridge Railing Replacement Clamp | Each | $720.00 |
| 587.1001 | Box Beam Bridge Rail, One Rail | Foot | $200.00 |
| 587.1002 | Box Beam Bridge Rail, Two Rail | Foot | $261.00 |



Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# 2024 Summer Maintenance Bid

| SECTION 606 | | | Chemung Supply Corp | Pavilion Drainage Supply Co., Inc. |
|---|---|---|---|---|
| Item No. | Item Desc. | Pay Unit | Bid Price | Bid Price |
| E203.99 | Windrow Excavation & Removal | Bid in Section 203 | | |
| E606.10A | Box Beam Guide Railing (Furnished & Installed) 1' - 100' | Foot | -- | $74.80 |
| E606.10B | Box Beam Guide Railing (Furnished & Installed) 101' - 500' | Foot | -- | $63.75 |
| E606.10C | Box Beam Guide Railing (Furnished & Installed) 501' - 1,000' | Foot | -- | $58.25 |
| E606.10D | Box Beam Guide Railing (Furnished & Installed) over 1000' | Foot | -- | $56.85 |
| E606.10F | Box Beam Guide Railing (Furnished Only) | Foot | $48.40 | $41.10 |
| 606.100002 | Box Beam Guide Railing (Shop Bent or Shop Mitered) (Furnished and Instaled) | Foot | -- | $74.80 |
| E606.100002F | Box Beam Guide Railing (Shop Bent or Shop Mitered) (Furnished Only) | Foot | $87.21 | $56.25 |
| E606.11A | Box Beam Median Barrier (Furnished & Installed) 1' - 100' | Foot | -- | $95.00 |
| E606.11B | Box Beam Median Barrier (Furnished & Installed) 101' - 500' | Foot | -- | $83.35 |
| E606.11C | Box Beam Median Barrier (Furnished & Installed) 501' - 1000' | Foot | -- | $77.85 |
| E606.11D | Box Beam Median Barrier (Furnished & Installed) over 1000' | Foot | -- | $76.50 |

Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# 2024 Summer Maintenance Bid

| SECTION 606 | | | Chemung Supply Corp | Pavilion Drainage Supply Co., Inc. |
|---|---|---|---|---|
| Item No. | Item Desc. | Pay Unit | Bid Price | Bid Price |
| 606.120101 | Box Beam End Piece | EA | $395.00 | $755.00 |
| 606.120102 | Box Beam Guide Railing End Assembly Type I (Furnished & Installed) | EA | – | $5,390.00 |
| E606.120102F | Box Beam Guide Railing End Assembly Type I (Furnished Only) | EA | $395.00 | $3,820.00 |
| 606.120201 | Box Beam Guide Railing End Assembly Type IIA (Furnished & Installed) | EA | – | $2,660.00 |
| E606.120201F | Box Beam Guide Railing End Assembly Type IIA (Furnished Only) | EA | $1,240.00 | $1,850.00 |
| 606.1203 | Box Beam End Assembly Type III | EA | $4,425.00 | $8,030.00 |
| E606.18A | Weak-Post, Corrugated Beam Guide Rail (Furnished & Installed) 1' - 100' | Foot | – | $51.50 |
| E606.18B | Weak-Post, Corrugated Beam Guide Rail (Furnished & Installed) 101' - 500' | Foot | – | $30.55 |
| E606.18C | Weak-Post, Corrugated Beam Guide Rail (Furnished & Installed) 501' - 1000' | Foot | – | $28.80 |
| E606.18D | Weak-Post, Corrugated Beam Guide Rail (Furnished & Installed) over 1000' | Foot | – | $26.95 |
| E606.18F | Weak-Post, Corrugated Beam Guide Rail (Furnished Only) | Foot | $49.95 | $19.55 |
| 606.22 | Anchorage Units for Corrugated Beam Guide Railing (Furnished & Installed) | EA | – | $1,550.00 |
| 606.23 | Anchorage Units for Corrugated Beam Guide Railing (Driveways, Walkways and Other Openings) (Furnished & Installed) | EA | – | $1,500.00 |
| 606.26 | Corrugated Beam Guide Railing End Terminal (Energy-Absorbing) (Furnished & Installed) | EA | – | $6,450.00 |
| 606.27 | HPBO (Mod.) Corrugated Beam Guide Railing End Terminal (Energy-Absorbing) (Furnished & Installed) | EA | – | $4,850.00 |
| E606.2701A | HPBO (Mod.) Corrugated Beam Guide Railing (Furnished & Installed) 1' - 100' | Foot | – | $69.35 |
| E606.2701B | HPBO (Mod.) Corrugated Beam Guide Railing (Furnished & Installed) 101' - 500' | Foot | – | $43.05 |
| E606.2701C | HPBO (Mod.) Corrugated Beam Guide Railing (Furnished & Installed) 501' - 1000' | Foot | – | $40.45 |
| E606.2701D | HPBO (Mod.) Corrugated Beam Guide Railing (Furnished & Installed) over 1000' | Foot | – | $38.60 |
| 606.270101 | HPBO (Mod.) Corrugated Beam Guide Railing Shop Curved (Furnished & Installed) | Foot | – | $47.20 |
| 606.2703 | Anchorage Units for HPBO (Mod.) Corrugated Beam Guide Railing (Furnished & Installed) | EA | – | $2,180.00 |
| 606.2704 | Anchorage Units for HPBO (Mod.) Corrugated Beam Guide Railing Buried in Back Slope (Furnished & Installed) | EA | – | $2,370.00 |
| E606.32A | Heavy Post Blocked-Out Corrugated Beam Guide Railing (Furnished and Installed) 1'-100' | Foot | – | $68.25 |
| E606.32B | Heavy Post Blocked-Out Corrugated Beam Guide Railing (Furnished and Installed) 101'-500' | Foot | – | $42.00 |
| E606.32C | Heavy Post Blocked-Out Corrugated Beam Guide Railing (Furnished and Installed) 501'-1,000' | Foot | – | $39.35 |
| E606.32D | Heavy Post Blocked-Out Corrugated Beam Guide Railing (Furnished and Installed) over 1000' | Foot | – | $37.50 |

Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# 2024 Summer Maintenance Bid

| SECTION 606 | | | Chemung Supply Corp | Pavilion Drainage Supply Co., Inc. |
|---|---|---|---|---|
| Item No. | Item Desc. | Pay Unit | Bid Price | Bid Price |
| 606.4805 | I-Beam Posts for Existing Corrugated Beam Guide Railing (Furnished and Installed) | EA | -- | $118.75 |
| E606.480501 | I-Beam Post Installations for Corrugated Beam Guide Railing (Furnished Only) | EA | -- | $55.00 |
| E606.480502 | I-Beam Post Installations for Corrugated Beam Guide Railing (Installed Only) | EA | -- | $94.00 |
| E606.4818 | I-Beam Posts for Existing HPBO (Mod.) Corrugated Beam Guide Railing (Furnished & Installed) | EA | -- | $118.75 |
| E606.5148A | Resetting Corrugated Beam Guide Railing (New Posts) 1'-100' | Foot | -- | $43.65 |
| E606.5148B | Resetting Corrugated Beam Guide Railing (New Posts) 101'-500' | Foot | -- | $25.75 |
| E606.5148C | Resetting Corrugated Beam Guide Railing (New Posts) Over 500 ft. | Foot | -- | $19.60 |
| E606.5348A | Resetting Box Beam Guide Railing (New Posts) 1'-100' | Foot | -- | $61.90 |
| E606.5348B | Resetting Box Beam Guide Railing (New Posts) 101'-500' | Foot | -- | $38.90 |
| E606.5348C | Resetting Box Beam Guide Railing (New Posts) Over 500 ft. | Foot | -- | $32.90 |
| E606.5501A | Resetting HPBO Corrugated Beam Guide Railing (New 12 in. Blockouts) 1'-100' | Foot | -- | $53.25 |
| E606.5501B | Resetting HPBO Corrugated Beam Guide Railing (New 12 in. Blockouts) 101'-500' | Foot | -- | $28.50 |
| E606.5501C | Resetting HPBO Corrugated Beam Guide Railing (New 12 in. Blockouts) 501'-1000' | Foot | -- | $22.00 |
| E606.5501D | Resetting HPBO Corrugated Beam Guide Railing (New 12 in. Blockouts) over 1000' | Foot | -- | $18.20 |
| E606.550101 | Resetting HPBO Corrugated Beam Guide Railing (Heavy Posts and Blockouts Furnished by Others) | Foot | -- | $27.20 |
| E606.5601 | Resetting HPBO Corrugated Beam Median Barrier (New 12" Blockouts) | Foot | -- | $56.55 |
| E606.560101 | Resetting HPBO Corrugated Beam Median Barrier (New 12" Blockouts) (Furnished by others) | Foot | -- | $52.40 |
| 606.5910 | Resetting Anchorage Units for Corrugated Beam Guide Railing or Median Barrier | EA | -- | $800.00 |
| 606.86 | Guide Rail Transition Corrugated Beam to Thrie Beam | EA | -- | $7,525.00 |

Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# 2024 Summer Maintenance Bid

| SECTION 606 | | | Chemung Supply Corp | Pavilion Drainage Supply Co., Inc. |
|---|---|---|---|---|
| Item No. | Item Desc. | Pay Unit | Bid Price | Bid Price |
| 606.8704 | Corrugated Beam Guide Railing Transition Assembly to Concrete Parapets or Concrete Barrier | EA | -- | $1,750.00 |
| 606.8801 | Transition from Box Beam Guide Rail to Jersey-shaped Concrete Barrier (One- or Two-Way Operation) | EA | -- | $8,500.00 |
| 606.8802 | Transition from Jersey-shaped Concrete Barrier to Box Beam Guide Rail (One Way - Trailing End of Barrier) | EA | -- | $5,840.00 |
| 606.8901 | Transition: Heavy Posts Blocked Out (MOD.) Corrugated Guide Railing to Box Beam Guide Railing | EA | -- | $7,660.00 |
| 606.8902 | Transition: Heavy Posts Blocked Out (MOD.) Corrugated Guide Railing to Weak Post Corrugated Beam Guide Railing | EA | -- | $4,575.00 |
| E606.9905 | Guiderail Removal | Foot | -- | $2.80 |
| E606.9906 | Asphalt Concrete Mowing Strips | Ton | -- | $730.00 |
| E606.9909 | Maintenance & Protection of Traffic | Foot | -- | $2.75 |
| E636.0105 | As Directed: Guide Railing Maintenance and Repair Work | Bid in Section 636 | | |

Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

## Addendum to Contract Major Exposure

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Contractors or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Contractor shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Contractor its officers, agents, subcontractors, and/or employees as well as the negligence, active or passive, of the Contractor, its officers, agents, subcontractors, and/or employees.

4. Contractor shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Contractor shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Contractor shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate. Umbrella coverage shall be in an amount of at least $5,000,000.00.

(c) Contractor shall furnish the above insurances, including subcontractors' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Contractor shall ensure all its subcontractors, if any, have obtained all the above insurances and shall also assure that any policy procured by any subcontractor or sub-subcontractor shall name the Town as an additional insured on a primary and non-contributory basis. A failure by Contractor to assure that any policy procured by any subcontractor or sub-subcontractor name the Town as an additional insured on a primary and non-contributory basis, shall be considered a material breach of the





Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

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 regardless of whether the Town is successful in said suit.

(e) A failure by Contractor to procure the General Liability, Professional Liability and/or Property Damage policies referenced above, or the failure to have the Town of Amherst as an additional insured on a primary, non-contributory basis on said policies, shall be considered a material breach of the underlying contact and subject the Contactor to forfeiture of its performance bond, if any, and to pay liquidated damages to the Town of no less than $2,000,00.00 or the Town's actual expenses, whichever is higher, including, but not limited to all attorney fees and expenses related to the prosecution of a breach of the insurance procurement requirements suit and/or of the indemnification provisions regardless of whether the Town is successful in said suit.

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business





Attachment: DOC042924-042924105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

Utilization Commitment.

(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Contractor, in accordance with its status as an independent Contractor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

Pavilion Drainage Supply Co., Inc

Print Name of Company

By: _____

Signature

Philip J Plossl

Printed name

Date: 4-25-2024

Agreed to and Accepted by:

Town of Amherst

By: _____

Brian J. Kulpa, Supervisor

Date: _____

Attachment: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

# IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York provision was added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Under t Act, the Commissioner of the Office of General Services (OGS) will develop a list (prohibited entities li of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Tl list is posted on the OGS website.

By submitting a response to this solicitation, or by assuming the responsibility under Contract/Lease awarded hereunder, Bidder/Contractor/Vendor (or any assignee) certifies that it will n 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 seekir to renew or extend a Contract/Lease (or assume responsibility of a Contract/Lease awarded must certi at the time the Contract/Lease is renewed, extended or assigned that it is not included on the prohibite entities list.

During the term of the Contract/Lease, should the Town of Amherst (Town) receive informatic that a person is in violation of the above-referenced certification, the Town will offer the person a opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in th investment which is in violation of the Act within 90 days after the determination of such violation, the the Town shall take such action as appropriate including, but not limited to, imposing sanctions, seekin 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 entit that appears on the prohibited entities list prior to the award of a Contract/Lease, and to pursue responsibility review with respect to any entity that is awarded a Contract/Lease and appears on th prohibited entities list after Contract/Lease award.

Company Name: Pavilion Drainage Supply Co., Inc

Signature: Philip J Plossl

Print Name: Philip J Plossl

Title: President

Date: 04/25/2024

DENISE S. RADER
#01RA6215695
NOTARY PUBLIC STATE OF NEW YORK
QUALIFIED IN GENESEE COUNTY
MY COMMISSION EXPIRES JAN. 04, 2026

Sworn To Before Me This
25th Day of April, 2023
Denise S Rader
Notary Public

Attachment: DOC042924-042924105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

13.M.1.a

PAVIDRA-01

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 2/7/2024

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 endorse 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 | CONTACT NAME: Victoria Puglia |
|---|---|
| ASSUREDPARTNERS NORTHEAST LLC<br>90A John Muir Dr, Suite 100<br>Amherst, NY 14228 | PHONE (A/C, No, Ext): (716) 688-8888 277 FAX (A/C, No): (716) 810-8864<br>E-MAIL ADDRESS: victoria.puglia@assuredpartners.com |

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : Travelers Indemnity Co of Amer | 25666 |
| INSURER B : Travelers Indemnity Co | 25658 |
| INSURER C : Travelers Casualty & Surety Co | 19038 |
| INSURER D : Travelers Property Casualty Co Of America | 25674 |
| INSURER E : | |
| INSURER F : | |

INSURED

Pavilion Drainage Supply Co Inc
PO Box 219
Pavilion, NY 14525-0219

**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 PERIO INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THI 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 | | | | | | EACH OCCURRENCE | $ 1,000, |
| | CLAIMS-MADE X OCCUR | X | | DTCO8X477540TIA23 | 12/1/2023 | 12/1/2024 | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 300, |
| | X Contractual Liab | | | | | | MED EXP (Any one person) | $ 5, |
| | X XCU Included | | | | | | PERSONAL & ADV INJURY | $ 1,000, |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE | $ 2,000, |
| | POLICY X PRO-JECT LOC | | | | | | PRODUCTS - COMP/OP AGG | $ 2,000, |
| | OTHER: | | | | | | | $ |
| B | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) | $ 1,000, |
| | X ANY AUTO | | | 8101L2670412326G | 12/1/2023 | 12/1/2024 | BODILY INJURY (Per person) | $ |
| | OWNED AUTOS ONLY / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | $ |
| | X HIRED AUTOS ONLY / X NON-OWNED AUTOS ONLY | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| B | X UMBRELLA LIAB X OCCUR | | | CUP8S1523662326 | 12/1/2023 | 12/1/2024 | EACH OCCURRENCE | $ 5,000, |
| | EXCESS LIAB CLAIMS-MADE | | | | | | AGGREGATE | $ 5,000, |
| | DED X RETENTION $ 10,000 | | | | | | | $ |
| C | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | X PER STATUTE / OTH-ER | |
| | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N | N/A | | UB3K0577932326G | 12/1/2023 | 12/1/2024 | E.L. EACH ACCIDENT | $ 1,000, |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE | $ 1,000, |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ 1,000, |
| D | Installation Floater | | | 6604X509366TIL23 | 12/1/2023 | 12/1/2024 | Limit | 1,000, |
| D | Leased/Rented Equip | | | 6604X509366TIL23 | 12/1/2023 | 12/1/2024 | Limit | 250, |

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 additional insured on a primary and non-contributory basis when required by written contract or agreement.

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, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

© 1988-2015 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

Attachment: DOC042924-042924105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

13.M.1.a

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

# CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

**1a. Legal Name & Address of Insured (Use street address only)**
Pavlion Drainage Supply Co., Inc.
PO Box 219
Pavilion NY 14525

**1b. Business Telephone Number of Insured**
575-584-3261

**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**
161125873

**2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)**
Town of Amherst
5583 Main Street
Willamsville NY 14221

**3a. Name of Insurance Carrier**
Travelers Casualty and Surety Co

**3b. Policy Number of entity listed in box "1a"**
UB3K0577932326G

**3c. Policy effective period**
12/01/2023 to 12/01/2024

**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 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 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.*

**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: John Daughton
(: or licensed agent of insurance carrier)

Approved by: [signature] 4/18/2024
(Signature) (Date)

Title: President

Telephone Number of authorized representative or licensed agent of insurance carrier: (716)688-8888

*Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.*

C-105.2 (9-07) www.wcb.state.ny.us

Attachment: DOC042924-042924105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

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)
PAVILION DRAINAGE SUPPLY CO INC
PO BOX 219
PAVILION, NY 14525

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*

1b. Business Telephone Number of Insured
716-584-3261

1c. Federal Employer Identification Number of Insured or Social Security Number
161125876

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"
DBL53400

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 4/18/2024 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: DOC042924-04292024105007 (RES-2024-442 : Authorize Supervisor to Sign Contract to Pigyback - Pavilion Drainage Supply Co

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 28965 **RESOLUTION 2024-443** **ADOPTED**

# Authorize Supervisor to Sign Joe Johnson Equipment Inc Contract Extension - CRS #4794

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 1/2/2024 through 01/02/2025.

This contract is subject to the Contract Routing System (CRS #4794) extension and the approval of the Town Attorney.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

C8163 : 4240

D5130 : 4240

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

# AGREEMENT EXTENSION

Let this document stand as an Agreement between JOE JOHNSON 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.

Joe Johnson 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:

**JOE JOHNSON EQUIPMENT INC**

By: Craig Reynolds
Signature

CRAIG REYNOLDS
Print Name

PARTS MGR.
Title

Date: 4/10/24

Agreed to and Accepted by:

**TOWN OF AMHERST**

By: _____
BRIAN KULPA
Supervisor

Date: _____



Attachment: DOC050624-05062024080512 (RES-2024-443 : Authorize Supervisor to Sign Joe Johnson Equipment Inc Contract Extension - CRS

Bid #2022035 - Sweeper Parts

[ ] Low Bid

| Item No. | CATALOG NO/DESCRIPTION | Lacal Equipment<br>% Off Manufacturer's List Price | Valley Fab<br>% Off Manufacturer's List Price | Joe Johnson<br>% Off Manufacturer's List Price |
|---|---|---|---|---|
| 1 | Leach Compactor/Packer Parts – All Models | NO BID | NO BID | 0% |
| 2 | ODB Model LCT6000 Leaf Machine Parts | 35% | NO BID | NO BID |
| 3 | Tarco/Tarrant/Loughberry Parts – All Models | 5% | 5% | NO BID |
| 4 | Keystone All Pro 460 Strip Brooms (Per Box) – NO EXCEPTIONS | 5% | NO BID | 35% |
| 5 | Keystone All Pro #411 Center Sweep Mandrel for Elgin Eagle Sweeper - NO EXCEPTIONS | 5% | NO BID | 35% |
| 6 | Keystone All Pro #410 Center Sweep Mandrel for Elgin Pelican Sweeper – NO EXCEPTIONS | 5% | NO BID | 35% |
| 7 | Keystone All Pro 466 Strip Brooms (Per Box) – NO EXCEPTIONS | 5% | NO BID | 35% |
| 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% | NO BID | 35% |
| 9 | Elgin Sweeper Parts | 35% | NO BID | 0% |
| 10 | Rockford Sweeper Parts | NO BID | NO BID | NO BID |
| 11 | Superior Sweeper Parts | NO BID | NO BID | NO BID |
| 12 | Tennant Sweeper Parts | NO BID | NO BID | NO BID |
| 13 | Tymco Sweeper Parts | 35% | NO BID | NO BID |
| | **No Additional Charges Will Be Allowed** | | | |



Attachment: DOC050624-05062024080512 (RES-2024-443 : Authorize Supervisor to Sign Joe Johnson Equipment Inc Contract Extension - CRS

# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY): 04/23/2024

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**
Aon Risk Services Central, Inc.
Chicago IL Office
200 East Randolph
Chicago IL 60601 USA

CONTACT NAME:
PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105
E-MAIL ADDRESS:

| INSURER(S) AFFORDING COVERAGE | | NAIC # |
|---|---|---|
| INSURER A: | Zurich American Ins Co | 16535 |
| INSURER B: | American Zurich Ins Co | 40142 |
| INSURER C: | | |
| INSURER D: | | |
| INSURER E: | | |
| INSURER F: | | |

**INSURED**
Joe Johnson Equipment LLC
a division of Federal Signal Corporation
62 LaGrange Ave
Rochester NY 14613 USA

**COVERAGES** **CERTIFICATE NUMBER:** 570105161258 **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,

Limits shown are as requested

| 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 | Y | Y | GL0007560502 | 11/01/2023 | 11/01/2024 | EACH OCCURRENCE | $2,000,000 |
| | CLAIMS-MADE X OCCUR | | | GL Premise | | | | |
| A | | | | GL0007560602 | 11/01/2023 | 11/01/2024 | DAMAGE TO RENTED PREMISES (Ea occurrence) | $2,000,000 |
| | | | | GL Products | | | MED EXP (Any one person) | $10,000 |
| | | | | | | | PERSONAL & ADV INJURY | $2,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE | $4,000,000 |
| | X POLICY PRO-JECT LOC | | | | | | PRODUCTS - COMP/OP AGG | $6,000,000 |
| | OTHER: | | | | | | Prod-Comp/Ops - Ea | $3,000,000 |
| A | AUTOMOBILE LIABILITY | Y | Y | BAP 0075607 02 | 11/01/2023 | 11/01/2024 | COMBINED SINGLE LIMIT (Ea accident) | $2,000,000 |
| | X ANY AUTO | | | Auto AOS | | | BODILY INJURY ( Per person) | |
| | OWNED AUTOS ONLY / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | |
| | HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY | | | | | | PROPERTY DAMAGE (Per accident) | |
| | UMBRELLA LIAB OCCUR | | | | | | EACH OCCURRENCE | |
| | EXCESS LIAB CLAIMS-MADE | | | | | | AGGREGATE | |
| | DED RETENTION | | | | | | | |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | Y | WC0007560302 | 11/01/2023 | 11/01/2024 | X PER STATUTE OTH-ER | |
| A | ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER (Mandatory in NH) Y/N: N | N/A | | AOS WC0007560402 | 11/01/2023 | 11/01/2024 | E.L. EACH ACCIDENT | $1,000,000 |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | Retro | | | E.L. DISEASE-EA EMPLOYEE | $1,000,000 |
| | | | | | | | E.L. DISEASE-POLICY LIMIT | $1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Town of Amherst is included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies. General Liability and Automobile Liability evidenced herein is Primary and Non-Contributory to other insurance available to an Additional Insured, but only in accordance with the policy provisions. A waiver of subrogation is granted in favor of Town of Amherst in accordance with the policy provisions of the General Liability, Automobile Liability and Workers Compensation policies.

**CERTIFICATE HOLDER**

Town of Amherst
5583 Main Street
Williamsville NY 14221 USA

**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

Aon Risk Services Central, Inc.

©1988-2015 ACORD CORPORATION. All rights reserved



The ACORD name and logo are registered marks of ACO



Attachment: DOC050624-050624080512 (RES-2024-443 : Authorize Supervisor to Sign Joe Johnson Equipment Inc Contract Extension - CRS

AGENCY CUSTOMER ID: 10224264
LOC #:

# ADDITIONAL REMARKS SCHEDULE



| AGENCY | NAMED INSURED |
|---|---|
| Aon Risk Services Central, Inc. | Joe Johnson Equipment LLC |
| POLICY NUMBER: See Certificate Numbe 570105161258 | |
| CARRIER: See Certificate Numbe 570105161258 / NAIC CODE: | EFFECTIVE DATE: |

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER | |
| INSURER | |
| INSURER | |
| INSURER | |

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| | WORKERS COMPENSATION | | | | | | | |
| A | | N/A | | EWS007560802<br>XS WC OH<br>SIR applies per policy terms & conditions | 11/01/2023 | 11/01/2024 | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |



© 2008 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

Attachment: DOC050624-05062024080512 (RES-2024-443 : Authorize Supervisor to Sign Joe Johnson Equipment Inc Contract Extension - CRS

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28971 **RESOLUTION 2024-444** **ADOPTED**

# Interim Release-New York Liquidation Bureau

Please authorize the Supervisor to sign the Interim Release from New York Liquidation Bureau on behalf of the Reliance Insurance Company which reimburses the Town the sum of $21,961.25 from the Excess Workers' Compensation Policy.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

$21,961.25

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28989 **RESOLUTION 2024-445** **ADOPTED**

# Extended Sick Leave of Absence Without Pay/Highway Department

Please authorize an Extended Sick Leave of Absence Without Pay to an employee at the Highway Department. Effective May 14, 2024 through November 30, 2024 for Douglas Riley.

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28972 **RESOLUTION 2024-446** **ADOPTED**

# Project Manager - PT/Central Fire Alarm

Please appoint a Project Manager - PT to the Central Fire Alarm Office. Provisional, pending satisfactory completion of a Civil Service Examination. Effective May 14, 2024 at an hourly rate of $50.00, not to exceed $35,000 annually for James Koeppel.

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28988 **RESOLUTION 2024-447** **ADOPTED**

# Public Safety Dispatcher-PT/Police Department

Please appoint a Public Safety Dispatcher - PT to the Police Department. Effective May 14, 2024, Temporary, $19.50 ph, Step 1 for Jordan Cooper.

Contingent upon completing all pre-employment requirements.

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28973 **RESOLUTION 2024-448** **ADOPTED**

# Wastewater Treatment Plant Operator "A"/Engineering-Wastewater Treatment Plant

Please appoint a Wastewater Treatment Plant Operator to the Engineering Department-Wastewater Treatment Plant, Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII, effective May 14, 2024, at an hourly rate of $31.15, Grade V, Step 5 for Justin Russell.

This is a promotion for an employee who is currently serving as a Wastewater Treatment Plant Operator-Trainee and has acquired his 3A License.

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28976 **RESOLUTION 2024-449** **ADOPTED**

# General Crew Chief/Refuse Department

Please appoint a General Crew Chief to the Refuse Department. Permanent, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary of $75,629, Grade 18, Step E for Ryan Licata.

Contingent upon completing all pre-employment requirements.

This is a promotion for an employee currently serving as Sr. Refuse Control Officer.

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28977 **RESOLUTION 2024-450** **ADOPTED**

# Senior Refuse Control Officer/Refuse Department

Please appoint a Senior Refuse Control Officer to the Highway Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary $69,097, Grade 15, Step F for James Lawida.

Contingent upon completing all pre-employment requirements.

This is a promotion for an employee currently serving as Refuse Control Officer.

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28982 **RESOLUTION 2024-451** **ADOPTED**

# Police Captain/Police Department

Please appoint a Police Captain to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary of $117,997 for John Miller.

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

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 28983 **RESOLUTION 2024-452** **ADOPTED**

# Police Lieutenant (4 Positions)/Police Department

Please appoint four (4) Police Lieutenants to the Police Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective May 14, 2024 at an annual salary of $107,214 for Patrick Luvender, John Michael Murphy, Matthew Dunford and Timothy Wilson.

These are promotions for employees currently serving as Police Officers.
Replacing an employee recently promoted and vacancies.

**5/13/2024**
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 28980 **RESOLUTION 2024-453** **ADOPTED**

# To Authorize the Supervisor to Sign an Agreement with the Harrison Studio for the Preparation of the 5 Year Consolidated Plan for the ACT Consortium CRS #4799

**WHEREAS**, the Towns of Amherst, Tonawanda, and Cheektowaga as participants in the (ACT) HOME Consortium are required by the federal Department of Housing and Urban Development (HUD) to prepare a Five-Year Consolidated Plan, and

**WHEREAS**, said plan will set forth the goals and activities to lead the Consortium through the next five years in the activities and expenditures of HOME Investment Partnerships Grant funds, and

**WHEREAS**, these goals and accomplishments will benefit those residents of the Town whose income is low to moderate by providing affordable, safe and secure housing and also offer the opportunity of affordable homeownership, and

**WHEREAS**, said Five Year Consolidated Plan will be consistent with the guidelines established by the federal Department of Housing and Urban Development; and

**WHEREAS**, the Town of Amherst will act as lead agency for coordinating the preparation of the Consolidated Plan by the consultants of The Harrison Studio; now therefore be it

**RESOLVED**, that the Town Board authorizes the Town Supervisor, subject to successful completion of the contract routing process, to enter into a contract for $43,000 with The Harrison Studio to coordinate the preparation of the Five Year (2024-29) Consolidated Plan on behalf of the ACT HOME Consortium.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

The proposed Five-Year Consolidated Plan has been budgeted in the 2023 CDBG budget (N23-30). The Total Project budget is $43,000 to be equally split by the Towns of Amherst, Cheektowaga and Tonawanda. The Town of Amherst's share of the contract is $14,334. The resolution will, therefore, have no impact on the current budget or tax rate.

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

# AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2024 by and between The Harrison Studio, a New York Corporation having its principal office located at 160 Washburn Street, Suite 200, Lockport, NY 14095 (hereinafter "the Consultant") and the Town of Amherst, New York, a municipal corporation organized and existing under and by virtue of the laws of the State of New York, acting as lead agency of the Amherst Cheektowaga Tonawanda HOME Consortium, and having its principal office at 5583 Main Street, Amherst, New York 14221, and the Town of Cheektowaga, New York, a municipal corporation organized and existing under and by virtue of the laws of the State of New York and having its principal office at Broadway and Union Road, Cheektowaga, New York 14227 and the Town of Tonawanda, New York, a municipal corporation organized and existing under and by virtue of the laws of the State of New York and having its principal office at 2919 Delaware Avenue, Kenmore, New York 14217 (hereinafter "the Towns").

## WITNESSETH:

**WHEREAS**, the Towns of Amherst, Cheektowaga, and Tonawanda New York have agreed to develop a new Consolidated Plan for the three towns; and

**WHEREAS**, the Towns are desirous of contracting with the Consultant for the preparation of the Consolidated Plan pursuant to the Scope of Services in the updated proposal of the Consultant dated March 22, 2024 and which is attached hereto as Exhibit A (the "Scope of Services");

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the parties hereto do mutually agree as follows:

1. (a) "Towns" shall mean the Towns of Amherst, Cheektowaga, and Tonawanda.
   (b) "Consultant" shall mean The Harrison Studio

2. The following exhibits are attached to this Agreement and made a part hereof:
   (a) Exhibit "A" -- Scope of Services
   (b) Exhibit "B" -- Project Schedule & Billing
   (c) Exhibit "C" – Certificates of Insurance

3. Consultant, for consideration herein provided, shall perform the services as described in Exhibit "A attached hereto and made a part hereof.

4. Consultant shall prior to execution of this Agreement provide to the Towns certificates of insurance evidencing compliance with the provisions of the Addendum to Contract attached



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

hereto and incorporated herein. Consultant agrees to defend, indemnify and hold-harmless the Towns from and against all claims, liability and damages resulting from or arising out of performance by Consultant of the terms and conditions of this Agreement.

5. The Towns agrees to pay Consultant not more than forty-three thousand dollars (**$43,000.00**) from the effective date of this contract through March 31, 2025 for the services it provides to the Towns.

6. The Consultant shall have earned, upon the satisfactory completion of work elements, the cost ascribed to each work item in accordance with Exhibit A. Consultant shall submit to the Towns payment vouchers according to the schedule, as described in Exhibit B in a format acceptable to the Towns. Requests for payment for work completed between the effective date of this contract through December 31, 2024 shall be submitted no later than January 10, 2025 to be consistent with the Town of Amherst's fiscal year.

Amounts earned by the Consultant shall become due and payable upon the presentation to the Town of Amherst on behalf of the Towns of Cheektowaga and Tonawanda by The Consultant of a voucher for payment which includes a description of the work completed and the amounts earned for such work. Upon review and approval of the aforementioned vouchers by the Town of Amherst, the Town of Amherst shall process and subsequently issue funds totaling the approved amount. The sum of all vouchers submitted to the Town of Amherst by Consultant shall not exceed **$43,000**.

7. Consultant agrees that it shall keep and maintain separate books of account and records concerning all costs incurred in the performance of this Agreement, and that it shall have available for the federal government all Consultant's facilities, books and other financial and statistical data as they relate to the application, acceptance, and use of federal funds for this federally assisted program. The Towns and Consultant agree to comply with the regulations, policies, guidelines and requirements of Office of Management and Budget Circulars A-102, and A-133 as they relate to the application, acceptance and use of federal funds for this federally assisted program.

