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, September 13, 2021 | **7:00 PM** | **Amherst Municipal Building**

I. IN MEMORY

9/11 Victims with connections to Amherst & Western New York:

World Trade Center (North Tower)

Brandon J. Buchanan, 24, Cantor Fitzgerald

Michael Canty, 30, Carr Futures

Leonard M. Castrianno, 30, Cantor Fitzgerald

H. Joseph Heller, 37, Carr Futures

Stephen Hoffman, 36, Cantor Fitzgerald

Shai Levinhar, 29, Cantor Fitzgerald

Christopher E. Lunder, 34, Cantor Fitzgerald

Daniel Robert Nolan, 44, Marsh McLennan

Michael P. O'Brien, 42, Cantor Fitzgerald

Todd Pelino, 34, Cantor Fitzgerald

John Patrick Salamone, 37, Cantor Fitzgerald

Melissa Vincent, 28, Alliance Consulting

World Trade Center (South Tower)

FF Robert Foti, 42, Ladder 7, Engine 16

Philip T. Hayes 67, Fire Safety Director, World Trade Center, OCS Security

FF Michael F. Lynch, 30, Engine 40/L35 (on rotation from L32)

Lt. Paul T. Mitchell, 46, Battalion 1, Hook & Ladder 110

Sean Rooney, 50, Aon Corporation

FF Christopher Santora, 23, Engine 54, Ladder 4

FF Dennis Scauso, 46, HazMat 1

Margaret Walier Seeliger, 34, Aon Corporation

Jeffrey Shaw, 42, Forest Electric Company

Eric Thorpe, 35, Keefe, Bruyette & Woods

Rodney James Wotton, 36, Fiduciary Trust International

Pentagon

David W. Laychak, 40, Civilian Budget Analyst, US Army

United Flight 175 (South Tower)

Amy King, 29, Flight Attendant

Michael Tarrou, 38, Flight Attendant

American Airlines Flight 77 (Pentagon)

Renee May, 39, Flight Attendant

II. INVOCATION

Councilmember Szukala

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL:

7:00 PM Meeting called to order on September 13, 2021 at Amherst Municipal Building, 5583 Main Street, Williamsville, NY.

Attendee Name	Organization	Title	Status	Arrived
Brian J. Kulpa	Town of Amherst	Supervisor	Present	
Jacqualine Berger	Town of Amherst	Deputy Supervisor	Present	
Deborah Bruch Bucki	Town of Amherst	Councilmember	Present	
Shawn Lavin	Town of Amherst	Councilmember	Present	
Michael Szukala	Town of Amherst	Councilmember	Present	
Francina J. Spoth	Town of Amherst	Town Clerk	Present	
Timothy Koller	Town of Amherst	Deputy Town Clerk	Present	
Stanley J. Sliwa	Town of Amherst	Town Attorney	Present	
Daniel J. Ulatowski	Town of Amherst	Assistant Planning Director/ZEO	Present	
Daryl Bramer	Town of	Comptroller	Present	

	Amherst			
Jeffrey S. Burroughs	Town of Amherst	Town Engineer	Present	
Patrick G. Lucey	Town of Amherst	Highway Superintendent	Present	
Lynda Juul	Town of Amherst	Director of Finance	Present	
Christopher P. Schregel	Town of Amherst	Traffic-Safety Coordinator	Present	

V. MINUTES APPROVAL

1. Monday, August 23, 2021

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

VI. PROCLAMATIONS AND ANNOUNCEMENTS

Councilmember Bucki recognized Danne Farrell for his contribution to the Town ceremonies, namely 9/11 Commemorative Ceremony and the Amherst Veterans Honoring Ceremony.

VII. PUBLIC HEARINGS

Speakers will be limited to 3 minutes.

1. Resolution 2021-569

Request to Rezone 468 Harding Road

~~Denial of~~ Local Law to Amend the Zoning Map
(468 Harding Road, Z-2020-13)

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of May 20, 2021 that the proposed Traditional Single-Family Residential District (TR-3) zoning at 468 Harding Road is **not consistent** with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board ~~**denies**~~ approves the request to amend the Town Zoning map for the following reasons as stated by the Planning Board:

1. The proposed zoning and development plan is inconsistent with the policies of the Comprehensive Plan and the Zoning Ordinance.

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

7/12/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:11 PM.

Jeffery D. Palumbo, Esq., Barclay Damon LLP, presented and answered questions along with David Capretto from Forbes Capretto Homes.

The following Speakers addressed the Town Board and all spoke in opposition:
Mark Bechtel, 442 Harding Rd. - Opposed to 10 more houses, roads are narrow, additional cars, increased noise and parking; no sidewalks, no street lights
Kathleen Santillo, 411 Harding Rd. - 10 houses too close together, traffic, too many cars
John Squires, 437 Harding Rd. - Increased traffic, not comfortable with 10 homes

As there were no further speakers, Supervisor Kulpa motioned to adjourn the public hearing and set a decision date for August 9th. The motion was seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:43 PM.

8/09/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:06 PM.

Jeffery Palumbo, Esq. addressed the Town Board. David Capretto answered questions.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was closed at 7:12 PM.

A motion to set a Decision Date for Sept. 13th was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0.

9/13/2021

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

Jeffery Palumbo, Esq. addressed the Town Board.

Deputy Supervisor Berger made a motion to adopt the resolution as drafted, Councilmeber Lavin seconded it. Deputy Superviosr Berger then made a motion to rescind her previous motion, seconded by Councilmember Lavin to amend the resolution to grant the request of rezoing and adopt the negative declaration and to change it in the body and title of the resolution and approved via roll call vote 3-2 (nay Kulpa & Bucki).

RESULT:	**ROLL CALL VOTE (ADOPTED) [3 TO 2]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Michael Szukala, Councilmember
AYES:	Berger, Lavin, Szukala
NAYS:	Kulpa, Bucki

2. Resolution 2021-570

Request to Reclassify a Portion of 520 Campbell Boulevard and to Amend the Audubon Development Plan

Adoption of Local Law to Amend the Zoning Map
(520 Campbell Boulevard (portion), Z-2021-03)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of May 28, 2021 that the proposed NCD-ND zoning at 520 Campbell Boulevard (portion) is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

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

1. That future development of the site complies with the dimensional requirements set forth in the R-3 zoning district listed in §203-3-6(B) of Town Code.

2. That the 9.88 acres be donated to the Town of Amherst.

7/12/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:44 PM.

Sean W. Hopkins, Esq., presented and answered questions.

The following Speaker addressed the Town Board:
Judy Colton, Sunshine Dr. - Questioned whether this rezoning would have any impact on the land near Bucyrus Heights

As there were no further speakers, Supervisor Kulpa motioned to adjourn the public hearing and set a decision date for August 9th. The motion was seconded by Councilmember Lavin

and unanimously approved 5-0. The public hearing was adjourned at 8:04 PM.

8/09/2021
A motion to adjourn until Sept. 13th was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:13 PM.

9/13/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:20 PM.

Sean W. Hopkins, Esq., presented and answered questions.

As there were no speakers, Supervisor Kulpa motioned to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:23 PM.

A motion to approve was made by Supervisor Kulpa and seconded by Deputy Supervisor Berger. A motion was then made by Supervisor Kulpa to amend, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Amendment adds a second condition.

A motion to approve as amended was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and approved via roll call vote 4-1 (Nay, Bucki).

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

3. Resolution 2021-678

10060 & 10090 Transit Road Rezoning

DRAFT RESOLUTION
(August 9, 2021)

Adoption of Local Law to Amend the Zoning Map
(10060 & 10090 Transit Road & Z-2019-06)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with

the findings of the Planning Board as stated in their resolution of June 24, 2021 that the proposed Center 2.5 District (CTR-2.5), Multifamily Residential District Five (MFR-5) and Residential District Three (R-3) zoning at 10060 & 10090 Transit Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

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

1. An agricultural data statement be provided with any application for development as required by Erie County Department of Environment and Planning (ECDEP).

2. That the subject area be removed from Agricultural District 17 - Amherst prior to submittal of any application for site development as required by ECDEP.

3. As required by New York State Department of Transportation (NYSDOT) a revised Traffic Impact Study (TIS) be provided with any application for development.

4. That the Petitioner address concerns of the New York State Department of Transportation (NYSDOT) during future development review.

8/09/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:16 PM.

Jeffery Palumbo, Esq. presented and answered questions from the Board.

The following speakers addressed the Town Board:
Matt Fitzgerald, Esq., Phillips Lytle LLP, spoke in opposition on behalf of the Ransom Oaks Community Corp. and their several concerns
Colleen Bogdan, 108 Summershade Ct. - Questioned detailed reports that are not included or signed off by Engineer; Spot rezoning; not consistent with neighborhood; the neighborhood is opposed
Steve Massaro, 1116 Smith Rd. - Flooding problems; grossly oversized project; traffic
William Klein, 28 Oak Hill Ct. - Water tables; traffic on Smith; cut through on Ruby Lane.; home values
Colleen Daumen, 418 Glen Oak Dr. - Additional stress of traffic, water, sewage & to fire departments
Rick Mullaney, 25 Honey Suckle Way - Voiced his concerns

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing until Sept. 13th, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 8:04 PM.

9/13/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:25 PM.

Jeffery Palumbo, Esq. presented and answered questions from the Board.

There were no speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing and set a decision date for October 18th. The motion was seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 7:30 PM.

10/18/2021

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

Jeffery Palumbo, Esq. provided an update and answered questions from the Board.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:05 PM.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 10/18/2021 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Deputy Supervisor	
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala	

4. Resolution 2021-679

6842 & 6846 Main Street (Portions) Rezoning

Adoption of Local Law to Amend the Zoning Map
(Portions of 6842 & 6846 Main Street, Z-2021-05)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of June 24, 2021 that the proposed Deep Corridor 5 District (DC-5) zoning at portions of 6842 & 6846 Main Street is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

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

1. That the maximum allowed building height on the portion of the subject rezoning area currently addressed 6842 Main Street shall be limited to 2 stories with a peak height of 35 ft. and recorded as deed restrictions on the land.

2. That the maximum allowed building height on the portion of the subject rezoning area currently addressed 6846 Main Street shall be a maximum of 4 stories with peak height of 60 ft. and recorded as deed restrictions on the land.

8/09/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 8:07 PM.

Sean W. Hopkins, Esq. presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 8:24 PM. Supervisor Kulpa then motioned to set a decision date for Sept. 13th, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

9/13/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:30 PM.

Sean W. Hopkins, Esq., presented and answered questions.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger 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 Berger and unanimously approved 5-0.

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

5. Resolution 2021-772

All-Way Stop at Dawnbrook Lane & Morningstar Court

A public hearing for the installation of a third stop sign at the intersection of Dawnbrook Lane & Morningstar Court making it an all-way stop intersection.

"The intersection of Dawnbrook Lane & Morningstar Court is hereby designated as an all-way stop intersection and stop signs shall be installed on

all legs of the intersection."

9/13/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:33 PM.

Christopher Schregel, Traffic Safety Liaison, presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:36 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0.

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

6. Resolution 2021-773

Relief from Zoning Condition - 3800 Sheridan Drive

Adoption of Local Law for Relief from a Zoning Condition
(3800 Sheridan Drive, Z-2004-26_A)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of August 19, 2021, that the proposed relief of zoning condition for a proposed automobile dealership with overhead doors, is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed relief of a zoning condition is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to grant relief from a zoning condition that prohibited overhead doors that face north or west, on the subject property.

Supervisor Kulpa made the following request: that the Applicant and the Town of

Amherst Planning Board, along with New York State Department of Transportation, consider adding to the pedestrian realm and offering more significant pedestrian refuge along Sheridan Drive.

9/13/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:36 PM.

Sean Hopkins, Esq., presented and answered questions.

There were no speakers therefore, Supervisor Kulpa moved to close the hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:45 PM.

A motion to approve was made by Supervisor Kulpa and seconded by Councilmember Lavin. A motion was then made by Supervisor Kulpa to amend, seconded by Councilmember Bucki and unanimously approved 5-0. Amendment is underlined above.

A motion to approve as amended was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0.

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

VIII. 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 (2)

3. Amherst Community Diversity Commission (9)

4. Amherst Conservation Advisory Council (4)

5. Amherst Industrial Development Agency

Membership is full.

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

7. **Arts & Culture in Public Places Board (5)**

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

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

10. **Board of Ethics**
    Membership is full.

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

12. **Citizens Financial Advisory Committee (2)**

13. **Design Advisory Board**

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

15. **Employee Suggestion Review Committee**
    Membership is full.

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

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

18. **Glen Park Joint Board (1)**
    Village vacancy

19. **Government Study Committee (2)**

20. **Historic Preservation Commission (1)**

21. **Information Technology Advisory Committee (2)**

22. **Library Board of Trustees (1)**

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

24. **Open Government Advisory Board (4)**

25. **Planning Board**

Membership is full.

26. Recreation Commission (2)

27. Recycling and Waste Committee (3)

28. Senior Services Advisory Board (2)

29. Traffic Safety Board

Membership is full.

30. Youth Board (5)

Adult vacancies (5), Youth vacancies (0)

31. Zoning Board of Appeals

Membership is full.

IX. 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 Deputy Supervisor Berger and unanimously approved 5-0. Public Expression was opened at 7:50 PM.

The following speaker addressed the Town Board:
Ray Herman, 114 Oakgrove Dr - 9/11 Ceremony, in favor of Supervisor Kulpa & Councilmember Bucki vote against 468 Harding Road rezoning

There were no further speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Public Expression was closed at 7:51 PM.

X. CONSENT AGENDA

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

XI. COUNCILMEMBER RESOLUTIONS

A. SUPERVISOR KULPA:

1. Resolution 2021-774

Elected Officials' Salaries for 2022

BE IT RESOLVED that Elected Officials' salaries be set for the year 2022 as follows:

	2021 Salary	2022 Proposed
Supervisor	$105,000	$105,000
Deputy Supervisor	$ 4,000*	$ 4,000*
Councilmembers	$ 35,000	$ 35,000
Town Clerk	$ 82,000	$ 82,000
Highway Superintendent	$100,000	$100,000
Town Justices	$102,000	$102,000

BE IT FURTHER RESOLVED that these salaries be part of the preliminary budget and part of the notice of hearing of the preliminary budget.

* Stipend for Deputy Supervisor

9/13/2021
Consent

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

B. DEPUTY SUPERVISOR BERGER:

C. COUNCILMEMBER BUCKI:

D. COUNCILMEMBER LAVIN:

E. COUNCILMEMBER SZUKALA:

XII. DEPARTMENT HEAD RESOLUTIONS AND REPORTS

A. TOWN ATTORNEY:

1. Resolution 2021-775

Abandonment and Sale of S. Linden

AGENDA ITEM : SEPTEMBER 13th, 2021

TO: **Town Board**

FROM: **Ann Demopoulos, Esq., Deputy Town Attorney**

DATE: September 7, 2021

RE: Schedule Public Hearing
Abandonment and Sale of S. Linden Street (Paper Street)

At its meeting held June 7th, 2021, the Town Board authorized the abandonment and sale of S. Linden Street (2021-469). The Public Hearing was withdrawn from the agenda on August 9th, 2021. In furtherance of that authorization and subsequent action, kindly adopt a resolution scheduling a Public Hearing for October 18th, 2021 at 7:00 p.m. to serve as notice to any and all interested parties of the Town's intention to sell the abandoned street.

Thank you.

c: Kathy Cooper, Deputy Town Clerk
(**Agenda Item : September 13th, 2021**)
Dan Howard, Director of Planning
Patrick G. Lucey, Superintendent of Highway

9/13/2021
Consent

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

2. Resolution 2021-776

Master Small Cell License Agreement - CRS #2877

AGENDA ITEM : SEPTEMBER 13th, 2021

TO: Town Board

FROM: Stanley J. Sliwa, Esq., Town Attorney

DATE: September 8, 2021

RE: Master Small Cell License Agreement
Between Bell Atlantic Mobil Systems LLC d/b/a Verizon Wireless and the Town of Amherst (CRS #2877)

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

Thank you.

SJS:nmb
Attachment
c: Kathy Cooper, Deputy Town Clerk
(**Agenda Item : September 13th, 2021**)

9/13/2021
Consent

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

3. Resolution 2021-777

License Agreement - 146 Florence Lane (Collymore) (CRS #2869)

AGENDA ITEM : SEPTEMBER 13TH, 2021

TO: **Town Board**

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

DATE: **September 8, 2021**

RE: **Request for License Agreement (CRS #2869)**
Installation of Fence
Property Located At:
146 Florence Lane, Amherst, New York 14228

Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement.

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

This request was reviewed and approved by the Engineering Department.

Thank you for your consideration.

NMB:hs
Attachment
c: Kathy Cooper, Deputy Town Clerk
(w/attachment, **Agenda Item: September 13th, 2021**)
Jeffrey S. Burroughs, PE, Town Engineer *(w/attachment)*

9/13/2021
Consent

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

B. TOWN CLERK:

1. Resolution 2021-778

Fireworks Permit - Williamsville North High School

Request for fireworks permit on September 23, 2021 at 9:00 PM at Williamsville North High School, 1595 Hopkins Road with the following conditions:

1. Minimum secured diameter of site shall be 140 feet.
2. That the audience be 140 feet from the fireworks discharge location for vertical mortars. (maximum of 2 inch shells)
3. That one (1) 5-lb. ABC fire extinguisher, with a current inspection tag, is located at the firing site with a qualified operator. Additional extinguishers may be required depending on the site layout.
4. That the trajectory of shells shall not come within 25 feet of overhead objects.
5. That the actual shooters listed on the application be present at the site or a substitute shooters list be submitted five (5) or more days prior to the event.
6. Display shall follow NFPA 1123-2018 & IFC 2018.
7. Crowds over 1000 people require a crowd manager.
8. If you would like to start the display earlier than the time proposed you must call 689-1212 before starting to be approved by our office.

9/13/2021
Consent

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

C. ASSESSOR:

D. BUILDING/BUILDING MAINTENANCE:

1. Resolution 2021-779

Regional Environmental Demolition, Inc

Please authorize the Supervisor to sign contract between Town of Amherst and Regional Environmental Demolition, Inc. 6281 Wendt Dr., Niagara Falls, NY 14304.

9/13/2021
Consent

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

E. CENTRAL ALARM:

F. COMPTROLLER:

1. Resolution 2021-780

Budget Transfers and Amendments

For September 13, 2021 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 9/8/2021
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 - 2021

FROM:	***TO:***
A1990.4000 Contingency $23,200.00	A1420.4090 Law- Prof. Services $23,200.00
To transfer budgeted funds from contingency for attorney professional services to cover additional outside firm costs.	
A1990.4000 Contingency $27,087.92	A1110.1000 Court - Pers. Srvs. $25,162.95 A1110.8020 Court - FICA $1,924.97
A7146.4350 North Forest- Chemicals $837.48	A7141.4350 Recreation- Chemicals $837.48

A7140.4110 Amherst Rec. - Contractual $10,000
A7145.4150 Recreation - Spec. Celebration $5,000
A7253.4220 Ice Rink - Bldgs. & Grounds $15,000
Per department's request.

A3120.4430 Police - Miscellaneous $5,500
A3121.4050 Officer - Mileage $500
A3121.4120 Officer - Training $5,000
Per department's request.

A1990.4000 Contingency $15,000
A8020.4090 Planning - Prof. Srvs. $15,000
To transfer funds into Planning Professional Services for design and planning consulting support.

A1620.2100 Bldg.- Furniture, Desk & Chairs $12,261.30
A1620.2150 Bldg.- Improve & Equip $12,387.42
A1620.4220 Buildings & Grounds $24,648.72
To recognize transfer funds into building and grounds for Council Chambers project that was covered under APRA.

BUDGET AMENDMENTS - 2021

INCREASE: ***INCREASE:***

A1410.01255 Town Clerk - Fees $60,000
A1410.1000 Personal Services $55,736.18
A1410.8030 FICA $4,263.82
To recognize increase revenue amount for dog licenses fees and increase personal services for transfer of employee to Town Clerk.

A3310.02680 Traffic Signals - Ins. Proceeds $4,142.98
A3310.4430 Miscellaneous $4,142.98
To recognize insurance proceeds and increase expenditure for damages to a signal box for repairs.

N2144.02785 Cheek HOME Rehab $11,740.50
N2149.02785 Cheek HOME Admin $1,304.50
N2144.4000 Contractual $11,740.50
N2149.4003 Admin $1,304.50
To recognize Community Development program income from 80 Pamela Drive, Cheektowaga.

N2155.02785 Amherst Home - PI $4,566.42
N2155.4000 Admin $4,566.42
To recognize Community Development program income from 22 Woodcrest Drive, Amherst.

N2155.02785 Amherst Home - PI $15,471.90
N2154.02785 Amherst Home Admin $1,719.10
N2155.4000 Admin $15,471.90
N2154.4003 Admin $1,719.10
To recognize Community Development program income from 68 Dellwood Rd, Amherst.

N2155.02785 Amherst Home - PI $6,123.60
N2154.02785 Amherst Home Admin $680.40
N2155.4000 Admin $6,123.60
N2154.4003 Admin $680.40
To recognize Community Development program income from 459 Campus Drive, Amherst.

N2123.02785 CDBG & VG PI $18,760.00
N2125.02785 CDBG & VG Admin $4,690.00
N2123.4000 Admin $18,760.00
N2125.1000 Personal Services $4,356.71
N2125.8030 FICA $333.29
To recognize Community Development program income from 143 Mill Street, Amherst.

N2155.02785 Amherst Home - PI $12,800.00
N2155.4000 Admin $12,800.00
To recognize Community Development program income from 111 Garland Drive, Amherst.

N2155.02785 Amherst Home - PI $13,040.42
N2154.02785 Amherst Home Admin - PI $1,448.94
N2155.4000 Admin $13,040.42
N2154.4003 Admin $1,448.94
To recognize Community Development program income from 75 Oakbrook Drive, Amherst.

A3649.04589 ARPA- Federal Aid $32,276.14
A3649.1000 Personal Services $7,128.80
A3649.8030 FICA $498.62
A3649.2150 Bldg. Improve & Equip $24,648.72
To recognize Council Chambers project under ARPA.

N2123.02785 CDBG & VG PI $800.00
N2125.02785 CDBG & VG Admin $200.00
N2123.4000 Admin $800.00
N2125.1000 Personal Services $185.79
N2125.8030 FICA $14.21
To recognize Community Development program income from 6 Campus Drive N, Amherst

N2144.02785 Cheek HOME Rehab $2,938.90
N2149.02785 Cheek HOME Admin $326.54
N2144.4000 Contractual $2,938.90
N2149.4003 Admin $326.54

To recognize Community Development program income from 30 Carol Drive, Cheektowaga.

N0001.20084 CDBG Income 21/22 $640,103	See Attached $640,103
N0001.20085 Amherst Home 21/22 $376,759	See Attached $376,759
N0001.20086 Cheektowaga Home 21/22 $282,570	See Attached $282,570
N0001.20087 Tonawanda Home 21/22 $282,570	See Attached $282,570

See attached detail of expenditure accounts.

9/13/2021
Consent

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

G. CONTRACT COMPLIANCE:

1. Resolution 2021-781

Award Bid #2021015 - Sports Field Materials - CRS #2838, 2840 & 2842

WHEREAS, the Contract Compliance and Administration Department opened Bid #2021015 Sports Field Materials on May 27, 2021; and

WHEREAS, the bid process resulted in responses from three (3) vendors, as per the attached bid tabulation form;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award this bid as follows: items #5, 6, 8, 19, 20, 22-26, 28, & 32-36 to Andre and Son; items #1-4, 9, 10, 12, 15, 16, 21-23, 27, 29-31, 33, 34, 37, 38, 41, 43, 47, & 48 to Site One Landscape Supply; and items #7, 11, 13, 14, 17, 18, 28, 40, & 44-46 to Professional Turf Services; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contracts with Andre and Son, Site One Landscape Supply and Professional Turf Services.

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

2. Resolution 2021-782

Award Bid #2021012 - Town Wide Tree Planting - CRS #2857

WHEREAS, the Contract Compliance and Administration Department received bids on May 13, 2021 for Bid #2021012 Tree Planting; and

WHEREAS, the bid process resulted in responses from three (3) 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 Scott Lawn Yard, Inc.; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contract with Scott Lawn Yard, Inc.

9/13/2021
Consent

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

H. COURT:

I. ECONOMIC DEVELOPMENT:

J. EMERGENCY SERVICES:

K. ENGINEERING:

1. Resolution 2021-783

Award of Bid - Dann Lake Park Improvements Floating Dock Installation

On August 26, 2021, one (1) bid was received for the above referenced project. The bid tabulation sheet is attached. At this time, we recommend award of the contract to RW Weaver Corp d/b/a Anchor Marine and Greater Lakes EZ-Dock, 1501 Ferry Rd, Grand Island, NY 14072, per their low base bid $30,429.50 and alternate A.1 $14,500.00 for a total contract amount of $44,929.50 and authorize the Supervisor to execute the contract associated with the bid award.

The funds for this project are available from Bond Account No. KP 2106 - 4972.

May we have your approval to award RW Weaver Corp d/b/a Anchor Marine and Greater Lakes EZ-Dock, the above referenced contract?

Thank you for considering this request.

9/13/2021
Consent

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

2. Resolution 2021-785

Award of Bid - Williamsville Junior Football Fields Project Northeast Diversification, Inc.

On September 2, 2021, bids were received for the above referenced project. After review of the two (2) bids received (bid tabulation attached), the Engineering Department recommends award of this contract to Northeast Diversification, Inc., 2 Cadby Industrial Pkwy, Lancaster, NY, 14086 in the amount of $1,203,150 to include the base bid, alternate bid item 1 (plastic fence caps), and alternate No. 2 (black vinyl fencing) and authorize the Town Supervisor to execute the contract(s) associated with the bid award.

Funding for this contract shall be from project account KP2134-4972.

May we have your approval to award the above contract and also authorization of the Town Supervisor to execute the contract associated with the bid award?

9/13/2021
Consent

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

3. Resolution 2021-786

Award of Bid - Amherst Girls Softball Fields Occhino Corp.

On September 2, 2021, bids were received for the above referenced project. After review of the three (3) bids received (bid tabulation attached), the Engineering Department recommends award of this contract to Occhino Corp., 2650 Seneca Street, West Seneca, NY, 14224 in the amount of $1,955,222.00 to include the base bid and alternate bid item 3 (deduct for Town construction of storm line) and authorize the Town Supervisor to execute the contract(s) associated with the bid award.

Funding for this contract shall be from project account T2107-4001.

May we have your approval to award the above contract and also authorization of the Town Supervisor to execute the contract associated with the bid award?

9/13/2021
Consent

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

L. FINANCE:

1. Resolution 2021-787

Authorize Travel for NRPA National Playground Safety Inspector Course

WHEREAS, Dan Rizzo has been assisting the Highway Department and the Youth and Recreation Department in the coordination of repairs and improvements to various parks and playgrounds within the Town; and

WHEREAS, it would be beneficial for him to become a Certified Playground Safety Inspector;

NOW, THEREFORE, BE IT RESOLVED, Dan Rizzo is hereby authorized to attend the New York State Recreation & Park Society's National Playground Safety Inspector course in Fairport, NY from October 19-22, 2021.

9/13/2021
Consent

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

2. Resolution 2021-788

Authorize Vendors for Amherst Market at Bassett Park - CRS #2885 & 2886

WHEREAS, contract documents and vendors for the Amherst Market at Bassett Park were approved on June 7, 2021 via RES-2021-492; and

WHEREAS, additional vendors have requested to participate and filled out the appropriate documentation;

NOW, THEREFORE, BE IT RESOLVED, the Town Board hereby approves contracts with the following vendors:

CRS #2885 Mack's
CRS #2886 Boy Scouts of America - Pack 222

9/13/2021
Consent

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

M. HIGHWAY

1. Resolution 2021-789

Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854

NOW THEREFORE BE IT RESOLVED, that the Town of Amherst is approved to piggyback on the Erie County Contract with COMPASS MINERALS, INC. for road salt materials and sand, Bid #221190-004 for the period 9/1/2021 to 8/31/2022 for 8,000 tons.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Amherst Town Board authorizes the

Supervisor to sign this contract. This contract has completed the CRS # 2854 Contract Routing System and Town Attorney approval.

9/13/2021
Consent

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

2. Resolution 2021-790

Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860

NOW THEREFORE BE IT RESOLVED, that the Town of Amherst is approved to piggyback on the New York State - Office of General Services contract with AMERICAN ROCK SALT CO. for road salt on Group 01800; Award 23175; Contract # 68889 for the period 9/1/2018 to 8/31/2022 for 7,000 tons.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Amherst Town Board authorizes the Supervisor to sign this contract. This contract is subject to the Contract Routing System (CRS#2860) and the approval of the Town Attorney.

9/13/2021
Consent

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

3. Resolution 2021-791

Authorize Supervisor to Sign NOCO ENERGY CORP. - Diesel Fuel- CRS #2866

The Highway Department requests the Town Board give the Town Supervisor permission to sign a contract with NOCO ENERGY CORPORATION, 2440 Sheridan Drive, Tonawanda, NY 14150 and the Town of Amherst. Purchases are for diesel fuel, ultra-low sulfur and biodiesel based on NYS-OGS Group 05602, Award 23236, Contract PC# 69484 dated 08/27/2021

through 8/24/2023.