The Towns, HUD, the Comptroller General of the United States, and any of their duly authorized representatives shall have access to any books, papers, documents, and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

8. Consultant agrees to comply with the general compliance requirements of 24 CFR Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except for responsibilities that fall under 24 CFR Part 570.604 and 24 CFR Part 52. The terms and conditions of this Agreement are to be carried out in a manner consistent with all other federal, state and local laws.

9. The Consultant shall retain all required records which are directly pertinent to this Agreement for five years after the Towns have made final payment under this agreement and all other pending matters are closed.

10. This Agreement or any right, title or interest herein shall not be assigned, transferred, conveyed, sublet or otherwise disposed of without the previous written consent of the Towns.

11. This Agreement shall be in effect from the effective date of this agreement through March 31, 2025.

12. Consultant shall be fully accountable for its performance under this contract and agrees for itself and its officers to answer under oath all questions relevant to the performance thereof and to any transaction and act of omission in connection therewith if called before any judicial, county, state or federal agency empowered to investigate the Agreement or its performance.

13. Consistent with Consultant's status as an independent contractor, the Towns shall not be responsible for workers compensation benefits, social security coverage or unemployment insurance benefits with respect to Consultant or its employees.

Officers, agents, directors, and employees of the Consultant covenant and agree that they will conduct themselves consistent with such status; that they will neither hold themselves out as, nor claim to be, officers of employees of the Towns or their agents, and that they will not by reason therefore, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Towns.

14. **Termination**

(1) The Towns reserves the right to terminate this Agreement at its pleasure at any time prior to completion of the scope of work by giving two (2) weeks written notice of termination to Consultant either personally or by certified mail. The Towns further reserves the right to



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

terminate this Agreement for cause in the event that Consultant shall be in default of this Agreement; or shall become insolvent or bankrupt or assign for the benefit of creditors or take advantage of any insolvency statute or debtor or creditor law; or if its property or affairs be put in the hands of a receiver.

(2) Consultant reserves the right to terminate this Agreement at its pleasure at any time prior to completion of this Agreement by giving two (2) weeks written notice of termination to the Towns, either personally or by certified mail. Consultant further reserves the right to terminate this Agreement for cause in the event that the Towns shall be in default of this Agreement; or shall become insolvent or bankrupt or assign for the benefit or creditors or take advantage of any insolvency statute or debtor or creditor law; or if its property or affairs be put in the hands of a receiver.

(3) The fee to be paid to Consultant upon such termination shall be based upon the value of the services performed by Consultant up to the effective date of termination.

15. Changes in the Scope of Services and Cost specified in Exhibit "A" and Exhibit "B" may be requested by Consultant in writing, addressed to the Towns' Community Development Directors for subsequent action.

16. Consultant agrees to comply with all applicable federal requirements and standards as pertains to audits of sub recipients of federal funds under the federal Community Development Block Grant Program.

17. **Nondiscrimination**

Consultant shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104 (b) and 109 of Title I of the Housing and Community Development Act as amended of 1974, Section 505 of the Rehabilitation Act of 1973 (29 U.S.C. Section 974), the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act (39 U.S.C. Chapter 42) and all regulations promulgated with respect thereto including the regulations under 24 CFR Part 1. No person in the United States shall on the ground of race, age, color, creed, religion, national origin, sex, disability, or because he or she is a disabled veteran or veteran of the Vietnam era be excluded from participation in,



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

be denied the benefits of, or be subjected to discrimination under any program, activity, or service provided pursuant to this Agreement.

18. **Equal Employment Opportunity**

In carrying out this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, national origin, disability or because he or she is a disabled veteran or veteran of the Vietnam era. Consultant shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, disability or because he or she is a disabled veteran or veteran of the Vietnam era. 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. Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provision of this nondiscrimination clause. Consultant shall state that all qualified applicants will receive consideration for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. Consultant shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability or because he or she is a disabled veteran or veteran of the Vietnam era. Consultant shall incorporate the foregoing requirements of this paragraph in all of its contracts for work under this Agreement, except contracts for construction work or modification thereof, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for work under this Agreement.

19. **Obligations of Grantee with Respect to Certain Third-Party Relationships.**

Consultant shall remain fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of this Agreement. Consultant shall, by contractual requirement, covenant, or other binding commitment assure the compliance on the part of any contractor, subcontract, transferee, successor in interest or other participant in the activities pursuant to this Agreement, with the lawful requirements of the Towns necessary to insure that activities pursuant to this Agreement are carried out in accordance with the Towns assurances and certifications pursuant to the Community Development Block Grant Program, including those with respect to the assumption



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

of environmental responsibilities of the Towns under section 104(h) of the Housing and Community Development Act of 1974.

20. **Interest of Certain Federal Officials.**

No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

21. **Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body, or Other Public Officials.**

No member, officer, or employee of Consultant or its designees or agents, no member of the governing body of the Towns and no other public official of the Towns who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under the Agreement. Consultant shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

22. **Prohibition Against Payments of Bonus or Commission.**

The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining H.U.D. approval of the application for such assistance, or H.U.D. approval of applications for additional assistance, or any other approval or concurrence of H.U.D. required under this Agreement, Title I of the Housing and Community Development Act of 1974, as amended, or H.U.D. regulations with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

23. **Hatch Act**

Consultant agrees that no funds provided, nor personnel employed under this Agreement, shall in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

24. **Conflict of Interest**

Consultant agrees to abide by the provisions of 24 CFR Part 84.42 and Part 570.611 in regards to conflicts of interest in conducting activities related to this Agreement.

25. **Funding Source Recognition**



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

Consultant shall insure recognition of the role of the Community Development Block Grant funding source in providing services through this agreement. All activities, publications and items created pursuant to this Agreement shall be labeled as to funding source.

26. **Lobbying & Religious Activities**

By signing this Agreement, Consultant certifies that no federal funds have been paid or will be paid, by or on behalf of it, to any person for lobbying activities including influencing or attempting to influence an officer or employee of any state, local or federal agency or elected office. In addition, Consultant agrees that funds provided under this agreement will not be utilized for inherently religious activities prohibited by 24 CFR Part 570.200(j), such as worship, religious instruction or proselytization.

27. **Compliance**

The obligation of Consultant to comply with the provisions of paragraph 14 through 27 of this Agreement shall inure to the benefits of the United States, H.U.D. and the Towns, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to complete compliance therewith by Consultant.

Consultant shall, by contractual requirement, covenant, or other binding commitment assure the compliance with the above provision of the provisions of paragraph 14 through 27 of this Agreement on the part of any contractor, subcontractor, transferee, successor in interest or other participant in any activities pursuant to this Agreement.



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**TOWN OF AMHERST**

**By:** _____
Brian J. Kulpa, Supervisor

**MUNICIPAL CORPORATION ACKNOWLEDGMENT**

STATE OF NEW YORK )
TOWN OF AMHERST ) ss:
COUNTY OF ERIE )

On the_____day of_____, in the year Two Thousand Twenty Four, before me, the undersigned, personally appeared Brian J. Kulpa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**TOWN OF CHEEKTOWAGA**

**By:** _____
Brian Nowak, Supervisor

**MUNICIPAL CORPORATION ACKNOWLEDGMENT**

STATE OF NEW YORK )
TOWN OF CHEEKTOWAGA ) ss:
COUNTY OF ERIE )

On the_____day of_____, in the year Two Thousand Twenty Four, before me, the undersigned, personally appeared Brian Nowak, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**TOWN OF TONAWANDA**

**By:** _____
Joseph H. Emminger, Supervisor

**MUNICIPAL CORPORATION ACKNOWLEDGMENT**

STATE OF NEW YORK )
TOWN OF TONAWANDA ) ss:
COUNTY OF ERIE )

On the_____day of_____, in the year Two Thousand Twenty Four, before me, the undersigned, personally appeared Joseph H. Emminger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

Agreement between H. Sicherman & Company, Inc. d/b/a The Harrison Studio
and the Towns of Amherst, Cheektowaga, and Tonawanda

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed by their duly authorized officers.

**H. Sicherman & Company, Inc. d/b/a The Harrison Studio**

**By:** _____
Chuck Bell, President

**PRIVATE CORPORATION ACKNOWLEDGMENT**

STATE OF NEW YORK )
H. SICHERMAN & COMPANY, INC.) ss:
COUNTY OF ERIE )

On the 1st day of May, in the year Two Thousand Twenty Four, before me, the undersigned, personally appeared Chuck Bell, personally known to me or proved to me on the basis of satisfactory evidence to be the individual (s) whose name (s) is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
NOTARY PUBLIC

DIANE K. CHURCH
Notary Public, State of New York
Qualified in Orleans County
My Commission Expires 01/31/2026



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

**EXHIBIT "A"**

**SCOPE OF SERVICES**

# Consultant Work Plan

## Amherst / Cheektowaga / Tonawanda Consolidated Plan

### Overview

The Harrison Studio in association with Hallmark Planning & Development LLC, proposes to provide all of the services required for the production of the Amherst/Cheektowaga/Tonawanda HOME Consortium Consolidated Plan consistent with the Request for Proposals.

All Plan elements will be completed using the Consolidated Plan Template as part of HUD's eCon Planning Suite. The Towns will be expected to initiate the administrative requests necessary to allow the Consultants IDIS access to their respective CDBG and HOME programs on-line.

Chuck Bell will be the primary contact person and will supervise the process with support from Greg Merriam. Much of the assigned staff reside in Erie County and Mr. Bell resides Amherst.

The attached spreadsheets break out hours by staff person and provide targeted completion dates for each work plan element. While the spreadsheets detail each of the tasks to be accomplished along with projected completion dates and projected labor hours, the narrative below outlines the Consultants' approach toward addressing each primary element of the consolidated planning process:

*Overlapping Tasks*

The nature of the proposal to provide services for both the Erie County/Hamburg and the Amherst/Cheektowaga/Tonawanda Consolidated Plans allows for certain economies associated with addressing common needs in a coordinated manner. As a result, the Consultant is proposing to conduct certain meetings and forums and to accomplish certain research in a manner that will be applicable to all of the Plan documents. Those areas include the two meetings with housing, health, and social service agencies, the two economic development meetings or forums, the meeting with agencies regarding lead-based paint issues, and a significant portion of the homeless housing research.

### Task Group I. Managing the Process and Citizen Participation

The Consultants will initiate the planning process by emphasizing an appropriate level of communication with Community Development staff from the three Towns to ensure maximum coordination throughout the term of the engagement regarding expectations of the parties, scheduling, data collection, meeting and public hearing processes, and technical issues. This task group includes the planning, conduct, and documentation of fifteen (15) scheduled meetings and



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

forums for the solicitation of input. These include two (2) public hearings for each of the ACT communities and forums for housing, health, and services (6), economic development (2), and lead-based paint issues (1). For all meetings and forums, the Consultant is assuming responsibility for scheduling and conduct of the sessions, including invitations to appropriate agencies, organizations, and other interested parties, and will coordinate with the Towns, Erie County, and the Town of Hamburg in compiling contact information and addressing logistics. These meetings are in addition to the many smaller privately scheduled meetings that will be part of the standard research process.

Because of the consultant's local presence, additional meetings can readily be scheduled as appropriate. Routine progress meetings or conference calls with Towns' staff are accommodated within this proposal and at no additional cost. If a significant number of additional formal meetings or forums will be required beyond those detailed herein, then the Consultant may require the negotiation of an additional fee. The following general conditions and approaches have been assumed in preparing the proposal:

- The ACT Towns will provide any relevant available information and data that have been updated since the prior Consolidated Plan.

- The ACT Towns will designate appropriate personnel as primary contact points for the Consultants.

This task group also includes a review of the existing citizen participation plans for each Town, consultation with Town staff regarding any proposed revisions, and the development of narratives for each Consolidated Plan that describe the process followed for involving citizens in the preparation of each Plan and the consistency of the process with the respective citizen participation plans.

**Task Group II. Housing and Homeless Needs Assessment**

The consultant will compile and present in appropriate table formats all relevant census data and will highlight trends based on comparisons to prior census data. The proposal offers to present the data for each Town individually and for the Consortium as a whole. The extent of the census data provided will be at least the level necessary to support the analysis of needs as required by HUD Consolidated Plan regulations and as detailed herein. Wherever possible and appropriate, default data provided by HUD (e.g. through the American Community Survey and CHAS data) will be used.

The analysis of housing, economic and living conditions will begin with the procurement of needs data and information from all relevant sources through the use of consultation meetings and forums, public informational meetings and hearings, surveys, and consultant research. The emphasis for the housing elements will be on arriving at specific estimates of housing needs throughout the ACT Towns for income groups, tenure types, elderly, single persons and large families, and persons with AIDS or disabilities, with an additional focus on cost burdening, overcrowding, and substandard conditions. ACS and CHAS data made available by HUD will be the primary resources for housing data, although that information will be augmented as appropriate by local input and anecdotal information. All housing needs developed under this element will be arrived at in coordination with representatives of the Towns.



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

Information regarding homeless needs and needs of those requiring supportive housing has historically been the responsibility of the Homeless Alliance of Western New York. For this proposal, the Consultant will update 2020-2024 Consolidated Plan information by meeting with representatives of that organization as well as other Continuum of Care providers.

The Consultant will procure from appropriate agencies an updated list of assisted housing within the ACT communities, including units in the pipeline. For the public housing components of the housing needs and strategies elements, the Consultant will interface directly with each public housing agency serving the ACT communities to procure appropriate data and input.

The Consultant will meet with internet service providers as well as advocacy groups and agencies in order to identify where there are gaps in broadband access or inadequate broadband options. Specific emphasis will be given to the broadband needs of housing occupied by low- and moderate-income households with needs being identified and qualitatively discussed within the plan.

The Consultant will meet with emergency management agencies and consult with other organizations and agencies whose primary responsibilities include the management of flood prone areas and water resources in order to evaluate the vulnerability of housing occupied by low- and moderate-income households to natural hazard risks. Property insurance providers will also be consulted in order to gain an industry perspective on the current vulnerabilities, anticipated trends, and the growing costs associated with covering vulnerable households.

**Task Group III. Market Analysis**

Based on the data and other information procured through Task Group II, the Consultant will provide the required analysis of market conditions for the housing market in general as well as for special needs housing. The analysis will also address the facilities and services available to special needs populations.

The analysis of the public housing inventory will be developed from the data procured in Task Group II. The consultant will be responsible for both (i) reviewing data from the 2019 Analysis of Impediments to Fair Housing in Erie County, and (ii) coordinating with the consultant or consultant team developing the 2024 Analysis of Impediments to Fair Housing in order to provide a current and complete picture of the market. In addition, areas of low-income and minority concentrations will be described and analyzed.

**Task Group IV. Strategic Plan**

The Consultant will meet with Community Development staff for the Towns to review the data and analyses produced in Task Groups I through III to identify priority needs, goals, and strategies. Appropriate narratives and numerical presentations will be developed to address the strategies for housing, services, economic development, infrastructure, and other community development activities consistent with the Part 91 HUD Consolidated Planning regulations. All of the areas to be addressed in the Strategic Plan are listed in the attached work plan spreadsheet and the eCon Planning Suite tools will be used wherever appropriate.



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

### Task Group V. Consolidated Action Plan

The ACT Consortium Towns will be responsible for completing the Consolidated Action Plans. The Consultant staff will be available to assist in the process as requested and will integrate any of the Annual Action Plan information into the Consolidated Plan as may be appropriate.

### Task Group VI. Assembly

As required by the RFP, the Consultant will coordinate the formatting, placement, and editing of the Five-Year Plan and Consolidated Action Plan into a draft and final report document. The final report document will be provided to each Town in hardcopy and electronic format prepared in HUD's IDIS ECon Suite as mandated. One hard copy of the draft and final report will be submitted to the members of the ACT Consortium for further copying where necessary. One (1) electronic copy of the final Plan will be provided to each municipality as well. All reports presented for public review will also be provided in PDF format for posting onto the Internet.

### Personnel Hours and Rates Summary

As further detailed on the work program spreadsheets, the following summarizes labor hours and rates for the ACT Consolidated Plan:

| Personnel | Standard Billing | Total Hours |
|---|---|---|
| Greg Merriam | $140/hr | 106 |
| Chuck Bell | $150/hr | 60 |
| Michael Zimmerman | $150/hr | 53 |
| Karen Burke | $100/hr | 65 |
| Art Hall | $125/hr | 16 |
| Mike Thomas | $135/hr | 8 |
| Diane Church | $135/hr | 9 |
| Harry Sicherman | $165/hr | 5 |
| **Totals** | | **322** |

### Fixed Fee Proposal

For the proposed scope of services, The Harrison Studio will receive a fixed fee of **forty-three thousand dollars ($43,000)**, such fee to be inclusive of all labor, overhead, profit, all direct expenses including subcontracted services, travel, meals, other out-of-pocket costs, and all indirect costs including occupancy costs, utilities, equipment costs, leases, etc.

It is requested that the payment of the fixed fee be structured in such a way that the Consultant will receive progress payments at appropriate stages in the planning process, with the amount and timing of such payments to be subject to the mutual agreement of the parties.



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

**MBE/WBE Participation**

Hallmark Planning & Development LLC is a Certified Minority Business Enterprise. The value of the subcontract to be let to that company for the ACT Consortium Consolidated Plans is expected to be approximately $4,500.00.

**Contact Person**

All work performed under this engagement will be supervised by Chuck Bell. Mr. Bell's contact information:

Chuck Bell, President
The Harrison Studio
160 Washburn Street, Suite 200
Lockport, New York 14094
Phone: 716.462.6600, ext. 2
E-Mail: cbell@harrisonplacestudio.com

**Consultant Background**

Consultant experience, resumes, references, insurance coverage and other required information are included in the Master Proposal provided to Erie County and to the Towns of Amherst, Cheektowaga, and Tonawanda.

**Work Plan Spreadsheets**

As noted above, attached is a work plan spreadsheet for the ACT Consortium Consolidated Plan scope of services. It includes labor hours by personnel for all tasks, total labor hours for all personnel, and targeted completion dates for each task.



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

# EXHIBIT "B"

## PROJECT SCHEDULE & SCHEDULE OF FEES

## BUDGET

| Principals | Total Project cost |
|---|---|
| The Harrison Studio/Hallmark Planning | $43,000.00 |
| ACT HOME Consortium Responsibilities | |
| Town of Amherst | $14,334.00 |
| Town of Cheektowaga | $14,333.00 |
| Town of Tonawanda | $14,333.00 |

Project tasks may be invoiced based upon completion and according to the following work plan chart:

| Amherst, Cheektowaga, Tonawanda (ACT) Consortium 2025-2029 Consolidated Plan and Action Plan Work Program | Completion Date |
|---|---|
| Managing the Process | July 31, 2024 |
| Housing and Homeless Needs Assessment | July 31, 2024 |
| Market Analysis | August 20, 2024 |
| Strategic Plan | September 20, 2024 |
| Citizen Participation | October 31, 2024 |
| Consolidated Action Plan | December 1, 2024 |
| Assembly | December 1, 2024 |



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

# EXHIBIT "C"

## CERTIFICATES OF INSURANCE

Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

# Addendum to Contract

Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision conflict with the clauses in this Article the provisions in this Article are to be enforceable and the conflicting provision shall be considered null and void.

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 Customer.

Contractor shall indemnify and hold the Customer, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Customer, its officers, agents, and/or employees, arising from the negligence, active or passive, of Consultant, its officers, agents, subcontractors, and/or employees.

Contractor shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Customer.

(a) Compensation Insurance: Contractor shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Contractor shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it 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:

General and professional (if applicable) liability insurance 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.

Contractor shall ensure all its subcontractors, if any, have obtained all the above insurances.

Contractor shall furnish the above insurances, including subcontractors' insurances, to the Customer and shall also name the Customer as a primary additional insured in said policies.

(c) 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, and not later than three (3) days after the date of such accident.

No Assignment: In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Customer.

Required Provisions of Law: Each and every provision of law and clause required by law to he inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

(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.

The Contractor, in accordance with its status as an independent consultant or, 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 Customer by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Customer, 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.

This agreement shall be governed by, and interpreted according to the laws of the State of New York. Any and all legal action necessary to enforce the agreement will be held in Erie County, New York.

Authority for execution on behalf of Customer: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Customer, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Customer. This instrument shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Customer.

Agreed to and Accepted by:

The Harrison Studio
Print Name of Company

By: Chuck Bell
Chuck Bell, President

Chuck Bell, President
Printed name

Date: May 1st, 2027

Agreed to and Accepted by:

Town of Amherst
Print Name of Company

By:_____
Brian J. Kulpa, Supervisor

Brian J. Kulpa, Supervisor
Printed name

Date:_____



Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

# 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: H. Sicherman & Company, Inc.

Signature: Chuck Bell

Print Name: Chuck Bell

Title: President

Date: May 1, 2024

Sworn To Before Me This

1st Day of May, 2024

Diane K. Church

Notary Public

DIANE K. CHURCH
Notary Public, State of New York
Qualified in Orleans County
My Commission Expires 01/31/20 26

Revised 4.2017

Attachment: 5 year contract_signed by Harrison_5.8.24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year

# Five Year Consolidated Plan 2025-2029

## Ranking by Reviewer

## 4/11/2024

| | Enterprise Community Partners, Inc. | Urban Design Ventures LLC | The Harrison Studio |
|---|---|---|---|
| Amherst (reviewer #1) | 3 | 1 | 2 |
| Cheektowaga (reviewer #2) | 2 | 3 | 1 |
| Tonawanda (reviewer #3) | 3 | 2 | 1 |
| Hamburg (reviewer #4) | 2 | 3 | 1 |
| Erie County (reviewer #5) | 3 | 2 | 1 |
| City Buffalo (reviewer #6) | 1 | 3 | 2 |
| **Average Ranking** | **2.33** | **2.33** | **1.33** |

Attachment: Con Plan Scores by Muni 4-11-24 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year Consolidated

Amherst

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

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

May 6, 2024

**Agenda of May 13, 2024**

Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Subject: Contract with The Harrison Studio for the Amherst-Cheektowaga-Tonawanda HOME Consortium 2025-2029 Consolidated Plan

Honorable Board Members:

The FY 2023 Annual Action Plan adopted by the Town Board on February 13, 2023 includes an activity that allows the Town to contract with a consultant for the preparation of a Five Year (2025-29) Consolidated Plan for the Amherst-Cheektowaga-Tonawanda (ACT) HOME Consortium as required by the US Department of Housing and Urban Development. The Town of Amherst will act as the lead agency in the contract with Harrison Studio in the preparation of the Consolidated Plan with costs to be shared by the three Towns of the HOME Consortium.

The contract amount is $43,000, Amherst's share of the cost, $14,334, is to be paid with Community Development Block Grant funds.

Attached for your consideration is a resolution authorizing the Town Supervisor to enter into a contract with The Harrison Studio for the preparation of the 2024-29 Consolidated Plan.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

X:\Community Development\New Structure\CON PLAN\2025-2029 ConPlan\Contracts\TB_Letter_Contract_Harrison_Studio_5.13.24.docx



Attachment: letter-05082024084547 (RES-2024-453 : Contract with the Harrison Studio for the Completion of the 5 Year Consolidated Plan CRS

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Police
Initiated by: **Scott Chamberlin**
Co-Sponsored by:

DOC ID: 28974 **RESOLUTION 2024-454** **WITHDRAWN**

# Master Services Agreement: Installation of LPR Flock Group, Inc. (CRS #4703)

**TOWN BOARD AGENDA ITEM : MAY 13, 2024**

**TO:** **Town Board**

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

**RE:** **Master Services Agreement: Installation of LPR Flock Group, Inc. (CRS #4703)**

Kindly adopt a resolution authorizing the Supervisor to adopt and execute an agreement between the Town of Amherst (Police) and Flock Group, Inc. (CRS #4703) with regard to the above-entitled matter. Approval of this agreement is contingent upon the successful completion of the Contract Routing Process.

Thank you.

SPC: msl
C: Tim Koller, Deputy Town Clerk (Agenda Item: May 13, 2024)

**FINANCIAL IMPACT:**

A 3139 .2600: Amount not to exceed $63,000.00

**RESULT:** **WITHDRAWN**

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

**Flock Safety + NY - Amherst Town PD**

Flock Group Inc.
1170 Howell Mill Rd, Suite 210
Atlanta, GA 30318

MAIN CONTACT:
Brad Cochrane
brad.cochrane@flocksafety.com
7167994357

flock safety

# Master Services Agreement

This Master Services Agreement (this "***Agreement***") is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 ("***Flock***") and the entity identified in the signature block ("***Customer***") (each a "***Party***," and together, the "***Parties***") on this the 02 day of February 2024. This Agreement is effective on the date of mutual execution ("***Effective Date***"). Parties will sign an Order Form ("***Order Form***") which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

## RECITALS

**WHEREAS,** Flock offers a software and hardware situational awareness solution through Flock's technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer ("***Notifications***");

**WHEREAS,** Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

**WHEREAS,** Customer shall have access to the Footage in Flock Services. Pursuant to Flock's standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the ***Order Form***. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

**WHEREAS,** Flock desires to provide Customer the Flock Services and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations and evidence gathering for law enforcement purposes, ("***Permitted Purpose***").

## AGREEMENT

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

**NOW, THEREFORE,** Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

## 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 "***Anonymized Data***" means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 "***Authorized End User(s)***" means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 "***Customer Data***" means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. "***Customer Hardware***" means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 "***Embedded Software***" means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 "***Flock Hardware***" means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

1.7 "***Flock IP***" means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 "***Flock Network End User(s)***" means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 "***Flock Services***" means the provision of Flock's software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 "***Footage***" means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 *"**Hotlist(s)***" means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 "***Installation Services***" means the services provided by Flock for installation of Flock Services.

1.13 "***Retention Period***" means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 "***Vehicle Fingerprint™***" means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 "***Web Interface***" means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

## 2. SERVICES AND SUPPORT

2.1 **Provision of Access.** Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form ("***Retention Period***"). Authorized End Users will be required to sign up for an account and select a password and username ("***User ID***"). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 **Embedded Software License.** Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

2.3 **Support Services.** Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com (such services collectively referred to as ***"Support Services"***).

2.4 **Upgrades to Platform.** Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock's products or services to its agencies, the competitive strength of, or market for, Flock's products or services, such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

2.5 **Service Interruption.** Services may be interrupted in the event that: (a) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("***Service Interruption***"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

2.6 **Service Suspension.** Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("***Service Suspension***"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

2.7 **Hazardous Conditions.** Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

is to perform services under this Agreement, Flock shall have the right to cease work immediately.

## 3. CUSTOMER OBLIGATIONS

3.1 **Customer Obligations.** Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as ***"Customer Obligations"***).

3.2 **Customer Representations and Warranties.** Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

## 4. DATA USE AND LICENSING

4.1 **Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

4.2 **Customer Generated Data.** Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer (**"*Customer Generated Data*"**). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer's intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

4.3 **Anonymized Data.** Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

## 5. CONFIDENTIALITY; DISCLOSURES

5.1 **Confidentiality.** To the extent required by any applicable public records requests, each Party (the "***Receiving Party***") understands that the other Party (the "***Disclosing Party***") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "***Proprietary Information***" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 **Usage Restrictions on Flock IP.** Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

5.3 **Disclosure of Footage.** Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

## 6. PAYMENT OF FEES

6.1 **Billing and Payment of Fees**. Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

6.2 **Notice of Changes to Fees.** Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

6.3 **Late Fees.** INTENTIONALLY OMITTED

6.4 **Taxes.** Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and Flock shall not charge customer any taxes from which it is exempt. If any deduction or withholding is required by law, Customer shall notify Flock and shall pay Flock any additional

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

6.5 **Time is of the Essence.** Due to applicable grant rules, Parties agree that time is of the essence regarding the initial installation of any hardware, software, or service under this agreement. Any hardware, software, or service due under this agreement must be received by Customer and shall be placed in service by Flock no later than June 30, 2024. In the event that the initial installation of any hardware, software, or service under this agreement is not in service by June 30, 2024, this agreement shall automatically terminate and no payment shall be due from the Customer to Flock.

## 7. TERM AND TERMINATION

7.1 **Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "***Term***"). Following the Term, this Agreement may automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form ( "***Renewal Term***") upon written notice of renewal by Customer to Flock prior to the end of the then-current term. .

7.2 **Termination.** Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period ("***Cure Period***"). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the ***Cure Period***, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 **Survival**. The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

## 8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 **Manufacturer Defect.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a "***Defect***"), Customer must notify Flock's technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

8.2 **Replacements.** In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (https://www.flocksafety.com/reinstall-fee-schedule). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

8.3 **Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 **Disclaimer.** THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 **Insurance.** Flock will maintain commercial general liability policies as stated in Exhibit B.

8.6 **Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

## 9. LIMITATION OF LIABILITY; INDEMNITY

9.1 **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 **Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 **Flock Indemnity.** Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Except for damage or injury to property or person, Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

## 10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 **Ownership of Hardware**. Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

10.2 **Deployment Plan**. Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

10.3 **Changes to Deployment Plan.** After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (https://www.flocksafety.com/reinstall-fee-schedule). Customer will receive prior notice and confirm approval of any such fees.

10.4 **Customer Installation Obligations**. Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 **Flock's Obligations**. Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

**11. MISCELLANEOUS**

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

11.1 **Compliance With Laws.** Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 **Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent.

11.4 **Entire Agreement.** This Agreement, together with the Order Form(s), the reinstall fee schedule (https://www.flocksafety.com/reinstall-fee-schedule), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral , communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

11.5 **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

11.6 **Governing Law; Venue.** This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 **Special Terms.** Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("***Special Terms***"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 **Publicity.** Upon prior written consent of Customer, Flock has the right to reference and use Customer's name and disclose the nature of the Services in business and development and marketing efforts.

11.9 **Feedback.** If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 **Export.** Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Morality.** In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock's reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non appropriation with thirty (30) days written notice without penalty or other cost.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: legal@flocksafety.com

Customer NOTICES ADDRESS:

ADDRESS: _____

ATTN: _____

EMAIL: _____

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

EXHIBIT B

**INSURANCE**

**Required Coverage.** Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than "A" and "VII". Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

**Types and Amounts Required**. Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

(i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;

(ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars ($10,000,000) per occurrence and Ten Million Dollars ($10,000,000) in the aggregate;

(iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) in the aggregate;

(iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

(v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars ($5,000,000).

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

flock safety

# EXHIBIT A
# ORDER FORM

| | | | |
|---|---|---|---|
| Customer: | NY - Amherst Town PD | Initial Term: | 12 Months |
| Legal Entity Name: | NY - Amherst Town PD | Renewal Term: | 24 Months |
| Accounts Payable Email: | rphillips@apdny.org | Payment Terms: | Net 30 |
| Address: | 500 John James Audubon Pkwy Amherst, New York 14228 | Billing Frequency: | Annual Plan - Invoiced at Last Camera Validation. |
| | | Retention Period: | 30 Days |

## Hardware and Software Products

Annual recurring amounts over subscription term

| Item | Cost | Quantity | Total |
|---|---|---|---|
| **Flock Safety Platform** | | | **$60,000.00** |
| **Flock Safety LPR Products** | | | |
| Flock Safety Falcon ® | Included | 20 | Included |

## Professional Services and One Time Purchases

| Item | Cost | Quantity | Total |
|---|---|---|---|
| **One Time Fees** | | | |
| **Flock Safety Professional Services** | | | |
| Professional Services - Existing Infrastructure Implementation Fee | $150.00 | 20 | $3,000.00 |

| | |
|---|---|
| **Subtotal Year 1:** | $63,000.00 |
| **Annual Recurring Subtotal:** | $60,000.00 |
| **Estimated Tax:** | $0.00 |
| **Contract Total:** | $63,000.00 |

*Taxes shown above are provided as an estimate. Actual taxes are the responsibility of the Customer. This Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "**Renewal Term**") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

**Title Transfer on Hardware-** Upon installation, the Customer will receive title to the Flock Hardware. Upon expiration of the Term and any renewal Terms, Customer agrees to sell back each Flock Hardware to Flock for a $1 USD credit and be monetarily responsible for required replacement of or any damage to the Flock Hardware during the Term, except for normal wear and tear. The Flock Hardware will become the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Customer agrees to perform all acts which may be necessary to assure the transfer of title of the Flock Hardware by Flock. Upon issuing the credit (on a final invoice or as a refund to the Customer) and prior to Flock's receipt back of each unit of Flock Hardware, Customer grants Flock a perfected security interest in the Flock Hardware for which Flock may file this Agreement or a UCC form as proof thereof. Flock and Customer will arrange to remove Flock Hardware at a mutually convenient time.

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

# Billing Schedule

| Billing Schedule | Amount (USD) |
|---|---|
| **Year 1** | |
| At Last Device Installed | $63,000.00 |
| **Annual Recurring after Year 1** | $60,000.00 |
| **Contract Total** | $63,000.00 |

*Tax not included

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

## Product and Services Description

| Flock Safety Platform Items | Product Description | Terms |
|---|---|---|
| Flock Safety Falcon ® | An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes. | The Term shall commence upon first installation and validation of Floc Hardware. |

| One-Time Fees | Service Description |
|---|---|
| Installation on existing infrastructure | One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief. |
| Professional Services - Standard Implementation Fee | One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief. |
| Professional Services - Advanced Implementation Fee | One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief. |

## FlockOS Features & Description

| FlockOS Features | Description |
|---|---|

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

**By executing this Order Form, Customer represents and warrants that it has read and agrees to all of the terms and conditions contained in the Master Services Agreement attached.**

The Parties have executed this Agreement as of the dates set forth below.

| **FLOCK GROUP, INC.** | **Customer: NY - Amherst Town PD** |
|---|---|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |
| | PO Number: _____ |

Attachment: Flock Updated Agreement & Quote 5.8.2024 (RES-2024-454 : Agreement: Flock Group, Inc. (CRS# 4703))

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Police
Initiated by: **Scott Chamberlin**
Co-Sponsored by:

DOC ID: 28975 **RESOLUTION 2024-455** **ADOPTED**

# Memorandum of Understanding Use of Amherst Police Department Community Policing and Training Facility: United States Coast Guard-Buffalo (CRS #4783)

**TOWN BOARD AGENDA ITEM : MAY 13, 2024**

**TO:** **Town Board**

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

**RE:** **Memorandum of Understanding**
**Use of Amherst Police Department Community Policing and Training Facility: United States Coast Guard-Buffalo (CRS #4783)**

Kindly adopt a resolution authorizing the Supervisor to adopt and execute the attached Memorandum of Understanding between the Town of Amherst (Police) and United States Coast Guard-Buffalo, with regard to the above-entitled matter. This MOU has successfully completed the Contract Routing Process.