This contract is subject to the Contract Routing System (CRS#2866) and the approval of the Town Attorney.

9/13/2021
Consent

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

4. Resolution 2021-792

Approval of Agreement - State University of New York at Buffalo CRS #2887

The Highway Department requests authorization to allow the Supervisor to sign the agreement between the Town of Amherst Highway Department and the State University of New York at Buffalo.

This agreement is for the 2021 - 2022 winter season (9/01/2021 through 8/31/2022) for snow removal and ice control.

The State University of New York at Buffalo agrees to reimburse the Town of Amherst the sum of $54,985.18.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this agreement subject to the Contract Routing System (CRS #2887) and the approval of the Town Attorney.

9/13/2021
Consent

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

N. HUMAN RESOURCES:

1. Resolution 2021-793

School Crossing Guard-PT/Police

School Crossing Guard - PT/Police Department, Effective September 14, 2021, Temporary, $12.50 ph, Step 1 for Michael J. Donnelly.

Replacing an employee who resigned.

9/13/2021
Consent

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

2. Resolution 2021-794

Information Technology Engineer/Engineering

Please appoint an Information Technology Engineer to the Engineering Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective September 14, 2021 at an annual salary of $66,252, Grade 15, Step F for Gregory Struzik.

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

9/13/2021
Consent

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

O. INFORMATION TECHNOLOGY:

1. Resolution 2021-795

ACP Technologies State of Work - CRS #2852

Please authorize the Supervisor to sign an agreement with ACP Technologies for the period of October 1, 2021 through September 30, 2024. This agreement is for specialized technical support on an as needed basis.

9/13/2021
Consent

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

P. PLANNING:

1. Resolution 2021-796

To Authorize the Supervisor to Sign an Agreement with Belmont Housing Resources for WNY, Inc. for Housing Counseling Services CRS #2870

WHEREAS, the Town has budgeted Community Development Block Grant funds for housing counseling services; and

WHEREAS, Belmont Housing Resources for WNY, Inc. has proven to be an excellent provider of comprehensive housing counseling services; including pre-purchase workshops and counseling, post-purchase workshops and counseling, mortgage default counseling, and rental assistance counseling; and

WHEREAS, Community Development staff recommends that the Town contract with Belmont Housing Resources for WNY, Inc. for the provision of said housing counseling services for the period of April 1, 2021 through March 31, 2022; now therefore, be it

RESOLVED, the Town Board of the Town of Amherst authorizes the Town Supervisor, subject to the satisfactory completion of the contract routing process, to enter into a contract with Belmont Housing Resources for WNY, Inc. attached hereto, and for an amount not to exceed $16,500.00 for the period of April 1, 2021 through March 31, 2022.

9/13/2021
Consent

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

2. Resolution 2021-797

To Authorize the Supervisor to Execute an Agreement with the Boys and Girls Club of Buffalo, Inc. to Fund Staffing During the After-School Program Located at the Eggertsville Community Center in the Town of Amherst CRS #2878

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) funds agrees to offer support to at risk youth and low-income families, and

WHEREAS, the Boys and Girls Club of Buffalo, Inc. has provided a safe environment for children to go to the Eggertsville Community Center, and

WHEREAS, the Boys and Girls Club has submitted a satisfactory project budget and scope of services which provides for maximum assistance of $40,000 for staff members at the Community Center, now therefore, be it

RESOLVED, that the Town Board of the Town of Amherst authorizes the Supervisor, subject to the satisfactory completion of the contract routing process, to enter into an agreement with the Boys and Girls Club of Buffalo, Inc. for the period of April 1, 2021 through March 31, 2022.

9/13/2021
Consent

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

3. Resolution 2021-798

To Authorize the Town Supervisor to Enter into a Contract for Fair Housing Counseling Services with Housing Opportunities Made Equal (HOME) CRS #2872

WHEREAS, as a recipient of Community Development Block Grant and HOME Investment Partnership funds the Town certifies that it will affirmatively further fair housing; and

WHEREAS, the Town has programmed Community Development Block Grant funds for fair housing counseling services; now, therefore be it

RESOLVED, that the Town Board authorizes the Supervisor, subject to the satisfactory completion of the contract routing process, to sign a contract with Housing Opportunities Made Equal for an amount not to exceed $10,000 for services to Town residents during the period April 1, 2021 through March 31, 2022.

9/13/2021
Consent

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

4. Resolution 2021-799

To Authorize the Supervisor to Execute an Agreement for the Provision of Weatherization Services CRS #2873

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) funds agrees to affirmatively promote affordable housing, and

WHEREAS, the Town has budgeted FY 2021 CDBG funds for the provision of weatherization services, and

WHEREAS, Supportive Services Corporation is the sole recipient of weatherization funds from U.S. Department of Energy for use in Erie County outside the City of Buffalo, and

WHEREAS, the Planning Department recommends that the Town renew its contract with Supportive Services Corporation based on that agency's excellent provision of services, and

WHEREAS, Supportive Services Corporation has submitted a satisfactory project budget and scope of services which provides for a maximum fee of $12,000.00, now therefore be it

RESOLVED, that the Town Board authorizes the Supervisor, subject to the completion of the routine contract routing process, to execute an agreement with Supportive Services Corporation for the provision of weatherization services for the period April 1, 2021 through March 31, 2022.

9/13/2021

Consent

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

5. Resolution 2021-800

To Authorize the Supervisor to Execute an Agreement with the YWCA of Western New York, Inc. (YWCA) to Assist with Case Management in Transitional Housing Located in the Town of Amherst CRS #2874

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) and (CDBG) COVID-19 funds agrees to offer support to the families escaping domestic violence or facing homelessness, and

WHEREAS, the YWCA has provided four safe housing units in Amherst to families escaping domestic violence, and

WHEREAS, the YWCA has submitted a satisfactory project budget and scope of services which provides for a maximum assistance of $25,000 for case management in the transitional housing; now therefore, be it

RESOLVED, that the Town Board authorizes the Town Supervisor subject to the satisfactory completion of the contract routing process, to enter into an agreement with the YWCA for the case management services through the period April 1, 2021 through March 31, 2022.

9/13/2021
Consent

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

6. Resolution 2021-801

BCD Generic Environmental Impact Statement Establishment of Trust Accounts for Mitigation Cost Funds

WHEREAS, the Town of Amherst Town Board (the "Board") recognizes the opportunity for redevelopment and revitalization in the area identified as the Boulevard Central District (the "BCD"); and

WHEREAS, the Board has amended its Comprehensive Plan and adopted new Commercial/Mixed-Use Zoning Districts to provide guidance and regulatory provisions for redeveloping this area; and

WHEREAS, the Board wished to identify and evaluate the cumulative environmental impacts of redevelopment and implementation of these new policies, guidance, and zoning provisions in the BCD in order to plan for future infrastructure needs and community services; and

WHEREAS, the Board prepared a Generic Environmental Impact Statement for the BCD and, following public review, adopted a Statement of Findings pursuant to 6NYCRR Part 617.11 of SEQR on January 6, 2020; and

WHEREAS, a mitigation cost schedule was approved as part of the GEIS which identifies funds to be collected from developers for specific infrastructure improvements including repayment for the GEIS preparation along with capital sewer, capital water and transportation projects;

NOW, THEREFORE BE IT RESOLVED, that the Board directs the Comptroller to create separate Trust Accounts for the different mitigation cost funds as shown below, and;

- T4031 - BCD GEIS Preparation Fees
- T4032 - BCD GEIS Transportation Fees
- T4033 - BCD GEIS Sewer Fees
- T4034 - BCD GEIS Water Fees

BE IT FURTHER RESOLVED, that the Board approves the following as possible projects or improvements, shown by type, that could be funded using the mitigation cost funds collected by the Town:

- GEIS Preparation - future updates to the GEIS and mitigation cost schedule, and payment to the region's Metropolitan Planning Organization (GBNRTC) or other traffic consultants for traffic analyses.

- Transportation - construction of new public roadways, widening/addition of drive or turning lanes along highway corridors, construction of additional turn lanes at intersections, construction of roundabouts, parking lanes, modifying/replacing traffic signals or other traffic control devices , installation of smart signal equipment, right-of-way acquisition, roadway changes to accommodate other modes of transportation (transit, micro mobility), and upgrades to pedestrian amenities such as crosswalks, sidewalks, bike lanes, ADA accessibility, and detection and traffic control equipment.

- Sewer - construction of new lines, replacement of existing lines, upsizing, relining, repair and maintenance of existing lines, and related improvements at the Town's Wastewater Treatment Facility.

- Water - construction of new lines, replacement of existing lines, and upsizing, relining, repair and maintenance of existing lines.

9/13/2021
Consent

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

7. Resolution 2021-802

To Set a Date for the First of Two Public Hearings Required by the U.S. Department of Housing and Urban Development for the Town's FY 2022 Community Development Annual Action Plan

WHEREAS, the Town is required to hold at least two public hearings for the Annual Action Plan, encompassing both the Community Development Block Grant (CDBG) and HOME Investment Partnership Program (HOME) applications; and

WHEREAS, at least one public hearing must be held prior to the assembly of the draft Action Plan; now therefore, be it

RESOLVED, the Town Board of the Town of Amherst sets October 18, 2021 for the first public hearing for the 2022 Annual Action Plan to solicit input on housing and community development needs and to review the current use of CDBG and HOME grant funds.

9/13/2021
Consent

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

8. Resolution 2021-803

Willow Ridge/Parkview Action Plan Project Charter

WHEREAS, Niagara Falls Boulevard acts as a shared boundary between the Towns of Amherst and Tonawanda; and

WHEREAS, the Towns worked together in 2016 and 2017 to conduct a Phase 1 Study of Niagara Falls Boulevard to inventory existing conditions, issues, and opportunities; and

WHEREAS, the Town of Amherst also recently completed an Action Plan for the Boulevard Central District to the south of the Willow Ridge neighborhood; and

WHEREAS, the Towns of Amherst and Tonawanda want to continue planning initiatives along the Niagara Falls Boulevard corridor; and

WHEREAS, the Towns aim to create an Action Plan for the Willow Ridge and Parkview neighborhoods to address various problems and opportunities to improve connectivity, recreation, building maintenance and pedestrian safety; and

WHEREAS, the proposed Action Plan will serve as a guiding document to portray residents' future vision of the area, update Town Comprehensive Plan policies, create new goals and objectives, and utilize implementation strategies to create a more vibrant, connected and safe inter-municipal community; and

WHEREAS, the Town has prepared a Project Charter entitled "Willow Ridge/Parkview Action Plan" which includes the goals, process, stakeholders and general schedule that outlines the steps forward and the necessary components to initiate a planning process; now

THEREFORE BE IT RESOLVED, that the Town Board endorses the "Willow Ridge/Parkview Action Plan" Project Charter, which is attached and made part of this Resolution; and

BE IT FURTHER RESOLVED, that the Board supports the Town moving forward to carry out the planning process stated in the Project Charter.

9/13/2021
Consent

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

9. Resolution 2021-804

To Authorize a Minor Amendment to the FY 2020 Annual Action Plan for Community Development.

WHEREAS, the Town has adopted the FY 2020 Annual Action Plan on behalf of the Towns of Amherst, Cheektowaga and Tonawanda (ACT) HOME Consortium which dictate the expenditure of funds for the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Funding; and

WHEREAS, the Town is seeking to amend the FY 2020 Action Plan to reallocate $125,000 in Supplemental COVID (award #2) funds awarded by the CARES Act according to the following program/budget lines:

Decrease/Remove:

Senior Services Mental Health Asst. $ 125,000

Create/Increase:
Senior Services Congregate Dining Mobile Food Truck $ 125,000

WHEREAS, the new Program meets the criteria for use of the Supplemental CDBG-COVID funds awarded by the CARES Act to "prevent, prepare for, and respond to COVID" by enabling social distancing, reducing delivery burdens for Meals on Wheels, and expanding service options for vulnerable seniors;

NOW THEREFORE BE IT RESOLVED, the Town of Amherst Town Board hereby authorizes the above minor amendment to the FY 2020 Annual Action Plan.

9/13/2021
Consent

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

10. Resolution 2021-805

To Authorize the Supervisor to Execute an Agreement with the Buffalo Urban League for the Provision of Predatory Lending Counseling Services CRS #2884

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) funds, agrees to affirmatively promote fair housing, and

WHEREAS, the Community Development program's required analysis of impediments to fair housing has identified predatory lending practices by sub-prime lenders as a major impediment to fair housing, and

WHEREAS, in the current economy, mortgage default and imminent threat of foreclosure has many low income residents in danger of losing their homes, and;

WHEREAS, the Town has budgeted FY 2021 CDBG funds for the provision of predatory lending and foreclosure prevention counseling and legal services, and

WHEREAS, the Buffalo Urban League has provided comprehensive predatory lending counseling and legal services in the Town in prior years, and

WHEREAS, the Community Development staff recommends that the Town renew its contract with the Buffalo Urban League based on the Buffalo Urban League's excellent provision of services, and

WHEREAS, the Buffalo Urban League has submitted a satisfactory project budget and

scope of services which provides for a total fee of $6,000; now therefore, be it

RESOLVED, that the Town Board hereby authorizes the Town Supervisor, subject to the satisfactory completion of the contract routing process, to enter into an agreement with the Buffalo Urban League for the provision of predatory lending, housing counseling, and foreclosure prevention services for the period April 1, 2021 through March 31, 2022 at a contracted amount not to exceed $6,000.

9/13/2021
Consent

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

11. Resolution 2021-806

Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic Preservation (OPRHP) CRS #2199

WHEREAS, the Town of Amherst has requested a grant from the New York State Office of Parks, Recreation & Historic Preservation to fund the Amherst Historic Preservation Commission (HPC) in support of a "Preservation Day" Event coordinated amongst the HPC, Preservation Buffalo Niagara and the Buffalo Niagara Heritage Village, and

WHEREAS, the New York State Office of Parks, Recreation & Historic Preservation has approved a grant in the amount of $10,000 to the Town of Amherst HPC to support a "Preservation Day" Event, now therefore be it

RESOLVED, that the Amherst Town Board authorizes the Town Supervisor to execute the agreement with the OPRHP attached hereto, subject to satisfactory completion of the contract routing process.

9/13/2021
Withdrawn

RESULT:	**WITHDRAWN**

Q. POLICE:

R. SENIOR SERVICES:

1. Resolution 2021-807

Senior Center Software - Xavus Soulutions, LLC (CRS ID # 2853)

Authorize the Supervisor to sign a contract between the Town of Amherst (Senior Services Department) and Xavus Soulutions, LLC (DBA MySeniorCenter) for a software licensing/maintenance agreement from September 27, 2021 to September 26, 2023. As this is a software only agreement, we are requesting a waiver of the insurance requirement.

9/13/2021
Consent

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

2. Resolution 2021-808

Presenter/Performer Commitment Form - Hawk Creek Wildlife CRS #2858

We respectfully request Town Board permission to authorize the Supervisor to sign the Presenter/Performer Commitment Form between the Town of Amherst (Department of Senior Services) and Hawk Creek Wildlife for a presentation on September 24, 2021. Fee per event is $225.00.

9/13/2021
Consent

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

S. YOUTH AND RECREATION:

1. Resolution 2021-809

Lease Agreement CRS#2855

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and 716 Music & More for rental of space at the Harlem Road Community Center.

9/13/2021
Consent

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

2. Resolution 2021-810

Sheltering Agreement - Transit CRS #2835

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and the Williamsville Central School District for use of the Clearfield Community Center by Transit Middle School in case of an emergency.

9/13/2021
Consent

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

3. Resolution 2021-811

Sheltering Agreement - Casey CRS #2871

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and the Williamsville Central School District for use of the North Amherst Recreation Center by Casey Middle School in case of an emergency.

9/13/2021
Consent

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

4. Resolution 2021-812

Bedford Park Improvements - CRS #2864

Authorize the Supervisor to sign an agreement (secured through Legislator Jeanne Vinal) between the Town of Amherst (Youth & Recreation Department) and Erie County for improvements to Bedford Park in Willow Ridge.

9/13/2021
Consent

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

5. Resolution 2021-813

Registration Software - CRS #2888

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and Civic Rec/SHI (under approved Sourcewell contract CRS #2787) for registration software, pending successful completion of the contract routing process. As this is a software-only contract, we are also requesting a waiver of insurance.

9/13/2021
Consent

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

6. Resolution 2021-814

Nuflow Services of Upstate NY, LLC Contract - CRS #2868

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Nuflow Services of Upstate NY, LLC for emergency lining of pipe at the Northtown Center at Amherst.

9/13/2021
Consent

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

XIII. UNFINISHED BUSINESS

1. Resolution 2021-78

Local Law Amending Chapter 19, Ethics

A public hearing for "A Local Law Amending Chapter 19 of The Code Of The Town of Amherst With Respect To The Code of Ethics".

The purpose of this Local Law shall be to amend various section of Chapter 19 of the Code of the Town of Amherst with respect to the list of officials, notice and verification of filing.

1/19/2021
A motion to adjourn to April 19th was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

4/19/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:08 PM.

There were no speakers from the public. Supervisor Kulpa moved to Table the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was Tabled at 7:09 PM.

RESULT:	**TABLED (NO VOTE)**	**Next: 9/27/2021 7:00 PM**

2. Resolution 2021-153

Amend the Audubon Development Plan and the Zoning Map to Reclassify 2160 & 2170 North Forest Road from NCD-SA to NCD-ND

DRAFT RESOLUTION
(2/22/21)

Amend the Audubon Development Plan and the Zoning Map
[2160 & 2170 North Forest Road (NCD); Z-2020-06]

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of January 21, 2021 that the proposed New Community District - Neighborhood District (NCD-ND) classification at 2160 & 2170 North Forest Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed classification is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed classification at this location, and be it further

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

1. That the petitioner include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.

2/22/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:32 PM.

Sean Hopkins, Esq. presented.

The following speakers addressed the Town Board:
Joseph Hausbeck, 2180 N. Forest Rd. - Spoke in opposition; does not fit the concept of the

neighborhood; submitted a letter listing various concerns
Fran Cummings, 2200 N. Forest Rd. - Voiced her concerns; property floods; traffic
Karen Macris, 2230 N. Forest Rd. - Asked questions; concern of dorm-like apartments; dumpster location and noise

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to March 8th. The motion was seconded by Councilmember Szukala and unanimously approved 5-0. The public hearing was adjourned at 8:17 PM.

3/8/2021
A motion to adjourn to April 5th was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

4/5/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:05 PM.

Sean Hopkins, Esq. presented updated plans.

The following speakers addressed the Town Board:
Fran Cummings, 2200 N. Forest Rd. - Concerned about it being student housing, lighting spillover, flooding and traffic
Joseph Hausbeck, 2180 N. Forest Rd. - Concerned about excavation of the site and the project being too large

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to April 19th. The motion was seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 7:34 PM.

4/19/2021
Per Supervisor Kulpa, the Petitioner has requested an adjournment. Supervisor Kulpa then moved to Adjourn to May 3rd, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The hearing was adjourned at 7:09 PM.

5/03/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:09 PM.

Sean Hopkins, Esq. presented updated plans.

The following speaker addressed the Town Board:
Fran Cummings, 2200 N. Forest Rd. - Voiced her continued concerns regarding flooding, student housing in their senior citizen community

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was closed at 7:29 PM.

1/18/2022
A motion was made by Supervisor Kulpa to remove from Unfinished Business, seconded by Councilmember Bucki and unanimously approved 5-0.

A motion was made by Supervisor Kulpa to schedule a public hearing for the February 28th

Town Board meeting, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

RESULT:	**TABLED (NO VOTE)**	**Next: 9/27/2021 7:00 PM**

XIV. COMMUNICATIONS

1. Communication 2021-93

Presentation to the Town Board on Recommendations from the LISC Zombie Grant Report on September 27, 2021

The Task Force would like to present a report to the Town Board at their work session of September 27, 2021. Attached is a letter and the Zombie & Vacant Property Initiative Procedural Report.

9/13/2021
Referred to Planning, Building and Town Clerk for 9/27 Town Board Work Session

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

2. Communication 2021-94

Resident Concerns - Open Government Advisory Board

Email from Don Smith regarding questions about the Open Government Advisory Board.

9/13/2021
Referred to Town Attorney & Chairman of the Open Government Advisory Board

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

3. Communication 2021-95

Street Name to Honor Melvin J. Spoth

The attached letter is requesting a street to be named in honor of longtime resident Melvin J. Spoth.

9/13/2021
Referred to Planning & Highway

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

4. Communication 2021-96

Summons and Complaint & Order to Show Cause: LG 70 DOE Vs. Town of Amherst Et Al.

9/13/2021
Referred to Town Attorney

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

5. Communication 2021-97

Notice of Claim: Allstate Vs. Town of Amherst

9/13/2021
Referred to Town Attorney

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

XV. PUBLIC IMPROVEMENT PERMITS

XVI. SUSPENSION OF RULES

Deputy Supervisor Berger moved to open Suspension of Rules to bring forth 3 unlisted items. The motion was seconded by Councilmember Bucki and unanimously approved 5-0. Suspension of Rules was opened at 7:54 PM.

There being no further business requiring Suspension of Rules, Deputy Supervisor Berger moved to close, seconded by Councilmember Szukala and unanimously approved 5-0. Suspension of Rules was closed at 8:00 PM.

1. Resolution 2021-815

Downtown Revitalization Initiative Application 2021

Suspension to Town Board Agenda Item September 13, 2021

To: Town Board
From: Economic Development Department
Date: September 13, 2021
RE: Downtown Revitalization Initiative Application 2021

Purpose: Town Board approval of the submittal of a Downtown Revitalization Initiative application to Empire State Development and the Regional Economic Development Council

WHEREAS New York State's Downtown Revitalization Initiative (DRI) is a cornerstone of the State's economic development program; and

WHERAS the goals of the DRI is to transform downtown neighborhoods into vibrant centers that offer a high quality of life and are magnets for redevelopment, business, job creation, and economic and housing diversity; and

WHEREAS In its fifth year, the program will invest $200 million in up to 20 additional downtowns statewide; and

WHEREAS two locations have been identified in the Town of Amherst, with support of the Village of Williamsville, to submit an application for the areas around Main Street that are West of the Village and East of the Village.

NOW, THEREFORE, BE IT RESOLVED that the Town Board authorizes the Supervisor to submit two DRI application on behalf of the Town of Amherst.

9/13/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Supervisor Kulpa and unanimously approved 5-0.

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

2. Resolution 2021-816

Addendum to Municipal Cooperation Agreement for Shared Assessor Services Between the Town of Amherst and City of Tonawanda (CRS #2893)

SUSPENSION AGENDA ITEM : SEPTEMBER 13th, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **September 10, 2021**

RE: **Addendum To Municipal Cooperation Agreement For Shared Assessor Services Between the Town of Amherst and City of Tonawanda (CRS#2893)**

Kindly adopt a resolution authorizing the Supervisor to execute the attached addendum relative to shared Assessor services between the Town of Amherst and City of Tonawanda pursuant to General Municipal Law §119-0 pending successful completion of the Contract Routing System.

Thank you.

SJS:nmb
Attachment
c: Kathleen Cooper, Deputy Town Clerk
(*w/attachment,* **Suspension Agenda Item : September 13th, 2021**)
David Marrano, Town Assessor (*w/attachment)*

9/13/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Bucki and unanimously approved 5-0.

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

3. Resolution 2021-817

Lease Agreement with American Campus Communities (ACC) (CRS #2894)

SUSPENSION AGENDA ITEM : SEPTEMBER 13th, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **September 10, 2021**

RE: **Lease Agreement With American Campus Communities (ACC) (CRS#2894)**

Kindly adopt a resolution authorizing the Supervisor to a lease Agreement with American Campus Communities (ACC) for land located at 330 Maple Road, identified as approximately 10.14 acres of said property more fully detailed in the attached Lease Agreement, subject to the following:

1.) Review and final approval by the Town Attorney;

2.) Review and final approval by counsel for American Campus Communities; and

3.) Pending successful routing of the CRS.

Thank you.

SJS:nmb
Attachments
c: Kathy Cooper, Deputy Town Clerk
(*w/attachments,* **Suspension Agenda Item : September 13th, 2021**)

9/13/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Lavin and unanimously approved 5-0.

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

XVII. PUBLIC EXPRESSION #2

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 Lavin and unanimously approved 5-0. Public Expression was opened at 8:00 PM.

There were no speakers from the public, therefore Supervisor Kulpa moved to close Public Expression, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Public Expression was closed at 8:02 PM.

XVIII. ADJOURNMENT

There being no further business to come before the Town Board, Supervisor Kulpa moved to adjourn, seconded by Councilmember Lavin and unanimously approved 5-0. The Town Board meeting of September 13, 2021 was adjourned at 8:02 PM.

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 23440 **RESOLUTION 2021-569** **ROLL CALL VOTE (ADOPTED)**

Request to Rezone 468 Harding Road

~~Denial of~~ Local Law to Amend the Zoning Map
(468 Harding Road, Z-2020-13)

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of May 20, 2021 that the proposed Traditional Single-Family Residential District (TR-3) zoning at 468 Harding Road is **not consistent** with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board ~~**denies**~~ approves the request to amend the Town Zoning map for the following reasons as stated by the Planning Board:

1. The proposed zoning and development plan is inconsistent with the policies of the Comprehensive Plan and the Zoning Ordinance.

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

7/12/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:11 PM.

Jeffery D. Palumbo, Esq., Barclay Damon LLP, presented and answered questions along with David Capretto from Forbes Capretto Homes.

The following Speakers addressed the Town Board and all spoke in opposition:
Mark Bechtel, 442 Harding Rd. - Opposed to 10 more houses, roads are narrow, additional cars, increased noise and parking; no sidewalks, no street lights
Kathleen Santillo, 411 Harding Rd. - 10 houses too close together, traffic, too many cars
John Squires, 437 Harding Rd. - Increased traffic, not comfortable with 10 homes

As there were no further speakers, Supervisor Kulpa motioned to adjourn the public hearing and set a decision date for August 9th. The motion was seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:43 PM.

8/09/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:06 PM.

Jeffery Palumbo, Esq. addressed the Town Board. David Capretto answered questions.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was closed at 7:12 PM.

A motion to set a Decision Date for Sept. 13th was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0.

9/13/2021

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

Jeffery Palumbo, Esq. addressed the Town Board.

Deputy Supervisor Berger made a motion to adopt the resolution as drafted, Councilmeber Lavin seconded it. Deputy Superviosr Berger then made a motion to rescind her previous motion, seconded by Councilmember Lavin to amend the resolution to grant the request of rezoing and adopt the negative declaration and to change it in the body and title of the resolution and approved via roll call vote 3-2 (nay Kulpa & Bucki).

RESULT:	**ROLL CALL VOTE (ADOPTED) [3 TO 2]**
MOVER:	Jacqualine Berger, Deputy Supervisor
SECONDER:	Michael Szukala, Councilmember
AYES:	Berger, Lavin, Szukala
NAYS:	Kulpa, Bucki

LOCAL LAW NO. _____-202_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE, TO REZONE 468 Harding Road FROM _R-3_ TO _TR-3_ AND TO AMEND THE ZONING MAP ACCORDINGLY

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending the Zoning of 468 Harding Road."

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to rezone 468 Harding Road from R-3 Residential 3 to TR-3 Traditional Residential Single Family zoning has been filed and is in proper order. The Town Board further finds that the rezoning is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby amends its zoning map which is incorporated by reference in the Town zoning code by amending from R-3 Residential 3 to TR-3 Traditional Residential Single Family the zoning of 468 Harding Road, **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

> ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York being part of Lot 83, Township 11, Range 7 of the Holland Land Company's Survey, more particularly described as follows:
> BEGINNING at a point in the easterly line of Harding Road at the southerly line of lands conveyed to Sider by deed recorded in the Erie County Clerk's Office in Liber 2268 of Deeds at page 123;
> THENCE S 89°19'31" E along the said southerly line of Sider a distance of 276.59 feet to the westerly line of McKinley Avenue as appropriated by the State of New York and shown as Parcel 230 on Map 202;

Attachment: LL 468 Harding 2nd Amended TR-3 (RES-2021-569 : Rezoning of 468 Harding Road)

THENCE S 00°12'01" W, along the said westerly line of Parcel 230 a distance of 204.31 feet;
THENCE S39°51'32" W, continuing along the westerly line of Parcel 230, a distance of 30.17 feet to the northerly line of said Parcel 230:
THENCE S 89°45'27' W, along the said northerly line of Parcel 230, a distance of 224.14 feet;
THENCE N 46°08'55" W, continuing along the said northerly line of Parcel 230, a distance of 44.89 feet to the easterly line of Harding Road;
THENCE N 00°00'06" W, along the easterly line of Harding Road, a distance of 200.86 feet to the POINT OF BEGINNING, being 1.44 acres of land, more or less.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: LL 468 Harding 2nd Amended TR-3 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa, Supervisor
Daniel C. Howard, A Planning Director
Ellen M. Kost, AIC Assistant Planning Dir

Town Board Agenda of July 12, 2021

June 23, 2021

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

Subject: Request to Rezone 1.44± acres of land from Residential District Three (R-3) to Traditional Single-Family Residential District (TR-3); property located at 468 Harding Road, Forbes Capretto Homes, petitioner. (Z-2020-13).

Honorable Members:

The subject property is a 1.44 ± acre rectangular shaped parcel located at the southern termini of McKinley Avenue and Harding Road west of the intersection of Freeman Road and McKinley Avenue. The site is currently undeveloped and is largely lawn with 10± mature deciduous trees scattered along its periphery; it has 229 ± feet of frontage on both McKinley Avenue and Harding Roads with a depth of 276 ± feet.

The subject site is located within an archaeologically sensitive area based on NYS mapping and is within the Clarence Central School District.

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

The purpose of this request as shown on the concept plan is to allow the petitioner to construct a future 10 lot subdivision, with the internal 8 lots being 40 feet in width by 138 feet in depth, and 2 corner lots being 69± feet in width and 138 feet in depth.

An application to rezone the subject parcel from Residential District Three (R-3) to Residential District Four (R-4) to allow for two family dwellings was denied by the Town Board on February 4, 1991 (Z-1990-27).

The Planning Board previously approved a site plan on January 19, 2006 for a four-lot subdivision on the subject parcel (SP-2005-25).

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

continued . . .

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Honorable Town Board

Rezone land from R-3 to TR-3; property located at 468 Harding Road Agenda of July 12, 2021

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

The request is consistent with the Town of Amherst Bicentennial Comprehensive Plan's Conceptual Land Use Plan which projects single family residential development for the subject parcel. The request, however, is inconsistent with the Comprehensive Plan goal for the location of infill single-family residential development since it does not conform with the established character and scale of the surrounding neighborhood and areas. Adjacent single-family lots appear to have widths ranging from 59 feet to 159 feet, with the average lot width of 61 feet.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The proposed rezoning is inconsistent with the following sections of the Zoning Ordinance;

- §1-2-2 A, which seeks to protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development,
- §1-2-2 C, which seeks to prevent overcrowding of the land,
- §1-2-2 H, which seeks to assure that structures and land use arrangements are aesthetically harmonious with nearby areas and structures, and
- §1-2-2 K, which seeks to guide future development of the Town to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The proposed development is inconsistent and less compatible with the existing surrounding single family residential homes and lot sizes The proposed zoning district would allow for an approximate 45% reduction in the minimum lot size and a 38% reduction in lot width.

The area of the subject site facing the lots on the west side of Harding Road should at a minimum be consistent with the existing detached single family lots on that roadway. The easterly portion of the parcel could potentially be developed with an owner-occupied form of attached or detached higher density residential development which would face the rear of commercial properties fronting on Transit Road.

ADEQUATE SERVICES AND UTILITIES

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

A Short Form Stage A/B Cultural Resource Investigation has been performed on the subject site and the NYS Office of Parks, Recreation and Historic Preservation has determined that the project will have no impact upon cultural resources in or eligible for inclusion in the State and National Register of Historic Places.

This is an Unlisted action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

continued . . .

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Honorable Town Board

Rezone land from R-3 to TR-3; property located at 468 Harding Road Agenda of July 12, 2021

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board and that the subject request be **denied** based on the attached resolution.

Very truly yours,

Ellen M Host

for Daniel C. Howard, AICP
Planning Director

DH/SM/___
Att.
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Town_Board_Letter_071221.docx
cc: Stanley Sliwa, Town Attorney

Planning Board Denial May 20, 2021
Ayes 5; Noes 2 (Gill, Gilmour)

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2020-13

PETITIONER

Forbes Capretto Homes
c/o Jeff Palumbo, Esq.
Barclay Damon LLP
9276 Main Street, Suite 3
Clarence, NY 14031

PROPERTY LOCATION

468 Harding Road

WHEREAS the Town of Amherst Planning Board on Thursday, March 18, April 15, and May 20, 2021 held a remote public hearing on the proposed rezoning of land from Residential District Three (R-3) to Traditional Single-Family Residential District (TR-3), and

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

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

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

A. The proposed zoning and development plan is inconsistent with the policies of the Comprehensive Plan and the Zoning Ordinance.

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

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

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

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

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived since hydric/potentially hydric soils have not been identified on the parcel.

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

MAY 28 '21 PM 2:07 RCVD

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2020-13

PETITIONER	PROPERTY LOCATION
Forbes Capretto Homes	468 Harding Road

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

1. The proposed zoning and development plan is inconsistent with the policies of the Comprehensive Plan and the Zoning Ordinance.

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

The foregoing resolution was adopted by the Town of Amherst Planning Board, May 20, 2021. moved by – Giuliani, seconded by – Chmiel, ayes 5, noes 2 (Gill, Gilmour).

Robert J. Gilmour, Chair

5-27-21
Date

SM/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Resolution_052021.docx
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

MAY 28 '21 PM 2:37 RCVD

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

BARCLAY DAMON

Jeffery D. Palumbo
Partner

April 16, 2021

BY HAND DELIVERY

Town of Amherst
Town Board
c/o Town Planning Department
5583 Main Street
Williamsville, NY 14221

Re: 468 Harding Road
Proposed Rezoning

Dear Honorable Members of the Town Board:

Barclay Damon LLP represents Forbes Capretto Homes ("Applicant"). The Applicant previously submitted a Petition for Rezoning of the above Property on December 28, 2020 and an Amended Petition for Rezoning on February 4, 2021. We respectfully ask on behalf of Applicant that the original Petition for Rezoning filed on December 28, 2020 and the Amended Petition for Rezoning submitted on February 4, 2021 be further amended so that the request is now for rezoning from R-3 to TR-3.

This letter will confirm that Applicant is under contract to purchase 468 Harding Road, SBL 82.09-6-20, in the Town of Amherst ("Property"). The 1.44 acre Property is vacant, unimproved land in the southeast corner of the Town, immediately west of Transit Road and south of Interstate 90. Currently, the property is zoned Residential 3 (R-3). Applicant proposes a rezoning to Traditional Single-Family Residential (TR-3). The rezoning is one step towards a ten unit residential infill development with approximately 0.72 acres of greenspace. The proposed infill development is a permitted use in the TR-3 district. Subsequent to this request for rezoning, Applicant will seek site plan approval and any other necessary municipal approvals.

Enclosed, please find the following:

(1) Amended Petition for Rezoning/Town Application Form
(2) Amended Town of Amherst Zoning Code Rezoning Analysis
(3) Existing Boundary Survey
(4) Legal Description of Property to be Rezoned
(5) Preliminary Concept Plan
(6) Amended Draft Local Law

9276 Main Street - Suite 3 - Clarence, New York 14031 barclaydamon.com
JPalumbo@barclaydamon.com Direct: (716) 858-3722 Fax: (716) 768-2725

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

(7) Amended Full Environmental Assessment Form
(8) Town of Amherst Supplemental Environmental Assessment Form
(9) Owner Authorization

We look forward to introducing this Amended Application and discussing this Redevelopment with the Town Board. Thank you for your consideration. Please contact me should you require anything additional.

Very truly yours.

Jeffery D. Palumbo

JDP:tam
Enclosures

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

SECOND AMENDED APPLICATION TO TR-3
APRIL 16, 2021

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

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

Address Verified by Assessor's Office _____
VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____
ACCEPTED BY DATE

Materials Checked by Building Dept. _____
RECEIVED BY DATE

Materials Received by Planning Dept. _____
RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	$1,250	X
2 – 20 ACRES $1,250 + $250/acres or fraction thereof over 2 acres		_____
20 – 30 ACRES $5,700 + $150/acre or fraction thereof over 20 acres		_____
OVER 30 ACRES $6,900 +$75/acre or fraction thereof over 30 acres		_____
Request for Relief of/Change to Conditions of Zoning Approval	$ 1,200	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	$ 15.00	X
TOTAL FEE:	$ 1,265	

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

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Forbes Capretto Homes

Address: c/o Barclay Damon LLP
9276 Main Street, Suite 3

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

Phone: (716) 858-3728 Fax: (716) 768-2728

E Mail: jpalumbo@barclaydamon.com

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

From: R-3 District

To: TR-3 District

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

468 Harding Road
Amherst, NY

SBL #: 82.09-6-20

4. **Area of land to be rezoned** (in acres): 1.44

5. **Owner of Land:**

Name: Lori Grabenstatter

Address: 469 Harding Road

Telephone:

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

Name: Jeffery D. Palumbo, Esq.

Address: 9276 Main Street, Suite 3

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

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

7. **Petitioner's interest in property**

X Option to purchase

_____ Owner

_____ Other (explain) _____

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

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor.**

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

Liber _____ Page _____

11. **Information on proposed project:**

A. Description of the character of the proposed development:

Rezone to TR-3 in furtherance of development of vacant land into residential use.

B. Rationale for rezoning request:

1. Why was this site chosen? Availability, size, marketability, proximity to central corridor in Town and connectivity to neighboring municipalities.

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

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

3. How will this rezoning impact surrounding properties?
Residential use maintained.

4. How will this rezoning impact the school system?
Clarence Central School district; no likely impact.

12. Quantitative Data:

A. Total # of dwelling units 10

B. Distribution of dwelling units by type 10 single family patio homes

C. Gross Residential Density per acre

D. Total amount of Open Space N/A

E. Proposed Non-Residential Floor Area n/a

13. Development Schedule:

Start

Finish 6-9 months after bulding permit

Stages (# of) 1

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

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

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

N/A

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

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

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

See attached analysis.

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

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

See attached analysis.

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

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

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

1. Sanitary Sewer
Existing Town Sanitary Sewer District # 16
2. Storm Sewer/Drainage
Conveyance systems along Harding Road, Stiles Court, and McKinley Avenue
3. Water
Erie County Water Authority Lease Managed Service Area
4. Other

C. **Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood:**
See attached analysis.

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

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

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

See attached analysis

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

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

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

Jeffery D. Palumbo
Signature of Petitioner

Subscribed and sworn to before me this 16 day of April, 2021

Notary Public, Erie County, New York

TRACY A. MURRAY#01MU5077295
Notary Public, State of New York
Qualified in Genesee County
My Commission Expires 05/05/

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

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

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

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

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

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

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

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

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Rezoning Application Requirements and Checklist

The following checklist outlines the information required by the Town of Amherst to accept a Rezoning application. ***It is strongly recommended that you make an appointment with Planning Staff to discuss what information will be needed to address the items shown on the checklist.***

Item No.	Item	Submitted	Official use
I Application Information			
1.0	**Town of Amherst Rezoning / Comprehensive Plan Amendment Application Form (available from Planning Department)**		
1.1	Name, address, and contact information of the petitioner		
1.2	Name and address of property owners(s) – if different than petitioner		
1.3	If petitioner is different than property owner, provide statement describing interest in property and a letter from the property owner authorizing the application		
1.4	Identify existing and proposed zoning and acreage of area proposed to be rezoned		
1.5	Parcel addresses and Section, Block, and Lot (SBL) numbers of all properties proposed to be rezoned. Indicate if a portion of any parcel is involved, if applicable		
1.6	Statement of planning objectives to be achieved by the proposed rezoning, including the following: • How the proposed zoning and development plan meets the objectives of the Comprehensive Plan • A description of the character of the proposed development • The rationale behind the assumptions that are presented		
1.7	Cite specific maps and / or figures in the Comprehensive Plan that must be amended to support the proposed zoning and provide suggested amendments)		
1.8	A general statement about how any proposed open space will be maintained (if applicable)		
1.9	A development schedule indicating the approximate date when construction is expected to begin and be completed. Identify schedule of any proposed phasing of the development (attach pages as necessary)		
1.10	A statement of the petitioner's intentions regarding future sale or leasing of all or portions of the proposed development		
II Survey and Legal Description			
1.0	**Complete boundary survey that includes all existing structures, acreage, legal description, and easements plotted to scale by a NYS licensed land surveyor**		
1.1	Raised/wet seal and signature of licensed surveyor		
1.2	Clear delineation and acreage of area to be rezoned if different than property boundary		
2.0	**Legal Description of the total area proposed to be rezoned. (must be consistent with area shown to be rezoned on boundary survey)**		

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Item No.	Item	Submitted	Official use
III Concept Plan (if required by the Planning Board)			
1.0	**Conceptual development plan drawn to scale (no larger than 24" x36" format and folded into 8 ½" x 11" size)**		
1.1	North arrow		
1.2	Scale of drawing		
1.3	Property lines (existing and proposed)		
1.4	Unique natural features and tree cover		
1.5	Information on land controlled by the applicant located within 500 feet of the perimeter of the area proposed to be rezoned		
1.6	Location of all proposed structures and other improvements		
1.7	Number and type of dwelling units (if applicable)		
1.8	Gross square feet of commercial space (if applicable)		
1.9	Maximum structure heights		
1.10	Architectural sketches		
1.11	Existing and proposed contours		
1.12	Existing utility systems (sanitary sewers, water, storm drainage)		
1.13	Location of proposed storm water detention or retention facilities		
1.14	Proposed land use arrangement		
1.15	Location of all parking, loading, stacking and interior circulation drives		
1.16	Location of proposed curb cuts		
1.17	Location of cross access drives to adjacent parcels		
1.18	Pedestrian circulation system		
1.19	Location of NYSDEC wetlands (including buffer area) and/or federal wetlands; indicate jurisdictional status		
1.20	Location of floodway and 100-year floodplain (if applicable)		
1.21	Location and purpose of any proposed easements		
1.22	Location and proposed development of all open spaces, including parks, playgrounds, conservation areas, and dedicated open space; indicate intended ownership of such areas		
1.23	Additional data as required by the Planning Board		
V Other Required Information			
1.0	**Completed and signed Environmental Assessment Form**		
11	Soil boring report and geotechnical report prepared by a qualified Professional Engineer (if applicable)		
1.2	Traffic impact study (if applicable)		
1.3	Archaeological assessment (If applicable)		
1.4	Wetland Delineation report (if applicable)		
2.0	**8 1/2" X 11" reduction of concept plan drawing (see appendix B)**		
3.0	**A CD containing a PDF of the complete submittal package, including all drawings.**		

Rev. 07/02/08, 10/24/08, 11/4/13

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Town Zoning Code and Comprehensive Plan
Rezoning Analysis

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Town Zoning Code Rezoning Analysis
468 Harding Road

Pursuant to § 203-8-3-5 of the Town of Amherst Zoning Code, Petitioner submits the following in support of its Application to rezone 468 Harding Road (SBL 82.09-6-20) ("Property") from Residential District 3 (R-3) to Traditional Single-Family Residential District (TR-3) ("Application").

A. The proposed zoning and development plan is generally consistent with the policies of the Comprehensive Plan and this Ordinance.

1. State in detail why the proposed zoning is consistent with the adopted Town of Amherst Bicentennial Comprehensive Plan.

The Town of Amherst Bicentennial Comprehensive Plan, Amended September 2019 ("Comprehensive Plan"), calls for the development of "policies [that] emphasize the application of context-sensitive design standards to enhance community appearance and sense of place [and] spur reinvestment rather than new greenfield development, the Plan proposes tax and other incentives and zoning revisions focused on infill and redevelopment in older neighborhoods and commercial corridors." See Comprehensive Plan at ii – iiii.

As to context, the Property is located in the southeast corner of the Town immediately west of Transit Road and south of Interstate 90. Access to the Property is through a lighted intersection at Freeman Road and Transit Road. The Property is located in a small neighborhood with approximately 57 homes. The neighborhood has been continuously built up over time. One dwelling was constructed in 1927, with the majority being built in the 1930s-1960s; however, construction continued into the 1980s, 1990s, and 2000s. Two dwelling were constructed in the early 2010s, and the neighborhood still has vacant land for single-family dwelling construction. Meanwhile, the Property sits vacant and is currently owned by a neighboring resident. The proposed zoning is a step towards an infill development that helps sustain the continued growth of the preexisting neighborhood by introducing a "mixed residential" element to this underutilized Property in the neighborhood. See Comprehensive Plan at 3-31 – 3-32. While the proposed zoning presents an opportunity for infill development, it will not undermine previous operational and access improvements to Transit Road. See Comprehensive Plan at 6-12. The proposed zoning and subsequent development will use the same lighted intersection the rest of the neighborhood uses for ingress and egress, and the proposed development will have minimal trip generation given only ten units. See Comprehensive Plan at 1-6 (referencing Transit Road Arterial/Access Management Study); see also Transit Road Arterial/Access Management study at 40 – 42.

The subsequent infill development envisions a scale and site layout sensitive to the size and height of existing dwellings. In other words, the subsequent development is not imposing or out of character with the existing dwellings. Simply, this proposed zoning and subsequent infill development introduces quality housing similar in scale to neighboring

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

dwellings to create a more coherent, complete neighborhood. See Comprehensive Plan at vii, 3-54, 11-8.

2. **Pursuant to New York State Town Law § 272a(11) . . . . cite all text, map, and/or figures that must be amended to support the proposed zoning at this location.**

   The proposed zoning will require a Local Law amending Chapter 203 of the Town of Amherst Code to rezone the Properties from R3 to TR-3 and to Amend the Zoning Map, accordingly.

3. **State why the proposed zoning is consistent with intent and objections of § 203-1-2-2 of the Zoning Code.**

   The proposed zoning achieves many of the Town's Zoning Code Objectives as set forth in § 203-1-2-2. For example, the proposed zoning protects character and values of residential uses with an orderly and beneficial infill development designed and arranged consistently and harmoniously with the surrounding neighborhood. The proposed zoning also prevents the overcrowding of land with an infill development that also balances greenspace and preservation. Also, as mentioned above, the proposed zoning is consistent with the Comprehensive Plan and furthers Comprehensive Plan goals.

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

The proposed zoning will not result in any change to structures or utility consumption currently servicing the Property, which includes:

1. **Sanitary Sewer** – existing Town Sanitary Sewer District #16

2. **Storm Sewer/Drainage** – conveyance systems along Harding Road, Stiles Court, and McKinley Avenue.

3. **Water** – Erie County Water Authority Lease Managed Service Area.

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

The Property is currently zoned R-3 – Residential District Three under § 202-3-6 of the Zoning Code. R-3 permits single family detached dwellings. While the R-3 zoning matches the existing neighborhood, the Property itself is out of character with the lots in the neighborhood at 1.44 acres. The proposed zoning to TR-3 maintains the residential use while further an infill development more adequate for changing demographics and meeting a need for mixed residential. The infill development itself will be designed and scaled harmoniously with the existing neighborhood.

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

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

The Property is out of scale for a single family detached dwelling and more appropriate for multi-family dwellings. Overall, the Property is suitable for residential use, which the proposed zoning maintains.

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

The proposed change maintain the residential character of the Property but accommodates an infill development designed and scaled consistently with the surrounding neighborhood. The infill development also continues the steady build-up of the existing area and meets the need for mixed residential neighborhoods. See analysis contained in Section A.

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Full Environmental Assessment Form

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

SECOND AMENDED 4/16/21

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Harding Road		
Project Location (describe, and attach a general location map): 468 Harding Road (SBL 82.09-6-20)		
Brief Description of Proposed Action (include purpose or need): Rezone entirety of 468 Harding Road from R-3 to TR-3. The action has been defined broadly to include all site activities and including post-rezoning development of site.		
Name of Applicant/Sponsor: Forbes Capretto Homes	Telephone: (716) 688-5597 E-Mail: dcapretto@fobeshomes.com	
Address: 470 Cayuga Road		
City/PO: Cheektowaga	State: NY	Zip Code: 14225
Project Contact (if not same as sponsor; give name and title/role): Barclay Damon LLP, Jeffery D Palumbo as agent/attorney	Telephone: (716) 858-3728 E-Mail: jpalumbo@barclaydamon.com	
Address: 9276 Main Street, Suite 3		
City/PO: Clarence	State: NY	Zip Code: 14031
Property Owner (if not same as sponsor): Lori Grabenstatter	Telephone: E-Mail:	
Address: 469 Harding Road		
City/PO: Amherst	State: NY	Zip Code:14221

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B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	**If Yes: Identify Agency and Approval(s) Required**	**Application Date (Actual or projected)**
a. CityCounsel, TownBoard , or Village Board of Trustees ☑Yes ☐No	Amherst Town Board	December 28, 2020
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Amherst Planning Board, recommendation to Town Board	December 28, 2020
c. City, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☐Yes ☑No		
e. County agencies ☑Yes ☐No	Erie County Planning, 239-m referral	December 28, 2020
f. Regional agencies ☐Yes ☑No		
g. State agencies ☐Yes ☑No		
h. Federal agencies ☐Yes ☑No		
i. Coastal Resources. *i.* Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No *ii.* Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No *iii.* Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No		

C. Planning and Zoning

C.1. Planning and zoning actions.	
Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☑Yes ☐No • **If Yes,** complete sections C, F and G. • **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1	
C.2. Adopted land use plans.	
a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No	
b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes ☐No If Yes, identify the plan(s): NYS Heritage Areas West Erie Canal Corridor	
c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No If Yes, identify the plan(s):	

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C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
Residential-3

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☑ No

c. Is a zoning change requested as part of the proposed action? ☑ Yes ☐ No
If Yes,
i. What is the proposed new zoning for the site? Traditional Single-Family Residential (TR-3)

C.4. Existing community services.

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

b. What police or other public protection forces serve the project site?
Town of Amherst Police Department

c. Which fire protection and emergency medical services serve the project site?
Main-Transit Fire Protection District

d. What parks serve the project site?
Wehrle FAA Recreation Complex - Amherst

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? residential

b. a. Total acreage of the site of the proposed action? +/-1.44 acres
b. Total acreage to be physically disturbed? +/-1.44 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? +/- 1.44 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % Units:

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☑ No
If Yes,
i Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
ii Is a cluster/conservation layout proposed? ☐ Yes ☐ No
iii Number of lots proposed?
iv Minimum and maximum proposed lot sizes? Minimum Maximum

e. Will the proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: 6-9 months
ii. If Yes:
- Total number of phases anticipated
- Anticipated commencement date of phase 1 (including demolition) month year
- Anticipated completion date of final phase month year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

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f. Does the project include new residential uses? ☑ Yes ☐ No

If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase	10			
At completion of all phases	10			

g. Does the proposed action include new non-residential construction (including expansions)? ☐ Yes ☑ No

If Yes,

i. Total number of structures

ii Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length

iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☑ Yes ☐ No

If Yes,

i. Purpose of the impoundment: drainage

ii If a water impoundment, the principal source of the water: ☑ Ground water ☐ Surface water streams ☐ Other specify:

iii If other than water, identify the type of impounded/contained liquids and their source.

iv Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):

earth fill

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) ☐ Yes ☑ No

If Yes:

i. What is the purpose of the excavation or dredging?

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards):
- Over what duration of time?

iii Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.

iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No

If yes, describe.

v What is the total area to be dredged or excavated? _____ acres

vi What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? ☐ Yes ☐ No

ix. Summarize site reclamation goals and plan:

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☑ No

If Yes:

i Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description):

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ii Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐Yes ☐No
If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes ☐No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑Yes ☐No
If Yes:

i. Total anticipated water usage/demand per day: 3,750 gallons/day

ii Will the proposed action obtain water from an existing public water supply? ☑Yes ☐No
If Yes:

- Name of district or service area: Town of Amherst/Erie County Water Authority Lease Managed Service Area
- Does the existing public water supply have capacity to serve the proposal? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No
- Do existing lines serve the project site? ☑Yes ☐No

iii. Will line extension within an existing district be necessary to supply the project? ☑Yes ☐No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project: extension based on available waterline situation in area
- Source(s) of supply for the district: Lake Erie

iv Is a new water supply district or service area proposed to be formed to serve the project site? ☐Yes ☑No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑Yes ☐No
If Yes:

i Total anticipated liquid waste generation per day: 2,500 gallons/day

ii Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):
sanitary wastewater

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

- Name of wastewater treatment plant to be used: Town of Amherst Plant No. 16
- Name of district: Town of Amherst Sewer District No. 16
- Does the existing wastewater treatment plant have capacity to serve the project? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will a line extension within an existing district be necessary to serve the project? ☐Yes ☑No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

_____

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or 0.4 acres (impervious surface)

_____ Square feet or _____ acres (parcel size)

ii. Describe types of new point sources: Pipes, stormwater planters, and stormwater detention basins

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

directed to existing stormwater runoff conveyances systems along Harding Road, Stiles Court, and McKinley Avenue

- If to surface waters, identify receiving water bodies or wetlands: _____
- Will stormwater runoff flow to adjacent properties? ☐Yes ☑No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☑No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☐Yes ☑No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☐No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____ Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____ Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____ Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☐Yes ☐No N/A

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☐No

l. Hours of operation. Answer all items which apply.

i During Construction:

- Monday - Friday: Pursuant to Town Code
- Saturday: Pursuant to Town Code
- Sunday: Pursuant to Town Code
- Holidays: Pursuant to Town Code

ii During Operations:

- Monday - Friday: Continuous
- Saturday: Continuous
- Sunday: Continuous
- Holidays: Continuous

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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

During Construction only, which will occur as permitted by Town Code, and includes noise levels typically associated with construction.