Thank you.

SPC: msl
Attachment
C: Tim Koller, Deputy Town Clerk (Agenda Item: May 13, 2024)

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

A 3122 .02410: Revenue TBD

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

**MEMORANDUM OF UNDERSTANDING**
**BETWEEN TOWN OF AMHERST POLICE DEPARTMENT**
**and**
**UNITED STATES COAST GUARD - BUFFALO**

**1. Parties.** This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into by and between the Town of Amherst, whose address is 5583 Main Street, Williamsville, New York, Town of Amherst Police Department, whose address is 500 John James Audubon Pkwy. Amherst New York 14226 (hereinafter collectively referred to as the "Town"), and the United States Coast Guard – Buffalo, whose address is 1 Fuhrmann Boulevard, Buffalo, New York 14203. As used in this MOU, the term "Parties" describes the Town of Amherst Police Department and the United States Coast Guard – Buffalo.

**2. Purpose.** This Memorandum of Understanding (MOU) constitutes a professional service and/or shared-use agreement between the parties, wherein the Town of Amherst Police Department will make available to the United States Coast Guard - Buffalo, the Amherst Police Departments Community Policing and Training Facility (hereinafter "Facility") at 4220 Bailey Avenue, Amherst, New York for firearms and related law enforcement training as described below. The purpose of this MOU is to establish the terms and conditions for use of the Town of Amherst Police Department Community Policing and Training Facility by the United States Coast Guard - Buffalo.

**3. Authorities:** United States Coast Guard - Buffalo is authorized to enter this MOU under the Homeland Security Act of 2002, codified in Title 6, United States Code. Additionally, United States Coast Guard - Buffalo is authorized to enter into this agreement pursuant to the Government Employees Training Act, 5 U.S.C. §§ 4101 and 4105, permitting agencies to make agreements or other arrangements for the training of employees of the agency by, in, and through non-government facilities.

Nothing in this MOU is intended to conflict with current law, regulation, or policy governing the respective parties. Further, nothing in this MOU is intended to restrict the authority of either party to act as provided by applicable law, regulation, or agency policy. If any term of this agreement is inconsistent with law, regulation, or other authority that that term shall be invalid, but the remaining terms and conditions of this MOU shall remain in full force and effect.

**4. Conditions.** For United States Coast Guard - Buffalo to utilize the Town of Amherst Police Department Community Policing and Training Facility, approval must be given by the Chief of Police or his designee, and an individual memorandum of understanding executed. United States Coast Guard - Buffalo is responsible for complying with all applicable Federal law and, to the extent that they do not conflict with Federal law, State, County, Municipal laws, ordinances, and regulations wherein the



Attachment: Amherst PD MOU_USCG_1 (RES-2024-455 : MOU: Bailey Range: US Coast Guard (CRS#4783))

firearms range/training facility is located. The privilege granted to use the facility will be without cost or expense to the Amherst Police Department or the Town of Amherst.

**5.** **Use of the Facilities.** The Amherst Police Department agrees to allow the United States Coast Guard - Buffalo use of the agreed upon area of the facility, which is located at 4220 Bailey Avenue, Amherst New York to conduct suitable training, together with the necessary rights and ingress and egress to the facility. The Amherst Police Department Community Policing and Training Facility consists of four separate areas and this MOU specifically covers use of the designated training area to be used.

A. Classroom and presentation area located at the southernmost part of the building. Area includes classroom furniture and audio / visual equipment.

B. Realistic training area.

C. Firearms Range.

**6.** **Scheduling.** Scheduling for use of the Town of Amherst Police Department Community Policing and Training Facility is done by request in writing or email to the Chief of Police of the Amherst Police Department or his/her designee. Scheduling of the facility will be a mutually agreeable date and time. A designee of the Amherst Police Department will be responsible for maintaining a schedule of events at the facility and communicating the schedule with the parties involved.

**7.** **Rules and Regulations.**

A. The United States Coast Guard - Buffalo will use reasonable care in its use of the Facility and shall be responsible to the Town of Amherst Police Department for conducting all activities in a safe and prudent manner so as not to endanger others while on Town of Amherst property.

B. The United States Coast Guard - Buffalo shall return the Facility to the Amherst Police Department after each use in the same condition as before its use, except for reasonable wear and tear as would be expected with the type of training done.

C. The United States Coast Guard - Buffalo accepts the Facility in “as is” condition and acknowledges that the Town of Amherst makes no warranty in any manner as to the fitness of the facility for any specific purpose.

D. The United States Coast Guard - Buffalo agrees that the facility shall be used solely in the service for law enforcement purposes, such as training and to follow all posted rules and safety regulations.

E. The United States Coast Guard - Buffalo agrees to have a qualified instructor present who has attended and completed a safety and orientation briefing presented by an Amherst Police Department facility administrator.

F. The United States Coast Guard - Buffalo, its agents, employees, and invitees, agree to abide by all facility and training safety rules and to attend and complete a safety briefing by a qualified instructor before each use.

Attachment: Amherst PD MOU_USCG_1 (RES-2024-455 : MOU: Bailey Range: US Coast Guard (CRS#4783))

G. Violations of any of the agreed upon rules and regulations, or any above stated laws, or any damage (negligent or otherwise) may result in the termination of this MOU for United States Coast Guard - Buffalo, resulting in the loss of facility usage for the United States Coast Guard - Buffalo.

**8. Acknowledgement of Risk.** All persons being trained by the United States Coast Guard - Buffalo, or who are at the Facility at the request or invitation of the United States Coast Guard - Buffalo, will be always under the direct supervision of authorized United States Coast Guard - Buffalo instructors.

United States Coast Guard - Buffalo is a component of the Department of Homeland Security and as such, it is a self-insured entity supported by the U.S. Government. The Federal Tort Claims Act, Title 28, U.S.C. Sections 1346 et seq., provides the sole means through which the U.S. Government resolves all issues of liability for the loss or destruction of property or personal injury, or death caused by the negligent or wrongful acts or omissions of any employee of the government while acting within the scope of his or her offices or employment.

The United States Coast Guard - Buffalo is responsible for ensuring that all personnel using the Facility, while it is assigned to or otherwise being used by the United States Coast Guard - Buffalo, understand and agree that the use of the Facility is an inherently dangerous activity and that in consideration for being allowed to use the Facility, each individual assumes the risk of any injuries that may occur while using the Facility.

The Town of Amherst expressly disclaims any and all liability for damage or injury to United States Coast Guard - Buffalo, its agents, employees or invitees related to this MOU. The Town of Amherst shall not be liable for theft, vandalism or pilferage of the Facility or any items contained therein, which occurs during such time as the Facility is being used by the United States Coast Guard - Buffalo.

**9. Term of MOU.** This MOU becomes effective when approved by the parties identified below and will remain in effect for five (5) years after the agreement is signed. The parties then have the option to renew the MOU for two (2) additional, five (5) year terms.

Either party may terminate this MOU upon thirty (30) days written notification to the other party. Such notice will be the subject of immediate consultation to the parties to decide upon the appropriate course of action. Additionally, this MOU may be modified upon the mutual written consent of the parties, signed by the signatories to this agreement.

**10. General Provisions**

**A. Applicable Law.** The construction, interpretation and enforcement of this MOU shall be governed by the laws of the United States, and to the extent that they do not conflict with the laws of the United States, the laws of the State of New York. Any action arising out of this MOU and the

Attachment: Amherst PD MOU_USCG_1 (RES-2024-455 : MOU: Bailey Range: US Coast Guard (CRS#4783))

parties shall be brought in U.S. District Court. The Chief of Police or their designees have final say on all matters pertaining to safety, usage, and administration at the Facility. This supersedes any and all rank or administrative titles carried by members of guest agencies.

**B. Entirety of Agreement.** This MOU, consisting of [6], pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

**C. Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

**D. Sovereign Immunity.** The United States Coast Guard - Buffalo and the Amherst Police Department and their respective governing bodies do not waive their sovereign immunity by entering this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

**E. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this MOU shall not be construed to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to this MOU and shall insure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only party's signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

**F. Force Majeure**. Neither the Town of Amherst nor the United States Coast Guard - Buffalo shall be deemed in default hereunder if either Party is prevented from performing any of the obligations by reason of strikes, labor disputes, acts of God, acts of the public enemy, acts of the government, or sabotage or any other circumstances for which it is not responsible, or which are not within its control.

**11. Funding.** The fee schedule for the Facility is listed below. The fees are necessary to maintain the Facility at a high standard, parties will agree that any fees will be known and agree to at the time of training scheduling. Any fees paid by any agency constitute that agency's willingness to have a well-maintained training venue and at no point will any fees paid constitute any ownership, control, or unquestioned right to future use of the Facility. If the fee schedule changes, the Town of Amherst will notify the Parties (60) sixty days prior to changes taking effect.

Attachment: Amherst PD MOU_USCG_1 (RES-2024-455 : MOU: Bailey Range: US Coast Guard (CRS#4783))

| | |
|---|---|
| Firearms Range | $300 / half day (4 hrs.) |
| Firearms Range | $600 / Full day (8 hrs.) |
| Realistic Training House | $100 / half day (4 hrs.) |
| Realistic Training House | $200 / full day (8 hrs.) |
| Classroom and Presentation Area: $75 / each additional hour scheduled outside of normal business hours (8 AM - 4 PM) | |

**12. Signatures.** In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

**United States Coast Guard - Buffalo**

RUTERBUSCH.TRAVIS.WALTER.1097480253 Digitally signed by RUTERBUSCH.TRAVIS.WALTER.1097480253 Date: 2024.04.30 12:45:21 -04'00'

Travis W. Ruterbusch, Officer in Charge Date

CUSICK.BRANDON.RECE.1535105266 Digitally signed by CUSICK.BRANDON.RECE.1535105266 Date: 2024.04.30 13:47:31 -04'00'

Brandon R. Cusick, Law Enforcement Petty Officer Date

Attachment: Amherst PD MOU_USCG_1 (RES-2024-455 : MOU: Bailey Range: US Coast Guard (CRS#4783))

**Town of Amherst Police Department**

Brian J. Kulpa, Town Supervisor Date

Scott P. Chamberlin, Chief of Police Date

Attachment: Amherst PD MOU_USCG_1 (RES-2024-455 : MOU: Bailey Range: US Coast Guard (CRS#4783))

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Senior Services
Initiated by: **Melissa Abel**
Co-Sponsored by:

DOC ID: 28970 **RESOLUTION 2024-456** **ROLL CALL VOTE (ADOPTED)**

# Erie County Congregate Dining Services CRS #4772

We respectfully request Town Board permission to authorize the Supervisor to sign the Contract Amendment to the agreement between the Town of Amherst (Senior Services) and Erie County Senior Services upon successful completion of the Routing Process.

**5/13/2024**
A motion to approve was made by Supervisor Kulpa, seconded by Deputy Supervisor Lavin and approved via Roll Call vote 4-0-1 (abstain, Marinucci).

**FINANCIAL IMPACT:**

A 6773-04001

Increase Revenue ( $4795.00 )

| | |
|---|---|
| **RESULT:** | **ROLL CALL VOTE (ADOPTED) [4 TO 0]** |
| **MOVER:** | Brian J. Kulpa, Supervisor |
| **SECONDER:** | Shawn Lavin, Deputy Supervisor |
| **AYES:** | Kulpa, Lavin, Berger, Szukala |
| **ABSTAIN:** | Marinucci |

# Contract Sixth Amendment

THIS SIXTH AMENDMENT made on January 19, 2024 between the COUNTY OF ERIE, (herein, "COUNTY") a municipal corporation of the State of New York, having its principal office in Buffalo, Erie County, NY, and **Town of Amherst by and through the Amherst Center for Senior Services,** a non-profit organization under the laws of the State of New York (herein, "AGENCY") having its office at Town Hall, 5583 Main Street, Williamsville, NY 14221; amends the agreement made between the above-named parties on the 1st day of January, 2019 effective from January 1, 2019 to and inclusive of December 31, 2021.

NOW, THEREFORE, it is mutually agreed by and between the parties:

1. Except as hereinafter set forth, this fourth amendment is in addition to and not in substitution of the January 1, 2019 agreement between COUNTY and AGENCY, filed with the County Attorney's office as Document **#19-184-SS** (the "Agreement"), as amended.
2. The Agreement, as amended, is hereby further amended to replace **Schedule E: 2023 Budget Attachment** with attached **Schedule E: 2023 Budget Attachment Rev. 1, 01/19/24.**
3. Except as otherwise provided herein, all other terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, this agreement has been signed by the duly authorized officers of the respective parties.

**COUNTY OF ERIE**

_____

**Mark Poloncarz/Lisa M. Chimera**
County Executive/Deputy County Executive
Date: _____

**Town of Amherst Center for Senior Services**

_____

**Brian J. Kulpa**
Town Supervisor
Date: _____

Approved as to content:
By: (Electronically signed) Date: _____
**Angela Marinucci,** Acting Commissioner Dept. of Senior Services

Approved as to form:
By: (Electronically signed) Date: _____
**Aaron Rubin,** Assistant County Attorney

Document# 19-184-SS (AMEND 6)

Attachment: congregate-04162024135749 (RES-2024-456 : Erie County Congregate Dining - Erie County Senior Services CRS #4772)

**Erie County Dept. of Senior Services**
**Town of Amherst**
**2023 Congregate Dining**
**Schedule E: Attachment**
**Rev. 1**
**1/19/24**

| | Original contract | additions | Revised contract |
|---|---|---|---|
| Number of budgeted regular meals | 33,000 | 1,000 | 34,000.00 |
| Times: Price per meal (food prep) | $ 4.37 | $ 4.37 | $ 4.37 |
| Total regular meal $'s | $ 144,210.00 | $ 4,370.00 | 148,580.00 |
| Plus: cleanup & escort $s | $ 8,950.00 | $ 425.00 | 9,375.00 |
| | $ 153,160.00 | $ 4,795.00 | 157,955.00 |



Attachment: congregate-04162024135749 (RES-2024-456 : Erie County Congregate Dining - Erie County Senior Services CRS #4772)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28990 **RESOLUTION 2024-457** **ADOPTED**

# Travel Authorization

Authorize Eric Guzdek and Linda Groff to attend the USA Hockey Annual Congress in Denver, CO from 6/4-6/9/24. All expenses will be paid by the NYS Amateur Hockey Association.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

None

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

# TRAVEL EXPENSE APPROVAL/REIMBURSEMENT FORM

☐ $250 or LESS and under 75 miles — Department Head Approval ONLY Required — *REVISED 1/9/2023*

☒ $250 + or greater than 75 miles — Department Head AND Town Board Approval Required

| NAME | Employee # | Department | Phone Number |
|---|---|---|---|
| **Eric W. Guzdek** | **4327** | **Youth & Rec** | **(716) 631-7132** |

**Destination and Purpose of Trip**

| Date of Departure | Date of Return | Destination | Purpose/Justification |
|---|---|---|---|
| **6/4/2024** | **6/9/2024** | Denver, CO | **Attend the USA Hockey Annual Congress at no cost to the Town of Amhest as a the President of the New York State Amateur Hockey Association (USA Hockey District)** |

| Expenses | Estimated | Budget A/C # | Actual |
|---|---|---|---|
| Transportation: | | | |
| Mileage @ $0.655 | | | |
| Tolls | | | |
| Parking | | | |
| Local Transportation (bus/taxi) | | | |
| Plane/Rail/Bus | | | |
| Lodging: | | | |
| # nights @ | | | |
| Meals: | | | |
| IRS Per Diem Per Day | | | |
| 1st & Last Day of Travel @75% | | | |
| | | | |
| # Breakfasts @ | | | |
| # Breakfasts @ | | | |
| # Lunches @ | | | |
| # Lunches @ | | | |
| # Dinners @ | | | |
| # Dinners @ | | | |
| # Incidentals @ | | | |
| | | | |
| Registration/Conference Fee | | | |
| | | | |
| Other | | | |
| Subtotal | **$0.00** | | N/A |
| Contingency - 10% of subtotal or $200 | **$0.00** | | N/A |
| TOTAL | **$0.00** | | |

**Request Approved By:**

Mayor Dana Dalli

**Department Head Signature**

April 29, 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: USA Hockey Annual Congress Travel (RES-2024-457 : Travel Authorization)

# TRAVEL EXPENSE APPROVAL/REIMBURSEMENT FORM

☐ $250 or LESS and under 75 miles — Department Head Approval ONLY Required — *REVISED 1/9/2023*

☒ $250 + or greater than 75 miles — Department Head AND Town Board Approval Required

| 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 |
|---|---|---|---|
| **6/4/2024** | **6/9/2024** | **Denver, CO** | **Attend the USA Hockey Annual Congress at no cost to the Town of Amhest as a the Recording Secretary of the New York State Amateur Hockey Association (USA Hockey District)** |

| Expenses | Estimated | Budget A/C # | Actual |
|---|---|---|---|
| Transportation: | | | |
| Mileage @ $0.655 | | | |
| Tolls | | | |
| Parking | | | |
| Local Transportation (bus/taxi) | | | |
| Plane/Rail/Bus | | | |
| Lodging: | | | |
| # nights @ | | | |
| Meals: | | | |
| IRS Per Diem Per Day | | | |
| 1st & Last Day of Travel @75% | | | |
| | | | |
| # Breakfasts @ | | | |
| # Breakfasts @ | | | |
| # Lunches @ | | | |
| # Lunches @ | | | |
| # Dinners @ | | | |
| # Dinners @ | | | |
| # Incidentals @ | | | |
| | | | |
| Registration/Conference Fee | | | |
| | | | |
| Other | | | |
| Subtotal | **$0.00** | | N/A |
| Contingency - 10% of subtotal or $200 | **$0.00** | | N/A |
| TOTAL | **$0.00** | | |

**Request Approved By:**

Mary Diana Rossi

**Department Head Signature**

April 29, 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: USA Hockey Annual Congress Travel (RES-2024-457 : Travel Authorization)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28998 **RESOLUTION 2024-458** **ADOPTED**

# Sound System Repair - CRS #4736

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and AAA Sound & Video LLC for service, repair and replacement of sound equipment at the Northtown Center.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

A 7253.4110; $9,747.00

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

**AAA Sound & Video, LLC**
295 Mount Read Blvd STE. 5
Rochester, NY 14611
585-325-1080
michele@aaasound.com

**ADDRESS**
Northtown Center At Amherst
1615 Amherst Manor Drive
Williamsville, NY 14221

**SHIP TO**
Northtown Center At Amherst
1615 Amherst Manor Drive
Williamsville, NY 14221

# Estimate E-1153

DATE 03/27/2024

EXPIRATION DATE 04/26/2024

**CONTACT EMAIL**
BWaltz@amherst.ny.us

**CONTACT NAME**
Brad Waltz 716.631.7555 ext. 75

| DESCRIPTION | AMOUNT |
|---|---|
| FOR: SOUND SYSTEM REPAIR | |
| PROPOSAL TO PROVIDE SERVICE AND REPAIR EXISTING EQUIPMENT FOR THE 4 RINKS AS PER WALKTHROUGH. WILL NEED TO REPLACE THE FAILING COMPONENTS FOR 2 RINKS | |
| EQUIPMENT TO INCLUDE:<br>1 - ASHLY Ne 24.24mt (4X4) DSP<br>2 - ASHLY KLR3200 AMP<br>2 - BOGEN CAM8 PRO MIXER<br>4 - KDM RAMX2 WITH PS<br>4 - KDM SMLV-1 SURFACE BOXES | |
| LABOR TO INCLUDE INSTALLATION, TESTING,SET LEVELS,LABEL,AND REVIEW OPERATION. | |
| MATERIALS AND LABOR COMPLETE $9,747<br>NINE THOUSAND SEVEN HUNDRED FORTY SEVEN DOLLARS | 9,747.00 |
| NOTE: AMOUNT DOES NOT INCLUDE EXISTING MIXERS AMPLIFIERS AND SPEAKERS | |

| | |
|---|---|
| SUBTOTAL | 9,747.00 |
| TAX | 0.00 |
| TOTAL | $9,747.00 |

Accepted By

Accepted Date 3-28-24

ACCEPTANCE OF PROPOSAL -The above prices, specs and conditions are satisfactory and accepted. You are authorized to do the work as specified, if cancelled after acceptance of materials I will be subject to a 15% cancellation/restocking fee. 50% prepay required for all work requested and possible progress invoicing. Terms are Net 30

Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

## Addendum to Contract VENDOR ON SITE Minor

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 Vendors 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, Vendor 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 Vendor its officers, agents, sub-Vendors, and/or employees as well as the negligence, active or passive, of the Vendor, its officers, agents, sub-Vendors, and/or employees.

4. Vendor 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: Vendor 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: Vendor 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) Vendor shall furnish the above insurances, including sub-Vendors' 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) Vendor shall ensure all its sub-Vendors, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Vendor or sub-sub-Vendor shall name the Town as an additional insured on a primary and non-contributory basis.

Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

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 Vendor 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 Vendor 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 Vendor, in accordance with its status as an independent Vendor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules,

Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

AAA Sound
Print Name of Company

By: _____
Signature

Craig Wiegand
Printed name

Date: 3-11-24

Agreed to and Accepted by:

**Town of Amherst**

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

# EXHIBIT "1"

## 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: AAA Sound and Video

Signature: [signature]

Print Name: Craig Wiegand

Title: Operations Manager

Date: 3-11-24

Revised 4.2017

Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/11/2024

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 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**<br>Ashley Insurance<br>PO Box 105<br>Williamson NY 14589 | **CONTACT NAME:** Tracy Murray<br>**PHONE (A/C, No, Ext):** (315) 589-4751 **FAX (A/C, No):** (315) 589-9648<br>**E-MAIL ADDRESS:** |
| **INSURED**<br>AAA Sound & Video LLC<br>295 Mount Read Blvd<br>Rochester NY 14611-1931 | **INSURER(S) AFFORDING COVERAGE** — **NAIC #**<br>**INSURER A:** Hartford Underwriters Ins Co — 30104<br>**INSURER B:** Hartford Ins Co of Illinois — 38288<br>**INSURER C:**<br>**INSURER D:**<br>**INSURER E:**<br>**INSURER F:** |

**COVERAGES** **CERTIFICATE NUMBER:** CL2431102059 **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<br>[ ] CLAIMS-MADE [X] OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>[ ] POLICY [X] PRO-JECT [ ] LOC<br>[ ] OTHER: | Y | Y | 01SBABC4AH1 | 01/02/2024 | 01/02/2025 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG<br> | $ 1,000,000<br>$ 1,000,000<br>$ 10,000<br>$ 1,000,000<br>$ 2,000,000<br>$ 2,000,000<br>$ |
| B | AUTOMOBILE LIABILITY<br>[X] ANY AUTO<br>[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS<br>[ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY | Y | Y | 01UECAA6210 | 01/02/2024 | 01/02/2025 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident)<br> | $ 1,000,000<br>$<br>$<br>$<br>$ |
| A | [X] UMBRELLA LIAB [X] OCCUR<br>EXCESS LIAB [ ] CLAIMS-MADE<br>[ ] DED [ ] RETENTION $ 10,000 | Y | Y | 01SBABC4AH1 | 01/02/2024 | 01/02/2025 | EACH OCCURRENCE<br>AGGREGATE<br> | $ 1,000,000<br>$<br>$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | | | | [ ] PER STATUTE [ ] OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | <br>$<br>$<br>$ |

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 and completed operations.

**CERTIFICATE HOLDER**

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

Cynthia J. Barnes

© 1988-2015 ACORD CORPORATION. All rights reserved.



The ACORD name and logo are registered marks of ACORD



Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

NEW YORK STATE | Workers' Compensation Board

# CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

| | |
|---|---|
| 1a. Legal Name & Address of Insured (use street address only)<br>AAA Sound & Video LLC<br>295 Mt Read Blvd<br>Rochester, NY 14611<br><br>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 Insured<br>585-325-1080<br><br>1c. NYS Unemployment Insurance Employer Registration Number of Insured<br><br>1d. Federal Employer Identification Number of Insured or Social Security Number<br>934697061 |
| 2. Name and Address of Entity Requesting Proof of Coverage<br>(Entity Being Listed as the Certificate Holder)<br>Town of Amherst<br>5583 Main St<br>Williamsville, NY 14221 | 3a. Name of Insurance Carrier<br>Hartford Casualty Insurance Co<br><br>3b. Policy Number of Entity Listed in Box "1a"<br>01WECBC4CGG<br><br>3c. Policy effective period<br>01/02/2024 to 01/02/2025<br><br>3d. The Proprietor, Partners or Executive Officers are<br>☐ included. (Only check box if all partners/officers included)<br>☒ 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: CYnthia Baran
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Cynthia Baran 03/11/24
(Signature) (Date)

Title: President

Telephone Number of authorized representative or licensed agent of insurance carrier: 315-589-4751

**Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.**

**C-105.2 (9-17)** www.wcb.ny.gov

Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

# Workers' Compensation Law

**Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.**

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

Attachment: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

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)
AAA SOUND & VIDEO LLC
295 MT READ BLVD
ROCHESTER, NY 14611

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
585-325-1080

1c. Federal Employer Identification Number of Insured or Social Security Number
934697061

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
**ShelterPoint Life Insurance Company**

3b. Policy Number of Entity Listed in Box "1a"
DBL707833

3c. Policy effective period
01/02/2024 to 01/01/2025

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 3/26/2024 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: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

# 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: AAA Sound & Video (RES-2024-458 : Sound System Repair - CRS #4736)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28992 **RESOLUTION 2024-459** **ADOPTED**

# Grant Disbursement Agreement (DASNY) - CRS #4762

Authorize the Supervisor to sign a Grant Disbursement Agreement between the Town of Amherst and DASNY for the installation of a playground at the Audubon Library, pending successful completion of the contract routing process.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

KP account TBD - $400,000.00

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

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



This **GRANT DISBURSEMENT AGREEMENT** includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the project described below:

| | |
|---|---|
| **DORMITORY AUTHORITY OF THE STATE OF NEW YORK ("DASNY"):** | 515 Broadway<br>Albany, New York 12207<br>Contact: Karen Hunter<br>Phone: (518) 257-3177<br>E-mail: grants@dasny.org |
| **THE GRANTEE:** | Town of Amherst<br>5583 Main Street<br>Williamsville, New York 14221<br>Contact: Emily Melski<br>Phone: 7166317067<br>Email: emelski@amherst.ny.us |
| **THE PROJECT:** | Construction of a Playground |

| **PROJECT LOCATION(S):** | **ADDRESS:** |
|---|---|
| Audubon Library/Senior Center | 350 John James Audobon Parkway, Amherst, 14221 |
| **GRANT AMOUNT:** | $400,000.00 |
| **FUNDING SOURCE:** | State and Municipalities("SAM") |

For Office Use Only:

**PRELIMINARY APPLICATION OR PROJECT INFORMATION SHEET DATE:** 5/24/2023

**EXPIRATION DATE OF THIS AGREEMENT:** 3 YEARS FROM DASNY EXECUTION DATE

**Project ID:** **15777**
**GranteeID:** **918**
**FMS#:** **135201**

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



TERMS AND CONDITIONS

1. The Project

The Grantee will perform tasks within the scope of the project description, budget, and timeline as set forth in the Project Budget attached hereto as Exhibit A (collectively, the "Project") which was described by the Grantee in the Preliminary Application or Project Information Sheet submitted by the Grantee, then reviewed by DASNY and approved by the State.

2. Project Budget and Use of Funds

a) The Grantee will undertake and complete the Project in accordance with the overall budget, which includes the Grant funds, as set forth in the attached Exhibit A. The Grant will be applied to eligible expenses which are as described in the Preliminary Application or Project Information Sheet, and fall within the scope of the project description set forth in the attached Exhibit A.

b) Grantee agrees and covenants to apply the Grant proceeds only to capital works or purposes, which shall consist of the following:

i. the acquisition, construction, demolition, or replacement of a fixed asset or assets;

ii. the major repair or renovation of a fixed asset, or assets, which materially extends its useful life or materially improves or increases its capacity; or

iii. the planning or design of the acquisition, construction, demolition, replacement, major repair or renovation of a fixed asset or assets, including the preparation and review of plans and specifications including engineering and other services, field surveys and sub-surface investigations incidental thereto.

c) Grantee agrees and covenants that the Grant proceeds shall not be used for costs that are not capital in nature, which include, but shall not be limited to working capital, rent, utilities, salaries, supplies, administrative expenses, or to pay down debt incurred to undertake the Project.

3. Books and Records

The Grantee will maintain accurate books and records concerning the Project for six (6) years from the date the Project is completed and will make those books and records available to DASNY, its agents, officers and employees during Grantee's business hours upon reasonable request. In the event of earlier termination of this Agreement, such documentation shall be made available to DASNY, its agents, officers and employees for six (6) years following the date of such early termination.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

4. Conditions Precedent to Disbursement of the Grant

No Grant funds shall be disbursed until the following conditions have been satisfied:

a) DASNY has received the project description, budget, and timeline as set forth in the attached Exhibit A, and an opinion of Grantee's counsel, in substantially the form attached hereto as Exhibit B; and

b) The requirements of the SAM Program have been met; and

c) The monies required to fund the Grant have been received by DASNY; and

d) In the event of disbursement pursuant to paragraph 5(b) below, the Grantee has provided DASNY with documentation evidencing that a segregated account has been established by the Grantee into which Grant funds will be deposited (the "Segregated Account"). The Segregated Account must have industry-standard fraud protections added to the account, including but not limited to, check positive pay and ACH positive pay. Eligible Expenses incurred in connection with the Project to be financed with Grant proceeds that are to be paid on invoice shall be paid out of the Segregated Account. The funds in such account shall not be used for any other purpose.

e) The Grantee certifies that it is in compliance with the provisions of the SAM Program as well as this Agreement and that the Grant will only be used for the Project set forth in the Preliminary Application or Project Information Sheet and in Exhibit A hereto.

f) Not-for-profit organizations are required to register and prequalify on the New York State Grants Gateway (https://grantsmanagement.ny.gov/) in order to receive Grant funds. The Grantee's Document Vault must be in prequalification status prior to any disbursements of the grant funds.

5. Disbursement

Subject to the terms and conditions contained in this Agreement, DASNY shall disburse the Grant to the Grantee, in the manner set forth in Exhibit D, as follows:

a) Reimbursement: DASNY shall make payment directly to the Grantee in the amount of Eligible Expenses actually incurred and paid for by the Grantee, upon presentation to DASNY of:

i. the Payment Requisition Forms attached to this Agreement as Exhibit E and its attachments;

ii. copies of invoices for Eligible Expenses from the Grantee's contractor and/or vendor and proof of payment from the Grantee to the contractor and/or vendor in a form acceptable to DASNY; and

iii. such additional supporting documentation as DASNY may require in order to clearly demonstrate that Eligible Expenses were incurred and paid by the Grantee in connection with the Project described herein; or

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

b) Payment on Invoice:

i. DASNY may make payment directly to the Grantee in the amount of Eligible Expenses actually incurred by the Grantee, upon presentation to DASNY of:

1) the Payment Requisition Forms attached to this Agreement as Exhibit E and its attachments;

2) copies of invoices for Eligible Expenses from the Grantee's contractor and/or vendor in a form acceptable to DASNY evidencing the completion of work; and

3) such additional supporting documentation as DASNY may require in order to clearly demonstrate that Eligible Expenses were incurred by the Grantee in connection with the Project described herein.

ii. The Grantee must deposit all Grant proceeds paid on invoice pursuant to this paragraph 5(b) into the Segregated Account established pursuant to Paragraph 4(d). All Eligible Expenses incurred in connection with the Project to be financed with Grant funds that are to be paid on invoice must be paid out of this account. The account shall not be used for any other purpose.

iii. The Grantee must provide proof of disbursement of Grant funds to the respective contractor and/or vendor in a form acceptable to DASNY, within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. DASNY will not make any additional disbursements from Grant funds until such time as proof of payment is provided.

iv. Utilizing the Grant funds paid to the Grantee pursuant to this section for any purpose other than paying the contractors and/or vendors identified in the requisition documentation in the amounts set forth in the requisition shall constitute a default under this Agreement and shall, at a minimum, result in the denial of payment on invoice for subsequent requisitions.

v. DASNY may deny payment on invoice at its sole and absolute discretion, thereby restricting the method of payment pursuant to this contract to reimbursement subject to the terms of Section 5(a).

c) Real Property Acquisition:

i. Prior to closing on the sale of the subject real property, DASNY shall be provided with an executed Escrow Instruction Letter, signed by DASNY and an escrow agent approved by DASNY, a title report, the draft deed and any other documents requested by DASNY to justify and support the costs to be paid at the closing from Grant funds.

ii. DASNY shall transfer the Grant funds to the escrow agent to hold in escrow pending closing. The Grant funds will be wired to the escrow agent not more than one (1) business day prior to the scheduled closing unless otherwise approved by DASNY.

iii. On the day of the closing, the escrow agent shall provide DASNY with copies of the executed deed, a copy of the title insurance policy, the final closing

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

statement setting forth costs to be paid at closing, and copies of any checks to be drawn against Grant funds.

iv. Upon DASNY approval, the escrow agent shall disburse the Grant funds as set forth in the documentation described in (iii), above.

d) Electronic Payments Program: DASNY reserves the right to implement an electronic payment program ("Electronic Payment Program") for all payments to be made to the Grantee thereunder. Prior to implementing an Electronic Payment Program, DASNY shall provide the Grantee written notice one hundred twenty days prior to the effective date of such Electronic Payment Program ("Electronic Payment Effective Date"). Commencing on or after the Electronic Payment Effective Date, all payments due hereunder by the Grantee shall only be rendered electronically, unless payment by paper check is expressly authorized by DASNY. Commencing on or after the Electronic Payment Effective Date the Grantee further acknowledges and agrees that DASNY may withhold any request for payment hereunder, if the Grantee has not complied with DASNY's Policies and Procedures relating to its Electronic Payment Program in effect at such time, unless payment by paper check is expressly authorized by DASNY.

e) In no event will DASNY make any payment which would cause DASNY's aggregate disbursements to exceed the Grant amount.

f) The Grant, or a portion thereof, may be subject to recapture by DASNY as provided in Section 9(c) hereof.