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe:

n. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Dark sky compatible

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally, describe the proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☐ No N/A

If Yes:

i Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☐ No N/A

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: _____ tons per _____ (unit of time)
- Operation : _____ tons per _____ (unit of time)

ii Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction:
- Operation:

iii Proposed disposal methods facilities for solid waste generated on-site:

- Construction:
- Operation:

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s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii Generally describe processes or activities involving hazardous wastes or constituents: _____

iii Specify amount to be handled or generated _____ tons/month

iv Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

Not applicable

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____

ii If mix of uses, generally describe:

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0.0	0.40	+ 0.40
• Forested			
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)			
• Other Describe: greenspace/Vacant lot	+/- 1.44	1.04	- 0.40

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c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐Yes ☑No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii Dam's existing hazard classification: _____
iii Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐No
- If yes, cite sources/documentation: _____

ii Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☑Yes ☐No
If yes, provide DEC ID number(s): 915043

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):
The site of the proposed action has not been the subject of remediation, however, if the project site lands within 2,000 feet of an adjoining property subject to remediation, the EAF Mapper will check "yes" on the PDF of the FEAF. Attached is a description of the Pfohl Brothers Landfill remediation site at Aero Drive and Transit Road located south of the project site. Remedial construction of the site was completed in 2002 with a landfill cap and vented leachate collection system

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v. Is the project site subject to an institutional control limiting property uses? ☐ Yes ☑ No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐ Yes ☐ No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? > 5 feet

b. Are there bedrock outcroppings on the project site? ☐ Yes ☑ No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %

c. Predominant soil type(s) present on project site:

Claverack Loamy fine sand, 0--3%	73 %
Wassaic Silt Loam, 3-8% slopes	27 %
	%

d. What is the average depth to the water table on the project site? Average: 2 feet

e. Drainage status of project site soils:

☑ Well Drained:	27 % of site
☑ Moderately Well Drained:	73 % of site
☐ Poorly Drained	% of site

f. Approximate proportion of proposed action site with slopes:

☑ 0-10%:	100 % of site
☐ 10-15%:	% of site
☐ 15% or greater:	% of site

g. Are there any unique geologic features on the project site? ☐ Yes ☑ No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☐ Yes ☑ No

ii. Do any wetlands or other waterbodies adjoin the project site? ☐ Yes ☑ No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☐ Yes ☑ No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name _____ Approximate Size _____
- Wetland No. (if regulated by DEC)

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐ Yes ☑ No

If yes, name of impaired water body bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? ☐ Yes ☑ No

j. Is the project site in the 100-year Floodplain? ☐ Yes ☑ No

k. Is the project site in the 500-year Floodplain? ☐ Yes ☑ No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐ Yes ☑ No
If Yes:

i. Name of aquifer: _____

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m. Identify the predominant wildlife species that occupy or use the project site:

n. Does the project site contain a designated significant natural community? ☐Yes ☑No

If Yes:

i. Describe the habitat/community (composition, function, and basis for designation):

ii. Source(s) of description or evaluation:

iii. Extent of community/habitat:

- Currently: acres
- Following completion of project as proposed: acres
- Gain or loss (indicate + or -): acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No

If Yes:

i Species and listing (endangered or threatened):

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No

If Yes:

i. Species and listing:

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No

If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No

If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No

i. If Yes: acreage(s) on project site?

ii. Source(s) of soil rating(s):

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No

If Yes:

i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature

ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No

If Yes:

i. CEA name:

ii. Basis for designation:

iii. Designating agency and date:

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined bythe Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☐ Yes ☑ No

If Yes:

i Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii Name: _____

iii Brief description of attributes on which listing is based:

_____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: _____

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

iii Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i Identify the name of the river and its designation: _____

ii Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Forbes Capretto Homes by agent/attorney Date April 16, 2021 - AMENDED SUBMITTAL

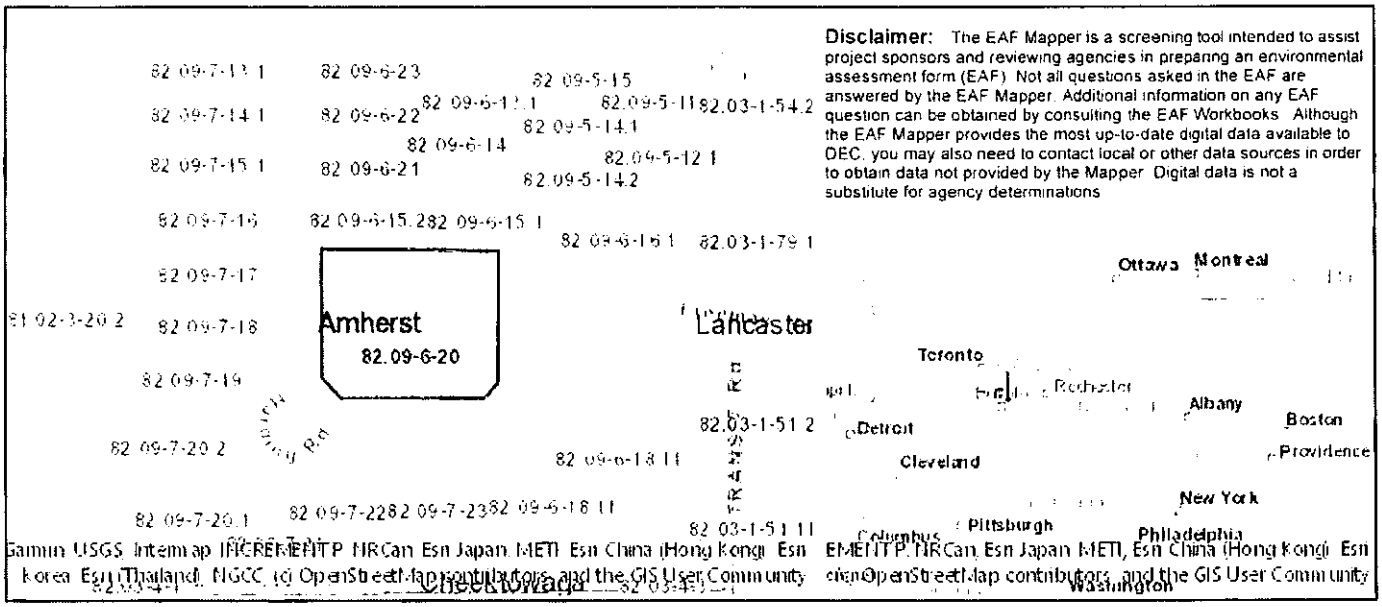
Signature Jeffery D. Palumbo Title agent/attorney

PRINT FORM

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

EAF Mapper Summary Report

Wednesday, December 23, 2020 4:24 PM



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	Yes
E.1.h.iii [Within 2,000' of DEC Remediation Site - DEC ID]	915043
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	No
E.2.h.iii [Surface Water Features]	No
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	No
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

E.2.o. [Endangered or Threatened Species]	No
E.2.p [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

Environmental Site Remediation Database Search Details

Site Record

Document Repository

Site-related documents are available for review through the DECInfo Locator on line at DECInfol ocator

Administrative Information

Site Name: Pfohl Brothers Landfill
Site Code: 915043
Program: State Superfund Program
Classification: **04**
EPA ID Number:

Location

DEC Region:9
Address: Aero Drive and Transit Road
City: Cheektowaga Zip: 14225
County: Erie
Latitude:42.94506036
Longitude:-78.70135094
Site Type: LANDFILL
Estimated Size: 94 Acres

Institutional And Engineering Controls

Control Type:
Deed Restriction

Control Elements:
Ground Water Use Restriction
Vapor Mitigation
Soil Management Plan
Cover System
Leachate Collection
Fencing/Access Control
Landuse Restriction
Building Use Restriction
Surface Water Use Restriction

Site Owner(s) and Operator(s)

Current Owner Name: ELIZABETH I. MCBRIDE

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Current Owner(s) Address: 9450-201 MEADOWOOD DRIVE
FORT PIERCE,FL, 34951
Current Owner Name:P AUL PFOHL
Current Owner(s) Address: PO BOX 3210
KIRBY,OR, 97531
Current Owner Name: PFOHL BROTHERS
Current Owner(s) Address: 5833 MAIN ST.
BUFFALO,NY, 14221
Current Owner Name: Pfohl Enterprises
Current Owner(s) Address: 5833 Main Street
Buffalo,NY, 14221
Current Owner Name:STUAR T JENKINS
Current Owner(s) Address: 42 WILLOWBROOK
BUFFALO,NY, 14221
Current Owner Name: AERO LAND, INC.
Current Owner(s) Address: 215 CALIFORNIA DRIVE
WILLIAMSVILLE,NY, 14221
Owner(s) during disposal: PFOHL BROTHERS
Current On-Site Operator: town of cheektowaga
Stated Operator(s) Address:
Cheektowaga,NY 14225

Hazardous Waste Disposal Period

From: 1940s **To:** 1969

Site Description

Location: This site is located in the Town of Cheektowaga, Erie County, on the north and south sides of Aero Drive. The closest main corridor is Transit Road that rests to the east. Site Features: The site consists of two capped fill areas for a total of approximately 94 acres. One fill area (approximately 70 acres) is located on Area B (north side of Aero Drive) and the other (approximately 24 acres) is located on Area C (south side of Aero Drive.) The two capped areas are individually fenced and there are four entrance gates along Aero Drive: two on the north side for Area B and two on the south side for Area C. The capped areas have evenly-distributed gas vents for the landfill gas control system. Several engineered drainage swales, ditches, and culverts divert surface water off the caps. The majority of this site remains vacant and grassy, however there are some commercial establishments present to the south east corner. Current Zoning and Land Use: This site comprised of multiple parcels zoned for commercial use. Past Use of the Site: The landfill was operated between 1940 and 1969 receiving household and industrial wastes. The industrial waste materials included paints, waste solvents, thinners, pine tar pitch, cellulose, rubber, scrap metal and phenolic tars. A Remedial Investigation and Feasibility Study was completed in 1991. The data showed that on-site soils, groundwater, seeps, and sediments were contaminated with Volatile and Semi-Volatile Organic Compounds, and metals at various concentrations. The data did not show any significant off-site impact. A Record of Decision (ROD) was issued in 1992 requiring the landfill to be consolidated and closed. A component of the ROD was an Interim Remedial Measure (drum removal) in advance of the landfill closure. The IRM program was initiated by the State in 1992, and subsequently completed by

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

the Potentially Responsible Parties (PRPs). This effort resulted in the removal of approximately 4800 drums and 660 cu./yds. of contaminated soil. A second ROD was issued in 1994 which removed Area A from the site description. Area A is the northern portion of the site which is located immediately south of the NYS Thruway. The ROD also stated that there will be no action in regard to off-site groundwater. The final remedial design for the site was completed in 2000. The remedial construction consisted of waste consolidation; capping of landfills on north side (Area B) and south side (Area C) of Aero Drive; providing leachate collection around areas B and C; restoring wetlands; and fencing the landfill. Work commenced in 2001 and was completed in 2002. The consolidated landfill was reduced to 94 acres. Site Geology and Hydrogeology: The landfill is located in the Lake Erie Plain. The region is underlain by gently dipping bedrock of sedimentary nature (e.g., sandstones, siltstones,and shales). Surface drainage in the area is generally to Aero Creek, Aero Lake, adjacent wetlands and unnamed tributaries, which eventually drain into Ellicott Creek, a regional creek that empties into the Niagara River at the City of Tonawanda, New York. Several ponds, marshes, and wetlands are within a mile of the site. Existing flood insurance maps (Federal Emergency Management Agency, 1983) indicate that the site is not in the Ellicott Creek Floodway. Changes to the flood elevation in Ellicott Creek did not occur as a result of site construction. The areas just outside the boundary of Area B (i.e., Aero Lake,Aero Creek, and adjacent wetlands) are within the 100-year flood zone elevation of 696.8 feet, as are several areas within Area C located adjacent to Aero Drive, Transit Road and Pfohl Road. Deed restrictions have been filed by the PRPs. The Operation, Maintenance and Monitoring Plan was approved in March 2006 and is being implemented by the Town of Cheektowaga.

Contaminants of Concern (Including Materials Disposed)

Contaminant Name/Type

WASTE OIL, PAINTS, THINNERS, PINE TAR PITCH
phenol

Site Environmental Assessment

Nature and Extent of Contamination: To facilitate future development along Pfohl Road and Aero Drive, approximately 36 acres of the landfilled areas, consisting of about 540,000 cubic yards of waste located along these roads (the edges of Areas B and C) were excavated and consolidated on the interior portions of Areas B and C. In addition, 9,200 cubic yards of contaminated soil and waste were excavated to protect the wetlands and consolidated on the interior portions of Areas B and C. Post-excavation soil samples showed that the remaining soils met New York State Technical and Administrative Guidance Memorandum No. 94-HWR-4046 January 24, 1994 (Revised) cleanup objectives. The excavated areas were backfilled with clean fill and top soil and were reseeded. A 94-acre cap was constructed over the consolidated wastes in conformance with New York State 6 NYCRR Part 360 closure requirements. The cap consists of a six-inch gas venting layer overlain by a layer of filter fabric, a 40-mil thick very flexible polyethylene (VFPE) liner, a 24-inch barrier protection layer of clean soil, and topped with six inched of topsoil capable of supporting vegetation. Forty-nine

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

gas vents were installed to convey the gas from beneath the low permeability layer of the cap via the gas venting layer to the atmosphere. The leachate collection system consists of an 8-inch diameter perforated collection pipe set in a granular material-filled trench, which runs along the 10,000-foot perimeter of the landfilled areas at a depth of approximately five to 22 feet bgs. An additional 1,000 feet of collection drain was installed eight to 14 feet bgs in the southwest interior of Area B to promote an upward gradient from the bedrock to the overburden within the confines of the perimeter barrier containment system. All of the collected leachate is discharged directly to the Cheektowaga Publically-Owned Treatment Works via six collection wet wells and a force main that was constructed to a sewer interceptor. Twenty-eight manholes were installed to facilitate monitoring and maintenance. A polyethylene (VFPE) wall keyed into 24 inches of undisturbed clay at the bottom of the perimeter trench was installed as a vertical barrier to prevent the collection drain system from collecting clean off-site groundwater and dewatering the adjacent wetlands. The polyethylene wall was connected to the VFPE liner in the landfill caps. All disturbed areas of the site were subsequently restored. A vegetative layer consisting of hardy, shallow rooted grasses was established on the surface of the landfill caps. The grass serves to stabilize the soil against erosion, minimize percolation of precipitation, promote evapotranspiration of soil moisture, and is aesthetically pleasing. Special Resources Impacted/Threatened: Vegetation patterns at the site are a mixture of herbaceous field, weed, and grass species. Both open-field, wetland and forested habitats characterize the surrounding area. These habitats support a variety of avian and mammalian species. No New York State Department of Environmental Conservation (NYSDEC) Significant Habitat Areas are found on-site, and no endangered or threatened species were identified in this area. Due to meandering wetland boundaries, the construction of the landfill caps led to the permanent removal of 0.16 acre of wetlands along a portion of the western boundary of Area B. As mitigation, 0.50 acres of wetland were reestablished along the northern boundary of Area B, resulting in a net gain of 0.34 acre of wetland.

Site Health Assessment

Remedial construction was completed in 2002 and consisted of waste consolidation, installation of a leachate collection system, and capping and fencing of the site. Previously, residential surface soil and sump water sample results indicated no threat to human health. NYSDOH sampled several private wells in the area, and none exceeded drinking water standards. NYSDOH conducted a lead screening and health survey, with no unusual patterns of reported illnesses or health conditions related to the site. The NYSDOH cancer incidence study concluded that overall from 1978 through 1989 a significant excess of newly diagnosed cancer cases were observed among females, but not among males. When the cases were geographically tracked no clustering or unusual patterns were seen near the landfill. During construction of the landfill cap, site-related odors were noticed by NYS Thruway employees in the adjacent toll booths. Air monitoring on-site and at the toll booths did not detect site-related contaminants at levels that represent a health concern.

For more Information:

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Return To Results

Refine This Search

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Town Supplemental Environmental Assessment Form

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

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

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Claverack Loamy fine sand, 0-3% slopes	very limited	somewhat limited	very limited	somewhat limited	somewhat limited
Wassaic silt loam, 3-8% slopes	very limited	somewhat limited	very limited	somewhat limited	somewhat limited

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

____ Geotechnical report attached ____ Not applicable

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ☒ No
On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ☒ No

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

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

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:
none.

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

Describe_____

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

7. Maximum number of vehicular trips to be generated per hour upon completion of project 7
Source: New York State Department of Environmental Conservation trip projection ratios

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

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

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:

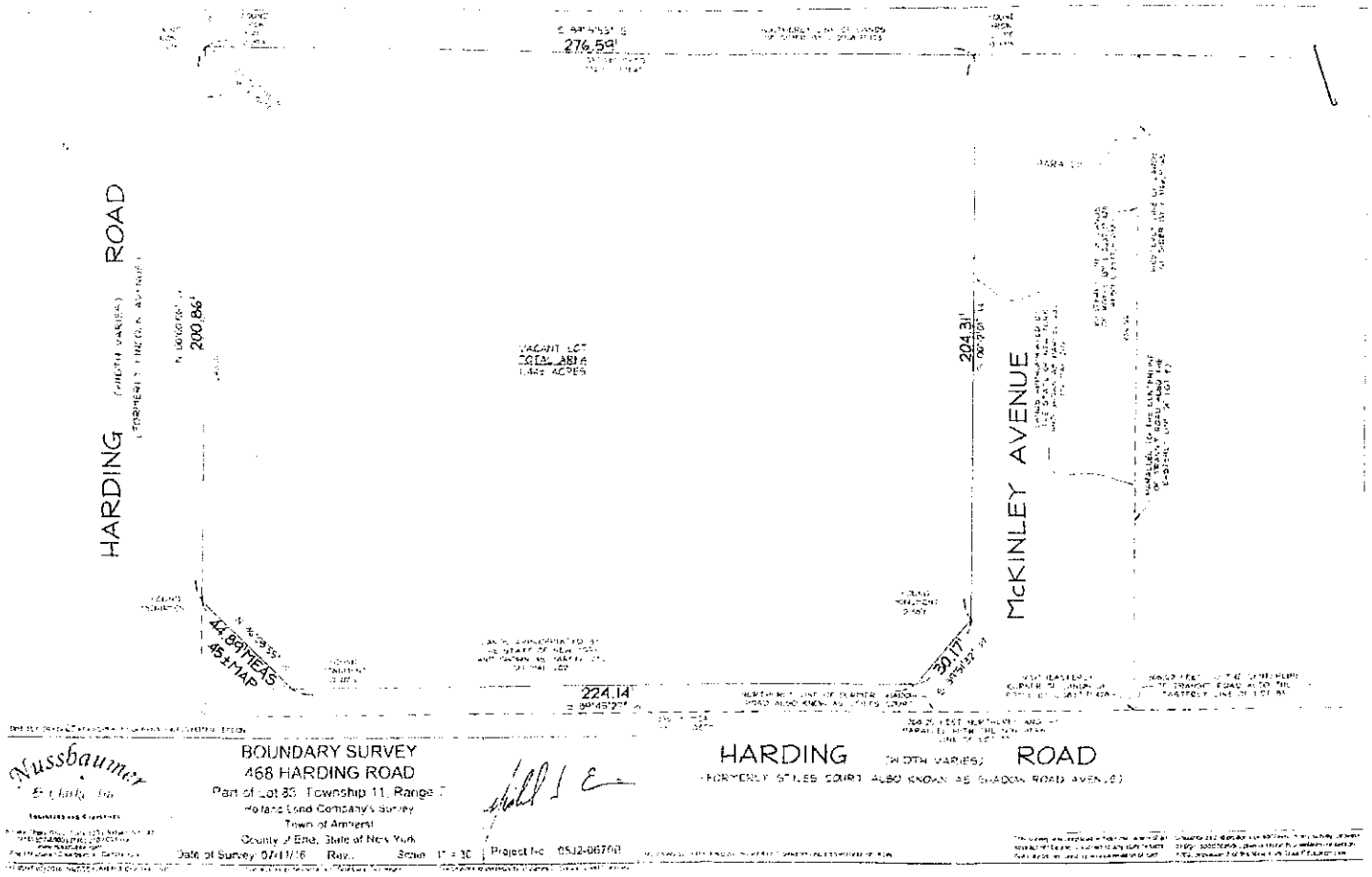
466 average flow 1,862 peak flow.

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

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Existing Boundary Survey

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)



Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Legal Description of Property to be Rezoned

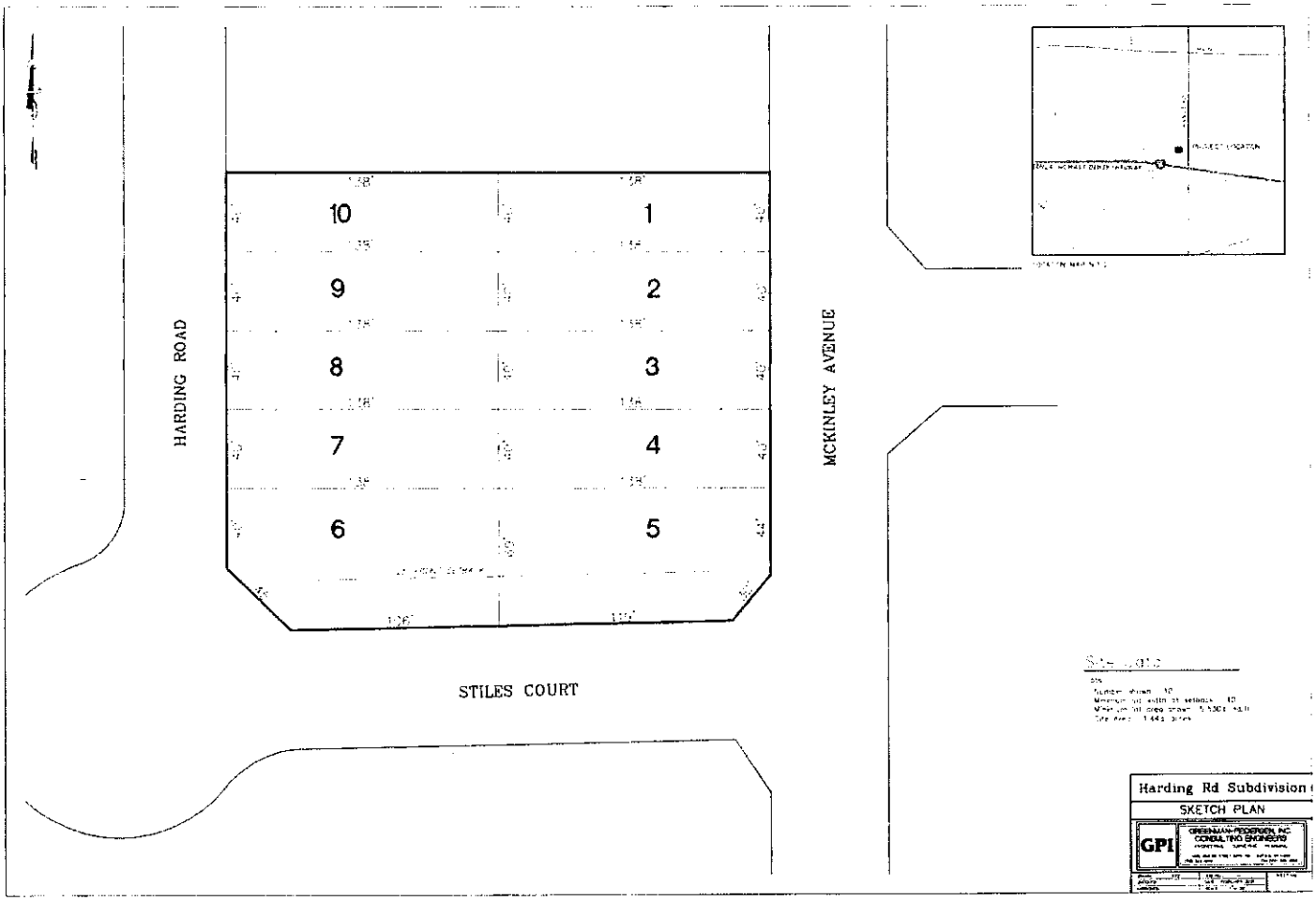
Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York being part of Lot 83, Township 11, Range 7 of the Holland Land Company's Survey, more particularly described as follows:
BEGINNING at a point in the easterly line of Harding Road at the southerly line of lands conveyed to Sider by deed recorded in the Erie County Clerk's Office in Liber 2268 of Deeds at page 123;
THENCE S 89°19'31" E along the said southerly line of Sider a distance of 276.59 feet to the westerly line of McKinley Avenue as appropriated by the State of New York and shown as Parcel 230 on Map 202;
THENCE S 00°12'01" W, along the said westerly line of Parcel 230 a distance of 204.31 feet;
THENCE S39°51'32" W, continuing along the westerly line of Parcel 230, a distance of 30.17 feet to the northerly line of said Parcel 230:
THENCE S 89°45'27' W, along the said northerly line of Parcel 230, a distance of 224.14 feet;
THENCE N 46°08'55" W, continuing along the said northerly line of Parcel 230, a distance of 44.89 feet to the easterly line of Harding Road;
THENCE N 00°00'06" W, along the easterly line of Harding Road, a distance of 200.86 feet to the POINT OF BEGINNING, being 1.44 acres of land, more or less.

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Preliminary Concept Plan

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)



Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Draft Local Law

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Owner Authorization

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

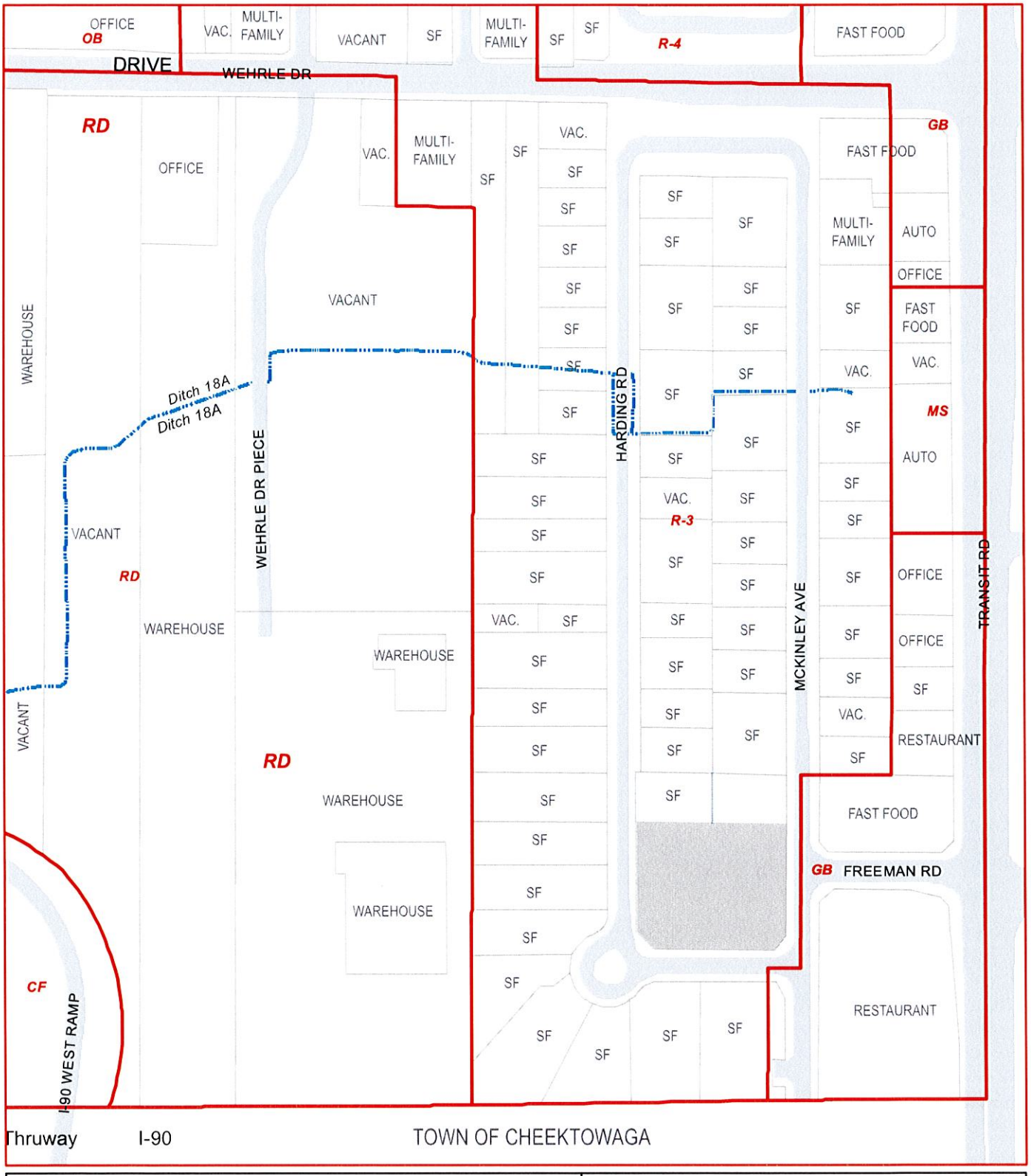
AUTHORIZATION

Lori M. Grabenstatter, record property owner of 468 Harding Road, 82.09-6-20, in the Town of Amherst hereby authorize Forbes Capretto Homes by the law firm of Barclay Damon LLP, to file an application, along with any necessary supporting documentation, with the Town of Amherst in connection with approvals sought for the above referenced property.

By: Lori M. Grabenstatter

Dated: ~~December __, 2020~~ January 4, 2021

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)



Z-2020-13

Request to Rezone 1.44+/- AC of Land from R-3 to TR-3
Property Located at 468 Harding Road

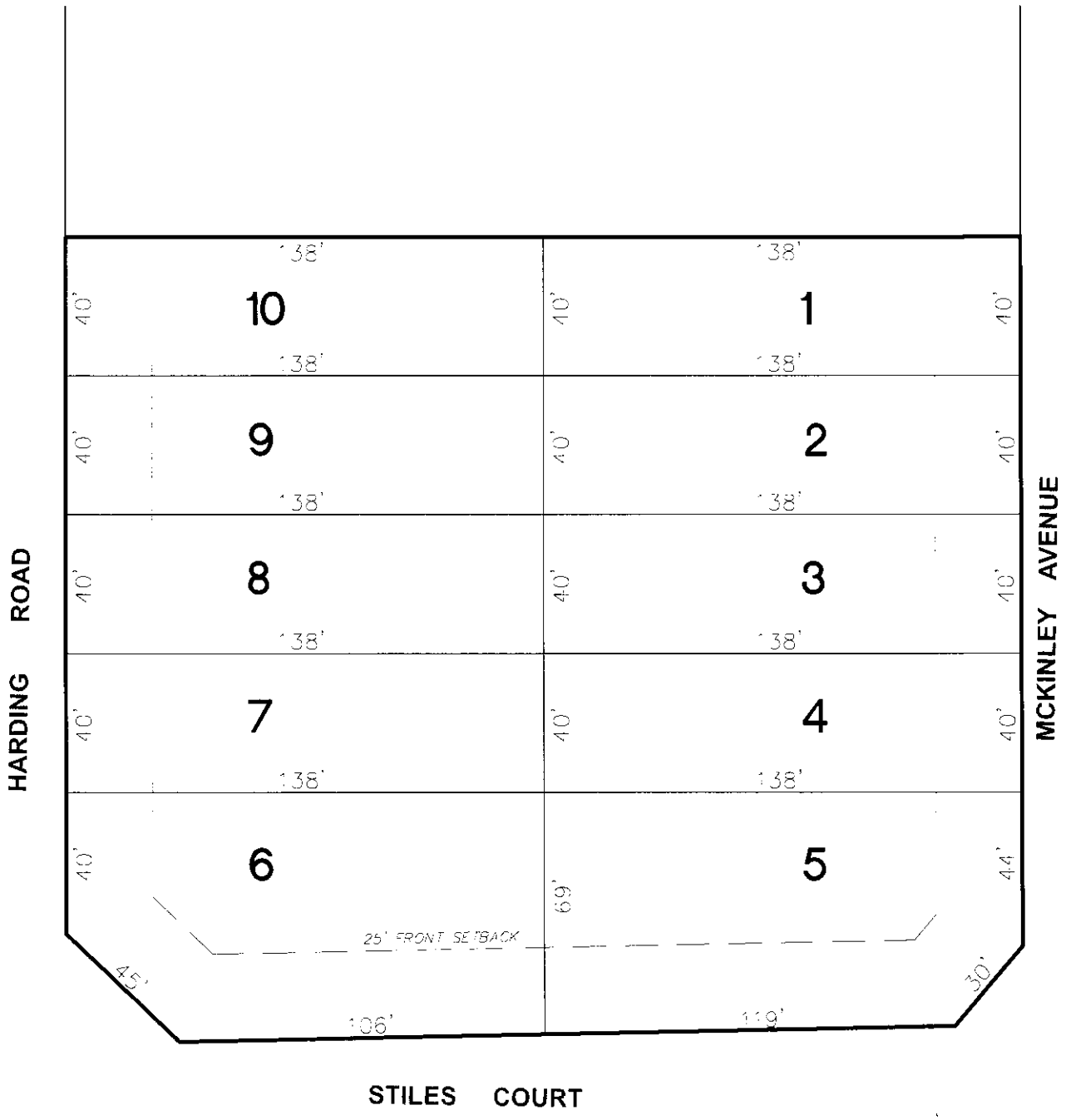
Forbes Capretto Homes, Petitioner

May 20, 2021

468 Harding Road

Prepared by the Town of Amherst Planning Department

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)



CONCEPT PLAN

Z-2020-13
468 Harding Road
Received: 3/2/21

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)



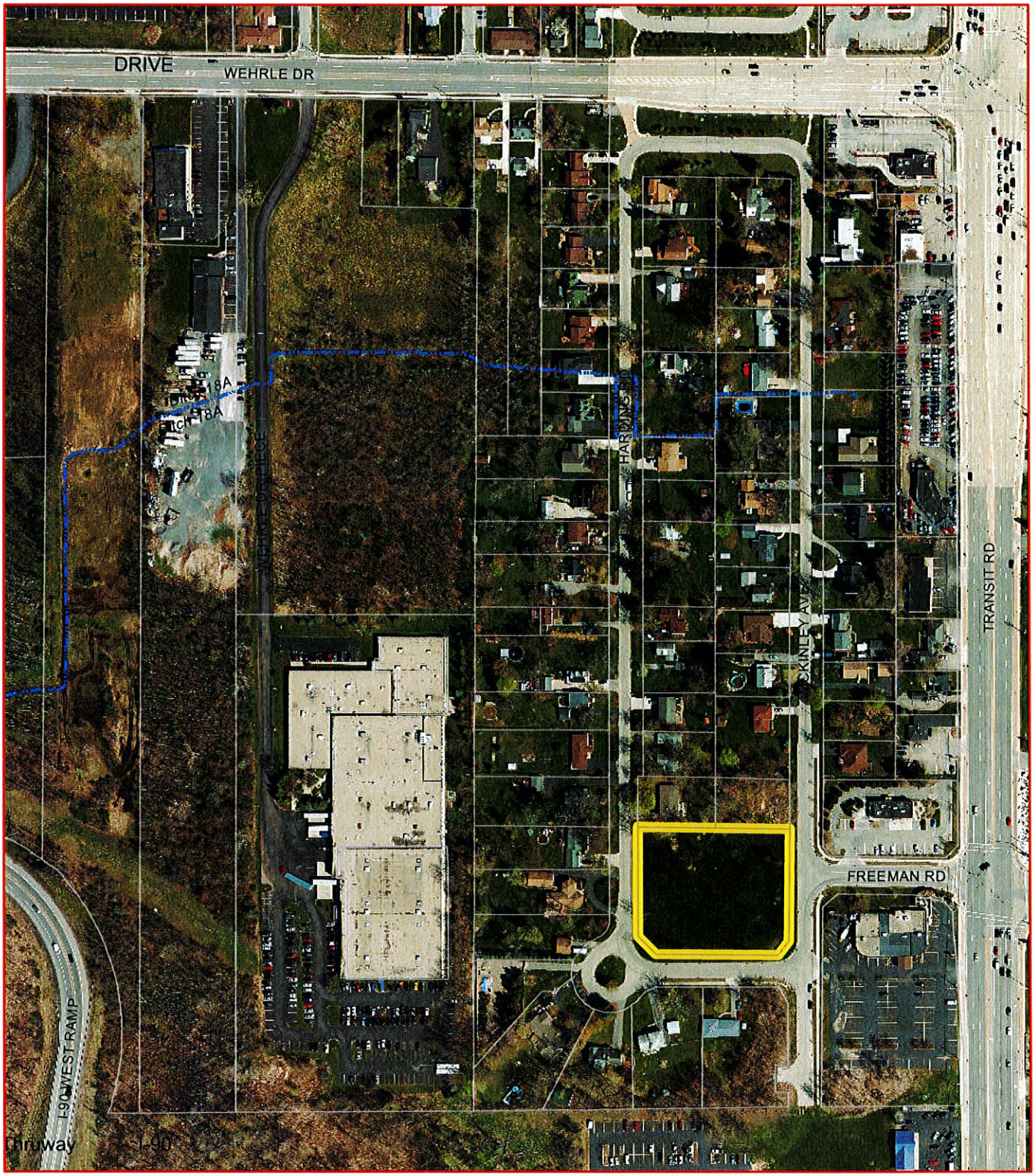




ILLUSTRATION

Z-2020-13
468 Harding Road
Received: 4/15/21

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)



Z-2020-13

Request to Rezone 1.44+/- AC of Land from R-3 to TR-3
Property Located at 468 Harding Road

Forbes Capretto Homes, Petitioner

May 20, 2021

468 Harding Road

Prepared by the Town of Amherst Planning Department

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

Town of Amherst Planning Department *Erie Cou*

SPa

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
MAY 07 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM

April 20, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.44± ACRES OF LAND FROM R-3 TO TR-3; PROPERTY LOCATED AT **468 HARDING ROAD**. FORBES CAPRETTO HOMES, PETITIONER. **Z-2020-13**.

REVIEW:

REVISED:
Received April 19, 2021

Do you agree with all statements made? Yes, with conditions.

If you do not, briefly state why: _____

General comments relative to your agency interests: Concerned with the number of possible curb cuts this number of lots will create along curves and intersections.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

ATSB suggests a private alley service driveways for all 10 lots, located along the rear property line. If unable/unwilling, ever effort should be given to consolidate driveways using shared driveways (1 per two lots) with no driveways entering the intersection.

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

Signature: Schregel, ATSB **Date:** 5/6/21

EK/RR/bt
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Rev_Transmittal_042021.doc

cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
MAY 04 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM April 20, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.44± ACRES OF LAND FROM R-3 TO TR-3; PROPERTY LOCATED AT **468 HARDING ROAD**. FORBES CAPRETTO HOMES, PETITIONER. **Z-2020-13.**

REVISED:
Received April 19, 2021

REVIEW:

Do you agree with all statements made? YES

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 4/29/21

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Rev_Transmittal_042021.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
MAY - 3 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM April 20, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

RECEIVED
APR 22 2021
TOWN ATTORNEY

4/26/21 AD

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.44± ACRES OF LAND FROM R-3 TO TR-3; PROPERTY LOCATED AT **468 HARDING ROAD**. FORBES CAPRETTO HOMES, PETITIONER. **Z-2020-13**.

REVISED:
Received April 19, 2021

REVIEW:

Do you agree with all statements made? Agree with all statements made.

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 4/26/21

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Rev_Transmittal_042021.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
APR 22 2021
TOWN ATTORNEY

RECEIVE
APR 29 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM April 20, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
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Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.44± ACRES OF LAND FROM R-3 TO TR-3; PROPERTY LOCATED AT **468 HARDING ROAD**. FORBES CAPRETTO HOMES, PETITIONER. **Z-2020-13**.

REVISED:
Received April 19, 2021

REVIEW:

Do you agree with all statements made? N/A.

If you do not, briefly state why: _____

General comments relative to your agency interests: Not at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Stan Sliwa **Date:** 4/23/21

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Rev_Transmittal_042021.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM April 20, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.44± ACRES OF LAND FROM R-3 TO TR-3; PROPERTY LOCATED AT **468 HARDING ROAD**. FORBES CAPRETTO HOMES, PETITIONER. **Z-2020-13**.

REVISED:
Received April 19, 2021

REVIEW:

Do you agree with all statements made? No.

If you do not, briefly state why: The existing R-3 zoning will allow for the development of 6 residential lots consistent in size with the existing lots in the neighborhood.

General comments relative to your agency interests: The average lot width of the 61 homes in the neighborhood averages 91 feet, with a min. lot of 52 feet and a maximum lot of width of 159 ' (see attached).

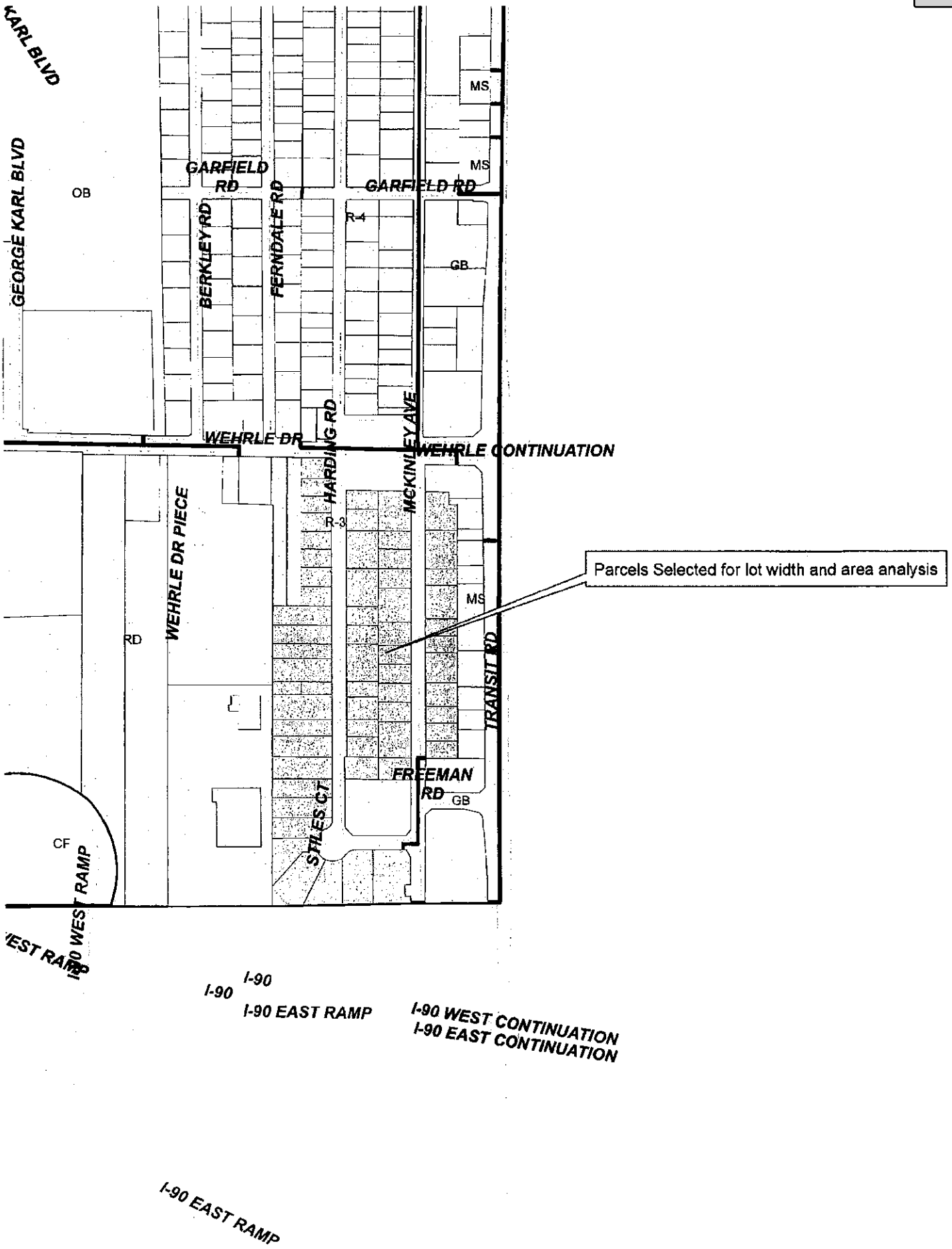
If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Daniel J. Ulatowski **Date:** 04/26/2021

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Rev_Transmittal_042021.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)



Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Parcel Address	FRONTAGE	DEPTH	ACRES
370 MC KINLEY AVE	70.00000	0.00000	0.20957
465 HARDING RD	80.00000	255.00000	0.45029
440 MC KINLEY AVE	70.00000	135.00000	0.22196
382 MC KINLEY AVE	137.60000	135.00000	0.41972
442 HARDING RD	70.00000	135.00000	0.21333
437 HARDING RD	67.00000	251.00000	0.38727
435 MC KINLEY AVE	155.00000	135.00000	0.46504
341 HARDING RD	56.00000	140.00000	0.24733
432 MC KINLEY AVE	75.00000	135.00000	0.21353
347 HARDING RD	70.00000	126.00000	0.20382
352 HARDING RD	75.00000	135.00000	0.23546
345 MC KINLEY AVE	159.00000	135.00000	0.51725
350 MC KINLEY AVE	109.00000	135.00000	0.44038
353 HARDING RD	93.00000	126.00000	0.19936
360 HARDING RD	88.00000	135.00000	0.26888
359 HARDING RD	76.00000	127.00000	0.22075
364 MC KINLEY AVE	156.00000	135.00000	0.47919
366 HARDING RD	156.00000	135.00000	0.47395
357 MC KINLEY AVE	78.00000	135.00000	0.23387
365 HARDING RD	75.00000	127.00000	0.21037
363 MC KINLEY AVE	78.00000	135.00000	0.25472
371 HARDING RD	75.00000	127.00000	0.21533
381 HARDING RD	80.00000	126.00000	0.23109
380 HARDING RD	156.00000	135.00000	0.47650
377 MC KINLEY AVE	80.00000	135.00000	0.25526
387 MC KINLEY AVE	139.00000	135.00000	0.43794
423 HARDING RD (NO FTG)	52.00000	124.00000	0.14211
415 HARDING RD	52.00000	126.00000	0.14848
424 MC KINLEY AVE	95.00000	135.00000	0.29668
421 MC KINLEY AVE	78.00000	135.00000	0.24692
389 HARDING RD	78.00000	251.00000	0.44149
392 HARDING RD	78.00000	135.00000	0.23465
391 MC KINLEY AVE	93.00000	135.00000	0.29586
395 HARDING RD	78.00000	251.00000	0.43456
400 HARDING RD	78.00000	135.00000	0.23075
394 MC KINLEY AVE	68.00000	135.00000	0.20790
412 HARDING RD	156.00000	135.00000	0.46884
405 HARDING RD	60.00000	251.00000	0.33734
405 MC KINLEY AVE	76.00000	135.00000	0.24066
410 MC KINLEY AVE	124.00000	135.00000	0.37501
411 HARDING RD	96.00000	251.00000	0.54484
415 MC KINLEY AVE	80.00000	135.00000	0.24811
424 HARDING RD	63.00000	135.00000	0.19196
431 HARDING RD	104.00000	251.00000	0.58821
430 HARDING RD	93.00000	135.00000	0.28183
427 MC KINLEY AVE	78.00000	135.00000	0.24707

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

469 HARDING RD	80.00000	256.00000	0.47207
441 HARDING RD	85.00000	251.00000	0.48488
450 HARDING RD	83.00000	135.00000	0.25213
448 MC KINLEY AVE	70.00000	135.00000	0.21566
461 HARDING RD	92.00000	252.00000	0.51176
460 HARDING RD	91.80000	135.01000	0.29435
479 HARDING RD	100.00000	221.00000	0.42658
483 HARDING RD	82.00000	199.00000	0.43211
489 HARDING RD	89.00000	217.00000	0.69650
505 HARDING RD	127.00000	201.00000	0.63655
575 HARDING RD	127.00000	218.00000	0.75724
491 HARDING RD	100.00000	195.00000	0.48501
388 MC KINLEY AVE	68.80000	135.00000	0.21590
455 MC KINLEY AVE	91.80000	135.00000	0.27950

Average Lot Width	91.52	Average Lot Area	0.34
Maximum Lot Width	159.00	Maximum Lot Area	0.76
Minimum Lot Width	52.00	Minimum Lot Area	0.14

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
APR 21 2021
TOWN OF AMHERST
BUILDING DEPT

MEMORANDUM April 20, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

RECEIVED
APR 23 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.44± ACRES OF LAND FROM R-3 TO TR-3; PROPERTY LOCATED AT **468 HARDING ROAD**. FORBES CAPRETTO HOMES, PETITIONER. **Z-2020-13**.

REVISED:
Received April 19, 2021

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: none at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Douglas Gesel **Date:** April 22, 21

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Rev_Transmittal_042021.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM April 20, 2021

TO: Daniel Ulatowski, Principal Planner
[redacted], Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

4/22/21 TO: Ellen Kost FROM: Dave Marrano Assessor cc: C. Walford

10 Single Family Patio

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 1.44± ACRES OF LAND FROM R-3 TO TR-3; PROPERTY LOCATED AT **468 HARDING ROAD**. FORBES CAPRETTO HOMES, PETITIONER. **Z-2020-13**.

REVISED:
Received April 19, 2021

REVIEW:

Do you agree with all statements made? See Below

If you do not, briefly state why: The Assessors office is

General comments relative to your agency interests: Opposed to this rezone if the end Result is

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) Residential Properties with Condominium Tax Status If not Condominium Tax status, we would suppose

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

Signature: _____ **Date:** 4/22/21

EK/RR/bf
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)_2020\Z-2020-13_Rev_Transmittal_042021.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
FEB 18 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM February 9, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville Central School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director TV

SUBJECT: AMENDED REQUEST TO REZONE 1.44± ACRES OF LAND FROM **R-3** TO **CR-3A**, **Z-2020-13**; PROPERTY LOCATED AT **468 HARDING ROAD**. BARCLAY DAMON LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 2/16/21

EK/TV/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)\Z-2020-13_Transmittal_amended_.20921.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
Williamsville Central School District
FEB 12 2021
Asst Superintendent for
Finance & Management Services

MEMORANDUM February 9, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville Central School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director TV

SUBJECT: AMENDED REQUEST TO REZONE 1.44± ACRES OF LAND FROM **R-3** TO **CR-3A**; **Z-2020-13**; PROPERTY LOCATED AT **468 HARDING ROAD**. BARCLAY DAMON LLC, PETITIONER.

REVIEW:

Do you agree with all statements made? Neutral

If you do not, briefly state why: _____

General comments relative to your agency interests: No comments at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 2/16/21

EK/TV/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)\Z-2020-13_Transmittal_amended_20921.doc
cc: Scott Marshall, Principal Planner
Jeff Palumbo, Barclay Damon LLP, 9276 Main Street, Suite 3, Clarence, New York 14031

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, NY AND REPLY TO MUNICIPALITY

Note: Please complete and send one copy with attachments to Erie County Division of Planning. Room 1053, 95 Franklin Street, Buffalo, N.Y. 14202. Retain a copy for your files.

DO NOT WRITE IN THIS SPACE

Case No.: ZR-21-84

Received: 1/14/21

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal action, such reply must be considered.

Description of Proposed Action

1. Name of Municipality: Town of Amherst, NY

2. Hearing Schedule: Date 02/20/21 Time 6:30pm Location Town Offices

3. Action is before: [X] Legislative Body [ ] Board of Appeals [X] Planning Board

4. Action consists of: [ ] New Ordinance [ ] Rezone/Map Change [ ] Ordinance Amendment [ ] Site Plan [ ] Variance [ ] Special Use Permit [X] Other Rezoning

5. Location of Property: [ ] Entire Municipality [X] Specific as follows: 468 Harding Road

6. Referral required as Site is within 500'of: [ ] State or County Property/Institution [X] Municipal Boundary [ ] Farm Operation located in an Agricultural District [ ] Expressway [ ] County Road [X] State Highway [ ] Proposed State or County Road, Property, Building/ Institution, Drainageway

7. Proposed change or use: Rezoning of 1.44± acres of land From R-3 to MFR-4A.

8. Other remarks: (ID#, SBL#, etc.) Z-2020-13

9. Submitted by: Roberta Rapporccio, Associate Planner Date: 1/8/21

Mailing Address: 5583 Main Street, Williamsville, NY 14221

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 1/26/21. The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.

1. [ ] **The proposed action is not subject to review under the law.**
2. [ ] **Form ZR-3, Comment on Proposed Action is attached hereto.**
3. [ ] **The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.**
4. [X] **No recommendation; proposed action has been reviewed and determined to be of local concern**

By the Division of Planning: Dan M. Hall Date: 1/26/21

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

January 12, 2021

Forbes Capretto Homes
c/o Jeff Palumbo
Barclay Damon LLP
9276 Main Street, Suite 3
Clarence, New York 14031

SUBJECT:	Rezoning Application Review	**Z-2020-13**
	Proposed:	Rezoning of 1.44± acres of land from R-3 to MFR-4A
	Property located at:	**469 Harding Road**
	Application received:	December 28, 2020
	Representative:	Barclay Damon LLP

Dear Mr. Palumbo,

Please consider the following comments:

1. The required geotechnical report must be provided for this site prior to the Planning Board public hearing.

2. The subject site is located within an archaeologically sensitive area. An archaeological assessment will be required prior to the Planning Board making a SEQR determination.

3. Please note that any other SEQR-related issues raised during the review process for this rezoning must be addressed prior to action by the Planning Board.

4. Any revised materials submitted must be provided to this office in a digital format in addition to paper copies.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/SM/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-13_(468_Harding_Rd)\Z-2020-13_Zoning_Review_Letter_010521.doccc:

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

From: Mark Bechtel [mailto:markbechtel2425@gmail.com]
Sent: Sunday, May 23, 2021 8:28 PM
To: Kulpa, Brian J. ; Bucki, Debbie ; Berger, Jacqualine ; Szukala, Michael ; Lavin, Shawn A. ; Howard, Dan
Subject: 468 Harding Rd new housing project.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Supervisor Kulpa and Town Board Members

I am again writing to you with great concern over the new housing development planned to be built at 468 Harding Road. I was unable to attend the recent Planning Board meeting and I would appreciate some clarity with this project. I have heard everything from two buildings with five units each to ten individual homes. An article in the Buffalo News from 5/21/21 indicates that the project will be two buildings with five units each. I was under the impression that the two building plan was not going to be built anymore. I would like to know what the true plans are.

I am also asking that you visit the site and see for yourselves that this site is not large enough to support two five unit buildings or ten individual houses. I would have much less concern if they built six individual houses, which is what the site is zoned for. However, ten houses on this small piece of property is far too many and will create overcrowding and other safety concerns for our neighborhood. Moreover, nothing has been said by the builder in reference to addressing the increased traffic concerns, lack of street lighting concerns and the fact that we have no sidewalks on our streets. I walk around the block with my four year daughter all the time and we constantly have to move over for vehicles going by. With increased housing in our small neighborhood comes increased traffic and major safety concerns since we have no sidewalks and no place for our children to play.

In closing, I am asking that you please visit this site and decide for yourselves if ten new houses would fit on this lot. I also ask you to put yourselves in my position and if you would want this development in your neighborhood. Please do not allow the re-zoning of this site and allow Forbes Capretto Homes to pack in ten more houses into our neighborhood.

Respectfully

Mark Bechtel

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

From: Mark Bechtel <markbechtel2425@gmail.com>
Date: 3/18/21 8:46 AM (GMT-05:00)
To: "Kulpa, Brian J." <bkulpa@amherst.ny.us>
Cc: "Berger, Jacqualine" <jberger@amherst.ny.us>, "Bucki, Debbie" <dbucki@amherst.ny.us>, "Lavin, Shawn A." <slavin@amherst.ny.us>, "Szukala, Michael" <mszukala@amherst.ny.us>
Subject: Proposed re-zoning for 468 Harding Road

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Supervisor Kulpa

I am writing to you today so that I may voice my concern over the proposed building of apartments at 468 Harding Road. I have resided at 442 Harding Road with my wife and children for over eight years. We have children ages 13,12 and 4. We are extremely concerned about the proposed building of higher density residential apartments on a street that currently only has single family homes. Our concerns center around the safety of our children and our quality of life.

To begin with, there are no sidewalks and the street is a narrow residential street. When we are walking or riding bikes as a family or if the kids are alone going around the block there is nowhere to be but the street. Higher density apartments, coupled with the proposed Big Ditch restaurant being added nearby will more than certainly increase the traffic which will in turn, cause less safe conditions to enjoy such activities. Additionally, by virtue of the nature of non permanent housing there will be an influx of temporary residents in what is currently a very stable neighborhood. There are also concerns over an increase in street parking and noise that will be associated with any type of apartment building(s). We already have noise from Transit Road, the Airport and Thruway. This will only add to the noise level in the neighborhood which will stem from activities ranging from loud music, car alarms, increased vehicle traffic, etc. Lastly, a project such as this is out of character for our quiet little neighborhood and would certainly negatively affect property values of the neighboring single family homes.

In closing, I am respectfully asking you to not allow this project to proceed. We have little issue with single family homes being built on this vacant land, however the scope of this project does not fit the neighborhood. If this project is allowed to move forward, myself and several of my neighbors may feel our only option is to sell and leave the town entirely.

Respectfully

Mark and Kathryn Bechtel

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

From: Mark Bechtel [mailto:markbechtel2425@gmail.com]
Sent: Sunday, May 23, 2021 8:28 PM
To: Kulpa, Brian J. ; Bucki, Debbie ; Berger, Jacqualine ; Szukala, Michael ; Lavin, Shawn A. ; Howard, Dan
Subject: 468 Harding Rd new housing project.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Supervisor Kulpa and Town Board Members

I am again writing to you with great concern over the new housing development planned to be built at 468 Harding Road. I was unable to attend the recent Planning Board meeting and I would appreciate some clarity with this project. I have heard everything from two buildings with five units each to ten individual homes. An article in the Buffalo News from 5/21/21 indicates that the project will be two buildings with five units each. I was under the impression that the two building plan was not going to be built anymore. I would like to know what the true plans are.

I am also asking that you visit the site and see for yourselves that this site is not large enough to support two five unit buildings or ten individual houses. I would have much less concern if they built six individual houses, which is what the site is zoned for. However, ten houses on this small piece of property is far too many and will create overcrowding and other safety concerns for our neighborhood. Moreover, nothing has been said by the builder in reference to addressing the increased traffic concerns, lack of street lighting concerns and the fact that we have no sidewalks on our streets. I walk around the block with my four year daughter all the time and we constantly have to move over for vehicles going by. With increased housing in our small neighborhood comes increased traffic and major safety concerns since we have no sidewalks and no place for our children to play.

In closing, I am asking that you please visit this site and decide for yourselves if ten new houses would fit on this lot. I also ask you to put yourselves in my position and if you would want this development in your neighborhood. Please do not allow the re-zoning of this site and allow Forbes Capretto Homes to pack in ten more houses into our neighborhood.

Respectfully

Mark Bechtel

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

TO:

Date: 4/13/2021

Town of Amherst Supervisor Kulpa, Brian Kulpa bkulpa@amherst.ny.us

Amherst Town Board –

Jacqualine Berger – jberger@amherst.ny.us

Deborah Bucki - dbucki@amherst.ny.us

Shawn Lavin – slavin@amherst.ny.us

Michael Szukala mszukala@amherst.ny.us

Town of Amherst Zoning & Planning – Acarrato@amherst.ny.us

Asst. planning director Ellen Kost EKOST@amherst.ny.us

Daniel Howard planning@amherst.ny.com

RE: Request to Rezone 144 Acres of Land / 468 Harding Road

I am writing to express my strong opposition and concern over the potential rezoning of the property at 468 Harding to MFR-4A. I am extremely concerned about how this would affect our neighborhood which is zoned R-3. Our properties in this neighborhood are Zoned R-3 for a reason. We have single family homes that are the makeup of our neighborhood. I am concerned for the safety of our families, most with either small children and / or pets who use our neighborhood daily for exercise - walking /biking. We also have seniors that use their scooters in the street. Dropping multifamily units in our neighborhood will only make the traffic and congestion this much worse, causing additional concern for the safety of our families.

I am a resident of this community for 34 years and have fought to keep our neighborhood single family homes. It is why we purchased this property in the first place - a safe and congestion free neighborhood with little to no traffic to raise our family. Dropping Apartments / multifamily units on tiny lots are not in support of our neighborhood community and would look totally out of character.

I cannot imagine how noisy it will be when Big Ditch is in full swing. The airport / thruway and transit road noise are a lot to handle as it is. More cars, more lights, more Noise which will in no doubt be enhanced by multi-family units.

This zoning seems one step closer to allowing commercial to encroach the neighborhood. Please support my request by OPPOSING this rezoning and multi-family dwellings on postage sized lots which look nothing like the properties in our neighborhood.

Respectfully,

Lisa Fischer

405 McKinley Ave

Williamsville, NY 14221

mtfd55w@yahoo.com

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Fadel, Bryan

From: Dan Kennedy <mullane716@gmail.com>
Sent: Sunday, May 23, 2021 11:47 AM
To: Carrato, Amy
Subject: 468 Harding Road re-zoning

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning Board,
In response to the re-zoning request for 468 Harding Road to divide up the lots from 6 to 10, I ask that this request be denied on the grounds that the density is not consistent with the neighborhood. As I understand the request is to have 10 lots, 5 on each side, at 40 foot widths. That is not consistent with the lot sizes of the rest of the neighborhood and would be at a density more closely resembling city lot sizes. I am a resident of the neighborhood and think a development like this would reduce my home value. Besides appearances, it would create more traffic and street parking than the neighborhood was designed for. Again, I request that this motion be denied. Developing as 6 lots would still be below widths of most lots but I would be ok with that.
Thank you,
Dan Kennedy
461 Harding Road
Williamsville, NY 14221

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

April 12, 2021

Amherst Planning Board
5583 Main Street
Williamsville, New York 14221

Re: Request to Rezone Land at
468 Harding Road

Dear Amherst Planning Board Members,

We are writing this letter to state that we are opposed to the rezoning of this land to accommodate apartments. We were informed by Mr. Voight of the Planning Department that this rezoning would allow for apartments to be constructed currently and in the future once the zoning is changed. Ours is a quiet, family-oriented neighborhood and we do not feel that apartments should be built on this lot. Apartments typically are not kept up as well, as they are not owned by the renters, tend to have a transient population, often have dumpsters to contend with and not enough off-street parking to accommodate their cars. This is not what we want in our neighborhood. Years ago, our neighborhood came together to stop apartments from being built on that site. Fortunately, the Amherst Town Board agreed with us then and they did not rezone for apartments. We are hoping that the current Town Board would also support us and not rezone this land for apartments.