6. Non-Discrimination and Affirmative Action

The Grantee shall make its best effort to comply with DASNY's Non-Discrimination and Affirmative Action policies set forth in Exhibit F to this Agreement.

7. No Liability of DASNY or the State

DASNY shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify, defend, and hold harmless DASNY, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability and any other liability for injury or damage, cost or expense resulting from the payment of the Grant by DASNY to the Grantee or use of the Project in any manner, including in a manner which, if the bonds are issued on a tax-exempt basis, (i) results in the interest on the bonds issued by DASNY the proceeds of which were used to fund the Grant (the "Bonds") to be includable in gross income for federal income tax purposes or (ii) gives rise to an allegation against DASNY by a governmental agency or authority, which DASNY defends that the interest on the Bonds is includable in gross income for federal income tax purposes, other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

8. Warranties and Covenants

The Grantee warrants and covenants that:

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

a) The Grant shall be used solely for Eligible Expenses in accordance with the Terms and Conditions of this Agreement.

b) No materials, if any, purchased with the Grant will be used for any purpose other than the eligible Project costs as identified in Exhibit A.

c) The Grantee agrees to utilize all funds disbursed in accordance with this Agreement in accordance with the terms of the SAM Program.

d) The Grantee is solely responsible for all Project costs in excess of the Grant. The Grantee will incur and pay Project costs and submit requisitions for reimbursement in connection with such costs.

e) The Grantee has sufficient, secured funding for all Project costs in excess of the Grant, and will complete the Project as described in the Preliminary Application or Project Information Sheet and in this Agreement.

f) The Grantee agrees to use its best efforts to utilize the Project for substantially the same purpose set forth in this Agreement until such time as the Grantee determines that the Project is no longer reasonably necessary or useful in furthering the public purpose for which the grant was made.

g) There has been no material adverse change in the financial condition of the Grantee since the date of submission of the Preliminary Application or Project Information Sheet to DASNY.

h) No part of the Grant will be applied to any expenses paid or payable from any other external funding source, including State or Federal grants, or grants from any other public or private source.

i) The Grantee owns, leases, or otherwise has control over the site where the Project will be located. If the Project includes vehicle purchase(s), removable equipment, or furnishings including but not limited to, computer hardware and software, air conditioning units, lab equipment, office furniture and telephone systems, the Grantee has or will develop, implement, and maintain an inventory system for tracking such items, as well as has or will develop, implement, and maintain a usage policy.

j) In the event the Grantee will utilize the Grant funds to acquire real property, the Grantee must retain title ownership to the real property. If at any time during the term of this Agreement the real property is repurchased by the Seller or otherwise conveyed to any entity other than the Grantee, the Grantee will notify DASNY within 10 business days from the date the contract of sale is executed OR within 10 business days from the date the Grantee initiates or is notified of the intent to transfer ownership of the real property, whichever is earlier. In that event, Grantee hereby agrees to repay to DASNY all Grant funds disbursed pursuant to this Agreement.

k) The Project to be funded by the Grant will be located in the State of New York. If the Grant will fund all or a portion of the purchase of any type of vehicle, such vehicle will be registered in the State of New York and a copy of the New York State Vehicle Registration documents will be provided to DASNY's Accounts Payable Department at the time of requisition.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

l) Grantee is in compliance with, and shall continue to comply in all material respects, with all applicable laws, rules, regulations and orders affecting the Grantee and the Project including but not limited to maintaining the Grantee's document vault on the New York State Grants Reform Gateway (https://grantsmanagement.ny.gov/).

m) The Grantee has obtained all necessary consents and approvals from the property owner in connection with any work to be undertaken in connection with the Project.

n) All contractors and vendors retained to perform services in connection with the Project shall be authorized to do business in the State of New York and/or filed such documentation, certifications, or other information with the State or County as required in order to lawfully provide such services in the State of New York. In addition, said contractor/vendors shall possess and maintain all professional licenses and/or certifications required to perform the tasks undertaken in connection with the Project.

o) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given or will give anything of value to anyone to procure the Grant or to influence any official act or the judgment of any person in the performance of any of the terms of this Agreement.

p) The Grant shall not be used in any manner for any of the following purposes:

i. political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;

ii. religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;

iii. payments to any firm, company, association, corporation or organization in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest, including but not limited to an officer or employee directly or indirectly responsible for the preparation or the determination of the terms of the contract or other arrangement pursuant to which the proceeds of the Grant are to be disbursed. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five percent (5%) of the assets, stock, bonds or other dividend or interest-bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

iv. payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.

v. generation of tax credits or reimbursement of Project costs that have or will cycle through corpus of tax credit structure.

q) The relationship of the Grantee (including, for purposes of this paragraph, its officers, employees, agents and representatives) to DASNY arising out of this Agreement shall be that of an independent contractor. The Grantee covenants and agrees that it will conduct itself in a manner consistent with such status, that it will neither hold itself out as, nor claim to be, an officer, employee, agent or representative of DASNY or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of DASNY or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

r) The information contained in the Preliminary Application or Project Information Sheet submitted by the Grantee in connection with the Project and the Grant, as such may have been amended or supplemented and any supplemental documentation requested by the State or DASNY in connection with the Grant, is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Preliminary Application or Project Information Sheet, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that DASNY has relied on the statements and representations made by the Grantee in the Preliminary Application or Project Information Sheet and any supplemental information in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Preliminary Application or Project Information Sheet, supplemental information, or otherwise in connection with the Grant and that the information contained in the Preliminary Application or Project Information Sheet and supplemental information continues on the date hereof to be materially correct and complete.

s) The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Grantee Questionnaire ("GQ"), attached hereto as Exhibit C, or the Grantee's document vault in the New York State's Grants Reform Gateway completed by the Grantee in connection with the Project and the Grant, and that the responses in the GQ and the document vault continue on the date hereof to be materially correct and complete. The Grantee hereby acknowledges that DASNY has relied on the statements and representations made by the Grantee in the GQ in making the Grant, and that the Grantee will be required to reaffirm the information therein each time a requisition for grant funds is presented to DASNY.

t) The Grantee is duly organized, validly existing and in good standing under the laws of the State of New York, or is duly organized and validly existing under the laws of another jurisdiction and is authorized to do business and is in good standing in the State of New York and shall maintain its corporate existence in good standing in each such jurisdiction for the term of this Agreement, and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder;

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

u) The Grantee agrees to provide such documentation to DASNY as may be requested by DASNY in its sole and absolute discretion to support a requisition for payment, to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by DASNY in connection with the Grant, and further acknowledges that if documentation requested in connection with a requisition for payment does not, in the sole and absolute discretion of DASNY, provide adequate support for the costs requested, that such requisition request shall be denied and payment shall not be made to the Grantee.

v) The Agreement was duly authorized, executed and delivered by the Grantee and is binding on and enforceable against the Grantee in accordance with its terms.

9. Default and Remedies

a) Each of the following shall constitute a default by the Grantee under this Agreement:

i. Failure to perform or observe any obligation, warranty or covenant of the Grantee contained herein, or the failure by the Grantee to perform the requirements herein to the reasonable satisfaction of DASNY and within the time frames established therefor under this Agreement.

ii. Failure to comply with any request for information reasonably made by DASNY to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by DASNY in connection with the Grant.

iii. The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant, including information provided in the Preliminary Application or Project Information Sheet or in any supplemental information that may be requested by the State or DASNY.

iv. The Grantee shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its general creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing.

v. An order of a court having jurisdiction shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to the Grantee, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days.

vi. The Grantee abandons the Project prior to its completion.

vii. The Grantee is found to have falsified or modified any documents submitted in connection with this grant, including but not limited to invoice, contract or payment documents submitted in connection with a Grantee's request for payment/reimbursement.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

viii. Utilizing the Grant funds paid to the Grantee pursuant to Section 5(b) for any purpose other than paying the contractors and/or vendors identified in the requisition documentation in the amounts set forth in the requisition.

b) Upon the occurrence of a default by the Grantee and written notice by DASNY indicating the nature of the default, DASNY shall have the right to terminate this Agreement.

c) Upon any such termination, DASNY may withhold any Grant proceeds not yet disbursed and may require repayment of Grant proceeds already disbursed. If DASNY determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, DASNY may require repayment of those funds and may refer the matter to the appropriate authorities for prosecution. DASNY shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term of Agreement

Notwithstanding the provisions of Section 9 hereof, this Agreement shall terminate three (3) years after the latest date set forth on the front page hereof without any further notice to the Grantee. DASNY, in its sole discretion, may extend the term of this Agreement upon a showing by the Grantee that the Project is under construction and is expected to be completed within the succeeding twelve (12) months. All requisitions must be submitted to DASNY in proper form prior to the termination date in order to be reimbursed.

11. Project Audit

DASNY shall, upon reasonable notice, have the right to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for six (6) years following the completion of the Project or earlier termination of this Agreement.

12. Survival of Provisions

The provisions of Sections 3, 7, 8(o), 8(p) and 11 shall survive the expiration or earlier termination of this Agreement.

13. Notices

Each notice, demand, request or other communication required or otherwise permitted hereunder shall be in writing and shall be effective upon receipt if personally delivered or sent by any overnight service or three (3) days after dispatch by certified mail, return receipt requested, to the addresses set forth on this document's cover page.

14. Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

15. Modification

This Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein.

17. Confidentiality of Information

Any information contained in reports made to DASNY or obtained by DASNY as a result of any audit or examination of Grantee's documents or relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "confidential" by the Grantee that concerns or relates to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses or expenditures, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, which is determined by DASNY to be exempt from public disclosure under the Freedom of Information Law, shall be considered business confidential and is not to be released to anyone, except DASNY and staff directly involved in assisting the Grantee, without prior written authorization from the Grantee, as applicable. Notwithstanding the foregoing, DASNY will not be liable for any information disclosed, in DASNY's sole discretion, pursuant to the Freedom of Information Law, or which DASNY is required to disclose pursuant to legal process.

18. Executory Clause

This Agreement shall be deemed executory to the extent of monies available for the SAM Program to DASNY.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



Town of Amherst
Construction of a Playground
Project ID: 15777

This agreement is entered into as of the latest date written below:

**GRANTEE:** **Town of Amherst**

(**Signature of Grantee Authorized Officer**)

Brian Kulpa Town Supervisor

(Printed Name and Title)

Date:

**DORMITORY AUTHORITY OF THE STATE OF NEW YORK**

(**Signature of DASNY Authorized Officer**)

(Printed Name)

Date:

| DASNY OFFICE USE ONLY | |
|---|---|
| **GRANTS ADMIN REVIEW** | **FINAL LEGAL REVIEW** |
| APPROVED FOR LEGAL REVIEW: | APPROVED FOR SIGNATURE: |
| DATE: | DATE: |

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



# GRANT DISBURSEMENT AGREEMENT

## EXHIBITS

| | |
|---|---|
| EXHIBIT A | Project Budget |
| EXHIBIT B | Opinion of Counsel |
| EXHIBIT C | Grantee Questionnaire |
| EXHIBIT D | Disbursement Terms |
| EXHIBIT E | Payment Requisition Form and Dual Certification |
| EXHIBIT E-1 | Payment Requisition Cover Letter |
| EXHIBIT E-2 | Payment Requisition Back-up Summary |
| EXHIBIT F | Non-Discrimination and Affirmative Action Policy |

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

## EXHIBIT A: Project Budget

Town of Amherst
Construction of a Playground
Project ID: 15777

| USE OF FUNDS | TIMELINE | | SOURCES | | | |
|---|---|---|---|---|---|---|
| | Anticipated Dates** | | DASNY Share | In-Kind / Equity /Sponsor | Other Sources | Total |
| Project Description* | *Start* | *End* | *Amount* | *Amount* | *Amount* | |
| Construction of a Playground | | | $400,000.00 | $16,911.00 | $0.00 | $416,911.00 |

* Please note that the project description as set forth in this column must summarize the scope of the Eligible Expenses set forth in the Preliminary Application or Project Information Sheet as per Section 2(a) of this Agreement for which reimbursement or payment on invoice will be sought. Please ensure that the project description is an appropriate summary of the Eligible Expenses for which grantee will be submitting for requisition. The failure to ensure **all** Eligible Expenses are consistent with the project description may delay payment.

** Please be sure to complete the anticipated start and end dates in the Project timeline.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



## EXHIBIT B: Opinion of Counsel

DASNY
General Counsel
515 Broadway
Albany, New York 12207

*Re: State and Municipalities ("SAM") Grant*
*Construction of a Playground*
*Project ID: 15777*

Ladies and Gentlemen:

I have acted as counsel to Town of Amherst (the "Grantee") in connection with the Project referenced above. In so acting, I have reviewed a certain Grant Disbursement Agreement between you and the Grantee (the "Agreement") and such other documents as I consider necessary to render the opinion expressed hereby.

Based on the foregoing, I am of the opinion that:

1. the Grantee is duly organized, validly existing and in good standing under the laws of the State of New York; **or**

the Grantee is duly organized and validly existing under the laws of another jurisdiction, and the Grantee is in good standing and authorized to do business in the State of New York;

2. the Grantee has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder; **and**

3. the Agreement was duly authorized, executed and delivered by the Grantee and is binding on and enforceable against the Grantee in accordance with its terms.

By selecting this option and providing my electronic signature, I hereby execute and deliver a validly binding legal opinion in the form of this Exhibit B, just the same as a pen-and-paper signature on a separate document.

Approved – Legal Opinion attached

***Instructions – Grantee's Attorney will choose appropriate response. If **"Approved as to form"** is checked, the Attorney will DocuSign form. If **"Approved – Legal Opinion attached"** is checked, the Attorney must attach a legal opinion using the language provided in this exhibit.*

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

## EXHIBIT C: Grantee Questionnaire

**PLEASE READ THE FOLLOWING:**

1) You are acknowledging the following regarding the included Grantee Questionnaire:

- This inserted Grantee Questionnaire is an accurate and true copy of such previously submitted DASNY Grantee Questionnaire.

- The Grantee certifies that there has been no material change in the information provided in the Grantee Questionnaire.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

NEW YORK STATE OF OPPORTUNITY. | DASNY

| DASNY OFFICE USE ONLY | |
|---|---|
| GQ Review | |
| DS | 7/10/2023 |

***Grant Programs***
**Municipal Grantee Questionnaire**

*THIS QUESTIONNAIRE MUST BE COMPLETED IN FULL BEFORE DASNY WILL PROCESS YOUR GRANT APPLICATION. THE COMPLETED QUESTIONNAIRE WILL BE KEPT ON FILE FOR ONE (1) YEAR. THE GRANTEE MUST NOTIFY DASNY, IN WRITING OF ANY CHANGES TO THESE RESPONSES.*

**SECTION I: GENERAL INFORMATION**

1. Grantee (Legally Inc. Name): Town of Amherst
2. Federal Employer ID No. (FEIN): 16-6002157
3. Website Address: www.amherst.ny.us
4. Business E-mail Address: bkulpa@amherst.ny.us
5. Principal Place of Business Address: 5583 Main Street, Williamsville, NY 14221
6. Telephone Number: 716-631-7067
7. Type of Entity (Please select appropriate response):

a) County
b) City
c) X Town
d) Village
e) Public Benefit Corporation
f) Fire District
g) School District
h) Soil or Water Conservation District
i) Community College
j) Public Library
k) BOCES
l) Other Please Specify: _____

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

## SECTION II: GRANTEE CERTIFICATION AS TO PUBLIC PURPOSE

### A. DEFINITIONS

*As used herein in this Grant Programs Municipal Grantee Questionnaire:*

1. "Affiliate" means any person or entity that directly or indirectly controls or is controlled by or is under common control or ownership of a Related Party.

2. "Authorized Officer" is someone who can contractually bind the organization to a legal contract. If you do not know who this is, please consult with your attorney. DASNY will not be able to provide you with this information.

3. "Grantee" means the party or parties receiving funds pursuant to the terms of Grant Disbursement Agreement(s) ("GDA") to be entered into between the Grantee and DASNY.

4. "Grant-Funded Project" means the work that will be fully or partially paid for with the proceeds of one or more Grants administered by DASNY, as described in the Preliminary Application(s), Project Information Sheet(s) and GDA(s), and includes, but is not limited to, capital costs including architectural, engineering and other preliminary planning costs, construction, furnishings and equipment.
5. "Related Party" means: (i) the party's spouse,(ii) natural or adopted descendants or step-children of the party or of the spouse, (iii) any natural or adopted parent or step-parent or any natural, adopted, or step-sibling of the party or of the spouse, (iv) the son-in-law, daughter-in-law, brother-in-law, sister-in-law, father-in-law or mother-in-law of the party or of the spouse, (v) any person sharing the home of any of the party or of the spouse, (vi) any person who has been a staff member, employee, director, officer or agent of the party within two (2) years of the date of this Grantee questionnaire, and (vii) affiliates or subcontractors of the party.

6. "Sponsoring Member(s)" means the Elected State Official who sponsored, arranged for and/or procured the Grant.

### B. GRANT AWARD(S)

1. Has the Grantee or any of the Grantee's Related Parties paid any third party or agent, either directly or indirectly, to aid in the securing of a Grant-Funded Project? Yes No x

   If answer is "**Yes**", Please explain:

| |
|---|
| |

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

2. Has the Grantee or any of the Grantee's Related Parties agreed to select specific consultants, contractors, suppliers or vendors to provide goods or services in connection with any Grant-Funded Project as a condition of receiving a Grant? Yes No x

If answer is "**Yes**", Please explain:

3. Does the Grantee have a conflict of interest policy? Yes x No

a) If **"Yes"**, will all consultants, contractors, suppliers and vendors selected to provide goods or services in connection with any Grant-Funded Project be chosen in accordance with the Grantee's conflict of interest policy, or if consultants, suppliers and vendors retained in connection with a Grant-Funded Project have already been selected, was the selection undertaken in accordance with the Grantee's conflict of interest policy? Yes x No

If answer is "**No**", Please explain:

4. Does the Sponsoring Member(s) or any Related Parties to Sponsoring Member(s) have any financial interest, direct or indirect, in the Grantee or in any of the Grantee's equity owners, or will the Sponsoring Members or any Related Parties to Sponsoring Members receive any financial benefit, either directly or indirectly, from the Grant-Funded Project(s) funded in whole or in part with Grant proceeds? Yes No x

If the answer is "**Yes**", please provide details:

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

**SECTION III: DUE DILIGENCE QUESTIONS**

1. Does the Grantee currently possess all certifications, licenses, permits, approvals, or other authorizations issued by any Local, State, or Federal governmental entity in connection with any Grant-Funded Project, Grantee's services, operations, business, or ability to conduct its activities? *Please note this does not include construction related activities such as building permits and certificates of occupancy for any Grant-Funded project.* Yes x No

   If the answer is "**No**", will the Grantee obtain all required certifications, licenses, permits, approvals, or other authorizations issued by Local, State, or Federal Governmental entity in connection with any Grant-Funded Project, Grantee's services, operations, business or ability to conduct its activities prior to the execution of the Grant Disbursement Agreement for that Grant-Funded Project? If the answer is **"No"**, please explain: Yes No

2. Within the past five (5) years, has the Grantee or any Elected or Appointed Official on the Governing Board, Zoning Board, Planning Board, or other Municipal Board or body of the Grantee been subject to any of the following:

   a) A judgment or conviction for any business-related conduct constituting a crime under Federal, State or Local government law? Yes No x

   b) Been suspended, debarred or terminated by a Local, State or Federal authority in connection with a contract or contracting process? Yes No x

   c) Been denied an award of a Local, State or Federal government contract, had a contract suspended or had a contract terminated for non-responsibility? Yes No x

   d) Had a Local, State, or Federal government contract suspended or terminated for cause prior to the completion of the term of the contract? Yes No x

   e) A criminal investigation or indictment for any business-related conduct constituting a crime under Federal, State or Local government? Yes No x

   f) An investigation for a civil violation for any business-related conduct by any Federal, State or Local agency? Yes No x

   g) An unsatisfied judgment, injunction or lien for any business-related conduct obtained by any Federal, State or Local government agency including, but not limited to, judgments based on taxes owed and fines and penalties assessed by any Federal, State or Local government agency? Yes No x

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

h) A grant of immunity for any business-related conduct constituting a crime under Federal, State or Local law including, but not limited to any crime related to truthfulness and/or business conduct? Yes No x

i) An administrative proceeding or civil action seeking specific performance or restitution in connection with any Federal, State or Local contract or lease? Yes No x

j) The withdrawal, termination or suspension of any grant or other financial support by any Federal, State, or Local agency, organization or foundation? Yes No x

k) A suspension or revocation of any business or professional license held by the Grantee, a current or former principal, director, or officer of the Grantee, or any member of the any current or former staff of the Grantee? Yes No x

l) A sanction imposed as a result of judicial or administrative proceedings relative to any business or professional license? Yes No x

m) A Federal, State or Local government enforcement determination involving a violation of Federal, State or Local laws? Yes No x

n) A citation, notice, violation order, pending administrative hearing or proceeding or determination for violations of:

- Unemployment insurance or workers' compensation coverage or claim requirements Yes No x
- A Federal, State, or Local determination of a willful violation of any public works or labor law or regulation? Yes No x

**For each "Yes" answer to questions 2a-n, provide details regarding the finding, including but not limited to cause, current status, resolution, etc.**

3. During the past three (3) years, has the Grantee **failed** to file documentation requested by any regulating entity, with the Attorney General of the State of New York, or with any other Local, State, or Federal entity that has made a formal request for information? Yes No x

If "**Yes**", indicate the years the Grantee fails to file the requested information and the current status of the matter:



Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

4. During the past three (3) years, has the Grantee had any Governmental audits conducted that revealed material weaknesses in the Grantee's system of internal controls or was non-compliant with contractual agreements or any material disallowance? Yes No x

   If "**Yes**", please provide details and what has been done to rectify the weakness or non-compliance(s). If a Corrective Action Plan was required, please provide details:

| |
|---|
| |

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

## CERTIFICATION

The Grantee certifies that all funds that will be expended pursuant to the terms of a GDA to be entered into between DASNY and the Grantee are to be used solely and directly for the public purpose or public purposes described in the Preliminary Application, Project Information Sheet and GDA. The Grantee further certifies that all such funds will be used solely in the manner described in the Preliminary Application, Project Information Sheet, and GDA. The Grantee further certifies that it will utilize the real property, equipment, furnishings, and other capital costs paid for with Grant proceeds until such time as the Grantee reasonably determines that such real property, equipment, furnishings and other capital costs are no longer reasonably necessary or useful to further the public purpose for which the Grant was made.

The undersigned recognizes that this questionnaire is submitted for the express purpose of inducing DASNY to make payment to the Grantee for services rendered by the undersigned and that DASNY may in its discretion, by means which it may choose, determine the truth and accuracy of all statements made herein. The undersigned further acknowledges that intentional submission of false or misleading information may constitute crimes, including but not limited to, a felony under Penal Law Section 210.40 or a misdemeanor under Penal Law Section 210.35 or Section 210.45, and may also be punishable by a fine of up to $10,000 or imprisonment of up to five years under 18 U.S.C. Section 1001; and swears and/or affirms under penalty of perjury that the information submitted in this questionnaire and any attached pages is true, accurate and complete.

The undersigned also certifies that s/he has not altered the content of the questions in the questionnaire in any manner; has read and understands all of the items contained in the questionnaire and any attached pages; has supplied full and complete and accurate responses to each item therein; is knowledgeable about the submitting Grantee's business and operations; understands that DASNY will rely on the information supplied in this questionnaire when entering into a contract with the Grantee; and is under duty to notify DASNY of any changes to the Grantee's responses herein until such time as the Grant proceeds have been fully paid out to Grantee.

| | |
|---|---|
| DocuSigned by: Brian Kulpa 6A5E3EC8D52348E... | DocuSigned by: 926E6F21F3DD4EF... |
| Signature of Authorized Officer | Signature of Authorized Officer |
| Brian Kulpa | Marty Polowy |
| Printed Name of Authorized Officer | Printed Name of Authorized Officer |
| Town Supervisor | Sr Dep Town attorney |
| Title of Authorized Officer | Title of Authorized Officer |
| 6/23/2023 | 7/3/2023 |
| Date Signed | Date Signed |

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



# EXHIBIT D: Disbursement Terms

Town of Amherst
Construction of a Playground
Project ID: 15777

Subject to the terms and conditions contained in this Agreement, DASNY shall disburse the Grant to the Grantee as follows:

**Standard Reimbursement**

DASNY shall make payment to the Grantee, no more frequently than monthly, based upon Eligible Expenses (as set forth and in accordance with the schedule in Exhibit A) actually incurred by the Grantee, in compliance with Exhibit A and upon presentation to DASNY of the Payment Requisition Forms attached to this Agreement as Exhibit E and its attachments, together with such supporting documentation as DASNY may require in order to clearly demonstrate that Eligible Expenses were actually incurred by the Grantee in connection with the Project described herein. Payment shall be made by reimbursement, subject to the terms and conditions of Sections 4 and 5(a) of this Agreement; by payment on invoice subject to the terms and conditions of Sections 4 and 5(b) of this Agreement; or, for real property acquisition, subject to the terms and conditions of Sections 4 and 5(c) of this Agreement.

Supporting documentation acceptable to DASNY must be provided prior to payment, including invoices and proof of payment in a form acceptable to DASNY. If the fronts and backs of canceled checks cannot be obtained from the Grantee's financial institution, a copy of the front of the check must be provided, along with a copy of a bank statement clearly showing that payment was made by the Grantee to the contractor. DASNY reserves the right to request additional supporting documentation in connection with requests for payment, including the backs of canceled checks, certifications from contractors or vendors, or other documentation to verify that grant funds are properly expended. *Please note that quotes, proposals, estimates, purchase orders, and other such documentation* ***do NOT*** *qualify as invoices*.

The Grantee agrees to provide such documentation to DASNY as may be requested by DASNY in its sole and absolute discretion to support a requisition for payment, to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by DASNY in connection with the Grant, and further acknowledges that if documentation requested in connection with a requisition for payment does not, in the sole and absolute discretion of DASNY, provide adequate support for the costs requested, that such requisition request shall be denied and payment shall not be made to the Grantee.

All expenses submitted for reimbursement or payment on invoice must be for work completed at the approved Project location(s) and/or items received at the approved Project location(s) prior to the date of the request for reimbursement/payment. In addition, if funds are requisitioned for the purchase of a vehicle, the New York State Vehicle Registration Documents and title must be submitted along with the requisition forms.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



## EXHIBIT E: Payment Requisition Form and Dual Certification

Town of Amherst
Construction of a Playground
Project ID: 15777

**For Office Use Only:**

**FMS#: 135201**

Payment Request #

For work completed between ____/____/____ and ____/____/

**THIS REQUEST:**

| A: DASNY SHARE* | | B: THIS REQUEST | C: TOTAL REQUESTED PRIOR TO THIS REQUEST | D: A-B-C BALANCE |
|---|---|---|---|---|
| $ | $400,000.00 | | | |

* Please note that when submitting a requisition for payment, DASNY can only reimburse for capital expenditures for the Project as set forth in Exhibit A of this Agreement. In addition, all capital expenditures are to be both incurred (billed to) and paid for by the named Grantee. Capital expenditures include the costs of acquisition, design, construction, reconstruction, rehabilitation, preservation, development, improvement, modernization and equipping of the approved Project location.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

# EXHIBIT E: Payment Requisition Form and Dual Certification

## DUAL CERTIFICATION

This certification must be signed by two Authorized Officers of theTown of Amherst, for Project #15777.

We hereby warrant and represent to DASNY that:

1. To the best of our knowledge, information and belief, the expenditures described in Payment Requisition Request #_____ attached hereto in the amount of $_____ for which Town of Amherst, is seeking payment and/or reimbursement comply with the requirements of the Agreement between DASNY and Town of Amherst (the "Agreement"), are Eligible Expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from DASNY does not duplicate reimbursement or disbursement of costs and/or expenses from any other source.
2. The warranties and covenants contained in Section 8 of the Agreement are true and correct as if made on the date hereof.
3. The Eligible Expenses for which reimbursement is sought in connection with this requisition were actually incurred by the Grantee named on the cover page of this Agreement, and/or will be paid by the Grantee solely from the Segregated Account established pursuant to paragraph 4(d) of the Grant Disbursement Agreement to the contractor named on the invoices submitted in connection with this requisition and shall not be used for any other purpose.
4. All Project costs described in any contractor/vendor invoice submitted pursuant the payment requisition form have been completely and fully performed and/or received on site at the applicable project location prior to the date hereof.
5. Proof of disposition of funds from the Segregated Account to the contractor and/or vendors that are being paid on invoice, if any, will be provided to DASNY within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. We understand that in the event that acceptable proof of payment is not provided, DASNY will not make any additional disbursements from Grant funds until such time as such proof of payment is provided.
6. We have the authority to submit this requisition on behalf of Town of Amherst. All eligible expenses have been incurred within the scope of the project description set forth in the schedule in Exhibit A to this Agreement.
7. The following documents are hereby attached for DASNY approval, in support of this requisition, and are accurate images of the original documents **(Please check off all that apply):**

   - ☐ Readable copies of both front and back of canceled checks.
   - ☐ Readable copies of the front of the checks and copies of bank statements showing that the checks have cleared.
   - ☐ Copy of New York State Vehicle Registration and Title documents for all vehicles purchased with Grant funds.
   - ☐ Invoices/receipts for eligible goods/services that have been received/performed at the approved Project location(s) and a completed Exhibit E-2: Payment Requisition Back-up Summary.
   - ☐ Other:

**Authorized Officer Signature:** _____ Date: _____

Print Name: _____

Title: _____

**Authorized Officer Signature:** _____ Date _____

Print Name: _____

Title: _____

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

**EXHIBIT E-I: Payment Requisition Cover Letter**

ON GRANTEE'S LETTERHEAD

Date

Attention: Accounts Payable - Grants
DASNY
515 Broadway
Albany, New York 12207

*Re: State and Municipalities ("SAM") Grant*
*Construction of a Playground*
*Project No. 15777*

To Whom It May Concern:

Enclosed please find our request for payment/reimbursement. The package includes completed Exhibits E and E-2, including a Dual Certification with original signatures from two authorized officers. I have also included supporting documentation and invoices, as summarized in Exhibit E-2.

Below I have checked off the relevant payment option and completed the required payment information. This information is complete and accurate as of the date of this letter:

| | |
|---|---|
| 1) ☐ | We would like to be paid by reimbursement pursuant to section 5(a) of the grant disbursement agreement. Proof of payment is enclosed for all invoices submitted in this request. Please remit payment by check. |
| **OR** | |
| 2) ☐ | We would like to be paid by reimbursement pursuant to section 5(a) of the grant disbursement agreement. Proof of payment is enclosed for all invoices submitted in this request. Please remit payment by wire. The wire instructions for our account are as follows:<br>BANK NAME: _____ ACCOUNT #:<br>ACCOUNT NAME: _____ ABA #: |
| **OR** | |

3) ☐ We would like to be paid on invoice pursuant to Section 5(b) of the grant disbursement agreement. We have not paid the invoice(s) included in this request. We have established a **segregated account to be used solely for accepting and disbursing funds from DASNY for this grant and for no other purpose.** We have applied industry standard fraud protections to this account, including but not limited to, check positive pay and ACH positive pay. The wire instructions for this account are as follows:

BANK NAME: _____ ACCOUNT #:

ACCOUNT NAME: _____ ABA #:

If any further information is needed, please contact me at (___)_____.

**Please sign and return these documents to DASNY at apgrants@dasny.org. Please return them from the Grantee's organizational email address and retain the original copies for production to DASNY if requested. By providing electronic signature(s), the Grantee's designee will be providing validly binding legal documents, just the same as a pen-and-paper signature.**

Signature: _____

Print Name: _____ Title: _____

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

**EXHIBIT E-2: Payment Requisition Back-up Summary**

Town of Amherst
Construction of a Playground
Project ID: 15777

Please list below all invoice amounts totaling the amount for which you are seeking reimbursement in this request. Invoices should be organized and total amount requested for reimbursement from grant subtotaled. Please use additional sheets if necessary.

| VENDOR/ CONTRACTOR NAME | INVOICE/ APPLICATION # | AMOUNT REQUESTED FROM GRANT FUNDS | COMMENT |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL Requested: | | | (Transfer total amount requested to Exhibit E pg. 18 column B) |

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



## EXHIBIT F

## NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY FOR THE PROJECT

It is the policy of the State of New York and DASNY, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minorities Group Members and women share in the economic opportunities generated by DASNY's participation in projects or initiatives, and/or the use of DASNY funds.