Thank you for your consideration and support of our neighborhood.

Sincerely,

Robert and Carol Kern

505 Harding Road
Williamsville, NY 14221
716-725-5753

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

RECEIVED
APR 12 2021
TOWN OF AMHERST
PLANNING DEPT.

Amherst Planning Board
5583 Main Street
Williamsville, NY 14221

Subject: Request to Rezone 468 Harding Rd from R-3 to MFR-4A

Dear Mr Kulpa and Planning Board Members,

Our names are Rosanne and John McGovern and live at 424 McKinley Avenue in Williamsville. This letter is in response to the Town Clerk's letter from March 29 for a zoning change at 468 Harding Road that has been requested by Forbes Capretto Homes from R-3 to MFR-4A, Z-2020-13.

From what we understand, Forbes would like to build single family structures on the 468 Harding.
We do not object to single family homes.
Under the MFR-4A zoning code, commercial, public and civic structures would be allowed to be built. It could be developed into a Bed and Breakfast, public utilities facility or even a telecommunication facility.
We do object to changing the zoning to MFR-4A.

Our concern is after the property is no longer owned by Forbes Capretto Homes. New owners would have standards that open up the possibility of commercial development on that land.
We definitely welcome new families; we do not welcome public, civic or commercial facilities.
Our request is to keep the zoning of 468 Harding at R-3.
Thank you.

Respectfully,
John McGovern

Rosanne McGovern

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Fadel, Bryan

From: Jackie Rindfleisch <jackierindfleisch@yahoo.com>
Sent: Wednesday, April 14, 2021 1:35 PM
To: Carrato, Amy
Subject: 468 Harding Rd

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

My name is Jacqueline Rindfleisch, I live at 431 Harding Rd. Williamsville, NY. I am writing in opposition to the attempt to rezone 468 Harding Rd. We live in a nice quiet neighborhood and we don't want to have apartment buildings or condos built on our street. There is already a brewery going up in the same general area. We have no sidewalks and the street is not nearly wide enough. We have lived in this neighborhood since 1995. This is the second attempt to rezone this property, and it is essentially the same neighbor that has something to do with this. He claims that "his wife wouldn't want to look at condos or an apartment building". But I am 100 percent sure that he will sell his house before this. He has been trying to sell this property ever since the neighbors signed a petition so that he couldn't rezone it. This neighborhood is where I raised my children and it would ruin this area not to mention our property values. Please do not allow this to happen. Thank you for your time.

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Fadel, Bryan

From: Rose Walker <rorow45@hotmail.com>
Sent: Wednesday, April 14, 2021 12:42 PM
To: Carrato, Amy
Subject: Request to rezone 468 Harding in Williamsville

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Amherst Planning Board,

I am unable to attend the Zoom meeting on April 15, 2021 regarding the re-zoning at 468 Harding Rd. in Williamsville. I would like to state reasons why I DO NOT agree with it being re-zoned.

If my understanding is correct you do not have to rezone if you wish to build a house or apartments on a lot in a residential area. If the owner of this property wants to rezone this area that would mean they are going to have it changed so they can build something for a business on it. If the owner has the plans of building something for their business these are the cons:

- What type of building will be there? If it is a commercial building it will be an eye sore to our beautiful neighbor. It would be the first building you would see coming into our residential area.
- What is going to be in this building? If it is trucks or equipment for a business, there will be more pollution in the area. If there are multiple trucks/equipment it will add to the noise of the neighborhood. Plus, you're talking about possible fuel spills and more of an opportunity of a hazard happening.
- More people on the street with people that do not live there and will probably not have the consideration of the residents of that street. There are many times when I do come around the bend and I have to yield as it is to one or two trucks that are on the side of the road from their business as it is. I don't complain about that but I do not want more business vehicles on our road to make it more difficult to reach my house.
- Will there have to be more electric wires need for this building? If so how will that add to the power outages that we do get when we have storms. What power lines will it run off?
- Would they be dumping anything on the lot from the business? If so, what about smells if not taken care of properly? What about a rat infestation?

If the owner is building an apartment complex, I believe they would not have to re-zone it. If apartments or anything similar to that is being built and it does have to be rezoned, here are my concerns:

- Parking lot – are there going to be lights on during the whole night as a security?
- Noise – more cars and more people.
- Garbage collection – dumpster – will it attract rats?
- Sewer plans and discharge – will it overrun the current system in the neighborhood?
- Does the whole street change the zone or is it just that lot? If they are allowed to rezone whats to say someone else on the street wants to rezone an area?

I vote against them rezoning. It should be kept residential. If they want to build townhouses (anything other than a regular house) I am also against that for the above reasons.

Sincerely,

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Resident/home owner of 441 Harding Rd.

Sent from my iPad

Attachment: Z-2020-13_TB_Letter_071221 (RES-2021-569 : Rezoning of 468 Harding Road)

Cooper, Kathy

From: Carrato, Amy
Sent: Monday, June 21, 2021 9:22 AM
To: Cooper, Kathy
Subject: FW: 468 Harding rd..Williamsville

This one too...

-----Original Message-----
From: Rose Walker <rorow45@hotmail.com>
Sent: Friday, June 18, 2021 12:36 PM
To: Carrato, Amy <acarrato@amherst.ny.us>
Subject: 468 Harding rd..Williamsville

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Grabber complaining about lights from Russell Park.. ok town board.. what about his landscaping supplies he has on his lots behind fence..and in garage.. and for ForbesCapretto homes saying what's four more houses.. we live here not him. Grabber says 5 houses are ok with it, but it's NOT the majority.. we live here too.. we've had issues with Grabber before when he wanted to re-zone..
Sent from my iPad

Attachment: Rose Walker 468 Harding (RES-2021-569 : Rezoning of 468 Harding Road)

Cooper, Kathy

Subject: FW: Planning board.. concerning Harding rd..

-----Original Message-----
From: Carrato, Amy <acarrato@amherst.ny.us>
Sent: Thursday, June 17, 2021 1:06 PM
To: TownClerkDL <townclerk@amherst.ny.us>
Subject: FW: Planning board.. concerning Harding rd..

The email below is regarding Z-2020-13, 486 Harding Road. This will be on the July 12 Town Board agenda.

Amy

-----Original Message-----
From: Rose Walker
Sent: Thursday, June 17, 2021 10:10 AM
To: Carrato, Amy <acarrato@amherst.ny.us>
Subject: Planning board.. concerning Harding rd..

CAUTION: This email originated from outside of the organization.
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I'm very concerned about this 10 houses on 468 Harding rd, It will not be in the best interest for our street.. and now, they want to put sidewalks in... they wanted to do that when they reconstructed Transit/Whrele .. and when they connected McKinley/Harding. No sidewalks because we have to maintain them with snow removal.. no one wanted them .. and I still don't want them.. I'm doing my own driveway now in my 70's..and that would be an added work.. not only that—we lose frontage of our property.. I reside 441 Harding.. thank you for taking the time to read this.. Rose
Sent from my iPad

Attachment: 468 Harding - Walker (RES-2021-569 : Rezoning of 468 Harding Road)

-------- Original message --------
From: Mary Dolata [redacted]
Date: 7/7/21 11:21 AM (GMT-05:00)
To: "Kulpa, Brian J." <bkulpa@amherst.ny.us>
Cc: "Berger, Jacqualine" <jberger@amherst.ny.us>, "Bucki, Debbie" <dbucki@amherst.ny.us>, "Lavin, Shawn A." <slavin@amherst.ny.us>, "Szukala, Michael" <mszukala@amherst.ny.us>
Subject: Zoning at 468 Harding Rd

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Amherst Town Board Members,
:

Prior to the meeting on July 12, 2021 we wish to convey our opposition to the request to amend the zoning for the property at 468 Harding Rd. Contrary to statements made by the builder the addition of 10 homes to a 1.44 acre property is not "characteristic of the neighborhood". We ourselves, and the neighbors on either side of us, have .5 acres on our property. On the entire length of our side of Harding Rd from the property in question to the Wehrle Drive there are only 11 homes.

To my knowledge all of the homes on Harding and McKinley except one are owner occupied. Several of them for over 30 years with the same owner. In speaking with neighbors there are concerns these small and inexpensive houses- relative to other homes built here in the past 20 years- would attract investors and become rental properties. This is also not characteristic of the neighborhood and would change the dynamic of an established and older neighborhood.

Our neighborhood was reconfigured several years ago with access to Wehrle closed off and all traffic from both streets must now exit onto Freeman and then Transit Rd. Adding in traffic from Dunkin Donuts and the Protocol, which is currently a COVID testing site, as well as the possible addition of traffic from the Big Ditch Brewery creates a lot for such a small intersection. There is another home currently being constructed adjacent to the 468 Harding property so in reality this would be an 11 home addition if this is approved. If these small homes have more than one vehicle parking will be an issue as on street parking is banned overnight in the winter months and parking vehicles on both sides of our narrow streets makes it difficult to drive down. The current property owner has said the new homes will not affect those of us down the street, but as previously stated we must all go past that property to exit the neighborhood. This affects every homeowner and it is frustrating that we have not all been provided with notices re: the meetings concerning this request to rezone. Thank you for your consideration to this matter.

Sincerely,

Thomas and Mary Dolata
[redacted]
Williamsville, NY 14221

August 2, 2021

Amherst Town Hall
5583 Main Street
Williamsville, NY 14221

Subject: Rezoning of Harding Road

Dear Supervisor Kulpa and Town Board Members,

Our names are Rosanne and John McGovern and we live at [redacted] McKinley Ave in Williamsville. Our letter is in opposition to the request by Forbes Capretto Homes to rezone the property at 468 Harding Rd from R-3 to TR-3. We ask that you keep the zoning to R-3.

The change to TR-3 would allow not only higher density housing but also allow a new owner of the property to build public and civic facilities. These facilities could include public utility structures, solar energy systems, telecommunication facilities, houses of worship, common recreational buildings and private schools or day-care centers. None of these uses would be welcome in our residential neighborhood. Once the zoning is changed, it will be very difficult to change it back. We want to avoid present and future owners to have a gateway to build anything other than standard lot size, single family residential homes.

There are Businesses all around us. It seems like our neighbors have been fighting for years to keep the quality of life in our little community safe and appealing. Yes, development is a way to generate revenue but it should not be at the cost and well being of our neighborhood. We ask that before you make a final decision, look at what would be best for us, as Amherst residents, not the tax revenue it would generate.

We will not repeat all the comments from speakers, Mark, Kathleen and John, who spoke at the Monday, July 12th Town Board Meeting but we agree with their views in preserving the character of our McKinley/Harding circle.

Please listen to our voices. Keep the zoning of Harding Rd at R-3.
Thank you.

Sincerely,
John McGovern
Rosanne McGovern
Rosanne McGovern

AUG 03 '21 PM 2:55 RCVD

Attachment: McGovern letter of opposition (RES-2021-569 : Rezoning of 468 Harding Road)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 23441 **RESOLUTION 2021-570** **ROLL CALL VOTE (ADOPTED)**

Request to Reclassify a Portion of 520 Campbell Boulevard and to Amend the Audubon Development Plan

Adoption of Local Law to Amend the Zoning Map
(520 Campbell Boulevard (portion), Z-2021-03)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of May 28, 2021 that the proposed NCD-ND zoning at 520 Campbell Boulevard (portion) is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

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

1. That future development of the site complies with the dimensional requirements set forth in the R-3 zoning district listed in §203-3-6(B) of Town Code.

2. That the 9.88 acres be donated to the Town of Amherst.

7/12/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:44 PM.

Sean W. Hopkins, Esq., presented and answered questions.

The following Speaker addressed the Town Board:
Judy Colton, Sunshine Dr. - Questioned whether this rezoning would have any impact on the land near Bucyrus Heights

As there were no further speakers, Supervisor Kulpa motioned to adjourn the public hearing and set a decision date for August 9th. The motion was seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was adjourned at 8:04 PM.

8/09/2021

A motion to adjourn until Sept. 13th was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was adjourned at 7:13 PM.

9/13/2021

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

Sean W. Hopkins, Esq., presented and answered questions.

As there were no speakers, Supervisor Kulpa motioned to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:23 PM.

A motion to approve was made by Supervisor Kulpa and seconded by Deputy Supervisor Berger. A motion was then made by Supervisor Kulpa to amend, seconded by Deputy Supervisor Berger and unanimously approved 5-0. Amendment adds a second condition.

A motion to approve as amended was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and approved via roll call vote 4-1 (Nay, Bucki).

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

D R A F T (7/12/21)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Project: Z-2021-03

Address: 5583 Main Street
Williamsville, NY 14221
(716) 631-7051

Date:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action: Rezoning Request.

SEQR Status: Type I

Description of Action: Reclassification of 1.8± acres of land from NCD-SA to NCD-ND to allow for the future use and development of the site is to allow a portion of the site to be developed as single-family lots. A total of 1.80 ± acres out of 14.39 ± acres will be developed into 8 single family homes that have frontage on Sierra Drive, a public roadway.

Location: 520 Campbell Boulevard (portion), Town of Amherst, Erie County, New York

Petitioner: Cimimelli Muir Woods LLC

Attachment: Z-2021-03_Draft_Neg_Declaration_071221 (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Full Environmental Assessment Form (EAF) - Parts 1 & 2, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed reclassification of 1.8 ± acres of land from NCD-SA to NCD-ND for a proposed addition of 8 single family homes will not have a significant impact on the environment, as follows:

1. The project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on March 5, 2021 reviewed the application and EAF submitted on March 1, 2021, and had no objection or comments on the proposed rezoning.

2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on March 5, 2021 reviewed the application and EAF submitted on March 1, 2021, and has no objection or comments on the proposed rezoning.

4. The project is not within an area identified by the State as potentially containing significant cultural or archeological resources, nor will it impair the character or quality of important historical resources.

5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for reclassification from NCD-SA to NCD-ND. Neighboring uses are residential and zoned NCD-R-3, NCD-SA, and NCD-ND; therefore, the project is consistent with surrounding land use.

6. The proposed reclassification to NCD-ND for a proposed addition of 8 single-family homes will not cause a major change in the use of either the quantity or type of energy.

7. The reclassification to NCD-ND for the proposed addition of 8 single-family homes will not create any hazard to human health.

Attachment: Z-2021-03_Draft_Neg_Declaration_071221 (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

8. The reclassification to NCD-ND will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed addition of 8 single-family homes will be consistent with the scale of surrounding land uses.

9. The reclassification to NCD-ND for the proposed addition of 8 single-family homes will not significantly increase the number of people using the site over its previous level of use.

10. Review by the Town Traffic/Safety Board on March 8, 2021 and NYSDOT on April 12, 2021 indicate that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on March 5, 2021, Engineering on March 5, 2021, Traffic/Safety Board on March 8, 2021, Assessor on March 8, 2021, Fire Chiefs' Council on May 19, 2021, and Right-of-Way Agent on March 10, 2021 along with outside agencies including Erie County Department of Environment & Planning on April 12, 2021, and New York State Department of Transportation on April 12, 2021. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____

Signature & title of preparer date

_____ _____

Brian J. Kulpa, Supervisor date

DH/SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Draft_Neg_Declaration_071221.docx
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDEC

Attachment: Z-2021-03_Draft_Neg_Declaration_071221 (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

LOCAL LAW NO. _____-202_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE TO RECLASSIFY A PORTION OF 520 CAMPBELL BOULEVARD FROM NCD-SA TO NCD-ND & TO AMEND THE AUDUBON DEVELOPMENT PLAN AND TO AMEND THE ZONING MAP ACCORDINGLY.

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 203 of Town of Amherst Code, Known As The Zoning Ordinance To Reclassify a Portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and to Amend the Audubon Development Plan and to Amend The Zoning Map Accordingly".

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to reclassify a portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and to Amend the Audubon Development Plan and to Amend the Zoning Map Accordingly has been filed and is in proper order. The Town Board further finds that the request to reclassify a portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and the Amendment of the Audubon Development Plan are consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby amends its zoning map which is incorporated by reference in the Town zoning code reclassifying from NCD-SA to NCD-ND a portion of 520 Campbell Boulevard, **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

Legal Description of Property to be Reclassified from NCD-SA to NCD-ND:

ALL THOSE TRACTS OR PARCELS OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 70, Township 12, Range 7 of the Holland Land Company's Survey, bounded and described as follows.

PARCEL 1:

BEGINNING at a point on the northerly boundary of Sierra Drive as shown on a subdivison map of The Preserve at Muir Woods recorded in the Erie County Clerk's Office under Map Cover 3754 at a distance of 276.97 feet westerly from its intersection

Attachment: LL 520 Campbell Blvd (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

with the westerly boundary of Campbell Boulevard being a 66.00 feet wide right of way;

Thence along the northerly boundary of Sierra Drive the following two (2) courses and distances:

1) N-89°-45'-59"-W, a distance of 458.83 feet to a point of curvature;
2) Westerly along a curve to the left having a radius of 176.00 feet an arc distance of 6.17 feet to a point;

THENCE: Through the lands conveyed to Ciminelli Muir Woods LLC by deed recorded in the Erie County Clerk's Office in Liber 11322 of Deeds at page 4494 the following two (2) courses and distances:

1) N-00°-14'-01"-E, along a non-radial line a distance of 138.94 feet to a point;
2) S-89°-45'-59"-E, along a line parallel with the northerly line of said Sierra Drive a distance of 194.09 feet to the southwest corner of lands conveyed to Kathleen J. Skeide by Deed recorded in the Erie County Clerk's Office in Liber 11123 of Deeds at page 2408;

THENCE: N-89°-22'-00"-E, along the south line of said Kathleen J. Skeide lands a distance of 270.94 feet to a point;

THENCE: S-01°-14'-00"-E through said lands conveyed to Ciminelli Muir Woods LLC a distance of 142.93 feet to the POINT OF BEGINNING, Containing 1.495 acres more or less.

PARCEL 2:

BEGINNING at a point on the northwesterly boundary of Sierra Drive at the northeasterly corner of Sub Lot 21 as shown on a subdivison map of The Preserve at Muir Woods recorded in the Erie County Clerk's Office under Map Cover 3754;

THENCE: N-75°-07'-44"-W, along the northerly line of said Sub lot 21 a distance of 156.81 feet to the northeast corner of Sub lot 18 as shown on said map Cover 3754;
THENCE: N-54°-35'-00"-W, along the northeasterly line of said Sub lot 18 a distance of 75.41 feet to a northerly corner of said Sub lot 18;

THENCE: Through said lands conveyed to Ciminelli Muir Woods LLC the following two (2) courses and distances:

1) N-79°-00'-45"-E, a distance of 128.98 feet to a point;
2) S-63°-52'-36"-E, along a radial line a distance of 117.00 feet to a point on the first mentioned northwesterly boundary of Sierra Drive;

THENCE: along said northwesterly boundary of Sierra Drive the following two (2) courses and distances:

Attachment: LL 520 Campbell Blvd (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

1) Southwesterly along a curve to the left having a radius of 176.00 feet an arc distance of 34.56 feet to a point of tangency;
2) S-14°-52'-16"-W a distance of 25.55 feet to the POINT OF BEGINNING, Containing 0.308 acre more or less.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: LL 520 Campbell Blvd (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

Brian J. Kulpa, Supervisor
Daniel C. Howard, A Planning Directo
Ellen M. Kost, AI Assistant Planning Di

Town Board Agenda of July 12, 2021

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

Subject: Request to Amend the Audubon Development Plan and Reclassify 1.8 ± acres of land from NCD-SA to NCD-ND, property located at 520 Campbell Boulevard (portion), Ciminelli Real Estate, Petitioner (Z-2021-03).

Honorable Members:

The subject property is a 1.8 ± acre irregularly shaped parcel located at 520 Campbell Boulevard (portion) on the west side of Campbell Boulevard, 0.44± miles north of the intersection of Campbell Boulevard and Dodge Road. The proposed project site is currently vacant open space that has an abundance of trees, with a federal wetland encompassing 6.8± acres of the entire site. The proposed rezoning site will be part of the existing residential development named "The Preserve at Muir Woods."

Campbell Boulevard is classified as a NYS minor arterial in Figure 9 in the Comprehensive Plan.

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

The purpose of this request is to allow a portion of the site to be developed as single-family lots. A total of 1.80± acres out of 14.39± acres will be developed into 8 single family homes that have frontage on Sierra Drive, a public roadway.

History of previous rezoning requests:

SP-2017-03: Site plan for 133-lot subdivision "The Preserve @ Muir Woods," site includes 520 Campbell Blvd (approved 9/14/2017)

SP-2013-03_A: Final plat for "The Preserve @ Muir Woods" was approved 6/21/2018.

Z-2018-06: Amendment #69 to Audubon Development Plan for 520 Campbell Boulevard (portion) - Reclassify 1.8 acres from NCD-SA to NCD-ND to add 8 lots to "The Preserve at Muir Woods" (withdrawn by applicant)

continued...

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Honorable Town Board

Rezone land from NCD-SA to NCD-ND; property located at 520 Campbell Boulevard (portion)
Agenda of July 12, 2021

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

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

The proposed rezoning is consistent with the Comprehensive Plan which shows the project area as "mixed residential." The Comprehensive Plan outlines mixed residential as "designations comprised of small lot single-family, duplex, and other attached dwelling types." The concept plan presented shows small lot, single-family homes which fits the description of the mixed residential land use.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

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

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

Adjacent land uses are all residential, zoned NCD-R-3, NCD-SA, and NCD-ND. The residential development that is adjacent, is zoned NCD-ND but is restricted to residential use only. The Comprehensive Plan shows the surrounding land uses as mixed residential, and recreation/open space which is consistent with the proposed reclassification.

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is a Type I action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board's findings relative to SEQR and issue the attached Negative Declaration, and that the subject request be **approved** based on the attached resolution.

Very truly yours,

for Daniel Howard
Planning Director

DH/SM/bf
Att.
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_TB_Leter_071221.docx
cc: Stanley Sliwa, Town Attorney
Planning Board Approval – May 20, 2021
Ayes 6, Noes 1 (Penberthy)

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN
Z-2021-03

PETITIONER

Ciminelli Real Estate Corporation
c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, NY 14221

PROPERTY LOCATION

520 Campbell Boulevard (portion)

WHEREAS the Town of Amherst Planning Board on Thursday, May 20, 2021 held a virtual public hearing on Amendment #75 to the Audubon New Community District Development Plan to reclassify the subject property from NCD-SA to NCD-ND (Neighborhood District), and

WHEREAS the Planning Board has reviewed the Amendment plans and supporting documentation, and

WHEREAS the Amendment has been referred to the various Town review agencies, and

WHEREAS the Planning Board finds that:

A. The proposed Revision to the Development Plan meets the intent and objectives of a New Community District as expressed in Subsection 1-1.1.

B. The proposed Revision to the Development Plan meets all the requirements of Section 5-2-3 through 5-2-6.

C. The proposed Revision to the Development Plan is conceptually sound in that it meets present and future community needs.

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

E. The proposed Amendment to the Development Plan is consistent with the Town Comprehensive Plan.

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

NOW THEREFORE BE IT RESOLVED that the Planning Board, in accordance with Section 8-15-2 of the Zoning Ordinance offers a positive report and recommends Town Board **approval** of Amendment #75 to the Audubon Development Plan with the following condition:

1. That future development of the site comply with the dimensional requirements set forth in the R-3 zoning district listed in §203-3-6(B) of Town Code.

MAY28'21 PM 2:08 RCVD

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN
Z-2021-03

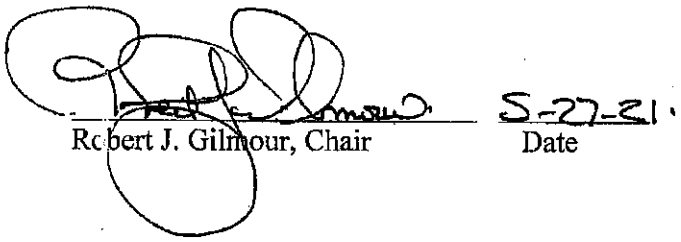
PETITIONER

Ciminelli Real Estate Corporation

PROPERTY LOCATION

520 Campbell Boulevard (portion)

The foregoing resolution was adopted by the Town of Amherst Planning Board, May 20, 2021; moved by Giuliani; seconded by Gill; ayes 6, noes 1 (Penberthy).



Robert J. Gilmour, Chair — Date 5-27-21

TV/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Resolution_052021.docx
cc: Commissioner of Building
Town Engineer
Highway Superintendent
Traffic/Safety Coordinator

MAY 28 '21 PM 2:09 RCVD

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Application to Reclassify a Portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and Amendment of the Audubon New Community District Development Plan
Applicant: Cimineili Real Estate Corporation

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

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2021-03 **Acreage** 1.8 **Fee $** 1,265.00

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____ ACCEPTED BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. _____ RECEIVED BY DATE

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

RECEIVED
FEB 22 2021
TOWN OF AMHERST
PLANNING DEPT.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Ciminelli Real Estate Corporation

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

Phone: 510-4338 Fax:

E Mail shopkins@hsr-legal.com

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

From: NCD-SA District

To: NCD-ND District

[Note: The request involves a requested reclassification of a portion 520 Campbell Boulevard from NCD-SA to NCD-ND, which is not considered a rezoning. The application also includes a request to amend the Audubon New Community Development Plan.]

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

Portion of 520 Campbell Boulevard

SBL #: 27.19-1-29

4. **Area of land to be rezoned** (in acres): 1.8 acres [Reclassification of a portion of 520 Campbell Boulevard from NCD-SA to NCD-ND]

5. **Owner of Land:**

Name: Ciminelli Muir Woods LLC

Address: 1185 Sweet Home Road, Amherst, NY 14226

Telephone: 631-8000

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

Additional Project Contact:
Ken Zollitsch, GPI Engineering
4950 Genesee Street, Suite 100
Buffalo, New York 14225
Tel: 716.989-3342
E-mail: kzollitsch@gpinet.com

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

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsr-legal.com
City State Zip Code

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

7. Petitioner's interest in property

_____Option to purchase

_____Owner

__x__Other (explain) The owner of the Project Site and the Petitioner are related entities.

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

Not Applicable.

9. Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor. Legal description of property to be reclassified attached as Exhibit "1" and a copy the Survey of the portion of 520 Campbell Boulevard to be reclassified is provided at Exhibit "2".

10. Said property has the following deed restrictions or Covenants: (attach copy) Not Applicable.

Liber _____ Page _____

11. Information on proposed project:

A. Description of the character of the proposed development:

See Exhibit "3".

B. Rationale for rezoning request:

1. Why was this site chosen?

See Exhibit "3".

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

See Exhibit "3".

3. How will this rezoning impact surrounding properties?

See Exhibit "3".

4. How will this rezoning impact the school system?

See Exhibit "3".

12. Quantitative Data:

A. Total # of dwelling units 8

B. Distribution of dwelling units by type Single Family Homes for Sale.

C. Gross Residential Density per acre 0.55 units per acre.

D. Total amount of Open Space Approximately 10 acres.

E. Proposed Non-Residential Floor Area Not Applicable.

[Note: A copy of the Sketch Plan prepared by GPI Engineering is provided at Exhibit "5".]

13. Development Schedule:

Start Summer 2021

Finish Fall 2021

Stages (# of) 1

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

The detached single-family homes on individual lots will be sold.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

Greenspace and landscaping will be privately owned and maintained.

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

A. <u>The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Town Zoning Ordinance.</u>

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

See Exhibit "4".

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

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

See Exhibit "4".

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

See Exhibit "4".

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

1. Sanitary Sewer

Yes. Sanitary sewer connections for individual lots into existing sanitary sewer line on Sierra Drive.

2. Storm Sewer/Drainage

Yes.

3. Water

Yes.

4. Other Yes.

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

See Exhibit "4".

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

See Exhibit "4".

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

See Exhibit "4".

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

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

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

Counsel for Petitioner

Signature of Petitioner

Subscribed and sworn to before me this 22nd day of February, 2021

Notary Public, Erie County, New York Marianne Brautlacht

Marianne Brautlacht

MARIANNE BRAUTLACHT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 01/14/2022

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

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

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

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

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

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

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

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Full Environmental Assessment Form Prepared pursuant to the State Environmental Quality Review Act ("SEQRA") with Attached Page 5[a] & Attachment "A"

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Full Environmental Assessment Form
Part 1 - Project and Setting

Prepared By: Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338
E-mail: shopkins@hsr-legal.com

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Sponsor Information.

Name of Action or Project: Preserve at Muir Woods Subdivision - Proposed 8 Lot Residential Subdivision		
Project Location (describe, and attach a general location map): 520 Campbell Boulevard, Town of Amherst - Erie County		
Brief Description of Proposed Action (include purpose or need): The project ("action") consists of a residential subdivision on a portion of the approximately 14.39 acres parcel at 520 Campbell Boulevard ("Project Site") consisting of eight lots for detached single-family homes. The portion of the Project Site to be developed as single-family homes on individuals lot consists of 1.80 acres of the Project Site [12.5%] that is currently zoned NCD-SA. The Project Sponsor is seeking to amend classification of 1.80 acres of the Project Site from NCD-SA to NCD - Neighborhood District ("NCD-ND"). No impacts to the 6.88 acres of jurisdictional federal on the Project Site are being proposed and a copy of the Jurisdictional Determination issued by the U.S. Army Corps of Engineers on July 12, 2017 is provided at Attachment "A" of this Part 1 of the Full EAF. The action has been defined broadly to include all required discretionary approvals and permits as well as all site improvements including the proposed detached single-family homes, driveways, grading, sanitary sewer and water lines and connections and all other required utility improvements. The project purpose is to develop the a portion of 520 Campbell Boulevard with frontage on a public roadway as single-family homes. The project is a Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") since none of the impacts cross the threshold for a Type I action contained in 6 NYCRR Part 617.4		
Name of Applicant/Sponsor: Ciminelli Real Estate Corporation c/o Sean Hopkins, Esq.	Telephone: 510-4338 E-Mail: shopkins@hsr-legal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Project Contact (if not same as sponsor; give name and title/role): Sean W. Hopkins, Esq., Attorney for Project Sponsor	Telephone: 510-4338 E-Mail: shopkins@hsr-legal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Property Owner (if not same as sponsor): Ciminelli Muir Woods LLC	Telephone: 631-8000 E-Mail: afaeth@ciminelli.com	
Address: 50 Fountain Plaza, Suite 500		
City/PO: Buffalo	State: NY	Zip Code:

Additional Project Contact: Ken Zollitsch, GPI Engineering
4950 Genesee Street, Suite 100
Buffalo, New York 14225
Tel: 716.989-3342
E-mail: kzollitsch@gpinet.com

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)		
Government Entity	**If Yes: Identify Agency and Approval(s) Required**	**Application Date (Actual or projected)**
a. City Council, Town Board, or Village Board of Trustees ☑Yes ☐No	Reclassification of Project Site from NCD-SA to NCD-ND & Amendment of Aud. Dev. Plan	February 22, 2021
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Site Plan Approval and Final Plat Approval	To be Determined
c. City Council, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☑Yes ☐No	Building Dept. - Building Permits; Engineering Department - SWPPP Approval	To be Determined
e. County agencies ☑Yes ☐No	ECHD - Sanitary Sewer, Water Approval and Realty Subdivision; ECWA - Water	To be Determined
f. Regional agencies ☐Yes ☐No		
g. State agencies ☑Yes ☐No	New York State Department of Environmental Conservation - SPDES Permit	To be Determined
h. Federal agencies ☐Yes ☑No		

i. Coastal Resources.
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No

ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No
iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) [Note: The action will have no adverse impacts on the West Erie Canal Corridor.] ☑Yes ☐No
If Yes, identify the plan(s):
NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No
If Yes, identify the plan(s):

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C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
The Project Site is currently zoned NCD-SA. The Project Sponsor is proposing to reclassify a portion of the Project Site from NCD-SA to NCD-ND.

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☑ No

c. Is a zoning change requested as part of the proposed action? ☐ Yes ☑ No
If Yes, [Note: The Project Sponsor is proposing to reclassify a portion of the Project Site from NCD-SA to NCD-ND.]
i. What is the proposed new zoning for the site?

C.4. Existing community services.

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

b. What police or other public protection forces serve the project site?
Town of Amherst Police Department

c. Which fire protection and emergency medical services serve the project site?
Getzville Fire Protection District and Twin City Ambulance

d. What parks serve the project site?
Nature View Park; Walton Woods Park and Ellicott Creek Park

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Detached single-family homes on individual lots.

b. a. Total acreage of the site of the proposed action? 14.39 acres
b. Total acreage to be physically disturbed? 1.8± acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 341± acres
[Note: 9.97 acres of 520 Campbell Boulevard will consist of Permanent Open Space subject to a Declaration of Restrictions.]

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % Units:

d. Is the proposed action a subdivision, or does it include a subdivision? ☑ Yes ☐ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
Residential subdivision consisting of detached single-family homes on individual lots.
ii. Is a cluster/conservation layout proposed? ☐ Yes ☑ No
iii. Number of lots proposed? 8
iv. Minimum and maximum proposed lot sizes? Minimum 9,100± sqft Maximum 13,490± sqft

e. Will proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: 3 months
ii. If Yes:
- Total number of phases anticipated
- Anticipated commencement date of phase 1 (including demolition) ____ month ____ year
- Anticipated completion date of final phase ____ month ____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

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f. Does the project include new residential uses? ☑ Yes ☐ No
If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase	8			
At completion of all phases	8			

g. Does the proposed action include new non-residential construction (including expansions)? ☐ Yes ☑ No
If Yes,
i. Total number of structures _____
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length
iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☐ Yes ☑ No
If Yes,
i. Purpose of the impoundment: _____
ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☐ Other specify: _____
iii. If other than water, identify the type of impounded/contained liquids and their source. _____
iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres
v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) ☐ Yes ☑ No
If Yes:
i .What is the purpose of the excavation or dredging? _____
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____
iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No
If yes, describe. _____
v. What is the total area to be dredged or excavated? _____ acres
vi. What is the maximum area to be worked at any one time? _____ acres
vii. What would be the maximum depth of excavation or dredging? _____ feet
viii. Will the excavation require blasting? ☐ Yes ☐ No
ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☑ No
If Yes:
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

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ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments? ☐Yes☐No
If Yes, describe:

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes☐No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑Yes☐No
If Yes:

i. Total anticipated water usage/demand per day: 4,200± gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☑Yes☐No
If Yes:

- Name of district or service area: Town of Amherst
- Does the existing public water supply have capacity to serve the proposal? ☑Yes☐No
- Is the project site in the existing district? ☑Yes☐No
- Is expansion of the district needed? ☐Yes☑No
- Do existing lines serve the project site? ☑Yes☐No

iii. Will line extension within an existing district be necessary to supply the project? ☐Yes☑No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
- Source(s) of supply for the district:

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐Yes☑No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑Yes☐No
If Yes:

i. Total anticipated liquid waste generation per day: 2,800± gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):

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

- Name of wastewater treatment plant to be used: Town of Amherst Water Pollution Control Facility
- Name of district: Town District 16
- Does the existing wastewater treatment plant have capacity to serve the project? ☑Yes☐No
- Is the project site in the existing district? ☑Yes☐No
- Is expansion of the district needed? ☐Yes☑No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will line extension within an existing district be necessary to serve the project? ☐Yes ☑No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or 0.5± acres (impervious surface)

_____ Square feet or 1.8± acres (parcel size)

ii. Describe types of new point sources. New point sources will be inletting/outletting the proposed stormwater facilities. The impervious surfaces include driveways and single family homes.

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

Runoff will be directed to new stormwater facilities which will outlet to the adjacent lake which will ultimately flow to Ellicott Creek

- If to surface waters, identify receiving water bodies or wetlands: Ellicott Creek
- Will stormwater runoff flow to adjacent properties? ☐Yes ☑No

iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☑No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☑Yes ☐No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

Heavy equipment emissions during site construction.

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☑No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of semi-trailer truck trips/day: _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☐Yes ☑No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

iii. Will the proposed action require a new, or an upgrade to, an existing substation? ☐Yes ☐No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7am - 7pm or as allowed by Town
- Saturday: 7am - 7pm or as allowed by Town
- Sunday: to be determined
- Holidays: Not Anticipated

ii. During Operations:

- Monday - Friday: N/A
- Saturday: N/A
- Sunday: N/A
- Holidays: N/A

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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

During construction there will be temporary unavoidable noise impacts associated with the use of construction equipment and vehicles.

ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe:

n.. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Street fixtures and lighting on single family homes.

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally describe proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: _____ tons per _____ (unit of time)
- Operation : _____ tons per _____ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction:
- Operation:

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction:
- Operation:

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s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____

ii. If mix of uses, generally describe:

The primary use of the parcels in the vicinity of the Project Site is single-family homes on residential units. There are commercial uses at the intersection of Campbell Boulevard and North French Road and also multifamily uses to the south of the site on the east side of Campbell Boulevard.

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0	0.5±	+ 0.5±
• Forested	1.4±	0.0±	-1.4±
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	6.11±	5.71±	-0.4±
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal) [federal wetlands]	6.88	6.88	0
• Non-vegetated (bare rock, earth or fill)	-	-	-
• Other Describe: Lawns and landscaping	0	1.3±	+ 1.3±

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c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐Yes ☑No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:
iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

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v. Is the project site subject to an institutional control limiting property uses? ☐Yes ☑No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐Yes ☐No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? greater than 6 feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? 0 %

c. Predominant soil type(s) present on project site:

Ch - Cheektowaga	63 %
Cv - Cosad	37 %
	%

d. What is the average depth to the water table on the project site? Average: 0.0-1.5 feet

e. Drainage status of project site soils:

☐ Well Drained:	% of site
☐ Moderately Well Drained:	% of site
☑ Poorly Drained	100 % of site

f. Approximate proportion of proposed action site with slopes:

☑ 0-10%:	100 % of site
☐ 10-15%:	% of site
☐ 15% or greater:	% of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? [There are 6.88 acres of federal wetlands located on the Project Site per the Jurisdictional ☑Yes ☐No

ii. Do any wetlands or other waterbodies adjoin the project site? Determination issued by the USACE on July ☑Yes ☐No
If Yes to either *i* or *ii*, continue. If No, skip to E.2.i. 12, 2017. A copy is provided at Attachment "A."]

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? [The Applicant is not proposing any impacts to the 6.88 acres of federal wetlands.] ☑Yes ☐No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name Federal Waters Approximate Size 6.88 Acres
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐Yes ☑No
If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? ☐Yes ☑No

j. Is the project site in the 100 year Floodplain? ☐Yes ☑No

k. Is the project site in the 500 year Floodplain? ☑Yes ☐No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:
i. Name of aquifer: _____

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m. Identify the predominant wildlife species that occupy or use the project site:
Typical suburban species

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation):
ii. Source(s) of description or evaluation:
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐ Yes ☑No

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No
If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site?
ii. Source(s) of soil rating(s):

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name:
ii. Basis for designation:
iii. Designating agency and date:

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e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places? ☐ Yes ☑ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based:

_____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: _____

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

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Ciminelli Real Estate Corporation Date February 22, 2021

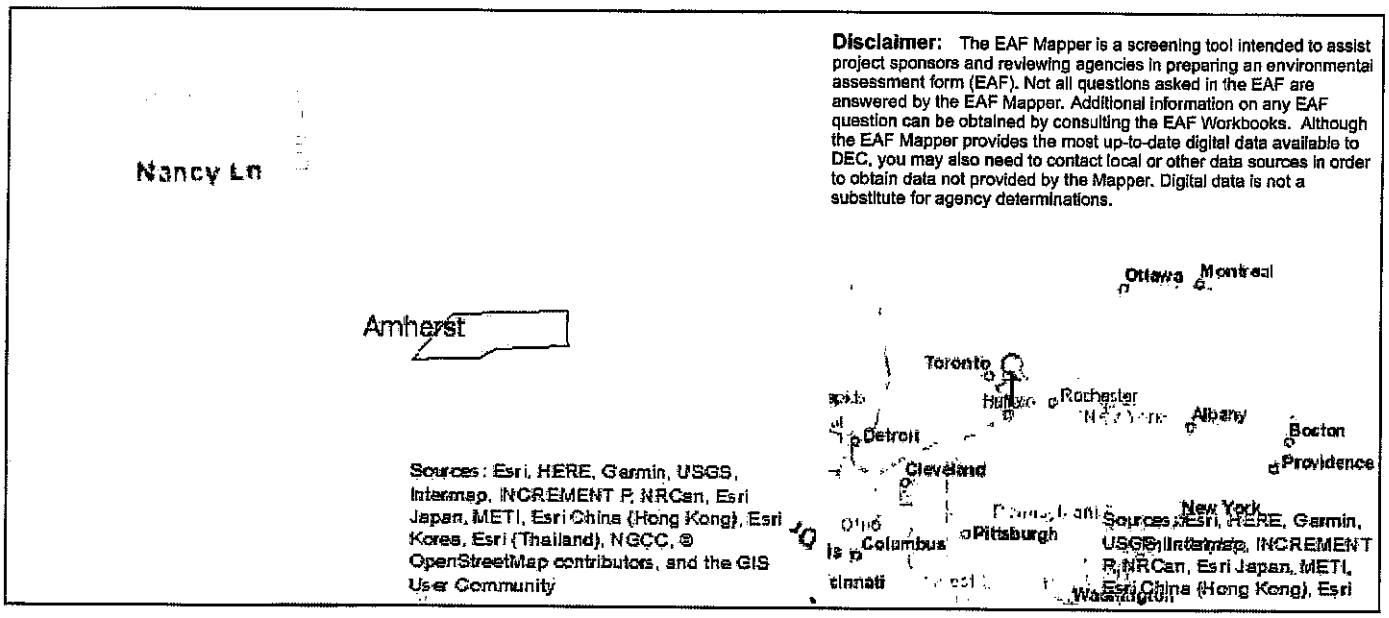
Signature _____ Title Attorney for Applicant/Project Sponsor

Sean W. Hopkins, Esq.

PRINT FORM

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

EAF Mapper Summary Report



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National Register of Historic Places]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

Application to Reclassify a Portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and Amendment of Audubon Development Plan

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

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Cheektowaga [Ch]	Severe: wetness, too clayey	Severe: wetness	Severe: wetness	Severe: wetness	Severe: wetness
Cosad [Cv]	Severe: wetness, cutbanks cave, too clayey	Severe: wetness	Severe: wetness	Severe: wetness	Moderate: wetness

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

___ Geotechnical report attached ___ Not applicable

[Note: Three copies of the Geotechnical Report prepared by Glynn Group dated October 4, 2018 are being submitted with the Application and supporting documentation.]

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ☑ No
On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ☑ No

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

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

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:

The Petitioner owns the parcels of real property 1081 and 1121 North French Road which consist of nearly 330 acres of land.

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

Describe: **There are current proposals to develop Site "B" of Muir Woods as student housing and Site "A" of Muir Woods as a mixed-use project.**

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

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

7. Maximum number of vehicular trips to be generated per hour upon completion of project: **8 vehicular trips during the weekday peak travel period.**

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

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

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:

    2,800 gpd average flow **11,200** gpd peak flow.

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

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Attachment A of Part 1 of Full Environmental Assessment Form – Jurisdictional Determination for 520 Campbell Boulevard Issued by the United States Army Corps of Engineers ("USACE") on July 12, 2017

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO
ATTENTION OF:

July 12, 2017

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application No. 2001-00067.

Ciminelli Real Estate Corporation
Centerpointe Corporate Park
350 Essjay Road
Williamsville, NY 14221

Dear Mr. Brad Packard:

I have reviewed the wetland delineation map you submitted for your request for a wetland boundary verification, located at 520 Campbell Boulevard which is directly adjacent to the Muir Woods project site, Town of Amherst, County of Erie, New York.

I have evaluated your submitted wetland delineation map and have determined that the wetland and water boundaries shown on the map accurately represent on-site conditions. Please note that this is a Preliminary Jurisdictional Determination (JD). Preliminary JDs are non-binding written indications that there may be waters of the United States (WOUS) on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 16-01, any permit application made in reliance on this Preliminary JD will be evaluated as though all wetlands or waters on the site are regulated by the Corps. Further, all waters, including wetlands will be used for purposes of assessing the area of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction for any or all of the waters identified on the submitted drawings, you may request an approved jurisdictional determination (AJD) from this office. If an AJD is requested, please be aware that this is often a lengthy process and we may require the submittal of additional information.

I have enclosed the Preliminary JD Form with this letter. The form and attached table identifies the extent of waters on the site and specific terms and conditions of the Preliminary JD. Please sign and return a copy of this form to my attention. If you do not respond within 15 days, we will presume concurrence and no additional follow up is necessary prior to finalizing an action.

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of all aquatic resources on the parcel be re-evaluated by a qualified wetland biologist after five years of the

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application No. 2001-00067.

date of this letter. This will ensure that any changes are appropriately identified and you do not inadvertently incur a violation of Federal law while constructing your project or working on your project site.

Lastly, this determination has been conducted only to identify the limits of waters that may be subject to Corps Clean Water Act or Rivers and Harbors Act jurisdiction. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

Questions pertaining to this matter should be directed to me at 716-879-4346, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: martin.h.crosson@usace.army.mil

Sincerely,

Martin H. Crosson
Biologist

Enclosures

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Ciminelli Real Estate Corporation	File Number: 2001-00067	Date: 07/12/2017
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT		
REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)		
ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.		
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:		
If you have questions regarding this decision and/or the appeal process you may contact: Martin Crosson U.S. Army Corps of Engineers 1776 Niagara Street Buffalo, New York 14207 716-879-4346 martin.h.crosson@usace.army.mil	If you only have questions regarding the appeal process you may also contact: Attn: Jacob Siegrist Great Lakes and Ohio River Division CELRD-PD-REG 550 Main Street, Room 10524 Cincinnati, OH 45202-3222 513-684-2699; FAX 513-684-2460	
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.		
_____ Signature of appellant or agent.	Date:	Telephone number:

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

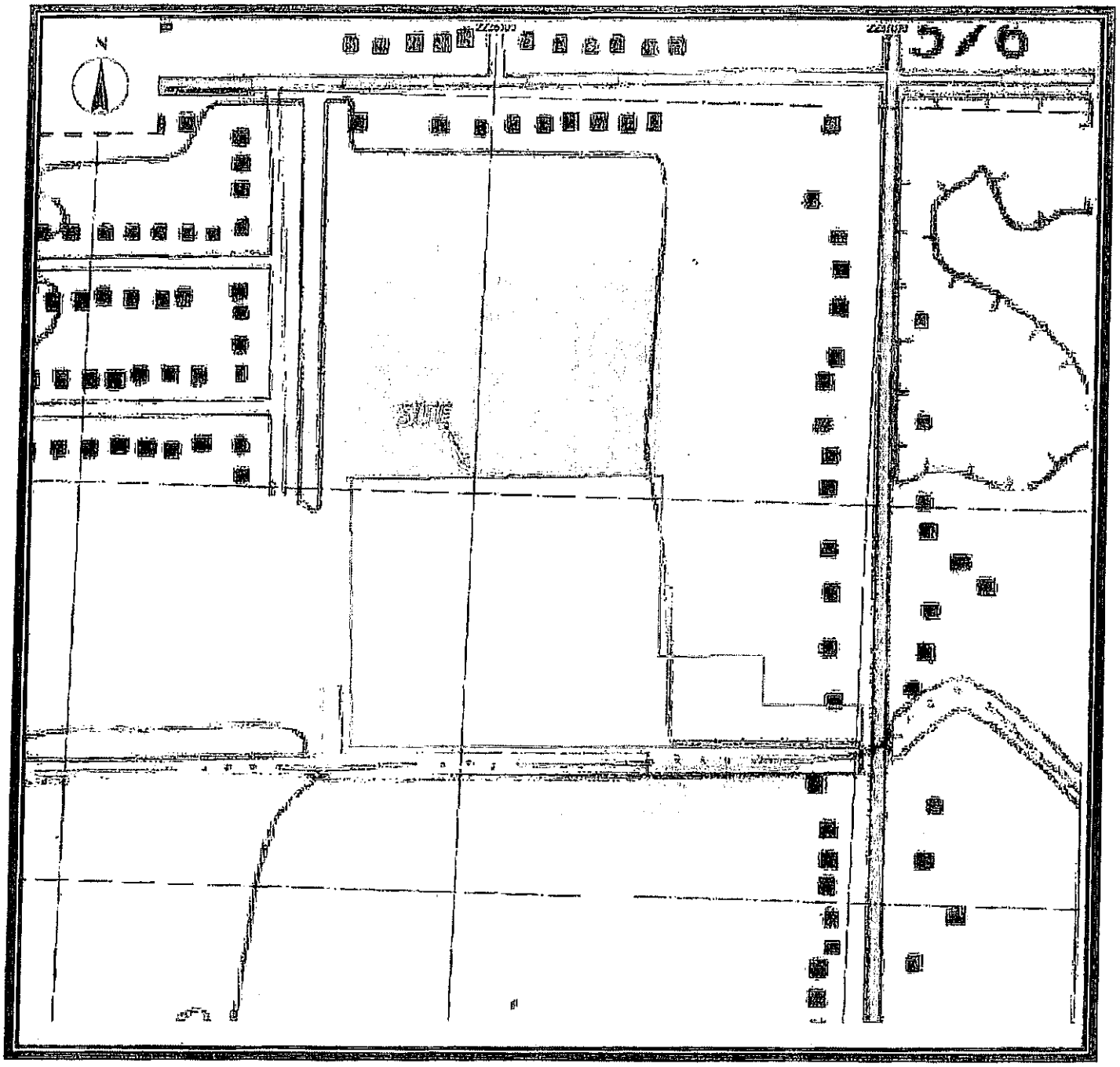


FIGURE 1: USGS 7.5 MINUTE TOPOGRAPHICAL MAP

Tonawanda East Quadrangle / 2002 DeLorme

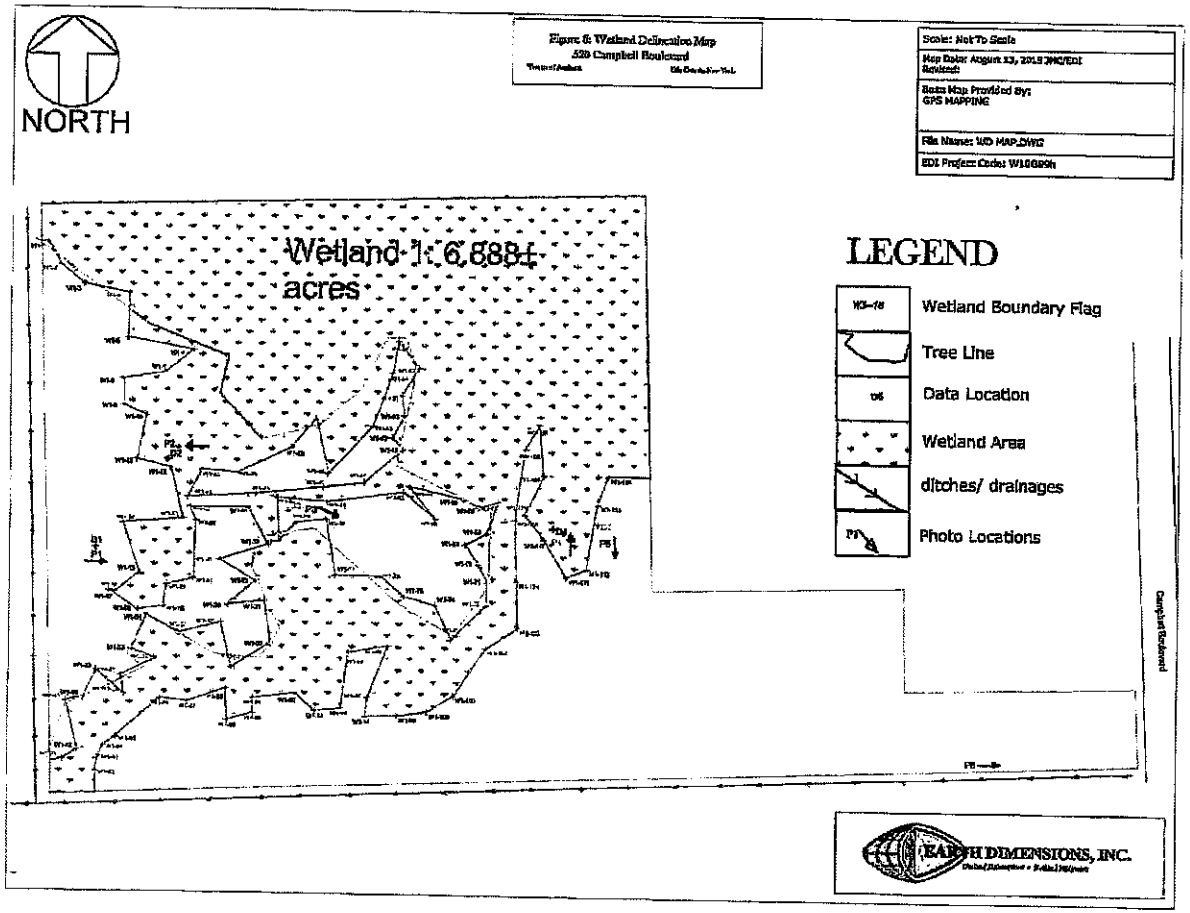
520 Campbell Boulevard

Town of Amherst, Erie County, New York

Ciminelli Real Estate Corporation
D/A Processing No. 2001-00067
Erie County, NY
Sheet 1 of 2

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Ciminelli Real Estate Corporation
D/A Processing No. 2001-00067
Erie County, NY
Sheet 2 of 2



PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: July 12, 2017.

B. NAME AND ADDRESS OF PERSON REQUESTING PJD:

Ciminelli Real Estate Corporation
Centerpointe Corporate Park
350 Essjay Road
Williamsville, NY 14221

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB Buffalo, Ciminelli Real Estate Corporation, 2001-00067.

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie City: Amherst

Center coordinates of site (lat/long in degree decimal format):

Lat.: 43.03126° Long.: -78.77060°

Universal Transverse Mercator: 17

Name of nearest waterbody: Ellicott Creek

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: July 12, 2017.

☒ Field Determination. Date(s): July 11, 2017.

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
Wetland 1	43.03126°	-78.77060°	6.888	PSS/FO	404

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there *"may be"* waters of the U.S. and/or that there *"may be"* navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:
Map: Delineation Report completed by Earth Dimensions, Inc. dated August 20, 2015.
☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report. Rationale: _____.
☐ Data sheets prepared by the Corps: _____.
☐ Corps navigable waters' study: _____.
☐ U.S. Geological Survey Hydrologic Atlas: _____.
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: Tonawanda East NY USGS 7.5.
☒ Natural Resources Conservation Service Soil Survey. Citation: Erie County.
☒ National wetlands inventory map(s). Cite name: fws.gov – wetland data mapper.
☐ State/local wetland inventory map(s): _____.
☐ FEMA/FIRM maps: _____
☐ 100-year Floodplain Elevation is: ____. (National Geodetic Vertical Datum of 1929)
☐ Photographs:
☐ Aerial (Name & Date): _____.
☐ Other (Name & Date): _____.
☐ Previous determination(s). File no. and date of response letter: _____.
☐ Other information (please specify): _____.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

J. Martin R. Cramer 07/12/2017
Signature and date of
Regulatory staff member
completing PJD

07/13/2017
Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)[1]
By: Ciminelli Muir Woods, LLC
By: Ciminelli Real Estate Corporation,
its Managing Member
Brad Packard, Director of Development & Planning
Ciminelli Real Estate Corporation

[1] Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Exhibit 1 – Legal Description of Property to be Reclassified from New Community District – Suburban Agriculture ("NCD-SA") to New Community District – Neighborhood District ("NCD-ND")

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

EXHIBIT 1

LEGAL DESCRIPTION OF PORTION OF 520 CAMPBELL BOULEVARD TO BE RECLASSIFIED FROM NEW COMMUNITY DISTRICT – SUBURBAN AGRICULTURE ("NCD-SA") TO NEW COMMUNITY DISTRICT – NEIGHBORHOOD DISTRICT ("NCD-ND")

ALL THOSE TRACTS OR PARCELS OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 70, Township 12, Range 7 of the Holland Land Company's Survey, bounded and described as follows.

PARCEL 1:

BEGINNING at a point on the northerly boundary of Sierra Drive as shown on a subdivison map of The Preserve at Muir Woods recorded in the Erie County Clerk's Office under Map Cover 3754 at a distance of 276.97 feet westerly from its intersection with the westerly boundary of Campbell Boulevard being a 66.00 feet wide right of way;

Thence along the northerly boundary of Sierra Drive the following two (2) courses and distances:

1) N-89°-45'-59"-W, a distance of 458.83 feet to a point of curvature;
2) Westerly along a curve to the left having a radius of 176.00 feet an arc distance of 6.17 feet to a point;

THENCE: Through the lands conveyed to Ciminelli Muir Woods LLC by deed recorded in the Erie County Clerk's Office in Liber 11322 of Deeds at page 4494 the following two (2) courses and distances:

1) N-00°-14'-01"-E, along a non-radial line a distance of 138.94 feet to a point;
2) S-89°-45'-59"-E, along a line parallel with the northerly line of said Sierra Drive a distance of 194.09 feet to the southwest corner of lands conveyed to Kathleen J. Skeide by Deed recorded in the Erie County Clerk's Office in Liber 11123 of Deeds at page 2408;

THENCE: N-89°-22'-00"-E, along the south line of said Kathleen J. Skeide lands a distance of 270.94 feet to a point;

THENCE: S-01°-14'-00"-E through said lands conveyed to Ciminelli Muir Woods LLC a distance of 142.93 feet to the POINT OF BEGINNING, Containing 1.495 acres more or less.