1) The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:

   a) Grantee shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

   b) At the request of the AAO, the Grantee shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Grantee's obligations herein.

2) The Grantee is encouraged to include minorities and women in any job opportunities created by the Project; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with the Project.

3) Grantee represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the AAO and shall permit access to its books and records by DASNY, or its designee, for the purpose of ascertaining compliance with provisions hereof.

4) Grantee shall include or cause to be included, paragraphs (1) through (3) herein, in every contract, subcontract or purchase order with a Contracting Party executed in connection with the Project, in such a manner that said provisions shall be binding upon each Contracting Party as to its obligations incurred in connection with the Project.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign Envelope ID: BF6C4FF3-0C19-46CD-AD23-A7F1FF5940A5



## NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

**Affirmative Action**
Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in paragraph 2) herein, and developed by DASNY.

**Affirmative Action Officer ("AAO")**
Shall mean DASNY's Affirmative Action Officer or his/her designee, managing the affirmative action program for DASNY.

**Contracting Party**
Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of $1,500, in connection with any projects or initiatives funded in whole or in part by DASNY and (ii) **any borrower or Grantee** receiving funds from DASNY pursuant to a loan or Grant document.

**Minority Business Enterprise ("MBE")**
Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is (i) a lease fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing, (iii) an enterprise in which such minority ownership has and exercises DASNY to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

**Minority Group Member**
Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

**Minority and Women-Owned Business Enterprise Participation**
Minority and Women-owned Business Enterprise participation efforts are not limited to the efforts suggested herein, and the role of M/WBE firms should not be restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such efforts may include but not be limited to:

(a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;

(b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women's trade associations;

(c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

(d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on DASNY contract;

(e) Utilizing the resources of DASNY Affirmative Action Unit to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;

(f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities with M/WBE firms, where appropriate, and

(g) The Contracting Party shall remit payment in a timely fashion.

**Women-owned Business Enterprise ("WBE")**

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing, (iii) an enterprise in which such women ownership has and exercises DASNY to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

DocuSign

## Certificate Of Completion

Envelope Id: BF6C4FF30C1946CDAD23A7F1FF5940A5 Status: Sent

Subject: DASNY Grant Disbursement Agreement - Town of Amherst: 15777 - Signature Required

Grantee ID:

Project ID: 15777

Source Envelope:

Document Pages: 32 Signatures: 0 Envelope Originator:

Certificate Pages: 5 Initials: 0 Ryan Brooks

AutoNav: Enabled 515 Broadway

EnvelopeId Stamping: Enabled Albany, NY 12207

Time Zone: (UTC-05:00) Eastern Time (US & Canada) RBrooks@dasny.org

IP Address: 144.121.77.34

## Record Tracking

Status: Original Holder: Ryan Brooks Location: DocuSign

4/5/2024 4:25:48 PM RBrooks@dasny.org

Security Appliance Status: Connected Pool: FedRamp

Storage Appliance Status: Connected Pool: Dormitory Authority - State of New York Location: DocuSign

| Signer Events | Signature | Timestamp |
|---|---|---|
| Brian Kulpa<br>bkulpa@amherst.ny.us<br>Town Supervisor<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Accepted: 6/23/2023 2:41:06 PM<br>ID: 57cfe162-4880-46bf-bebf-924377316f6e | | Sent: 4/5/2024 4:28:32 PM<br>Viewed: 4/8/2024 10:17:49 AM |
| Martin Polowy<br>mpolowy@amherst.ny.us<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Accepted: 7/3/2023 11:33:49 AM<br>ID: 8a010836-8f32-4eb1-955b-66e9b4452507 | | |
| Ryan Brooks<br>RBrooks@dasny.org<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| DASNY Legal Reviewers<br><br>Signing Group: DASNY Legal Reviewers<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| DASNY Authorized Officers<br><br>Signing Group: DASNY Authorized Officers<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

| In Person Signer Events | Signature | Timestamp |
|---|---|---|

| Editor Delivery Events | Status | Timestamp |
|---|---|---|

| Agent Delivery Events | Status | Timestamp |
|---|---|---|

| Intermediary Delivery Events | Status | Timestamp |
|---|---|---|

| Certified Delivery Events | Status | Timestamp |
|---|---|---|

| Carbon Copy Events | Status | Timestamp |
|---|---|---|
| Accounts Payable<br>apgrants@dasny.org<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |
| Grants Staff<br>grants@dasny.org<br>Security Level: Email, Account Authentication (None)<br>**Electronic Record and Signature Disclosure:**<br>Not Offered via DocuSign | | |

| Witness Events | Signature | Timestamp |
|---|---|---|

| Notary Events | Signature | Timestamp |
|---|---|---|

| Envelope Summary Events | Status | Timestamps |
|---|---|---|
| Envelope Sent | Hashed/Encrypted | 4/5/2024 4:28:32 PM |

| Payment Events | Status | Timestamps |
|---|---|---|

| Electronic Record and Signature Disclosure |
|---|

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

## ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Dormitory Authority - State of New York (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a $0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### All notices and disclosures will be sent to you electronically

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact Dormitory Authority - State of New York:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:
To contact us by email send messages to: dasnyinfo@dasny.org

**To advise Dormitory Authority - State of New York of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at dasnyinfo@dasny.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

**To request paper copies from Dormitory Authority - State of New York**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to dasnyinfo@dasny.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Dormitory Authority - State of New York**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to dasnyinfo@dasny.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: https://support.docusign.com/guides/signer-guide-signing-system-requirements.

**Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Dormitory Authority - State of New York as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Dormitory Authority - State of New York during the course of your relationship with Dormitory Authority - State of New York.

Attachment: DASNY 15777_Grant_Disbursement_Agreement_-_Town_of_ (RES-2024-459 : Grant Disbursement Agreement (DASNY) - CRS

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 28957 **RESOLUTION 2024-460** **ADOPTED**

# User Agreement (Car Show) - CRS #4767

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and the Rotary Club of Williamsville to use the parking lot of the Northtown Center at Amherst for a charity car show On August 11, 2024.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

None

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

# USER AGREEMENT

This Agreement, by and between the Town of Amherst (TOWN) and the Rotary Club of Williamsville, PO Box 45, Williamsville, NY 14231-0045, is as follows:

The TOWN hereby grants permission for the Rotary Club of Williamsville to offer a car show in the parking lot of the Northtown Center at Amherst, 1615 Amherst Manor Drive, Williamsville, NY 14221 on Sunday, August 11, 2024 from 10:00am until 4:00pm.

Car show location will be the Amherst Manor Drive parking lots, with the remainder of the lot(s) available for shared use by all visitors to the Northtown Center and Audubon Recreation Complex.

The TOWN agrees to waive any fees for the event.

The Rotary Club of Williamsville hereby agrees to indemnify and hold the TOWN harmless from any and all bodily injury or property damage claims or incidents that are a direct result of the Rotary Club of Williamsville's use of TOWN property.

The Rotary Club of Williamsville is required to sign and adhere to the terms and conditions of the addendum to contract attached hereto and made a part hereof.

Town of Amherst

By: _____

Brian J. Kulpa
Supervisor

Date: _____

Rotary Club of Williamsville

By: Richard A Wojtowicz Jr

Richard A. Wojtowicz
President

Date: April 19, 2024

Attachment: Rotary Williamsville Car Show 2024 (RES-2024-460 : User Agreement (Car Show) - CRS #4767)

## Addendum to Contract VENDOR ON SITE Minor

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 Vendors 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, Vendor 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 Vendor its officers, agents, sub-Vendors, and/or employees as well as the negligence, active or passive, of the Vendor, its officers, agents, sub-Vendors, and/or employees.

4. Vendor 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: Vendor 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: Vendor 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) Vendor shall furnish the above insurances, including sub-Vendors' 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) Vendor shall ensure all its sub-Vendors, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Vendor or sub-sub-Vendor shall name the Town as an additional insured on a primary and non-contributory basis.



Attachment: Rotary Williamsville Car Show 2024 (RES-2024-460 : User Agreement (Car Show) - CRS #4767)

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 Vendor 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 Vendor 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 Vendor, in accordance with its status as an independent Vendor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules,





Attachment: Rotary Williamsville Car Show 2024 (RES-2024-460 : User Agreement (Car Show) - CRS #4767)

regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

Rotary Club of Williamsville
Print Name of Company

By: Richard A. Wojtowicz
Signature

RICHARD A WOJTOWICZ
Printed name

Date: April 19, 2024

Agreed to and Accepted by:

**Town of Amherst**

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Revised 12.30.19 SJS

Attachment: Rotary Williamsville Car Show 2024 (RES-2024-460 : User Agreement (Car Show) - CRS #4767)

# HOLD HARMLESS AGREEMENT

The undersigned, Richard A. Wojtowicz President / AG herein referred to as "User"), in consideration of the use of the facilities of the Town of Amherst, (herein referred to as "Town"), located at the Northtown Center at Amherst, 1615 Amherst Manor Drive, Amherst, York, hereby

AGREES, to release and forever discharge the Town of and from all, and all manner of actions, cause, and causes of action, suits, controversies, damages, claims, and demands whatsoever, in law or in equity, which the User now has or which the User or (his/her) (their) (its) heirs, successors and assigns may have, resulting from the foregoing use of the Northtown Center at Amherst facilities of the Town and the User further hereby

AGREES, to defend; indemnify and hold harmless the Town, its members, officers, Directors, employees, and agents from any and all claims, suits, liabilities, causes of action, judgments, costs (including, but not limited to, all reasonable expenses of defense and related investigation), expenses, and damages (including damages for care and loss of services because of bodily injury, sickness or disease, including death resulting therefrom) sustained by User or any person or persons, and because of injury to, or destruction of, property (including the loss of use thereof), caused by, arising out of or resulting from, in whole or in part, any act or omission of User, its agents, servants, employees or individuals participating in User's use of Northtown Center at Amherst facilities; and the User further hereby

AGREES, On User's behalf and on behalf of User's insurance carrier, to waive any rights of subrogation against the Town that may otherwise attach to or derive from any policy of insurance the User may obtain to insure against User's liability in connection with use of the Northtown Center at Amherst facilities, and the User further hereby

AGREES, to name the Town of Amherst as an additional insured on any and all insurance policies the User may obtain in connection with the use of the Northtown Center at Amherst facilities and provide an appropriate Certificate of Insurance to the Town.

DATED: **Amherst, New York**
4/19/24

Print Name of User: RICHARD A Wojtowicz

Print Address of User: 207 Presidio Pl. Williamsville

Authorized Signature of User: Richard A Wojtowicz

Attachment: Rotary Williamsville Car Show 2024 (RES-2024-460 : User Agreement (Car Show) - CRS #4767)

STATE OF NEW YORK)
)SS
COUNTY OF ERIE

On the 19 day of April, in the year 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard Wojtowicz personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose Name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), acted, executed the instrument.

STATE OF NEW YORK)
)SS
COUNTY OF ERIE

On the 19 day of April, in the year 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard Wojtowicz, personally known to me or proved to me on the basis of satisfactory evidence did depose and say that he/she/they reside in Amherst, NY and that he/she/they is/are the President / AG of Rotary Club of Williamsville, the corporation described in, and which executed, in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Robin L. Erwin

ROBIN L. ERWIN
No. 01ER6415670
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 3/22/25

Attachment: Rotary Williamsville Car Show 2024 (RES-2024-460 : User Agreement (Car Show) - CRS #4767)

ACORD®

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/07/2023

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
Arthur J. Gallagher Risk Management Services, Inc.
2850 Golf Road
Rolling Meadows IL 60008

CONTACT NAME: Toni Hanes
PHONE (A/C, No, Ext): 1-833-3ROTARY FAX (A/C, No): 630-285-4062
E-MAIL ADDRESS: rotary@ajg.com

INSURED
All Active US Rotary Clubs & Districts
Rotary Club of Williamsville (#4766)
ATTN: Risk Management Dept.
1560 Sherman Ave.
Evanston, IL 60201-3698

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A: Westchester Surplus Lines Insurance Company | 10172 |
| INSURER B: | |
| INSURER C: | |
| INSURER D: | |
| INSURER E: | |
| INSURER F: | |

COVERAGES CERTIFICATE NUMBER: 899307648 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<br>CLAIMS-MADE [X] OCCUR<br>X Liquor Liability Included<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br>X POLICY [ ] PRO-JECT [ ] LOC<br>OTHER: | Y | | G73578917 002 | 7/1/2023 | 7/1/2024 | EACH OCCURRENCE<br>DAMAGE TO RENTED PREMISES (Ea occurrence)<br>MED EXP (Any one person)<br>PERSONAL & ADV INJURY<br>GENERAL AGGREGATE<br>PRODUCTS - COMP/OP AGG | $2,000,000<br>$500,000<br>$<br>$2,000,000<br>$4,000,000<br>$4,000,000 |
| A | AUTOMOBILE LIABILITY<br>ANY AUTO<br>OWNED AUTOS ONLY<br>X HIRED AUTOS ONLY<br>SCHEDULED AUTOS<br>X NON-OWNED AUTOS ONLY | | | G73578917 002 | 7/1/2023 | 7/1/2024 | COMBINED SINGLE LIMIT (Ea accident)<br>BODILY INJURY (Per person)<br>BODILY INJURY (Per accident)<br>PROPERTY DAMAGE (Per accident) | $2,000,000<br>$<br>$<br>$ |
| | UMBRELLA LIAB [ ] OCCUR<br>EXCESS LIAB [ ] CLAIMS-MADE<br>DED [ ] RETENTION $ | | | NOT APPLICABLE | | | EACH OCCURRENCE<br>AGGREGATE | $<br>$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ] N/A<br>If yes, describe under DESCRIPTION OF OPERATIONS below | | | NOT APPLICABLE | | | PER STATUTE [ ] OTH-ER<br>E.L. EACH ACCIDENT<br>E.L. DISEASE - EA EMPLOYEE<br>E.L. DISEASE - POLICY LIMIT | $<br>$<br>$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The Certificate Holder is included as an additional insured where required by written contract or permit subject to the terms and conditions of the general liability policy, but only to the extent bodily injury or property damage is caused in whole or in part by the acts or omissions of the insured.

CERTIFICATE HOLDER
Town of Amherst - New York,
5583 Main Street, Williamsville, NY 14221

FOR
ANNNUAL CAR SHOW at NORTHTOWN CENTER

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


© 1988-2015 ACORD CORPORATION. All rights reserved.
The ACORD name and logo are registered marks of ACORD

Attachment: Rotary Williamsville Car Show 2024 (RES-2024-460 : User Agreement (Car Show) - CRS #4767)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28952

**COMMUNICATION 2024-34**

**APPROVED**

# Amherst Symphony Orchestra Request for Fee Waiver

Request from The Amherst Symphony Orchestra seeking permission to place signs and a waiver of sign permit fees.

Response from the Building Commissioner is attached.

**5/13/2024**
Consent

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

# TOWN OF AMHERST
BUILDING DEPARTMENT

INTER-DEPARTMENTAL CORRESPONDENCE

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221

PHONE: (716) 631-7080
FAX: (716) 631-7192

Mark S. Berke, P.E.
Commissioner of Building


# Memorandum

**DATE:** April 29, 2024

**TO:** Tim Koller, Deputy Town Clerk

**FROM:** Mark Berke, P.E., Commissioner of Building, Amherst Building Department

**RE:** Waiver of Fees for Temporary Sign Permit of Amherst Symphony Orchestra

The Amherst Building Department recommends approval of the waiver of fees for the Amherst Symphony Orchestra's for temporary signs to be placed on town properties.

The properties and dates are as follows:

CONCERT DATES:
August 6, 2024, October 20, 2024, December 8, 2024, February 9, 2025, and April 6, 2025

SIGNAGE DATES:
For one week prior to each concert

SIGNAGE LOCATIONS:
Clearfield Library, 770 Hopkins Rd; Parks Department
Amherst Parks Department, 450 Maple Road,
Harlem Road Community Center; 4255 Harlem Rd, Buffalo, NY 14226

Permits will be required.

Commissioner of Building
Town of Amherst Building Department

6/9/2023

Attachment: Amherst Symphony Orchestra temp sign fee waiver memo_2024 (COM-2024-34 : Amherst Symphony Orchestra Request for Fee

April 26, 2024

My name is Alexa Mathes, VP Promotions with the Amherst Symphony Orchestra, and I am requesting

The board's permission to place roadside signage at the following locations to promote our free community concerts (5):

August 6, 2024, October 20, 2024, December 8, 2024,

February 9, 2025, and April 6, 2025

and to have Fees Waived.

Locations:

Parks and Recreation

Clearfield Library

Harlem Road Community Center

When: For one week prior to each concert.

Thank you for your time and consideration in this matter.

Alexa Mathes

VP Promotions

Amherst Symphony Orchestra

Attachment: Amherst Symphony Orchestra temp sign fee waiver memo_2024 (COM-2024-34 : Amherst Symphony Orchestra Request for Fee

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28951

**COMMUNICATION 2024-35**

**APPROVED**

# Boulevard Federal Credit Union Request for Fee Waiver

Request from the Boulevard Federal Credit Union seeking a waiver of the fire prevention permit fees for their 4th annual craft show/fundraiser for WNY Heroes on Saturday, August 17, 2024.

Response from the Building Commissioner is attached.

**5/13/2024**
Consent

| | |
|---|---|
| **RESULT:** | **APPROVED [UNANIMOUS]** |
| **MOVER:** | Brian J. Kulpa, Supervisor |
| **SECONDER:** | Jacqualine Berger, Councilmember |
| **AYES:** | Kulpa, Lavin, Berger, 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:** April 29, 2024

**TO:** Town Board

**FROM:** Mark S. Berke, P.E., Commissioner of Building

**RE:** Request for Waiver of Fire Prevention Permit Fees
2787 Niagara Falls Boulevard – Boulevard Federal Credit Union
Craft Yard Sale for WNY Heroes – August 17, 2024

I have reviewed the letter dated April 16, 2024, from Jennifer Heim, Manager/Treasurer, regarding the referenced matter. I hereby recommend the approval of this request to waive the fire prevention permit fee for this event.

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
Fran Spoth, Town Clerk

Attachment: BFCU Fire Prevention Permit Fee Waiver_4-29-24 (COM-2024-35 : Boulevard Federal Credit Union Request for Fee Waiver)

# Boulevard Federal Credit Union

2787 Niagara Falls Blvd., Amherst, NY 14228
Phone:(716) 691-6727
www.blvdfcu.com
Fax:(716) 691-6860


April 16th, 2024

Francina J. Spoth
Amherst Town Clerk
Amherst Municipal Building
5583 Main Steet
Williamsville, NY 14221

Dear Mrs. Spoth,

We humbly request for you to request to the Amherst Town Council to approve the waving of the fees associated to the Boulevard Federal Credit Union's cost to obtaining a Fire Permit for a Large tent that will be used at our Fundraiser on August 17th, to raise money for WNY Heroes.

The Boulevard Federal Credit Union is a Non-Profit 501(c)(1) and WNY Heroes is also a Non-Profit. We do not know the exact classification of their organization. The event on August 17th will be a craft show for local vendors and crafters. The tents (2) will be used for vendors that don't have their own tents to stay in the shade.

We appreciate your prompt review in this matter, and are excited on giving back to the community in every way we can.

Thank You

Jennifer Heim

Manger/Treasurer

Brianna Drajem

Event organizer/marketer

Attachment: BFCU Fire Prevention Permit Fee Waiver_4-29-24 (COM-2024-35 : Boulevard Federal Credit Union Request for Fee Waiver)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28959

**COMMUNICATION 2024-36** **APPROVED**

# AAUW Buffalo Branch Request for Fee Waiver

AAUW Buffalo Branch is requesting a waiver from a Sign Permit Fee for their annual Book Sale. The Building Commissioner response is also attached.

**5/13/2024**
Consent

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

AAUW
Buffalo (NY) Branch

**TOGETHER MAKING A DIFFERENCE**

*Empowering Women and Girls in the Western New York area since 1890!*

Brian J. Kulpa
Amherst Municipal Building
5583 Main St
Williamsville, NY 14221

April 24, 2024

Dear Mr Kulpa:

I am writing to request a waiver of the $130 fees for a sign permit and a temporary use permit. This year will be the 68th year for our AAUW-Buffalo Book Sale, and for at least the seventh time in the past few years we will be situated in Amherst – this year at 425 Essjay, in the Centerpointe complex. Although we have been working since early-April to get things set up, the sale itself will be Wednesday, May 29 through Sunday, June 2.

Our intention during the sale is to have one sign directly outside our door and another near the edge of the street to direct our customers. Of course, there will also be signs in our windows.

The money raised from the book sale goes entirely to scholarships and educational programs/projects, most of which are open to the public. In addition to the community benefitting from the proceeds of the sale, it is also a means for people to purchase good books at reasonable prices and for people to turn over their "used" books to a good cause. Over 4,000 people walked through our doors during the five days of the sale in 2023 to purchase the more than 150,000 books we had available.

Please let me know if you have any questions, and I look forward to hearing from you.

Thank you.

Sincerely,

Betty Preble

Betty Preble, AAUW-Buffalo Booksale Committee member

Attachment: AAUW-Buffalo Book Sale temp sign fee waiver memo_2024 (COM-2024-36 : AAUW Buffalo Branch Request for Fee Waiver)

# TOWN OF AMHERST
BUILDING DEPARTMENT

INTER-DEPARTMENTAL CORRESPONDENCE

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221

PHONE: (716) 631-7080
FAX: (716) 631-7192

Mark S. Berke, P.E.
Commissioner of Building


## Memorandum

**DATE:** May 2, 2024

**TO:** Tim Koller, Deputy Town Clerk

**FROM:** Mark Berke, P.E., Commissioner of Building, Amherst Building Department

**RE:** Waiver of Fees for Temporary Sign Permit for AAUW-Buffalo Book Sale

The Amherst Building Department recommends approval of the waiver of fees for the AAUW's Buffalo Book Sale for two (2) temporary signs to be placed at 425 Essjay, in the Centerpointe Development.

The dates are as follows:

SIGNAGE DATES:
May 29, 2024 – June 2, 2024

A permit will still be required.

Mark S. Berke, P.E.
Commissioner of Building

CC: Francina J. Spoth, Town Clerk

5/8/2023

Attachment: AAUW-Buffalo Book Sale temp sign fee waiver memo_2024 (COM-2024-36 : AAUW Buffalo Branch Request for Fee Waiver)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28968

**COMMUNICATION 2024-37** **REFERRED**

# Correspondence from Sean Hopkins, Esq.

Letter from Sean Hopkins, Esq. regarding the pending SA Zoning Report.

**5/13/2024**
Referred to Town Attorney & Planning

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

May 7, 2024

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: 455 & 495 Schoelles Road - Cimato Enterprises
File No. 10188.2 – Town of Amherst

Dear Supervisor Kulpa & Councilmembers:

This letter is being submitted on behalf of Cimato Enterprises in connection with the property it owns located at 455 and 495 Schoelles Road.

Cimato Enterprises is requesting that the finalize the pending SA Zoning Report that was authorized via a resolution adopted by the Town Board more than two years ago and also that the SA Zoning Report designate the property at 455 and 495 Schoelles Road as appropriate for a residential subdivision consistent with the R-3 zoning standards.

Please feel free to contact me at 510-4338 or via e-mail at shopkins@hsmlegal.com with any questions regarding this letter.

Thank you for your anticipated cooperation.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

cc: Jacqualine Berger, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember
Angela Marinucci, Councilmember
Francina J. Spoth, Town Clerk
Timothy J. Koller, Deputy Town Clerk
Martin Pollowy, Esq., Town Attorney
Daniel C. Howard, AICP, Planning Director
Fred Cimato, Cimato Enterprises
Ken Zollitsch, GPI Engineering

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsmlegal.com • www.hsmlegal.com

Attachment: Kulpa-Ltr-05-07-24 (COM-2024-37 : Correspondence from Sean Hopkins, Esq.)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28994

**COMMUNICATION 2024-38** **REFERRED**

# Correspondence from Sean Hopkins, Esq.

Letter from Sean Hopkins, Esq. regarding the formation of the Regency Commons Water Works Corp. in connection with the proposed residential subdivision at 166 Klein Road.

**5/13/2024**
Referred to Town Attorney, Planning and to request a resolution to be placed on next Town Board agenda

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

May 8, 2024

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: 166 Klein Road - Residential Subdivision - Town of Amherst
Applicant/Project Sponsor: Regency Builders, LLC
File 10066.10

Dear Supervisor Kulpa:

This letter is being submitted for the purpose of requesting that the Town Board adopt a resolution for the purpose of consenting to the formation of the Regency Commons Water Works Corp. under Article 10 – Section 40 of NY Transportation Corporations Law in connection with the proposed residential subdivision at 166 Klein Road.

On December 18, 2023, the Town Board adopted Resolution 2023-1014 for the purpose of allowing the water and sanitary sewer infrastructure for the subdivision to be public. A copy of Resolution 2023-1014 is attached as Exhibit "1". Subsequently, the Erie County Water Authority determined that the water infrastructure must owned and maintained by a Water Works Corporation to be formed pursuant to Article 10 – Section 40 of NY Transportation Corporations Law, to which the Town is required to give its consent.

Attached as Exhibit "2" is a draft resolution for the consideration of the Town Board consenting to the formation of the Regency Commons Water Works Corp. and attached as Exhibit "3" is a draft of the Certificate of Incorporation prepared by Brad Randaccio, Esq. for the Regency Commons Water Works Corp.

Please feel free to contact me at 716.510-4338 or via e-mail at shopkins@hsmlegal.com if you have any questions regarding the enclosed project documentation or the status of the project.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc.
cc: Jacqualine Berger, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsmlegal.com • www.hsmlegal.com

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

Angela Marinucci, Councilmember
Francina J. Spoth, Town Clerk
Timothy J. Koller, Deputy Town Clerk
Jeff Burroughs, P.E., Town Engineer
Martin Pollowy, Esq., Town Attorney
Daniel C. Howard, AICP, Planning Director
Brad F. Randaccio, Esq.
Ken Zollitsch, Greenman-Pedersen, Inc.
Elliot Lasky, Regency Builders, LLC
Robert Mayo, Regency Builders, LLC

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

# Exhibit 1

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

# TOWN OF AMHERST

TOWN CLERK'S OFFICE

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
(716) 631-7021
FAX (716) 631-7152
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Timothy Koller
Deputy Town Clerk


## CERTIFICATE OF TOWN CLERK

I, Timothy Koller, Deputy Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY, as follows:

That the attached Resolution 2023-1014 "Regency Builders – 166 Klein Road (Regency Commons)" is a true and exact copy of the Resolution enacted by the Town Board at its meeting on December 18, 2023.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this 26th day of December, 2023.

Timothy Koller
Deputy Town Clerk
Town of Amherst, Erie County, NY

Sworn to before me
This 26th day of December, 2023

Notary Public

ASHLEY BROWNSON
NOTARY PUBLIC STATE OF NEW YORK
ERIE COUNTY
LIC. #01BR6412344
COMM. EXP. 12/28/2024

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

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

Francina J. Spoth
Town Clerk

Meeting: 12/18/23 07:00 PM
Department: Town Attorney
Initiated by: **Martin A. Polowy**
Co-Sponsored by:

DOC ID: 28358 **RESOLUTION 2023-1014** **ADOPTED**

# Regency Builders - 166 Klein Road (Regency Commons)

**AGENDA ITEM : DECEMBER 18th, 2023**

**TO:** **Town Board**

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

**DATE:** **December 12, 2023**

**RE:** **Regency Builders, LLC**
**166 Klein Road (Regency Commons)**

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

**WHEREAS**, on February 16, 2023, the Town of Amherst Planning Board granted Preliminary Plat Approval for a nineteen (19) lot residential subdivision to be located at 166 Klein Road; and

**WHEREAS**, Condition No. 4 as contained in the attached resolution adopted by the Town of Amherst Planning Board on February 16, 2023 stated as follows: "That the ownership status of the proposed waterline and sanitary sewer line be determined by the Town Board in consultation with the Town Attorney;" and

**WHEREAS**, the residential subdivision will require Final Plat Approval from the Town of Amherst Planning Board;

**THEREFORE BE IT RESOLVED**, that the Town Board hereby approves allowing the sanitary sewer and water infrastructure to be owned by the Town of Amherst subject to the following conditions:

1.) The Petitioner shall grant the Town of Amherst (the "Town") the necessary non-exclusive easements for the purpose of accessing the private roadway, sanitary sewer and water infrastructure improvements, the private on-site stormwater management system and the ditch that bisects the eastern portion of 166 Klein Road (the "Project Site"). The content and form of the Easement Agreement shall be reviewed and approved by the Town Attorney's Office prior to recording at the Erie County Clerk's Office. A recorded copy of the Easement Agreement shall be provided to the Town Attorney's Office, the Engineering Department and the Planning Department.

2.) The Petitioner shall keep the Project site clear of all obstructions. The Petitioner shall be responsible for the restoration of disturbed areas (including landscaping) on the Project Site in the event the Town determines it is



Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

necessary to make maintain or make repairs to the sanitary sewer and water infrastructure improvements. In the event that a structure, appurtenance, tree and/or fence is necessary in the opinion of the Town to be removed to maintain or make repairs to the sanitary sewer and water infrastructure improvements, the Petitioner shall reimburse the Town for the cost of removing the obstruction and the Petitioner shall be responsible to replace such items after the maintenance and/or repair is complete. Petitioner shall be responsible for all costs related to utility conflicts encountered during the maintenance and/or repair of the sanitary sewer and water infrastructure improvements and shall reimburse the Town for any costs incurred by the Town due to said conflicts.

3.) The Town shall have no responsibility with respect to maintenance, repairs or replacement of sanitary and water laterals that will service the homes to be constructed on the Project Site.

4.) The Petitioner shall be responsible for the restoration of disturbed areas of the Project Site in the event of an emergency situation such that the Town determines it is necessary to maintain or make repairs to the on-site private stormwater management system. The Town shall not have any legal obligation to make repairs to the private on-site stormwater management system.

5.) In the event that the private roadway has not been plowed and the Town or emergency personnel require access to the Project Site in an emergency situation, the Town shall have the right to plow the roadway and Petitioner shall be required to reimburse the Town for the cost of the plowing of the private roadway. The Town shall not have any legal obligation to plow the private roadway.

6.) The Petitioner shall indemnify and hold harmless the Town and its employees and agents from and against any and all claims, demands, causes of actions, suits, damages, counsel fees, and all other actual and reasonable costs and expenses associated with the defense of Town, arising out of or incurred in defense of any claim, proceeding, or action brought for personal injury or property damage arising from Town use of the easements be conveyed to the Town in accordance with Condition No. 1 or the activities specified in Conditions No. 2 to No. 5.

7.) The Petitioner shall be required to build all public infrastructure to Town of Amherst and Erie County Water Authority standard specifications and obtain all required PIPs and subsequent approvals from the Town of Amherst Town Board and ECWA for the private roadway and all public infrastructure.

8.) The Petitioner shall be required to provide the Town of Amherst with a copy of the Offering Plan for the project once it has been approved by the NYS Attorney General Office.

9.) Conditions No. 1 to 9 shall be memorialized via the recording of a Declaration



Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

of Restrictions at the Erie County Clerk's Office. The content and form of the Declaration of Restrictions shall be reviewed and approved by the Town Attorney's Office prior to recording at the Erie County Clerk's Office. A recorded copy of the Declaration of Restrictions shall be provided to the Town Attorney's Office and the Planning Department. The Town Board shall not approve any PIPs for the project until such time that the Petitioner has complied with Condition No. 9 above.

MAP:nmb

Attachment

c: Timothy Koller, Deputy Town Clerk
(*w/attachment,* **Agenda Item - December 18, 2023**)

**12/18/2023**
Consent

**FINANCIAL IMPACT:**

None for the purposes of this resolution.

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

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

# Exhibit 2

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

**CONSENT TO FORMATION OF REGENCY COMMONS WATER WORKS CORP.**

WHEREAS, Brad F. Randaccio, 50 Fountain Plaza, Suite 1700, Buffalo, NY, 14202 is forming a water-works corporation to be named Regency Commons Water Works Corp., under Article 10 – Section 40 of NY Transportation Corporations Law, and

WHEREAS, the purpose of this corporation is to engage in any lawful act or activity relating to water service for eighteen (18) homes to be located at 166 Klein Road, for which a water-works corporation may be organized under NYS Transportation Corporations Law, and

WHEREAS, as a condition for the formation of the corporation, the controlling municipality needs to give its consent, and

WHEREAS, the Town Board of the Town of Amherst deems it is in the best interest of the Town to approve the formation of the Regency Commons Water Works Corp.

NOW, THEREFORE BE IT RESOLVED, that the Supervisor is hereby authorized to execute the Consent to Formation Letter, approving the formation of a water-works corporation, to be known as the Birch Creek Run Sewer Works Corporation, by Brad R. Randaccio, to engage in lawful acts or activities relating to service for eighteen (18) homes to be located at 166 Klein Road, which are allowed under Article 10 – Section 40 of NY Transportation Corporations Law.

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

# Exhibit 3

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

# CERTIFICATE OF INCORPORATION
# OF
# REGENCY COMMONS WATER WORKS CORP

## Under Section 3 of the Transportation Corporation Law of the State of New York

The undersigned, for the purpose of forming a corporation pursuant to Section 3 of the Transportation Corporation Law of the State of New York, certifies:

**FIRST**: The name of the corporation shall be **REGENCY COMMONS WATER WORKS CORP** (the "Corporation").

**SECOND**: The Corporation shall be a water-works corporation under Article 10 and Section 40 of the Transportation Corporations Law of the State of New York.

**THIRD**: The Corporation is formed to engage in any lawful act or activity for which a water-works corporation may be organized under the Transportation Corporations Law of the State of New York, provided that it may not engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained, and further provided that it may engage in the acts and activities of a water-works corporation only in the Town of Amherst, New York. The Corporation shall have all the powers of a water-works corporation enumerated in Section 43 of the Transportation Corporations Law of the State of New York, subject to any limitations provided in this Paragraph THIRD, said Transportation Corporations Law or any other statute of the State of New York including, without limitation, the definition of a water-works corporation set forth in Section 40 of the Transportation Corporations Law.

**FOURTH**: The office of the Corporation in the State of New York is to be located in the County of Erie.

**FIFTH**: The aggregate number of shares which the Corporation shall have the authority to issue is two hundred (200) shares of common stock without par value.

**SIXTH**: The Secretary of State of the State of New York is designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served. The address to which the Secretary of State shall mail a copy of process in any action or proceeding against the Corporation which may be served upon him is _____.

**SEVENTH**: The personal liability of the directors of the Corporation is eliminated to the fullest extent permitted by the provisions of Paragraph (b) of Section 402 of the Business Corporation Law of the State of New York, as the same may be amended and supplemented.

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

**IN WITNESS WHEREOF**, the undersigned has signed this Certificate of Incorporation on the ___ day of May, 2024, on behalf of the Corporation.

Dated: May___, 2024
Buffalo, New York

_____
Brad F. Randaccio, Esq., Incorporator
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202

Attachment: Kulpa-Ltr-05-08-24 (COM-2024-38 : Correspondence from Sean Hopkins, Esq.)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 29007

**COMMUNICATION 2024-39** **REFERRED**

# Correspondence from Joe Rubino

Letter from Joe Rubino regarding the proposed rezoning of 1789 Dodge Road.

**5/13/2024**
Referred to Town Attorney

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

**Joe Rubino**
**5462 Sheridan Drive, Suite 2**
**Williamsville, NY 14221**

May 7, 2024

Brian J. Kulpa, Town Supervisor
Town of Amherst Town Hall
5583 Main Street
Williamsville, NY 14221

Re: Request to Amend Zoning Classification of 1789 Dodge Road [Z-2020-15]
Proposed Residential Subdivision

Dear Supervisor Kulpa and Councilmembers:

During its meeting on February 28, 2022, the Town Board adopted Resolution 2022-195 for the purpose of adjourning its issuance of a decision in connection with the requested rezoning of 1789 Dodge Road from SA to R-3.

The Town Board held public hearings on requested rezoning on November 22, 2021 and January 18, 2022 and closed the public hearing during the meeting held on January 18, 2022. During its meeting on February 22, 2022, the Town Board closed the public hearing but did not issue a decision so that an evaluation could be completed of the continued suitability of parcels zoned SA within the Town.

I am respectfully requesting that the Town Board proceed with issuing of a decision on the pending requested rezoning from SA to R-3 subject to the proposed zoning conditions to accommodate the proposed residential subdivision that is consistent with the recommended land use per Figure 6 of the adopted Comprehensive Plan. The proposed zoning conditions are as follows:

1. That future development of the site shall be limited to single family detached residential uses with a maximum yield of fifteen (15) homes.

2. That any future development of a principal or accessory structure or uses in the 2.7 acres of Permanent Open Space shall be prohibited. The only proposed development of the portion of the Permanent Open Space is limited to required stormwater management system improvements and utility infrastructure.

3. That a protective covenant/conservation easement shall be placed on all proposed open space and confirm total acreage to be under the control of a homeowners association.

4. That the final plat design shall include a right-of-way access to a potential future Youngs Road extension.

5. That the landscaping and screening to be provided in the Permanent Open Space along the

Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

Dodge Road frontage of the project site shall require the approval of the Planning Board at the Preliminary Plat Application stage of the subdivision review process.

A copy of the PowerPoint presentation given to the Town Board during the public hearing held on January 18, 2022 is enclosed and it provided detailed information in support of the requested rezoning.

Please feel free to contact me at 983-1155 or via e-mail at josephrubino@howardhanna.com and thank for you for taking the time to review this letter

Sincerely,

Joe Rubino

Enc.
cc: Town Board
Town of Amherst Town Clerk's Office
Daniel Howard, Town of Amherst Planning Department
Martin Pollowy, Esq., Town Attorney
Sean Hopkins, Esq.
Chistopher Wood, P.E.

Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

# Town of Amherst Town Board

Continuation of Public Hearing held on November 22, 2021
Request to Rezone 6.7± acres of land
from SA to R-3
Address: 1789 Dodge Road
Petitioner: Joe Rubino

Z-2020-15

January 18, 2022

15.6.a

Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

## Location:

East side of Dodge Road, approximately 1,250 feet northeast of the intersection of Dodge Road and Casey Road opposite, and 120 feet northeast of the intersection of Brenridge Drive and Dodge Road

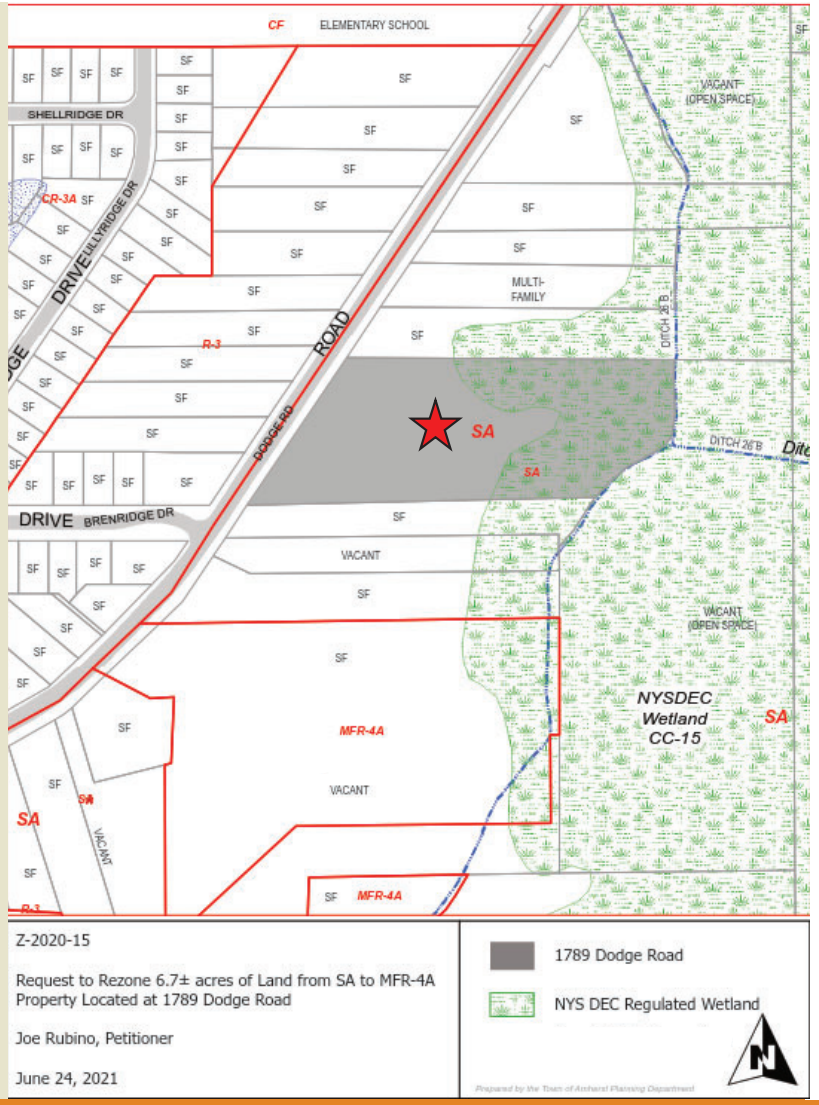
## Current Zoning:

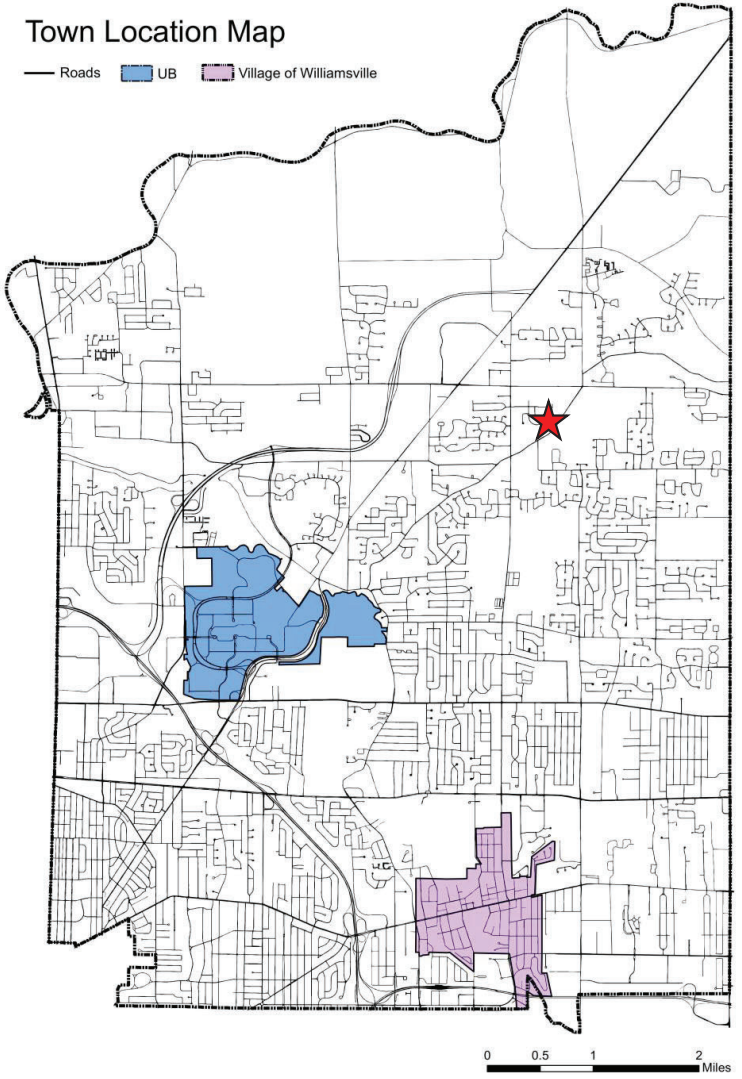
Suburban Agriculture District ("SA")

**Land Uses:**

SF – Single-family

V – Vacant



- **Existing Development:** Contains a single-family home along the Dodge Road frontage
- **Size of Project Site:** 6.7± acres






Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

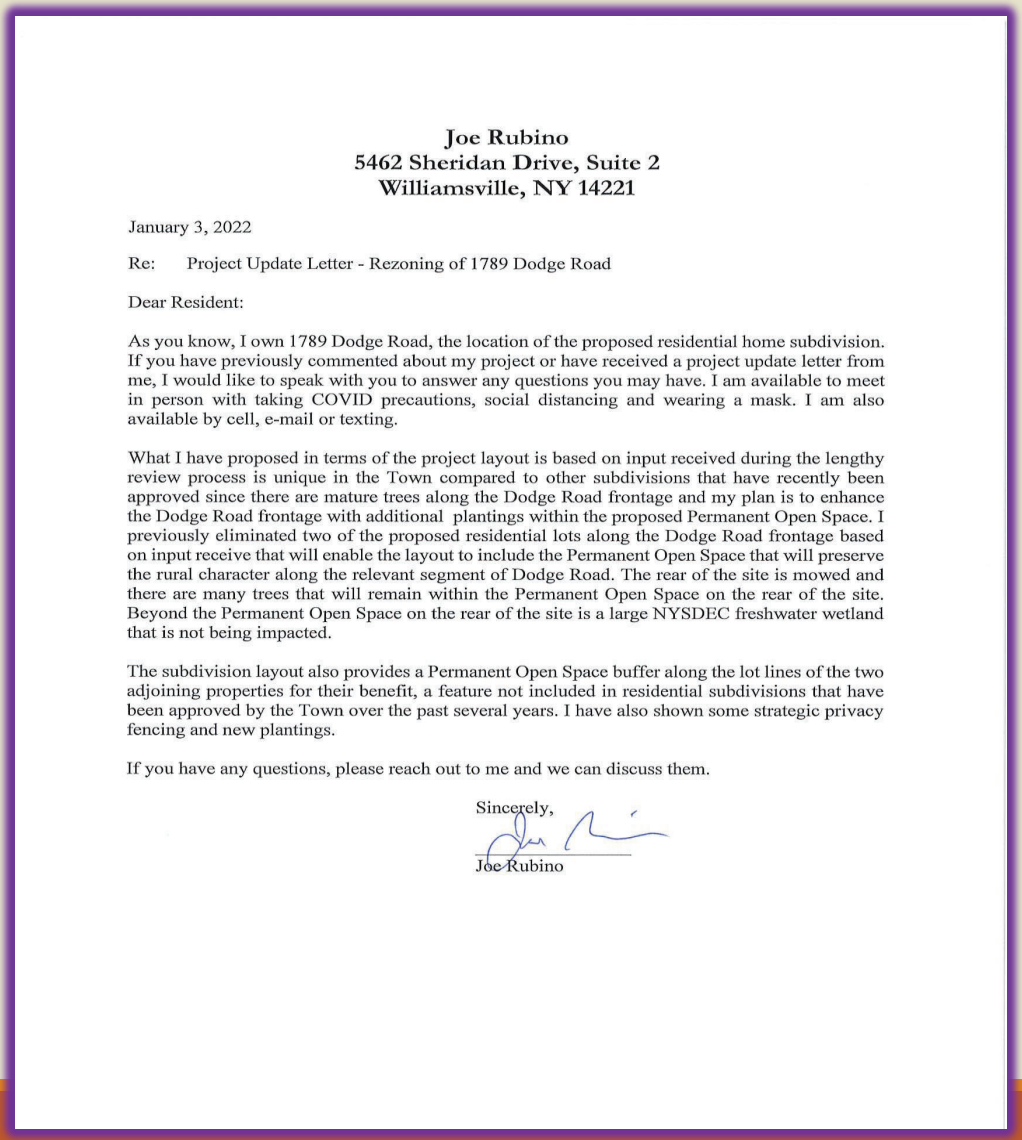
**Project Description:**

- Request to amend the zoning classification of 6.7± acres of land at 1789 Dodge Road from SA to R-3 to allow a 16-lot residential subdivision (15 lots for homes and 2.8 acres of Permanent Open Space).
- Current Concept Plan shows Permanent Open Space along Dodge Road frontage along with 20 ft. of Permanent Open Space on the north and south property lines.
- 1.5 acres of land is to remain Permanent Open Space consisting of eastern portion of the Project Site to accommodate a potential future Right-of-Way for a potential future extension of Youngs Road.
- 2.8 Acres of Permanent Open Space [41.8% of the Project Site]
- Public road is proposed with a single curb cut off Dodge Road - Roadway will end with a hammerhead configuration for fire safety ingress and egress per the standards in Appendix D of the NYS Fire Code.
- Wetland Delineation Report prepared by Earth Dimensions Inc. identified NYSDEC - Wetland is only 0.054 acres -No impacts are proposed to the on-site wetland area.



Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

- Project Update Letters sent to Residents and William Pitz of 1815 Dodge Road by Joe Rubino on January 3, 2022
- Informational Meeting on November 20, 2021 [Invite Letter sent on November 9, 2021
- Project Layout has been repeatedly modified based on input received.



**Joe Rubino**
**5462 Sheridan Drive, Suite 2**
**Williamsville, NY 14221**

January 3, 2022

Re: Project Update Letter - Rezoning of 1789 Dodge Road

Dear Resident:

As you know, I own 1789 Dodge Road, the location of the proposed residential home subdivision. If you have previously commented about my project or have received a project update letter from me, I would like to speak with you to answer any questions you may have. I am available to meet in person with taking COVID precautions, social distancing and wearing a mask. I am also available by cell, e-mail or texting.

What I have proposed in terms of the project layout is based on input received during the lengthy review process is unique in the Town compared to other subdivisions that have recently been approved since there are mature trees along the Dodge Road frontage and my plan is to enhance the Dodge Road frontage with additional plantings within the proposed Permanent Open Space. I previously eliminated two of the proposed residential lots along the Dodge Road frontage based on input receive that will enable the layout to include the Permanent Open Space that will preserve the rural character along the relevant segment of Dodge Road. The rear of the site is mowed and there are many trees that will remain within the Permanent Open Space on the rear of the site. Beyond the Permanent Open Space on the rear of the site is a large NYSDEC freshwater wetland that is not being impacted.

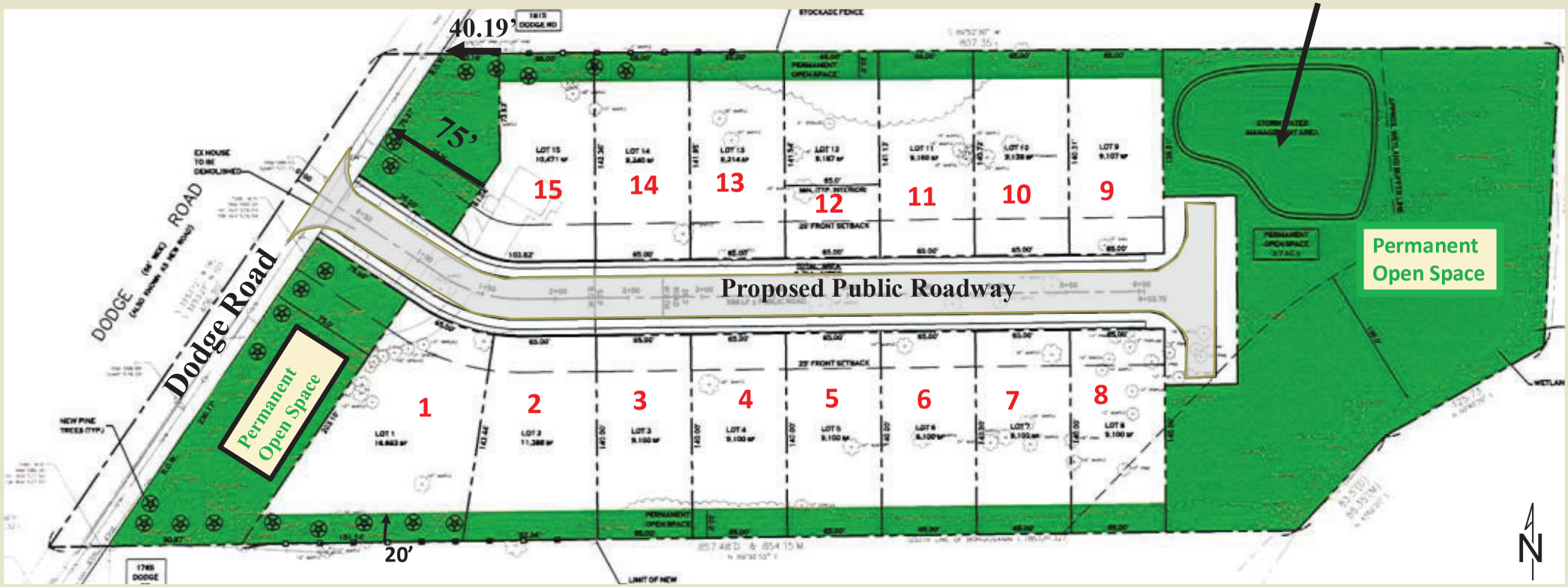
The subdivision layout also provides a Permanent Open Space buffer along the lot lines of the two adjoining properties for their benefit, a feature not included in residential subdivisions that have been approved by the Town over the past several years. I have also shown some strategic privacy fencing and new plantings.

If you have any questions, please reach out to me and we can discuss them.

Sincerely,

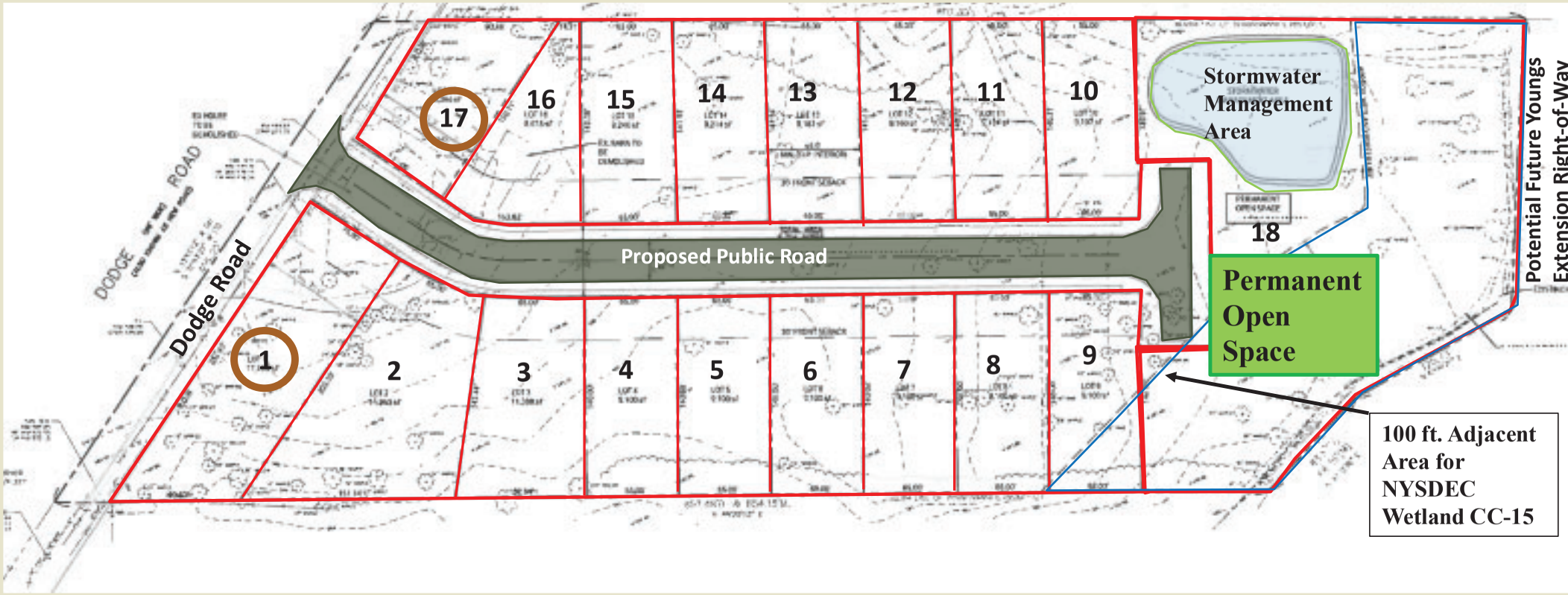
Joe Rubino

# CURRENT CONCEPT PLAN – 15 LOTS FOR SINGLE-FAMILY HOMES:



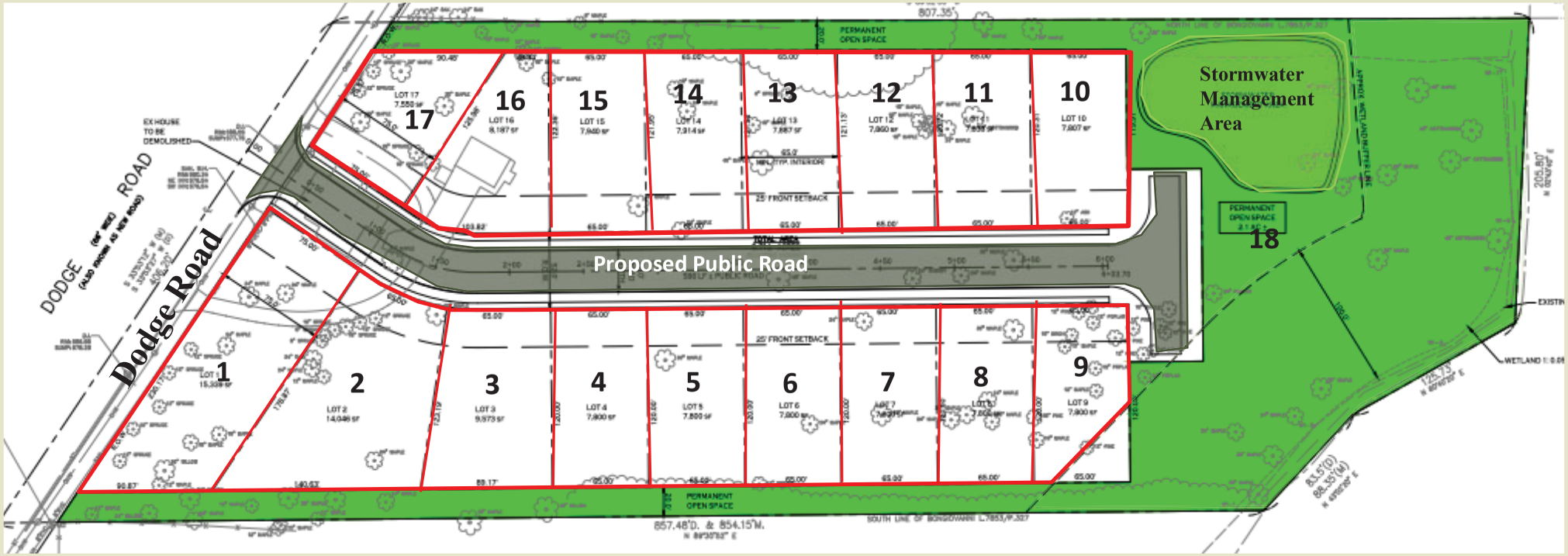
# ORIGINAL CONCEPT PLAN PRESENTED ON FEBRUARY 18, 2021 [17 LOTS FOR HOMES]:

1.5 Acres of Permanent Open Space



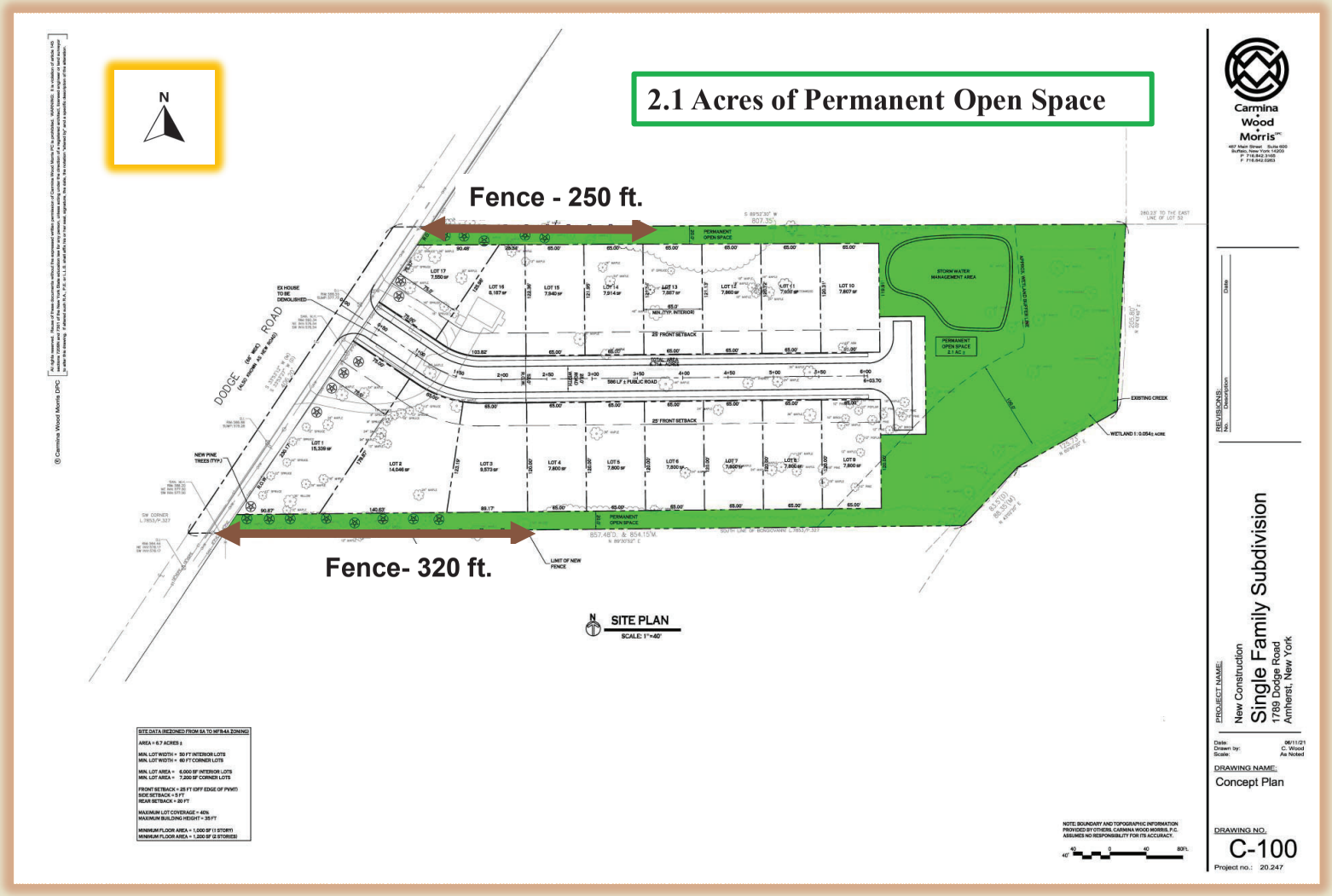
**CONCEPT PLAN PRESENTED ON APRIL 15, 2021 [17 LOTS FOR HOMES]:**

2.1 Acres of Permanent Open Space including Rear 20 ft. of Lots 1 to 17



**CONCEPT PLAN PRESENTED ON JUNE 24, 2021:**

- MFR-4A zoning requested – Concerns raised regarding other uses permitted in the MFR-4A zoning district
- 17 lots for single-family homes
- Installation of a 6 ft. privacy fence on northern edge of the 20 ft. of Permanent Open Space with a length of nearly 250 ft. as measured from the Dodge Road Right-of-Way and also along the southern edge of the 20 ft. of Permanent Open Space with a length of approximately 320 ft. as measured from the Dodge Road Right-of-Way.
- Planting of evergreen trees within the portions of the Permanent Open Space closest to the existing homes on the contiguous parcels to the north at 1815 Dodge Road and south at 1765 Dodge Road and along the Dodge Road frontage of the Project Site.



**CURRENT CONCEPT PLAN – DODGE ROAD FRONTAGE WITH SCREENING AS PREPARED BY ROBERT WALTER, RLA**

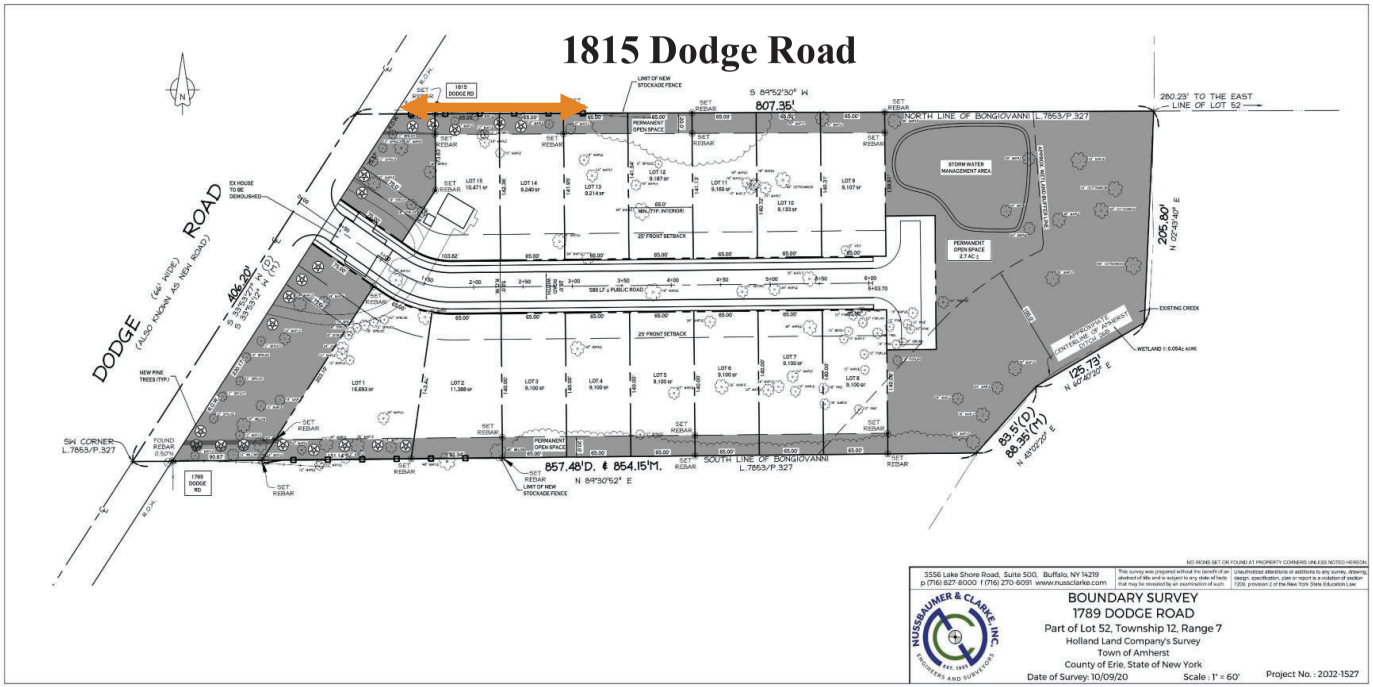
- Planning Board discussed the rural character of the relevant segment of Dodge Road
- Proposed Wood 2-Rail Split Rail Fence along Dodge Road frontage [Project Site has 406 ft. of frontage on Dodge Road]
- 6 ft. board on board fence along portions of the northern and southern boundaries of the Project Site
- Preservation of Existing Evergreen and Deciduous Trees
- Extensive New Plantings:
  - 25 Trees [3 types]
  - 74 Shrubs [6 types]






Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

**Permanent Open Space Boundaries Staked by Nussbaumer & Clarke, Inc.**



**Dodge Road Frontage [South]:**



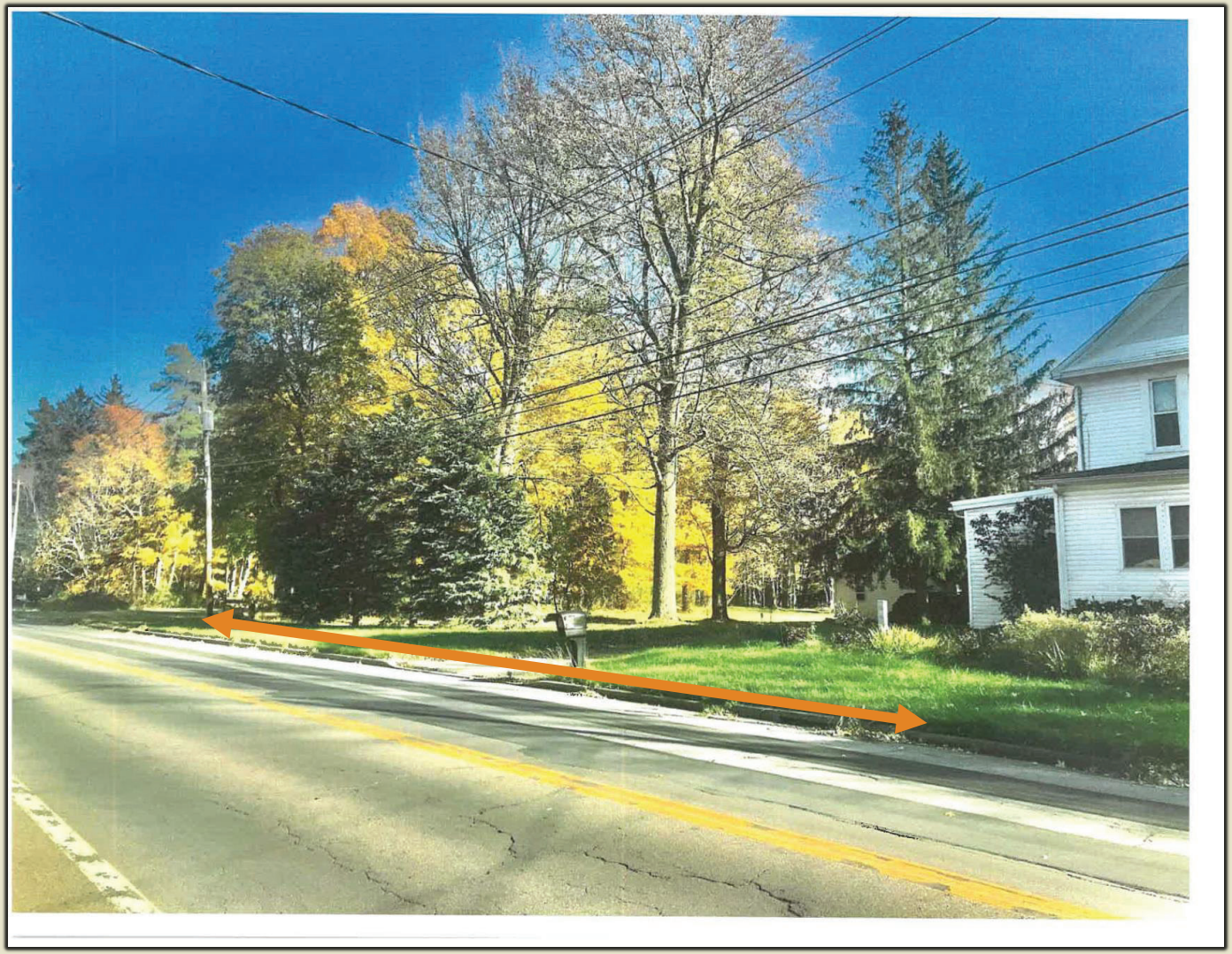
**Dodge Road Frontage [South]:**






Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

**Dodge Road Frontage[North]:**



**Northerly View on Project Site:**



## Aerial View:



# COLOR CONCEPT PLAN:




Carmina·Wood·Morris DPC

SINGLE FAMILY SUBDIVISION
1789 Dodge Road | Amherst, NY
November 2021

RENDERED SITE PLAN

1



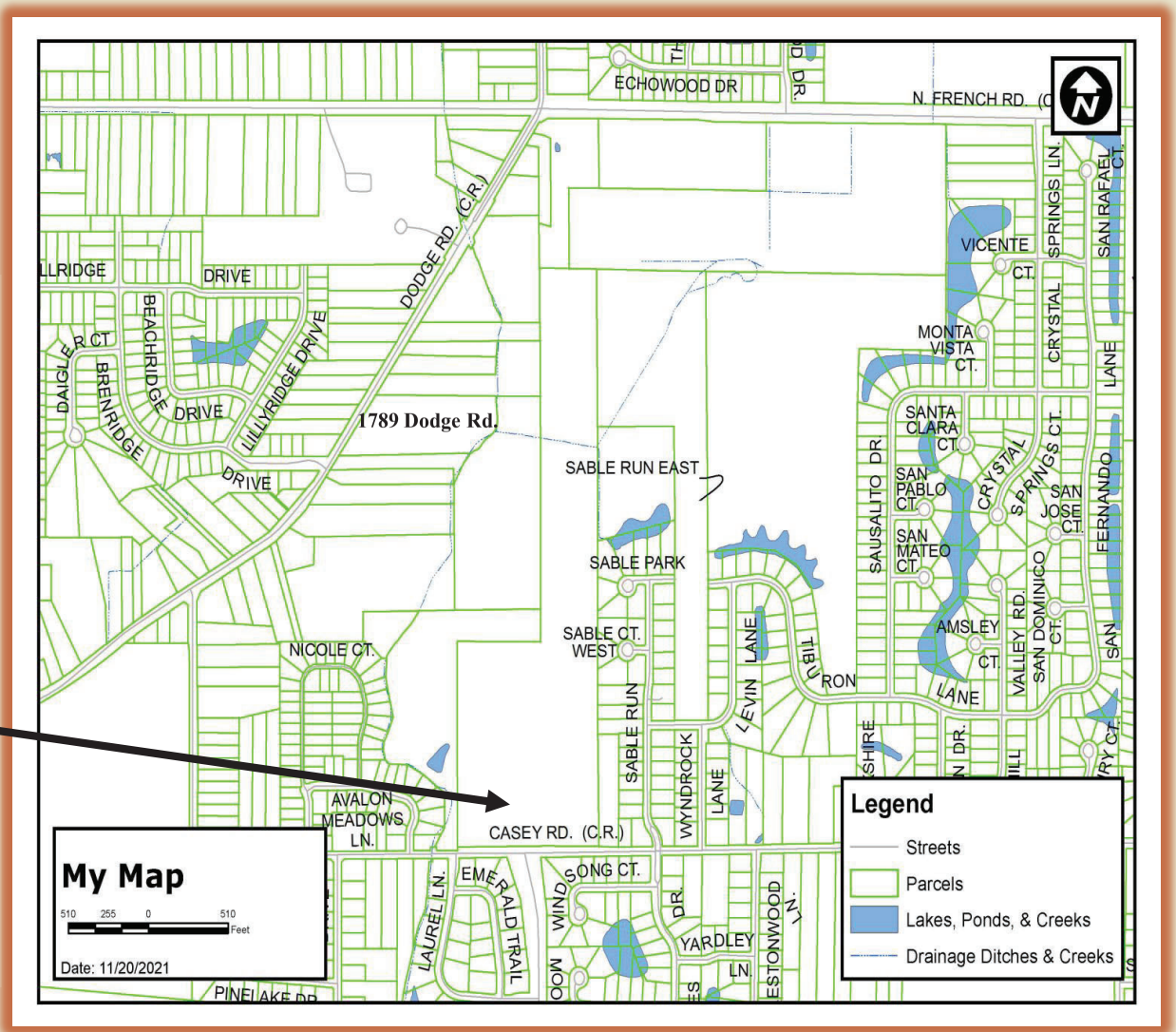
Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

**COLOR RENDERING OF DODGE ROAD FRONTAGE:**



# Subdivision on Casey Road at end of Youngs Road





# Sample Home Elevations:







Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

**Requested Rezoning from SA to R-3 is Consistent with the Adopted Comprehensive Plan:**

- Figure 6 of the adopted Bicentennial Comprehensive Plan ("Conceptual Land Use Plan") indicates the Project Site is appropriate for "Single Family Residential" use
- Benefits of Infill Development [Public infrastructure available]
- Proposed change does tend to improve the balance of uses and meets a specific demand in the Town
- Rezoning of 1695, 1701 and 1721 Dodge Road from SA to MFR-4A as approved on February 24, 2020

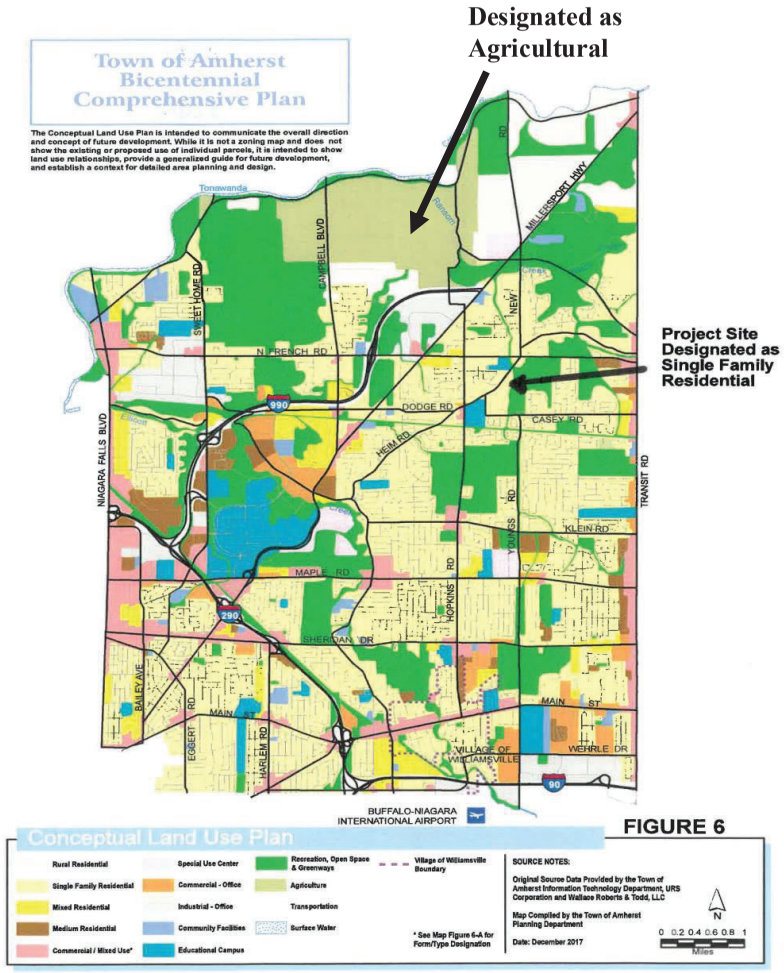


FIGURE 6



Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

**Requested Rezoning from SA to R-3 is Consistent with the Adopted Comprehensive Plan:**

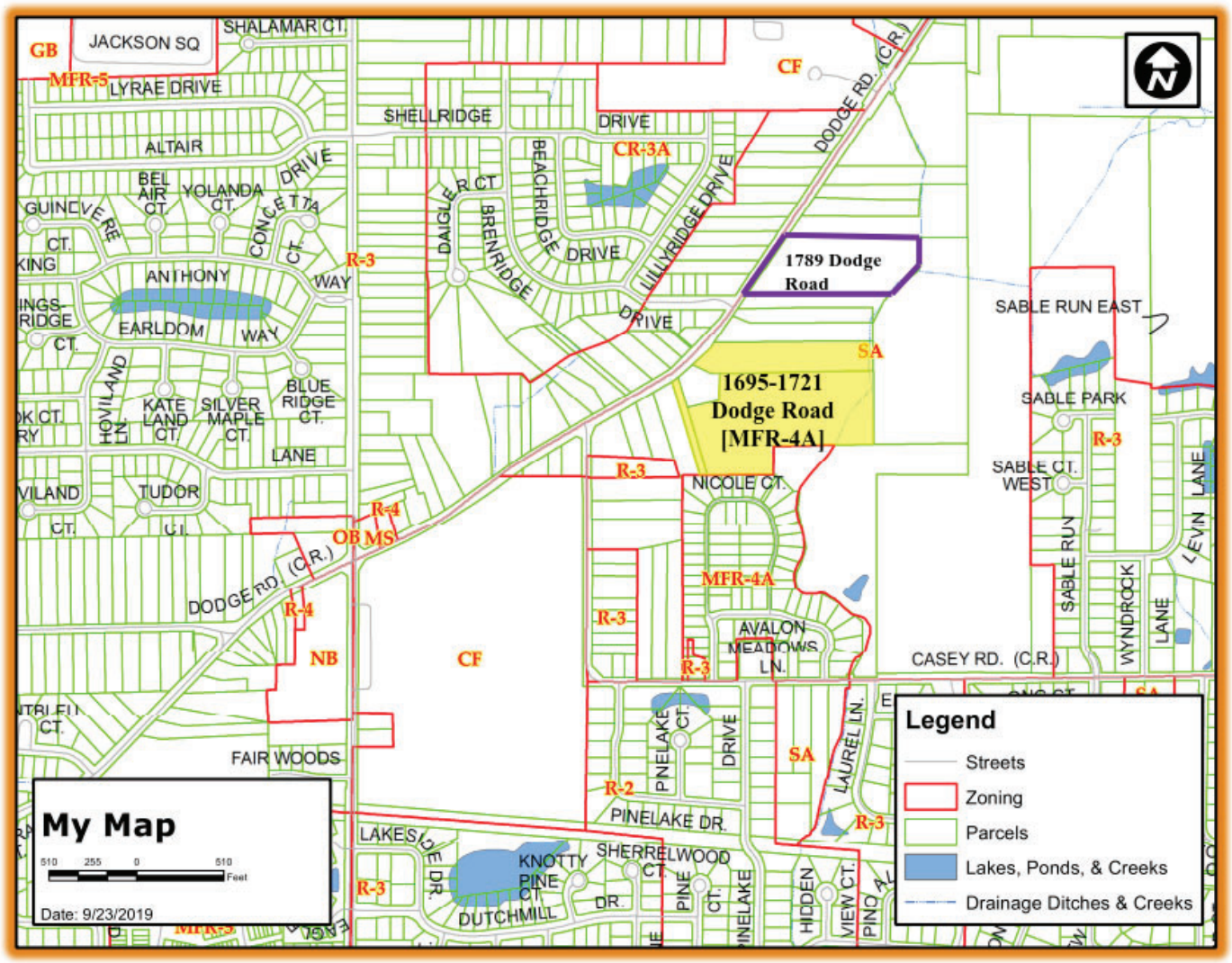
- Single-Family Residential (2 to 4 units/acre) – Page 3-21 of the Comprehensive Plan as most recently amended in December of 2020
  - "Consistent with Amherst's history as a suburban bedroom community, nearly one-half of the Town's land area will remain in relatively low-density, primarily single-family detached residential use. Policies for Amherst's single-family neighborhoods are to preserve the neighborhood fabric and quality of life by limiting undesired influences such as commercial intrusions."
  - Proposed Density – Reduced from 2.54 units to 2.24 units per acre as a result of providing Permanent Openn Space along Dodge Road frontage [2.8 acres of Permanent Open Space – 41.8% of the Project Site]
- Agriculture – The Comprehensive Plan designates areas for agriculture and associated activities including:
  - Agricultural Lands, included in Erie County Agricultural District #17
  - Lands acquired or designated for acquisition through the Town's purchase of development rights program, the Farmland Protection Program
  - Lands adjacent to such areas where the long-term viability of agriculture may be threatened by inconsistent uses or infrastructure development that represents urban/suburban encroachment.



*Suburban scale single-family homes.*



Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)


1789 Dodge Road
1695-1721 Dodge Road [MFR-4A]
SA
CF
CR-3A
R-3
R-4
R-2
NB
OB
MS
MFR-4A
MFR-5
GB
JACKSON SQ
SHALAMAR CT.
LYRAE DRIVE
ALTAIR
SHELLRIDGE DRIVE
DODGE RD. (C.R.)
DAIGLE R CT.
BRENRIDGE
BEACHRIDGE DRIVE
LILLYRIDGE DRIVE
SABLE RUN EAST
SABLE PARK
SABLE CT. WEST
SABLE RUN
LEVIN LANE
VYNDROCK LANE
NICOLE CT.
AVALON MEADOWS LN.
CASEY RD. (C.R.)
LAUREL LN.
PINELAKE CT.
PINELAKE DR.
LAKESIDE DR.
KNOTTY PINE CT.
SHERRELWOOD CT.
DUTCHMILL
HIDDEN VIEW CT.
PINE CT.
FAIR WOODS
ANTHONY WAY
EARLDOM WAY
KATE LAND CT.
SILVER MAPLE CT.
BLUE RIDGE CT.
TUDOR CT.
Legend
Streets
Zoning
Parcels
Lakes, Ponds, & Creeks
Drainage Ditches & Creeks
My Map
Date: 9/23/2019

## SEQRA and Project Review Process:

- No impacts to small portion of NYSDEC Freshwater Wetland CC-15 on rear of Project Site
- Low density subdivision – Reduced from 2.54 units to 2.24 units per acre
- Updated subdivision layout preserves the rural character of the Dodge Road frontage per the input received from the Planning Board during its meeting held on June 24, 2021 - 2.8 Acres of Permanent Open Space [41.2% of the Project Site]
- Stormwater management system will comply with the stringent stormwater quality and quantity standards of the NYSDEC including handling a 100-yr. storm event
- DSCA prepared by Carmina Wood Morris DPC in May of 2021 demonstrated there is adequate downstream sanitary sewer capacity during wet weather conditions per the standards of the NYSDEC
- If the requested rezoning is approved, the residential subdivision will require Sketch Plan, Preliminary Plat and Final Plat Approval from the Planning Board [Minimum of 3 additional public hearings]

## PROPOSED ZONING CONDITIONS:

1. That future development of the site shall be limited to single family detached residential uses with a maximum yield of fifteen (15) homes.
2. That any future development of a principal or accessory structure or uses in the 2.7 acres of Permanent Open Space shall be prohibited. The only proposed development of the portion of the Permanent Open Space is limited to required stormwater management system improvements and utility infrastructure.
3. That a protective covenant/conservation easement shall be placed on all proposed open space and confirm total acreage to be under the control of a homeowners association.
4. That the final plat design shall include a right-of-way access to a potential future Youngs Road extension.
5. That the landscaping and screening to be provided in the Permanent Open Space along the Dodge Road frontage of the project site shall require the approval of the Planning Board at the Preliminary Plat Application stage of the subdivision review process.

**Conclusion:**

- Requesting issuance of a Negative Declaration and the amendment of the zoning classification of 1789 Dodge Road from SA to R-3 subject to five conditions.

- Questions…



Attachment: Rubino-Ltr-Town Board-05-07-24 (COM-2024-39 : Correspondence from Joe Rubino)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28949

**COMMUNICATION 2024-40** **REFERRED**

# Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs. Francina Spoth, Amherst Town Clerk Et Al.

**5/13/2024**
Referred to Town Attorney

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

# REQUEST FOR JUDICIAL INTERVENTION

UCS-840 (7/2012)

| For Court Clerk Use Only: |
|---|
| IAS Entry Date |
| Judge Assigned |
| RJI Date |

Supreme COURT, COUNTY OF Erie

Index No: 805398/2024 Date Index Issued: 04/16/2024

**CAPTION:** Enter the complete case caption. Do not use et al or et ano. If more space is required, attach a caption rider sheet.

Jason Matthew Martin

Plaintiff(s)/Petitioner(s)

-against-

Tianna M. Marks, City Clerk for the City of Buffalo, Office of the City Clerk,
Kimberly A. Burst, Cheektowaga Town Clerk,
Cathy Rybczynski, Hamburg Town Clerk
Marguerite Greco, Tonawanda Town Clerk
Francina Spoth, Amherst Town Clerk, and
James V. McDonald, New York State Department of Health, Vital Records Section

Defendant(s)/Respondent(

**NATURE OF ACTION OR PROCEEDING:** Check ONE box only and specify where indicated.

**MATRIMONIAL**

- ○ Contested

  **NOTE:** For all Matrimonial actions where the parties have children under the age of 18, complete and attach the **MATRIMONIAL RJI Addendum.**

  For Uncontested Matrimonial actions, use RJI form UD-13.

**TORTS**

- ○ Asbestos
- ○ Breast Implant
- ○ Environmental: _____ (specify)
- ○ Medical, Dental, or Podiatric Malpractice
- ○ Motor Vehicle
- ○ Products Liability: _____ (specify)
- ○ Other Negligence: _____ (specify)
- ○ Other Professional Malpractice: _____ (specify)
- ○ Other Tort: _____ (specify)

**OTHER MATTERS**

- ○ Certificate of Incorporation/Dissolution [see **NOTE** under Commercial]
- ○ Emergency Medical Treatment
- ○ Habeas Corpus
- ○ Local Court Appeal
- ○ Mechanic's Lien
- ○ Name Change
- ○ Pistol Permit Revocation Hearing
- ○ Sale or Finance of Religious/Not-for-Profit Property
- ○ Other: _____ (specify)

**COMMERCIAL**

- ○ Business Entity (including corporations, partnerships, LLCs, etc.)
- ○ Contract
- ○ Insurance (where insurer is a party, except arbitration)
- ○ UCC (including sales, negotiable instruments)
- ○ Other Commercial: _____ (specify)

**NOTE:** For Commercial Division assignment requests [22 NYCRR § 202.70(d)], complete and attach the **COMMERCIAL DIV RJI Addendum.**

**REAL PROPERTY:** How many properties does the application include? _____

- ○ Condemnation
- ○ Mortgage Foreclosure (specify): ○ Residential ○ Commercial

Property Address: _____ (Street Address, City, State, Zip)

**NOTE:** For Mortgage Foreclosure actions involving a one- to four-family, owner-occupied, residential property, or an owner-occupied condominium, complete and attach the **FORECLOSURE RJI Addendum.**

- ○ Tax Certiorari - Section: _____ Block: _____ Lot: _____
- ○ Tax Foreclosure
- ○ Other Real Property: _____ (specify)

**SPECIAL PROCEEDINGS**

- ○ CPLR Article 75 (Arbitration) [see **NOTE** under Commercial]
- ○ CPLR Article 78 (Body or Officer)
- ○ Election Law
- ○ MHL Article 9.60 (Kendra's Law)
- ○ MHL Article 10 (Sex Offender Confinement-Initial)
- ○ MHL Article 10 (Sex Offender Confinement-Review)
- ○ MHL Article 81 (Guardianship)
- ○ Other Mental Hygiene: _____ (specify)
- ◉ Other Special Proceeding: Release of Vital Records (specify)

**STATUS OF ACTION OR PROCEEDING:** Answer YES or NO for EVERY question AND enter additional information where indicated.

| | YES | NO | |
|---|---|---|---|
| Has a summons and complaint or summons w/notice been filed? | ○ | ◉ | If yes, date filed: _____ |
| Has a summons and complaint or summons w/notice been served? | ○ | ◉ | If yes, date served: _____ |
| Is this action/proceeding being filed post-judgment? | ○ | ◉ | If yes, judgment date: _____ |

Attachment: DOC042524-042524140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

**NATURE OF JUDICIAL INTERVENTION:** Check ONE box only AND enter additional information where indicated.

- ○ Infant's Compromise
- ○ Note of Issue and/or Certificate of Readiness
- ○ Notice of Medical, Dental, or Podiatric Malpractice — Date Issue Joined: _____
- ○ Notice of Motion — Relief Sought: _____ — Return Date: _____
- ○ Notice of Petition — Relief Sought: _____ — Return Date: _____
- ◉ Order to Show Cause — Relief Sought: Miscellaneous — Return Date: _____
- ○ Other Ex Parte Application — Relief Sought: _____
- ○ Poor Person Application
- ○ Request for Preliminary Conference
- ○ Residential Mortgage Foreclosure Settlement Conference
- ○ Writ of Habeas Corpus
- ○ Other (specify): _____

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases. If additional space is required, complete and attach the **RJI Addendum**. If none, leave blank.

| Case Title | Index/Case No. | Court | Judge (if assigned) | Relationship to Instant Case |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

**PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in space provided. If additional space is required, complete and attach the **RJI Addendum**.

| Un-Rep | Parties: List parties in caption order and indicate party role(s) (e.g. defendant; 3rd-party plaintiff). | Attorneys and/or Unrepresented Litigants: Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address. | Issue Joined (Y/N): | Insurance Carrier(s): |
|---|---|---|---|---|
| ☐ | Martin (Last Name) Jason M. (First Name) Primary Role: Petitioner Secondary Role (if any): | BERNSTEIN (Last Name) ROBERT (First Name) Bernstein-Burkley PC (Firm Name) 601 Grant Street 9th Floor (Street Address) Pittsburgh (City) Pennsylvania (State) 15219 (Zip) +1 (412) 456-8101 (Phone) (Fax) rbernstein@bernsteinlaw.com (e-mail) | ○ YES ◉ NO | |
| ☒ | Marks (Last Name) Tianna M. (First Name) Primary Role: Respondent Secondary Role (if any): | (Last Name) (First Name) City Clerk for the City of Buffalo, Office of the City Clerk (Firm Name) 65 Niagara Square, Room 1308 (Street Address) Buffalo (City) New York (State) 14202 (Zip) (Phone) (Fax) (e-mail) | ○ YES ◉ NO | |
| ☒ | Burst (Last Name) Kimberly A. (First Name) Primary Role: Respondent Secondary Role (if any): | (Last Name) (First Name) Cheektowaga Town Clerk (Firm Name) 3301 Broadway Street (Street Address) Cheektowaga (City) New York (State) 14227 (Zip) (Phone) (Fax) (e-mail) | ○ YES ◉ NO | |
| ☒ | Rybczynski (Last Name) Cathy (First Name) Primary Role: Respondent Secondary Role (if any): | (Last Name) (First Name) Hamburg Town Clerk (Firm Name) 6100 South Park Avenue (Street Address) Hamburg (City) New York (State) 14075 (Zip) (Phone) (Fax) (e-mail) | ○ YES ◉ NO | |

**I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.**

**Dated:** 04/16/2024

ROBERT STEVEN BERNSTEIN
**SIGNATURE**

3069945
**ATTORNEY REGISTRATION NUMBER**

ROBERT STEVEN BERNSTEIN
**PRINT OR TYPE NAME**

Attachment: DOC042524-042520241402S3 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

# Request for Judicial Intervention Addendum

UCS-840A (7/2012)

Supreme COURT, COUNTY OF Erie Index No: 805398/2024

**For use when additional space is needed to provide party or related case information.**

**PARTIES:** For parties without an attorney, check "Un-Rep" box AND enter party address, phone number and e-mail address in "Attorneys" space.

| Un-Rep | Parties: List parties in caption order and indicate party role(s) (e.g. defendant; 3rd-party plaintiff). | Attorneys and/or Unrepresented Litigants: Provide attorney name, firm name, business address, phone number and e-mail address of all attorneys that have appeared in the case. For unrepresented litigants, provide address, phone number and e-mail address. | Issue Joined (Y/N): | Insurance Carrier( |
|---|---|---|---|---|
| ☒ | Greco (Last Name) Marguerite (First Name) Primary Role: Respondent Secondary Role (if any): | Last Name First Name: Tonawanda Town Clerk (Firm Name) 2919 Delaware Ave., Room 14 (Street Address) Kenmore (City) New York (State) 14217 (Zip) Phone Fax e-mail | ○ YES ◉ NO | |
| ☒ | Spoth (Last Name) Francina (First Name) Primary Role: Respondent Secondary Role (if any): | Last Name First Name: Amherst Town Clerk (Firm Name) 5583 Main Street (Street Address) Williamsville (City) New York (State) 14221 (Zip) Phone Fax e-mail | ○ YES ◉ NO | |
| ☒ | McDonald, (Last Name) James V. (First Name) Primary Role: Respondent Secondary Role (if any): | Last Name First Name: New York State Department of Health, Vital Records Section (Firm Name) Corning Tower, Empire State Plaza (Street Address) Albany (City) New York (State) 12237 (Zip) Phone Fax e-mail | ○ YES ◉ NO | |
| ☐ | Last Name First Name Primary Role: Secondary Role (if any): | Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail | ○ YES ○ NO | |
| ☐ | Last Name First Name Primary Role: Secondary Role (if any): | Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail | ○ YES ○ NO | |
| ☐ | Last Name First Name Primary Role: Secondary Role (if any): | Last Name First Name Firm Name Street Address City State Zip Phone Fax e-mail | ○ YES ○ NO | |

**RELATED CASES:** List any related actions. For Matrimonial actions, include any related criminal and/or Family Court cases.

| Case Title | Index/Case No. | Court | Judge (if assigned) | Relationship to Instant Case |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

**IN THE SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF ERIE**

| | |
|---|---|
| IN RE: PETITION FOR RELEASE OF VITAL RECORDS<br><br>JASON MATTHEW MARTIN,<br><br>Petitioner,<br><br>-against-<br><br>TIANNA M. MARKS, CITY CLERK FOR THE CITY OF BUFFALO, OFFICE OF THE CITY CLERK,<br><br>KIMBERLY A. BURST, CHEEKTOWAGA TOWN CLERK,<br><br>CATHY RYBCZYNSKI, HAMBURG TOWN CLERK,<br><br>MARGUERITE GRECO, TONAWANDA TOWN CLERK,<br><br>FRANCINA SPOTH, AMHERST TOWN CLERK, AND<br><br>JAMES V. MCDONALD, NEW YORK STATE DEPARTMENT OF HEALTH, VITAL RECORDS SECTION,<br>Respondents. | Index No.:<br><br>Judge:<br><br>ARTICLE 78 PROCEEDING |

APR 24 2024 PM2:22

**PETITION FOR RELEASE OF VITAL RECORDS**

Richard E. Chesney, Jr.
Hardin Thompson, P.C.
11 Broadway
New York, New York 1004
NY ID No. 4759197
Co-Counsel of Record

Robert S. Bernstein
Bernstein-Burkley, P.C.
601 Grant Street
9th Floor
Pittsburgh, PA 15219
NY ID No. 565946

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

Counsel of Record

**IN THE SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF ERIE**

| | |
|---|---|
| IN RE: PETITION FOR RELEASE OF VITAL RECORDS<br><br>JASON MATTHEW MARTIN,<br><br>Petitioner,<br><br>-against-<br><br>TIANNA M. MARKS, CITY CLERK FOR THE CITY OF BUFFALO, OFFICE OF THE CITY CLERK,<br><br>KIMBERLY A. BURST, CHEEKTOWAGA TOWN CLERK,<br><br>CATHY RYBCZYNSKI, HAMBURG TOWN CLERK,<br><br>MARGUERITE GRECO, TONAWANDA TOWN CLERK,<br><br>FRANCINA SPOTH, AMHERST TOWN CLERK, AND<br><br>JAMES V. MCDONALD, NEW YORK STATE DEPARTMENT OF HEALTH, VITAL RECORDS SECTION,<br><br>Respondents. | Index No.:<br><br>Judge:<br><br>ARTICLE 78 PROCEEDING |

**PETITION FOR RELEASE OF VITAL RECORDS**

1. Petitioner, Jason Matthew Martin, by and through his undersigned counsel, files this petition for the entry of an Order, pursuant to Article 78 and PHL§ 4173 and § 4174 directing the Respondents, Erie County Department of Health and New York State Department of Health which are responsible for the maintenance of vital records in the cities of Buffalo, Cheektowaga, Hamburg, Amherst, and Tonawanda subject to payment by Petitioner of applicable fees and completion of applicable

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

documentation, to enter an Order directing that the following long-form, certified, signed and sealed copies, suitable for apostille, of the Marriage Record of Petitioner's Great-Grandparents, Birth Certificates and Marriage Record of Petitioner's Grandparents and Death Certificates of Petitioner's Great- Grandparents and Grandparents.

2. The entry of this requested Order is necessary to allow the Office of the Consulate General of Italy to recognize Petitioner's Italian dual citizenship.

**PARTIES**

3. Petitioner is an adult individual residing in Bellevue, Washington.

4. Respondent, Tianna M. Marks, is the City Clerk for the City of Buffalo, Office of the City Clerk, with an address of 65 Niagara Square, Room 1308, Buffalo, NY 14202.

5. Respondent, Francina Spoth, is the Town Clerk of Amherst, New York, with an address of 5583 Main Street, Williamsville, NY 14221.

6. Respondent, Kimberly A. Burst, is the Town Clerk of the Town of Cheektowaga, New York, with an address of 3301 Broadway Street, Cheektowaga, NY 14227.

7. Respondent, Cathy Rybczynski, is the Town Clerk of the Town of Hamburg, New York, with an address of 6100 South Park Avenue, Hamburg, NY 14075.

8. Respondent, Marguerite Greco, is the Town Clerk of the Town of Tonawanda, New York, with an address of 2919 Delaware Ave., Room 14, Kenmore, NY 14217.

9. Respondent, James V. McDonald, New York Health Department of Vital Records Section, with an address of Corning Tower, Empire State Plaza, Albany, NY 12237.

**JURISDICTION**

10. As a court of general jurisdiction, this state court has subject matter jurisdiction of this case. The necessary vital records are located in New York and several of Petitioner's family members were born and married in New York.

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

11. PHL § 4173(2) provides that the requested birth, death, and marriage certificates can only be issued by order of this court.

12. A prior petition has not been made for the relief requested herein.

13. The Petitioner represents to this Court and to Respondents that the released vital records will be used solely to satisfy the legal and factual requirements to obtain Italian citizenship.

## FACTUAL BACKGROUND

14. Petitioner is in the process of applying to have his Italian Dual citizenship recognized on jure sanguinis.

15. The Petitioner needs certified, signed, and sealed copies, of all vital records (Birth, Death, and Marriage) of his ascendants to present to the Consulate General of Italy on jure sanguinis. A copy of the requirements necessary to establish his right to Italian citizenship is attached hereto as **Exhibit U.**

16. Petitioner's request is based on the information presently known to him.

17. The Petitioner has attempted to obtain all necessary records but was advised that a court order was required.

18. As a result, the Petitioner is seeking a court order to obtain the following documents[1]:

a. Marriage Record of Vincenzo Di Natale/ Vincenzo DiNatale/ Vincent Dinatale/ Vincent (Jimmy) Dinatale/ Vincent (Jimmy) DiNatale, and Rose Fallacaro/Rosetta Anna Fallacaro/Anna Rosa Fallacara/Rose A. Fallacaro/Rose Anna Fallacaro/Anna Dinatale/Anna Rose Dinatale/Anna R. Dinatale/ Rose Anna Dinatale/ Rosetta Rose Fallacaro DiNatale/ Anna Rosa Fallacaro/ Rose/ Rosetta, married on June 25, 1932, in Buffalo, New York.

b. Birth Certificate of Antonio P. DiNatale/ Antoni P. Dinatale/ Anthony Pasquale Di Natale/ Anthony Pasquale Dinatale/ Antonio P. Dinatale/ Anthony P. Dinatale/ Antonio P. Dinatale

[1] Because Petitioner is not in possession of the requested documents, we have included all known aliases for each individual's record requested.

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

Sr./ Anthony P. Dinatale Sr./ Pasquale/ Antonio P D, child of Vincenzo DiNatale and Rose Fallacaro born on June 21, 1933, in Buffalo, New York.

c. Birth Certificate of Betty Gay Moreland/Betty G. Moreland, child of Welby Leslie Moreland and Ann Elizabeth Christman born on May 25, 1933, in Buffalo, New York.

d. Marriage Record of Antonio P. DiNatale/ Antoni P. Dinatale/ Anthony Pasquale Di Natale/ Anthony Pasquale Dinatale/ Antonio P. Dinatale/ Anthony P. Dinatale/ Antonio P. Dinatale Sr./ Anthony P. Dinatale Sr./ Pasquale/ Antonio P D and Betty Gay Moreland/ Betty G. Moreland/Betty Gay Dinatale/Betty Dinatale/ Betty G. Dinata/ Betty G. Dinatale/ Betty G. DiNatale/ Betty G, married on March 14, 1953, in Amherst, New York.

e. Death Certificate of Vincenzo Di Natale/ Vincenzo DiNatale/ Vincent Dinatale/ Vincent (Jimmy) Dinatale/ Vincent (Jimmy) DiNatale passed away on September 2, 1990, in either Cheektowaga, Erie County, New York or Buffalo, New York.

f. Death Certificate of Antonio P. DiNatale/ Antoni P. Dinatale/ Anthony Pasquale Di Natale/ Anthony Pasquale Dinatale/ Antonio P. Dinatale/ Anthony P. Dinatale/ Antonio P. Dinatale Sr./ Anthony P. Dinatale Sr./ Pasquale/ Antonio P D who passed away on May 30, 2002, in Buffalo, New York or Tonawanda, New York.

g. Death Certificate of Rose Fallacaro/Rosetta Anna Fallacaro/Anna Rosa Fallacara/Rose A. Fallacaro/Rose Anna Fallacaro/Anna Dinatale/Anna Rose Dinatale/Anna R. Dinatale/ Rose Anna Dinatale/ Rosetta Rose Fallacaro DiNatale/ Anna Rosa Fallacaro/ Rose/ Rosetta passed away on December 21, 2002, in either Hamburg, New York or Buffalo, New York.

h. Death Certificate of Betty Gay Moreland/ Betty G. Moreland/Betty Gay Dinatale/Betty Dinatale/ Betty G. Dinata/ Betty G. Dinatale/ Betty G. DiNatale/ Betty G passed away on April 7, 2005, in Buffalo, New York.

**FAMILY HISTORY**

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

19. Petitioner's Great-Grandfather was born as Vincenzo Di Natale on February 11, 1906, in Aielli, Italy, to Pasquale Di Natale and Vittoria Petracca as evidenced by his Birth Certificate attached hereto as **Exhibit A**.

20. Petitioner's Great-Grandmother was born as Anna Rosa Fallacara on December 26, 1913, in Giovinazzo, Italy, to Michele Fallacara and Vita Maria Battista as evidenced by her Birth Certificate attached hereto as **Exhibit B**.

21. Great-Great-Grandfather arrived in the United States as Michele Fallacaro on April 11, 1914, as evidenced by his Certificate of Arrival attached hereto as **Exhibit C**.

22. Great-Grandfather arrived in the United States as Vincenzo Di Natale on December 11, 1920, as evidenced by his Certificate of arrival attached hereto as **Exhibit D**.

23. Great-Great-Grandfather declared his intention to become a citizen of the United States as Michele Fallacaro on November 26, 1927, as evidenced by his Declaration of Intention attached hereto as **Exhibit E**.

24. Great-Great-Grandfather became a United State citizen, as Michele Fallacaro, on June 8, 1930, as evidenced by his Naturalization Record attached hereto as **Exhibit F**.

25. Great-Grandparents married on November 20, 1931, in Buffalo, New York, as Welby Leslie Moreland and Ann Elizabeth Christman, as evidenced by the Register of Marriages attached hereto as **Exhibit G**.

26. Great-Grandparents married on June 25, 1932, in Buffalo, New York, as Vincenzo DiNatale and Rose Fallacaro, as evidenced by the Marriage Index attached hereto as **Exhibit H**.

27. Petitioner's Grandmother was born as Betty G. Moreland on May 25, 1933, in Buffalo, New York, as evidenced by the Birth Index attached hereto as **Exhibit I**.

28. Petitioner's Grandfather was born as Antonio P. DiNatale on June 21, 1933, in Buffalo, New York, as evidenced by the Birth Index attached hereto as **Exhibit J**.

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

29. Grandmother was baptized as Betty Gay Moreland on March 25, 1934, as evidenced by her Baptismal Record attached hereto as **Exhibit K**.

30. Great-Grandfather declared his intention to become a citizen of the United States as Vincenzo Di Natale on June 20, 1936, as evidenced by his Declaration of Intention attached hereto as **Exhibit L.**

31. Great-Grandfather became a citizen of the United States as Vincenzo Di Natale on December 1, 1938, as evidenced by his Naturalization Record attached hereto as **Exhibit M.**

32. Grandparents married on March 14, 1953, in Amherst, New York, as Antoni P. DiNatale and Betty G. Moreland, as evidenced by the Marriage Index attached hereto as **Exhibit N**.

33. Petitioner's Mother was born as Beth Marie DiNatale on January 28, 1959, in Buffalo, New York, to Anthony Pasquale DiNatale and Betty Gay Moreland, as evidenced by her Birth Certificate attached hereto as **Exhibit O**.

34. Petitioner was born as Jason Matthew Martin on September 15, 1976, to Beth Marie DiNatale in Buffalo, New York, as evidenced by his Birth Certificate attached hereto as **Exhibit P.**

35. Great-Grandfather passed away on September 2, 1990, as Vincent Jimmy DiNatale, as evidenced by his Death Record attached hereto as **Exhibit Q**.

36. Grandfather passed away on May 30, 2002, as Antonio P. DiNatale, as evidenced by his Death Report from Ancestry.com, attached hereto as **Exhibit R.**

37. Great-Grandmother passed away on December 21, 2002, as Rosetta Rose Fallacaro DiNatale, as evidenced by her Find A Grave Record attached hereto as **Exhibit S.**

38. Grandmother passed away on April 7, 2005, as Betty G. DiNatale, as evidenced by her Obituary attached hereto as **Exhibit T.**

39. Petitioner married Stacia Anissa Ross Corley on June 18, 2011, in Rowan, NC, as evidenced by their Marriage Record attached hereto as **Exhibit V**.

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

WHEREFORE, Petitioner prays this Honorable Court, pursuant to PHL §§ 4173 through 4174, subject to payment by Petitioner of applicable fees and completion of applicable documentation, to enter an Order directing that the following long-form, certified, signed and sealed copies of the following vital records be released to Petitioner by the Respondents:

| | |
|---|---|
| Marriage Record of: | Vincenzo Di Natale/ Vincenzo DiNatale/ Vincent Dinatale/ Vincent (Jimmy) Dinatale/ Vincent (Jimmy) DiNatale, and Rose Fallacaro/Rosetta Anna Fallacaro/Anna Rosa Fallacara/Rose A. Fallacaro/Rose Anna Fallacaro/Anna Dinatale/Anna Rose Dinatale/Anna R. Dinatale/ Rose Anna Dinatale/ Rosetta Rose Fallacaro DiNatale/ Anna Rosa Fallacaro/ Rose/ Rosetta |
| Certificate No.: | 14354 |
| Date of Marriage: | 06/25/1932 |
| Place of Marriage: | Buffalo, New York |
| | |
| Birth Certificate of: | Antonio P. DiNatale/ Antoni P. Dinatale/ Anthony Pasquale Di Natale/ Anthony Pasquale Dinatale/ Antonio P. Dinatale/ Anthony P. Dinatale/ Antonio P. Dinatale Sr./ Anthony P. Dinatale Sr./ Pasquale/ Antonio P D |
| Certificate No.: | 37491 |
| Date of Birth: | 06/21/1933 |
| Place of Birth | Buffalo, New York |
| Father: | Vincenzo Di Natale/ Vincenzo DiNatale/ Vincent Dinatale/ Vincent (Jimmy) Dinatale/ Vincent (Jimmy) DiNatale |
| Full Maiden Name of Mother: | Rose Fallacaro/Rosetta Anna Fallacaro/Anna Rosa Fallacara/Rose A. Fallacaro/Rose Anna Fallacaro/Anna Dinatale/Anna Rose Dinatale/Anna R. Dinatale/ Rose Anna Dinatale/ Rosetta Rose Fallacaro DiNatale/ Anna Rosa Fallacaro/ Rose/ Rosetta |
| | |
| Birth Certificate of: | Betty Gay Moreland/ Betty G. Moreland |
| Certificate No.: | 38191 |
| Date of Birth: | 05/25/1933 |
| Place of Birth | Buffalo, New York |
| Father: | Welby Leslie Moreland |
| Full Maiden Name of Mother: | Ann Elizabeth Christman |

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

| | |
|---|---|
| Marriage Record of: | Antonio P. DiNatale/ Antoni P. Dinatale/ Anthony Pasquale Di Natale/ Anthony Pasquale Dinatale/ Antonio P. Dinatale/ Anthony P. Dinatale/ Antonio P. Dinatale Sr./ Anthony P. Dinatale Sr./ Pasquale/ Antonio P D and Betty Gay Moreland/ Betty G. Moreland/Betty Gay Dinatale/Betty Dinatale/ Betty G. Dinata/ Betty G. Dinatale/ Betty G. DiNatale/ Betty G |
| Certificate No: | 12930 |
| Date of Marriage: | 03/14/1953 |
| Place of Marriage: | Amherst, New York |
| Death Certificate of: | Vincenzo Di Natale/ Vincenzo DiNatale/ Vincent Dinatale/ Vincent (Jimmy) Dinatale/ Vincent (Jimmy) DiNatale |
| Date of Death: | 09/02/1990 |
| Location of Death: | Cheektowaga, Erie County, New York or Buffalo, New York |
| Death Certificate of: | Antonio P. DiNatale/ Antoni P. Dinatale/ Anthony Pasquale Di Natale/ Anthony Pasquale Dinatale/ Antonio P. Dinatale/ Anthony P. Dinatale/ Antonio P. Dinatale Sr./ Anthony P. Dinatale Sr./ Pasquale/ Antonio P D |
| Date of Death: | 05/30/2002 |
| Location of Death: | Buffalo, New York or Tonawanda, New York |
| Death Certificate of: | Rose Fallacaro/Rosetta Anna Fallacaro/Anna Rosa Fallacara/Rose A. Fallacaro/Rose Anna Fallacaro/Anna Dinatale/Anna Rose Dinatale/Anna R. Dinatale/ Rose Anna Dinatale/ Rosetta Rose Fallacaro DiNatale/ Anna Rosa Fallacaro/ Rose/ Rosetta |
| Date of Death: | 12/21/2002 |
| Location of Death: | Hamburg, New York or Buffalo, New York |
| Death Certificate of: | Betty Gay Moreland/ Betty G. Moreland/Betty Gay Dinatale/Betty Dinatale/ Betty G. Dinata/ Betty G. Dinatale/ Betty G. DiNatale/ Betty G |
| Date of Death: | 04/07/2005 |
| Location of Death: | Buffalo, New York |

I affirm this ___ day of _____, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

DATE: _____, 2024

Respectfully submitted,

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

Richard E. Chesney, Jr.
Hardin Thompson, P.C.
11 Broadway
New York, New York 1004
NY ID No. 4759197
Co-Counsel of Record

*/s/ Robert S. Bernstein*
Robert S. Bernstein
Bernstein-Burkley, P.C.
601 Grant Street
9th Floor
Pittsburgh, PA 15219
NY ID No. 565946
Counsel of Record

Attachment: DOC042524-04252024140253 (COM-2024-40 : Request for Judicial Intervention & Article 78 Proceeding: Jason Matthew Martin Vs.

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28953

**COMMUNICATION 2024-41**

**REFERRED**

# Notice of Claim: Philip Colson Vs. Town of Amherst

**5/13/2024**
Referred to Town Attorney

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

To Town of Amherst, Town Clerk
ATTN: Town Clerks Office
5583 Main St.
Williamsville, 14221

I live at 80 Shellridge Dr. in East Amherst. I bought the house in September of 2020.

In 2021, we began having an issue with our sump pump discharge pipe. We used Roto-Rooter to get the pipe cleared. They said the problem came from a lot of roots that broke through the pipe about 15 feet from the street. They were able to break up the roots and the problem stopped until early April of this year. **The closest tree is the tree between the sidewalk and the street, which I understand to be owned by the Town of Amherst. A root broke through our property line and was breaking through our PVC pipe.**

In early April of 2024, we had the problem return, and this time the plumber said it could not be cleared by conventional augering. He said we had to dig up the yard and fix it. Please see the images below to see the root that broke through the PVC pipe. He is a Licensed Master Plumber and I can provide contact info if needed.

**The total cost of this was $380.63 for the diagnosis and $2,800 to dig up and fix the pipe.**

The break in the discharge pipe occurred at the marked spot in the satellite image.

**The tree has now cost me cumulatively more than $3,000, and I need to be reimbursed for this. The root has caused our sump pump to run constantly until it was fixed, and also cost me supplies to mitigate the problem once I was told the pipe was not fixable by normal augering.**

I will happily provide any other information requested, but I need this money back. It is a lot of money that we lost through no fault of our own and directly due to a tree that we neither planted nor wanted on land that we do not own.

Thank you,
Philip Colson

Attachment: DOC042924-04292024144455 (COM-2024-41 : Notice of Claim: Philip Colson Vs. Town of Amherst)

APR 29 2024 PM2:3

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
DOC ID: 28956

**COMMUNICATION 2024-42**

**REFERRED**

# Notice of Claim: State Farm Mutual Automobile Insurance Company A/S/O Mario Avarello Vs. Town of Amherst

**5/13/2024**
Referred to Town Attorney

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

April 18, 2024

Town Of Amhurst - Hwy Dept
1042 N Forest Rd
Williamsville NY 14221-4499

**Subrogation Services**
PO Box 106172
Atlanta GA 30348-6172

RECEIVED
APR 29 2024
TOWN ATTORNEY

RE: Claim Number: 52-57T2-52H
Our Insured: Mario Avarello
Date of Loss: October 16, 2023
Amount of Claim: $13,155.08

To Whom It May Concern:

We recently sent you a letter notifying you of the amount you owe for this claim. We have now made an additional payment/ payments on this claim. The total amount due is now $13,155.08.

Please remit your payment or contact us to discuss arrangements. Thank you for your cooperation.

If you have any questions or need additional information, please call me at the number listed below. If I am not available, any other member of my team may assist you.

Sincerely,

Claim Associate
(877) 787-8276 Ext. 71
Fax: (866) 231-9276

State Farm Mutual Automobile Insurance Company

Attachment: DOC050124-05012024152247 (COM-2024-42 : Notice of Claim: State Farm Mutual Automobile

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 29005 **RESOLUTION 2024-461** **ADOPTED**

# Public Improvement Permit No. 3113 Street Lights – Muir Woods – Audubon Extension 2005.008B/SP-2020-13

Attached please find an application for a Street Lighting Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $15,150.00.

We are sending two (2) checks to the Comptroller's Office, one for $150.00 to be retained as a Permit Fee and one in the amount of $15,000.00 which will be held in escrow to cover the inspection costs.

At this time, we are asking for your approval of the application for PIP No. 3113.

Thank you for considering this request.

**5/13/2024**
Consent

**FINANCIAL IMPACT:**

. Permit fee and inspection cost amount to $15,150.00.

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

# APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC/PRIVATE IMPROVEMENT

*TO THE HONORABLE TOWN BOARD:*
**Town of Amherst, Erie County, N.Y.**

Date: April 23, 20 24

**Application is Hereby Made for Permission to Construct:**

| | Public | Private |
|---|---|---|
| Pavement & Curbing | ☐ | ☐ |
| Waterline | ☐ | ☐ |
| Sanitary Sewer | ☐ | ☐ |
| Storm System | ☐ | ☐ |
| Street Lighting | ☒ | ☐ |

**Estimated Cost of Construction $** 150,000.00

**Address and/or Subdivision Name:** Muir Woods - Aspen Heights Student Housing **Town of Amherst Job:** SP-2020-13/2005.008B

**Description and location of improvements including quantities:** Installation of nine (9) Town Standard street lights along JJ Audubon Pkwy, Traditional Post Top Streetworks Archeon Small PA 1 Roadway Luminaire ARCH-S-PA1-100-740-U-T2R-A15-BK-10K-PR7, poles and all associated equipment, lines, and services.

| | Name | Address | Phone |
|---|---|---|---|
| **Owner:** | Amherst NY properties, KP6, LLC. | One Town Center Road, Suite 300, Boca Raton, FL 33486 | 704-255-4283 |
| **Engineer/Designer:** | Greenman-Pedersen, Inc. | 4950 Genesee Street, Suite 100, Buffalo, NY 14225 | 716-633-4844 |
| **Contractor:** | Christa Construction | 64 Commercial Street, Suite 401, Rochester, NY 14614 | 585-924-3050 |

This application must be submitted in quadruplicate along with four (4) full size copies of construction drawings showing the extent of the improvements which will be incorporated into and made part of this application. In the event the drawings submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined. **A PDF copy of the colored construction plans must also be provided.** The lighting PIP re uires submission of design plans prepared by a **licensed electrical engineer** and in accordance with Town and National Grid re uirements for **review and approval.**

Work under this permit shall be started within **60 days** from the date of approval thereof. Work under this permit shall be completed within **1 year** of the approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees from this permit shall be covered by **separate** checks made payable to the Town of Amherst in the amounts shown below and as set forth by the Town Board. The inspection fee is non-refundable and shall cover all work under this permit at no additional cost to the Town of Amherst. The inspection fee may be increased by a commercially reasonable amount during or after implementation of the improvements at the discretion of the Town Engineer due to unforeseen field conditions or complexity of design. All construction work is to be done during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees. Digital and full size hard copies of the as-built drawings shall be provided upon completion of the work. The lighting as-builts must contain field verified survey data in AutoCAD or GIS format for all electrical components including conduits, poles with numbering, power sources, and handhole locations.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such a permit is granted, they will comply with the terms thereof, the Laws of the state of New York, the Ordinances of the Town of Amherst and Regulations of the various departments to the Town and State of New York, and that they shall notify the Engineering Department forty-eight (48) business hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

| ITEM | | FEE |
|---|---|---|
| PERMIT | | $150.00 |
| INSPECTION | 10% of Estimate of Cost of Construction | $15,000.00 |
| VIDEO INSPECTION - SANITARY | | |
| $11.50 Per Linear Foot | | |
| TOTAL FEE | | $15,150.00 |

Owner sign Here

Amherst NY Properties KP6, LLC.
Please Print Name

One Town Center Road, Suite 300, Boca Raton, FL 33486
Address

Boca Raton | FL | 33486 | 704-255-4283
City | State | zip | Phone

Subscribed and sworn to before me this 25 Day of April 20 24

Notary Public, Palm Beach County, Florida

BRIA KRUPNICK
Notary Public - State of Florida
Commission # HH 294878
My Comm. Expires Jul 28, 2026
Bonded through National Notary Assn.

I do certify that I have examined the foregoing petition and sketch and certify that they conform to Ordinances of the Town of Amherst.

Town Engineer: Director of Engineering Services

Receipt is hereby acknowledged of the sum of $ _____, being the required fees established by the Town Board of the Town of Amherst, NY

Public/Private Improvement Permit No. 3113

Town Clerk

Rev. 9/13/20239/12/2023

Attachment: PIP 3113_2024-05-07_Muir Woods Audubon Extension (RES-2024-461 : Public Improvement Permit No. 3113)

Date: Apr 26, 2024 Check No: 1707 Total: $150.00 Bank: Fifth Third Bank

Payee: Town of Amherst ( TOWNOA )

| | Property | Date | Invoice Number | Account No. | Description | Amount Due | Amount Paid |
|---|---|---|---|---|---|---|---|
| 1 | Aspen Buffalo | 04/24/2024 | SP-2020-13/2002.008B... | | Permit Fee | $150.00 | $150.00 |
| | | | | | | | $150.00 |

Date: Apr 26, 2024 Check No: 1707 Total: $150.00 Bank: Fifth Third Bank

Payee: Town of Amherst ( TOWNOA )

| | Property | Date | Invoice Number | Account No. | Description | Amount Due | Amount Paid |
|---|---|---|---|---|---|---|---|
| 1 | Aspen Buffalo | 04/24/2024 | SP-2020-13/2002.008B... | | Permit Fee | $150.00 | $150.00 |
| | | | | | | | $150.00 |

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

Amherst NY Properties KP6 LLC
Aspen Buffalo
2800 S Texas Ave, Ste 350
Bryan, TX 77802

Fifth Third Bank

1707

Date: 04/26/2024

Amount
$150.00

***One Hundred Fifty Dollars And 00/100 **********

Void after 90 days

PAY
TO THE
ORDER OF

Town of Amherst
5583 MAIN ST
WILLIAMSVILLE, NY 14221-5488

HEAT SENSITIVE RUB AREA TO VERIFY

⑈001707⑈ ⑆042000314⑆ 7029151235⑈

VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID

Attachment: PIP 3113_2024-05-07_Muir Woods Audubon Extension (RES-2024-461 : Public Improvement Permit No. 3113)

Date: Apr 26, 2024 Check No: 1708 Total: $15,000.00 Bank: Fifth Third Bank

Payee: Town of Amherst ( TOWNOA )

| | Property | Date | Invoice Number | Account No. | Description | Amount Due | Amount Paid |
|---|---|---|---|---|---|---|---|
| 1 | Aspen Buffalo | 04/25/2024 | SP-2020-13/2002.008B | | Sanitary Inspection | $15,000.00 | $15,000.00 |
| | | | | | | | $15,000.00 |

Date: Apr 26, 2024 Check No: 1708 Total: $15,000.00 Bank: Fifth Third Bank

Payee: Town of Amherst ( TOWNOA )

| | Property | Date | Invoice Number | Account No. | Description | Amount Due | Amount Paid |
|---|---|---|---|---|---|---|---|
| 1 | Aspen Buffalo | 04/25/2024 | SP-2020-13/2002.008B | | Sanitary Inspection | $15,000.00 | $15,000.00 |
| | | | | | | | $15,000.00 |

THIS CHECK HAS A COLORED BACKGROUND AND CONTAINS MULTIPLE SECURITY FEATURES - SEE BACK FOR DETAILS

Amherst NY Properties KP6 LLC
Aspen Buffalo
2800 S Texas Ave, Ste 350
Bryan, TX 77802

Fifth Third Bank

1708

Date: 04/26/2024

Amount
$15,000.00

***Fifteen Thousand Dollars And 00/100 **********

Void after 90 days

PAY
TO THE
ORDER OF

Town of Amherst
5583 MAIN ST
WILLIAMSVILLE, NY 14221-5488

HEAT SENSITIVE
RUB AREA TO VERIFY

⑈001708⑈ ⑆042000314⑆70291512 35⑈

VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID VOID

Attachment: PIP 3113_2024-05-07_Muir Woods Audubon Extension (RES-2024-461 : Public Improvement Permit No. 3113)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Engineering Services
Initiated by: **Brian J. Armstrong**
Co-Sponsored by:

DOC ID: 29006 **RESOLUTION 2024-462** **WITHDRAWN**

# Public Improvement Permit No. 3118 Street Lights – Miller's Crossing Subdivision Phase 1 & 2 2018.043/SUB-2018-02

Attached please find an application for a Street Lighting Public Improvement Permit properly filled out. Permit fee and inspection cost amount to $8,650.00.

We are sending two (2) checks to the Comptroller's Office, one for $150.00 to be retained as a Permit Fee and one in the amount of $8,500.00 which will be held in escrow to cover the inspection costs.

At this time, we are asking for your approval of the application for PIP No. 3118.

Thank you for considering this request.

**FINANCIAL IMPACT:**

Permit fee and inspection cost amount to $8,650.00.

| **RESULT:** | **WITHDRAWN** |
|---|---|

# APPLICATION FOR PERMIT TO CONSTRUCT A PUBLIC/PRIVATE IMPROVEMENT

***TO THE HONORABLE TOWN BOARD:***
**Town of Amherst, Erie County, N.Y.**

Date: February 21, 20 24

**Application is Hereby Made for Permission to Construct:**

| | Public | Private |
|---|---|---|
| Pavement & Curbing | ☐ | ☐ |
| Waterline | ☐ | ☐ |
| Sanitary Sewer | ☐ | ☐ |
| Storm System | ☐ | ☐ |
| Street Lighting | ☒ | ☒ |

**Estimated Cost of Construction $** 85,000.00

**Address and/or Subdivision Name:** Miller's Crossing Subdivision **Town of Amherst Job:** 2018.043/SUB-2018

**Description and location of improvements including quantities:** Installation of sixteen (16) total Town Standard street lights along River Oak Ln (7 ea - private), Streamsong Ct (8 ea - public), and Autumn Meadows Ln (1 ea - public) Traditional Post Top Signify LED TownView TVPR-S3-S-16-G1-7-3W-730-A-N-R7-N-SP1-N-N-N-BKS, poles and all associated equipment.

| | Name | Address | Phone |
|---|---|---|---|
| **Owner:** | Natale Development | 9159 Main Street | 716-580-3318 |
| **Engineer/Designer:** | Greenman-Pedersen, Inc. | 4950 Genesee Street, Suite 100, Buffalo, NY 14225 | 716-633-4844 |
| **Contractor:** | Cimato Brothers Construction | 9220 Transit Road, East Amherst, NY 140514 | 716-688-3536 |

This application must be submitted in quadruplicate along with four (4) full size copies of construction drawings showing the extent of the improvements which will be incorporated into and made part of this application. In the event the drawings submitted contains other facilities not covered by this permit, then those covered by this permit must be designated by coloring so that a clear-cut picture of the work under this permit is easily determined. **A PDF copy of the colored construction plans must also be provided.** The lighting PIP re uires submission of design plans prepared by a **licensed electrical engineer** and in accordance with Town and National Grid re uirements for **review and approval.**

Work under this permit shall be started within **60 days** from the date of approval thereof. Work under this permit shall be completed within **1 year** of the approval thereof. Any request for extension shall be addressed in writing to the Town Board of the Town of Amherst.

Fees from this permit shall be covered by **separate** checks made payable to the Town of Amherst in the amounts shown below and as set forth by the Town Board. The inspection fee is non-refundable and shall cover all work under this permit at no additional cost to the Town of Amherst. The inspection fee may be increased by a commercially reasonable amount during or after implementation of the improvements at the discretion of the Town Engineer due to unforeseen field conditions or complexity of design. All construction work is to be done during normal and usual working hours. Any deviation from this must be compensated by the payment of additional fees. Digital and full size hard copies of the as-built drawings shall be provided upon completion of the work. The lighting as-builts must contain field verified survey data in AutoCAD or GIS format for all electrical components including conduits, poles with numbering, power sources, and handhole locations.

In consideration of the granting of the permit hereby petitioned for, the undersigned hereby agrees that if such a permit is granted, they will comply with the terms thereof, the Laws of the state of New York, the Ordinances of the Town of Amherst and Regulations of the various departments to the Town and State of New York, and that they shall notify the Engineering Department forty-eight (48) business hours in advance of commencing any work under this permit.

The undersigned hereby certifies that all of the information contained in this petition is correct and true.

| ITEM | | FEE |
|---|---|---|
| PERMIT | | $150.00 |
| INSPECTION | 10% of Estimate of Cost of Construction | $8,500.00 |
| VIDEO INSPECTION - SANITARY | | |
| $ 1.50 Per Linear Foot | | |
| TOTAL FEE | | $8,650.00 |

Owner sign Here

Natale Development
Please Print Name

9159 Main Street
Address

Clarence | NY | 14031 | 716-580-3318
City | State | zip | Phone

Subscribed and sworn to before me this 13 Day of MARCH 20 24

LAURIE SISTI
NOTARY PUBLIC STATE OF NEW YORK
No. 01SI5021060
Qualified in Erie County
My Commission Expires 12-06-2025

Notary Public, Erie County, New York

I do certify that I have examined the foregoing petition and sketch and certify that they conform to Ordinances of the Town of Amherst.

~~Town Engineer~~: Director of Engineering Services

Receipt is hereby acknowledged of the sum of $ _____, being the required fees established by the Town Board of the Town of Amherst, NY

Public/Private Improvement Permit No. 3118

Town Clerk

Rev. 9/13/2023

Attachment: PIP 3118_2024-05-07_Millers Crossing (RES-2024-462 : Public Improvement Permit No. 3118)

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

Francina J. Spoth
Town Clerk

Meeting: 05/13/24 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 29011 **RESOLUTION 2024-463** **ADOPTED**

# Rescinding Resolution 2024-266 Adopted March 25, 2024 Authorizing the Construction of a New Theater Located at Amherst Central Park

**Suspension to Town Board Agenda Item May 13, 2024**

**TO:** Amherst Town Board

**FROM:** Brian Kulpa, Supervisor

**DATE:** May 13, 2024

**RE:** **Rescinding Resolution 2024-266 Adopted March 25, 2024 Authorizing the Construction of a New Theater Located at Amherst Central Park**

RESOLUTION OF THE TOWN OF AMHERST, NEW YORK, ADOPTED MAY 13, 2024, RESCINDING A BOND RESOLUTION ADOPTED MARCH 25, 2024, AUTHORIZING THE CONSTRUCTION OF A NEW THEATER LOCATED IN AMHERST CENTRAL PARK, STATING THE ESTIMATED TOTAL MAXIMUM COST THEREOF IS $11,000,000, APPROPRIATING SAID AMOUNT FOR SUCH PURPOSE, AND AUTHORIZING THE ISSUANCE OF BONDS IN THE PRINCIPAL AMOUNT OF $11,000,000 TO FINANCE SAID APPROPRIATION

THE TOWN BOARD OF THE TOWN OF AMHERST, IN THE COUNTY OF ERIE, NEW YORK, HEREBY RESOLVES (by the favorable vote of not less than two-thirds of all the members of said Town Board) AS FOLLOWS:

Section 1. The bond resolution of the Town of Amherst, in the County of Erie, New York (herein called the "Town"), adopted by the Town Board of the Town on March 25, 2024, which authorized the issuance of $11,000,000 in obligations of the Town ($8,500,000 in serial bonds and $2,500,000 in bond anticipation notes issued in anticipation of payment from a tenant) for the construction of a new theater located in Amherst Central

Park, is hereby rescinded. No bonds or bond anticipation notes have been heretofore issued pursuant thereto. The amount of borrowing authorization hereby rescinded is $11,000,000.

**5/13/2024**
A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Berger and unanimously approved 5-0.

**FINANCIAL IMPACT:**

rescind of bond

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