PARCEL 2:

BEGINNING at a point on the northwesterly boundary of Sierra Drive at the northeasterly corner of Sub Lot 21 as shown on a subdivison map of The Preserve at Muir Woods recorded in the Erie County Clerk's Office under Map Cover 3754;

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

THENCE: N-75°-07'-44"-W, along the northerly line of said Sub lot 21 a distance of 156.81 feet to the northeast corner of Sub lot 18 as shown on said map Cover 3754;
THENCE: N-54°-35'-00"-W, along the northeasterly line of said Sub lot 18 a distance of 75.41 feet to a northerly corner of said Sub lot 18;

THENCE: Through said lands conveyed to Ciminelli Muir Woods LLC the following two (2) courses and distances:

1) N-79°-00'-45"-E, a distance of 128.98 feet to a point;
2) S-63°-52'-36"-E, along a radial line a distance of 117.00 feet to a point on the first mentioned northwesterly boundary of Sierra Drive;

THENCE: along said northwesterly boundary of Sierra Drive the following two (2) courses and distances:

1) Southwesterly along a curve to the left having a radius of 176.00 feet an arc distance of 34.56 feet to a point of tangency;
2) S-14°-52'-16"-W a distance of 25.55 feet to the POINT OF BEGINNING, Containing 0.308 acre more or less.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

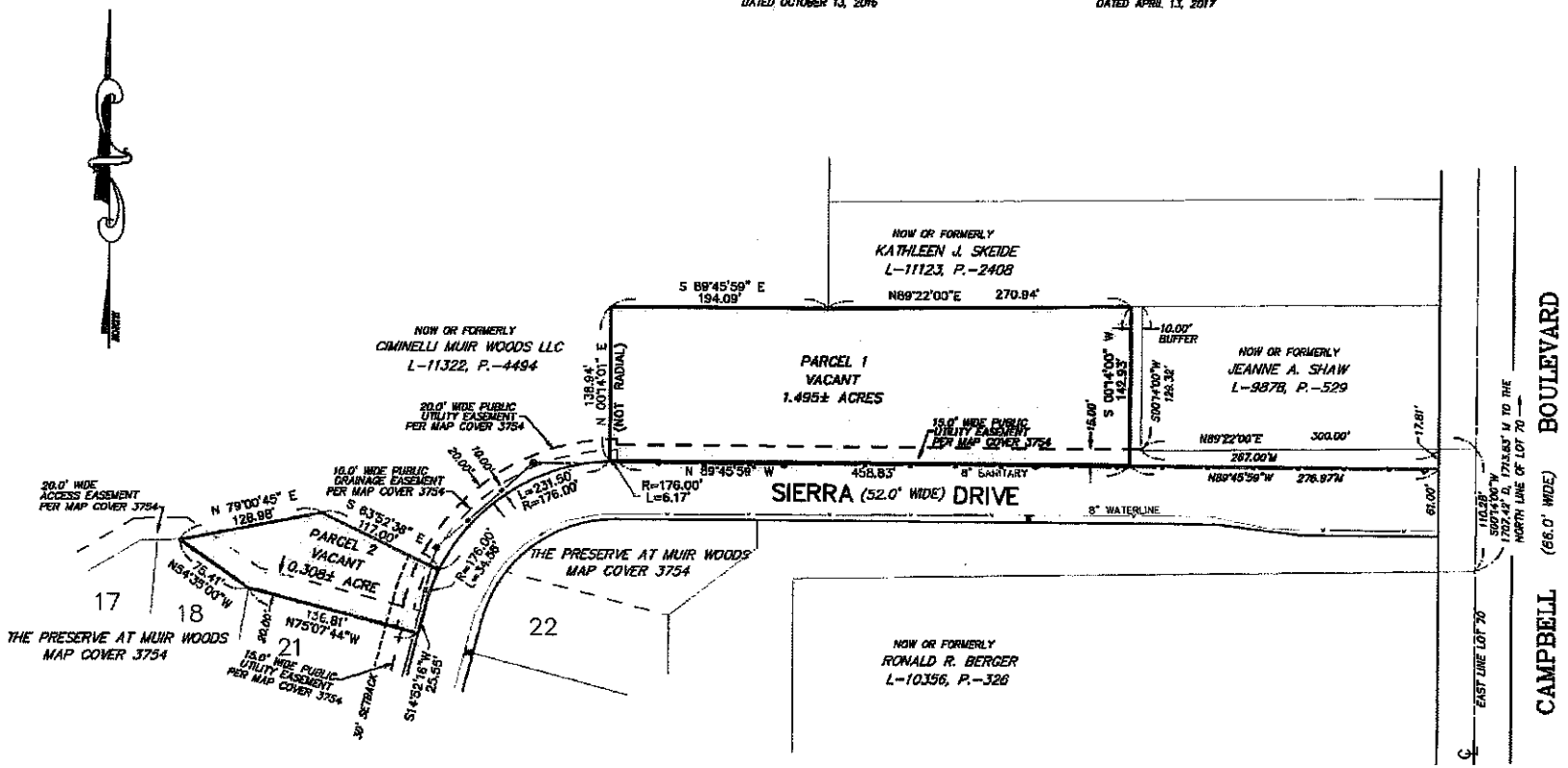
Exhibit 2 – Survey of Portion of 520 Campbell Boulevard to be Reclassified from New Community District – Suburban Agriculture ("NCD-SA") to New Community District – Neighborhood District ("NCD-ND") as Prepared by GPI Engineering, Landscape, Architecture & Surveying, LLP [11" x 17"]

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

THIS SURVEY WAS PREPARED WITH THE BENEFIT OF A TITLE COMMITMENT REPORT PREPARED BY STEWART TITLE INSURANCE COMPANY, TITLE NO. 10-330915 DATED OCTOBER 13, 2016

THIS SURVEY WAS PREPARED WITH THE BENEFIT OF A TITLE COMMITMENT REPORT PREPARED BY STEWART TITLE INSURANCE COMPANY, TITLE NO. 10-3300159 DATED APRIL 13, 2017

NOTE: UNAUTHORIZED ALTERATION OR ADDITION TO THIS DOCUMENT IS A VIOLATION OF SECTION 7209 PROVISION 2 OF THE NEW YORK STATE EDUCATION LAW.



SURVEY OF
PART OF LOT 70, TOWNSHIP 12, RANGE 7
HOLLAND LAND SURVEY
TOWN OF AMHERST, ERIE COUNTY, NEW YORK

GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP
ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE
4950 GENESEE STREET, SUITE 100
BUFFALO, NEW YORK 14225
(716) 633-4844 FAX 633-4848

Job No. 2013062 Date: SEPTEMBER 7, 2018
SCALE: 1"=100'

Exhibit 3 – Responses to Questions 11A & 11B of the Application

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

EXHIBIT 3

RESPONSES TO QUESTION 11A & 11B OF THE APPLICATION

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

Response to Question 11(A): The proposed project consists of eight (8) lots for detached single-family homes for sale on 1.8 acres of the 14.39 acre parcel at 520 Campbell Boulevard ("Project Site"). The new homes will be located on the Sierra Drive frontage of the Project Site. A copy of the Sketch Plan prepared by GPI showing the layout of the proposed residential lots is provided at Exhibit "5" of this Application. 9.88 acres of the Project Site, including the 6.88 acres of federal wetlands subject to the jurisdiction of the United States Army Corps of Engineers, will consist of Permanent Open Space to be protected via the recording of a Declaration of Restrictions at the Erie County Clerk's Office. The portion of the Project Site that will consist of Permanent Open Space is depicted on the plan prepared by GPI provided at Exhibit "9" of this Application. The proposed residential project requires 1.8 acres of the Project Site to be reclassified from New Community District – Suburban Agriculture ("NCD-SA") to New Community District – Neighborhood District ("NCD-ND"). The remainder of the Project Site will remain classified as NCD-SA. The portion of the Project Site to be reclassified from NCD-SA to NCD-ND is depicted on the Survey prepared by GPI provided at Exhibit "2" of this Application and a survey of the entire Project Site prepared by GPI is provided at Exhibit "6" of this Application.

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

Response to Question 11(B)(1): The Project Site is an appropriate location for the proposed eight (8) lot residential subdivision for detached single-family homes given its proximity to the previously

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

approved The Preserve at Muir Woods Subdivision and given that the proposed lot are already serviced by the necessary public infrastructure.

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

Response to Question 11(B)(2): The Applicant is not seeking to amend the zoning classification of the portion of the Project Site to be developed as eight (8) lots for detached single-family homes. Instead, the Applicant is seeking to reclassify 1.8 acres of the Project Site from NCD-SA to NCD-ND. The portion of the Project Site with frontage on Sierra Drive to be developed as detached single-family homes for sale is not suitable for agricultural uses.

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

Response to Question 11(B)(3): The proposed reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND to accommodate eight (8) lots for detached single-family homes will not result in any significant adverse impacts on surrounding properties. A color excerpt of the Zoning Map is provided at Exhibit "8" of this Application and it shows that the predominant land use on the parcels in the vicinity of the Project Site are single-family homes on lots zoned R-3, NCD-R3 and NCD-ND.

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

Response to Question 11(B)(4): The proposed residential project will have positive impacts on the Williamsville Central School District since the property taxes that will be generated on an annual basis will be substantially greater than the current property taxes generated by the vacant land zoned NCD-SA.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Exhibit 4 – Responses to Questions 16A, 16B, 16D & 16E of the Application

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

EXHIBIT 4

RESPONSES TO QUESTIONS 16(A), 16(C), 16(D) & 16(E) OF REZONING APPLICATION

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

Response to Question 16(A)(1): The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[1] In June of 2019, the Town Board adopted amendments to the Bicentennial Comprehensive Plan.

The Project Site is zoned New Community District ("NCD"). The Applicant is not seeking a rezoning of a portion of 520 Campbell Boulevard ("Project Site"), but instead is seeking to reclassify only 1.8 acres of the 14.39 acre parcel from New Community District – Suburban Agriculture ("NCD-SA") to New Community District – Neighborhood District ("NCD-ND").[2] Figure 6 of the Comprehensive Plan is titled "Conceptual Land Use Plan" and it indicates the

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

[2] A copy of the Survey prepared by GPI showing the portion of 520 Campbell Road that the Applicant is seeking to reclassify from NCD-SA to NCD-ND is provided at Exhibit "2" of this Application. A copy of the Survey of the overall parcel at 520 Campbell Boulevard as prepared by GPI is provided at Exhibit "6" of this Application.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Project Site is suitable for "Single Family Residential". A color copy of Figure 6 of the Comprehensive Plan is provided at Exhibit "7" of this Application. The use of the portion of 520 Campbell Boulevard for agricultural purposes is not suitable given the limited size of the developable portion of this parcel and the existing uses of nearby parcels, which predominantly consists of single-family homes on individuals lots. A color excerpt of the Zoning Map is provided at Exhibit "8" of this Application and it shows that there are any many nearby parcels zoned R-3, NCD-R3 and NCD-ND that are utilized as single-family homes on individual lots.

It is also important to mention that

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

Response to Question 16(A)(2): The Applicant is not seeking to amend the zoning classification of a portion of the Project Site to accommodate the proposed use of 1.8 acres as eight lots for detached single-family homes for sale. The proposed reclassification of a portion of the Project Site from New Community District – Suburban Agriculture ("NCD-SA") to New Community District – Neighborhood District ("NCD-ND") does not require an amendment to the Bicentennial Comprehensive Plan. The eight proposed residential lots on the portion of the Project Site that will have frontage on Sierra Drive is consistent with the recommended land use per the "Conceptual Land Use Plan" contained at Figure 6 of the adopted Comprehensive Plan.

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

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

> "The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

The proposed reclassification of only 1.8 acres of the Project Site from NCD-SA to NCD-ND is consistent with the Purpose of the Zoning Code. The proposed NCD-ND classification of a portion of the Project Site to accommodate eight lots for detached single-family homes is consistent with the Bicentennial Comprehensive Plan and will promote the public health, safety, convenience, comfort, prosperity and general welfare of the Town of Amherst and its residents.

Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen objectives that are discussed below as follows:

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

Response: The proposed and reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND as well as the proposed residential project consisting of eight lots for detached single-family homes is consistent with the objective of protecting the character and value of existing land uses. It is important to mention that 9.88 acres of the Project Site, including the 6.88 acres of jurisdictional federal wetlands, will consist of Permanent Open Space to be protected via the recording of a Declaration of Restrictions at the Erie County Clerk's Office. The portion of the Project Site that will consist of Permanent Open Space is depicted on the plan prepared by GPI provided at Exhibit "9" of this Application.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

Response: The proposed and reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND as well as the proposed residential project consisting of eight lots for detached single-family homes is consistent with this objective. The Comprehensive Plan strongly encourages infill development and the proposed eight lots represents infill development since the lots will be located on Sierra Drive, which means no new Town owned infrastructure will be necessary in connection with the proposed residential project.

C. To prevent overcrowding of land;

Response: The proposed eight lots for detached single-family homes on the approximately 14.39 acre Project Site represents a density of only .55 homes per acre. The proposed residential project will not result in the overcrowding of land.

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

Response: The proposed eight lots for detached single-family homes on the approximately 14.39 acre Project Site represents only a density of .55 homes per acre. The proposed residential project will not result in the overcrowding of land.

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

Response: The responses to the Questions in Section 16 of this Application to reclassify a portion of the Project Site from NCD-SA to NCD-ND set forth the reasons the proposed project is consistent with the policies of the adopted Comprehensive Plan.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

Response: The small portion of the Project Site to be developed for residential purposes is not located in a regulated floodway or flood zone. The Site Plan Application review process for the eight proposed lots for detached single-family homes will trigger the need for an Engineer's Report and SWPPP prepared by a licensed engineer to be prepared for review and approval by the Town's Engineering Department. The project will not increase the likelihood of damage and injury due to fire and flood. The new homes will be constructed per the stringent requirements of the NYS Building Code.

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

Response: The proposed and reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND as well as the proposed residential project consisting of eight lots for detached single-family homes is consistent with this objective. 9.88 acres of the Project Site, including the 6.88 acres of jurisdictional federal wetlands, will consist of Permanent Open Space to be protected via the recording of a Declaration of Restrictions at the Erie County Clerk's Office. The portion of the Project Site that will consist of Permanent Open Space is depicted on the Plan prepared by GPI attached as Exhibit "9" of this Application.

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

Response: The development of approximately 1.8 acres of Project Site in a manner consistent with the Sketch Plan prepared by GPI provided at Exhibit "5" of this Application will be aesthetically harmonious with nearby areas and structures.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

Response: The eight proposed residential lots for detached single-family homes will be located on Sierra Drive and will not result in potentially significant traffic impacts.

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

Response: The 1.8 acres of the Project Site to be developed as eight lots for detached single-family homes will have direct access to sanitary sewer and water lines as well as necessary public utilities. The proposed residential project will not result in the need for the Town of Amherst or other governmental agencies to pay for infrastructure improvements.

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

Response: The proposed reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND as well as the proposed residential project consisting of eight lots for detached single-family homes is consistent with this objective since the proposed residential project, which includes a large area of Permanent Open Space, is consistent with the policies contained in the Comprehensive Plan.

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

Response: The proposed reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND, as well as the proposed residential project consisting of eight lots for detached single-family homes is consistent with this objective.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

Response: The proposed reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND, as well as the proposed residential project consisting of eight lots for detached single-family homes is consistent with this objective. No signage will be required for the eight proposed lots for detached single-family homes.

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

Response to Question 16(C): The proposed reclassification of 1.8 acres of the Project Site from NCD-SA to NCD-ND as well as the proposed residential project consisting of eight lots for detached single-family homes, is compatible with the present zoning and conforming uses of nearby properties and the character of the neighborhood. A color excerpt of the Zoning Map is provided at Exhibit "8" of this Application and it shows that there are any many nearby parcels zoned R-3, NCD-R3 and NCD-ND that are utilized as single-family homes on individual lots.

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

Response to Question 16(D): The Project Site is not suitable for agricultural uses. The approximately 1.8 acres of the Project Site to be developed as eight lots for detached single-family homes is suitable for the proposed NCD-ND classification and the proposed use is consistent with the adopted Comprehensive Plan.

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

Response to Question 16(D): The proposed reclassification of a portion of the Project Site from NCD-SA to NCD-ND to accommodate eight lots for detached single-family homes for sale will have positive impacts on the balance of uses in the Town.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Exhibit 5 – Sketch Plan Depicting Proposed Eight Lots for Detached Single-Family Homes as Prepared by GPI Engineering, Landscape, Architecture & Surveying, LLP [11" x 17"]

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

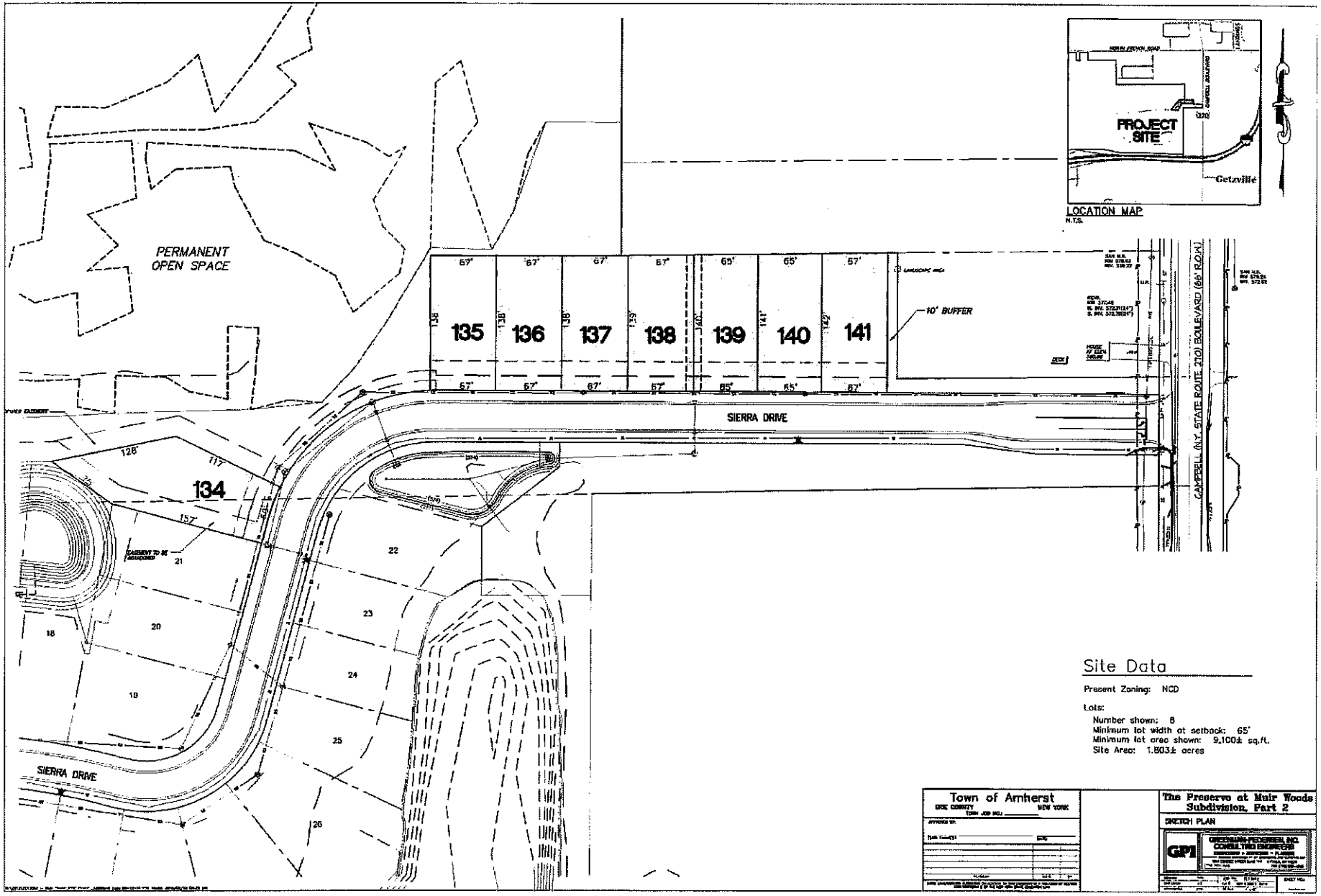
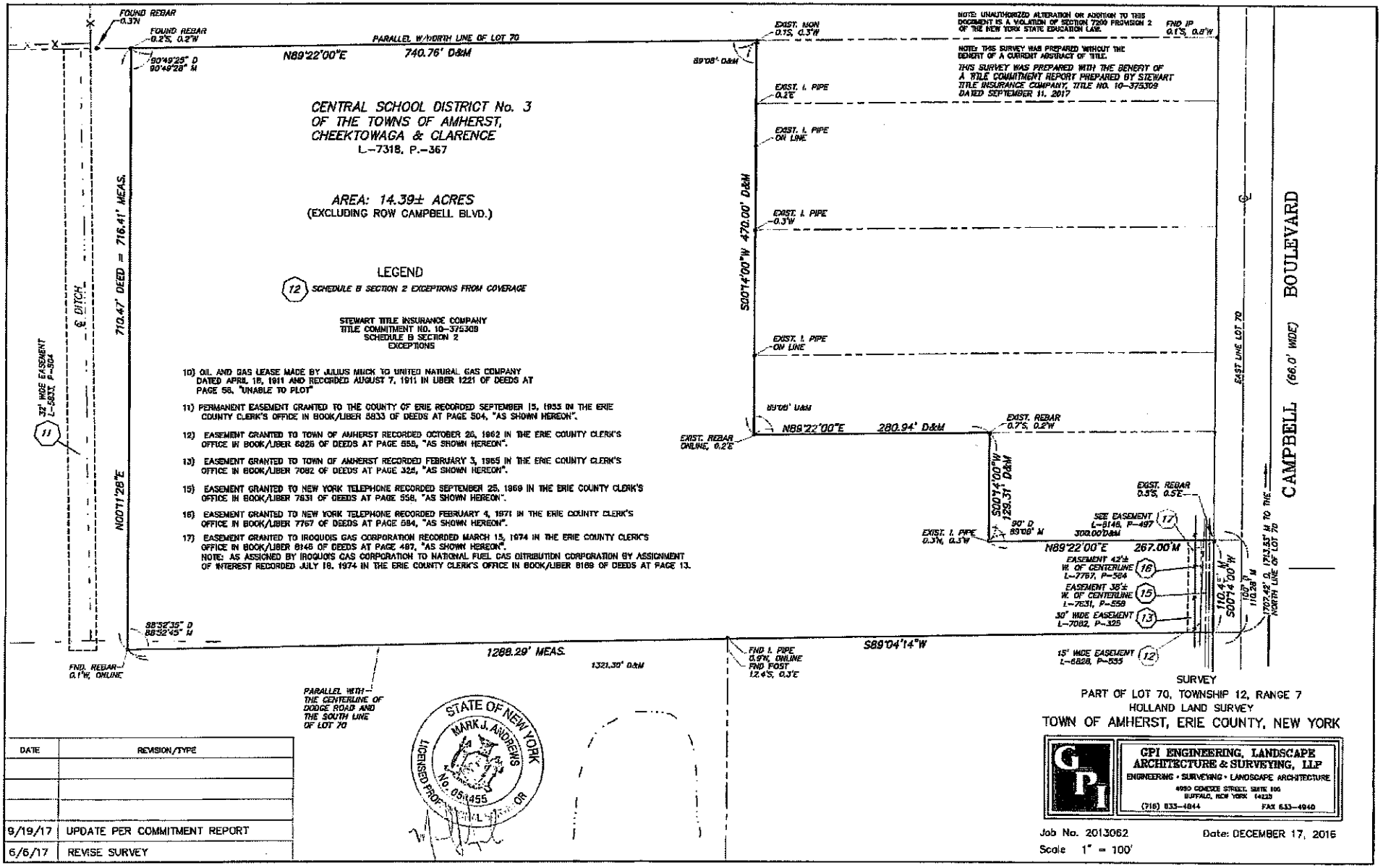

PERMANENT
OPEN SPACE
135
136
137
138
139
140
141
10' BUFFER
SIERRA DRIVE
134
SIERRA DRIVE
CAMPBELL (N.Y. STATE ROUTE 210) BOULEVARD (66' R.O.W.)
PROJECT SITE
Getzville
LOCATION MAP
N.T.S.
Site Data
Present Zoning: NCD
Lots:
Number shown: 8
Minimum lot width at setback: 65'
Minimum lot area shown: 9,100± sq.ft.
Site Area: 1.803± acres
Town of Amherst
ERIE COUNTY NEW YORK
The Preserve at Muir Woods Subdivision, Part 2
SKETCH PLAN
GPI

Exhibit 6 – Survey of 520 Campbell Boulevard as Prepared by GPI Engineering, Landscape, Architecture & Surveying, LLP [11" x 17"]

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)



DATE	REVISION/TYPE
9/19/17	UPDATE PER COMMITMENT REPORT
6/6/17	REVISE SURVEY

SURVEY
PART OF LOT 70, TOWNSHIP 12, RANGE 7
HOLLAND LAND SURVEY
TOWN OF AMHERST, ERIE COUNTY, NEW YORK

GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP
ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE
4950 GENESEE STREET, SUITE 105
BUFFALO, NEW YORK 14225
(716) 633-4844 FAX 633-4940

Job No. 2013062 Date: DECEMBER 17, 2016
Scale 1" = 100'

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Exhibit 7 – Color Copy of Figure 6 of the Town of Amherst Comprehensive Plan – Conceptual Land Use Plan

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.

Parcel at 520 Campbell Boulevard - Designated as Appropriate for Single Family Residential

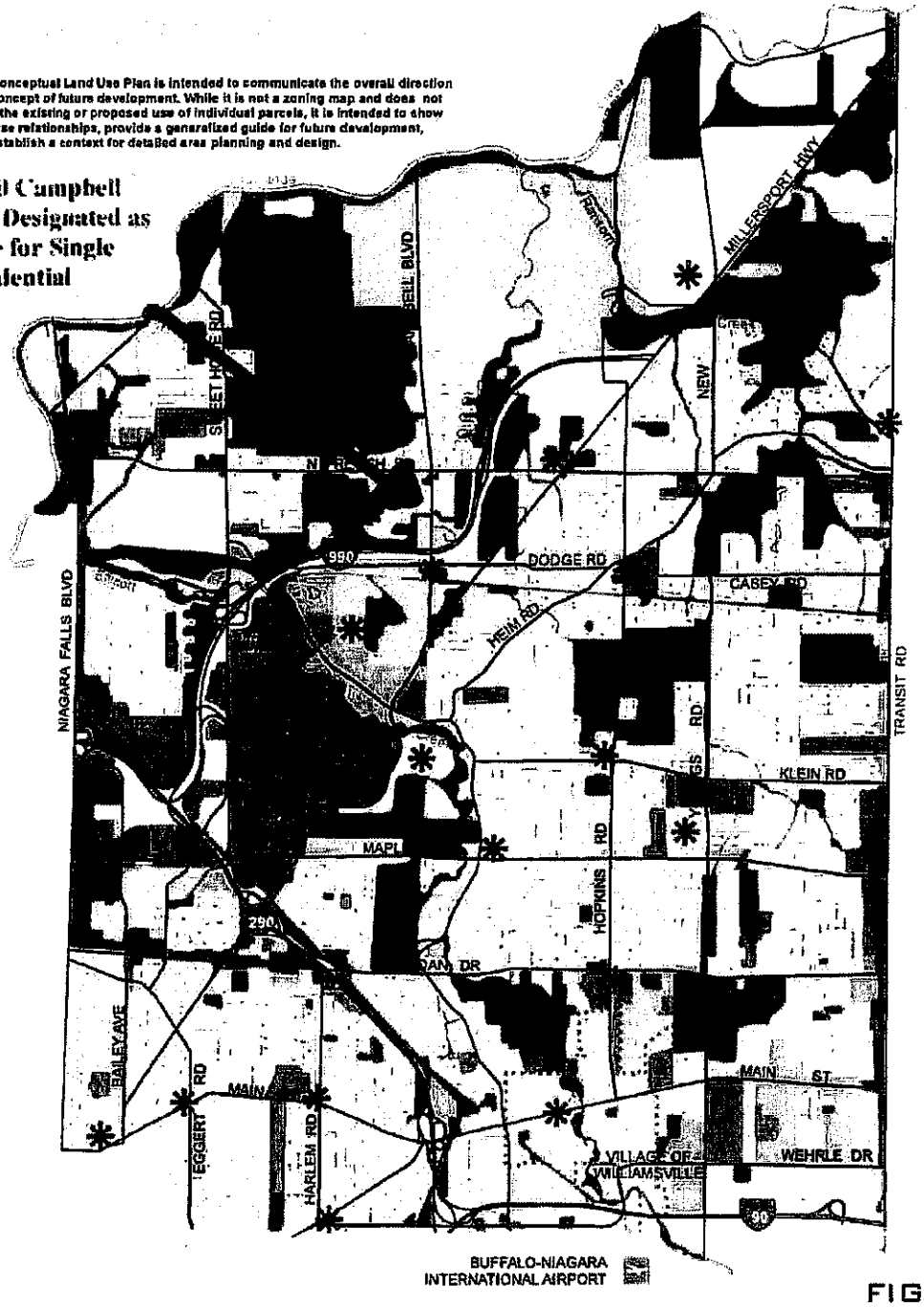


FIGURE 6

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

SOURCE NOTES:

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

Map Compiled by the Town of Amherst Planning Department

Date: September 2015

0 0.25 0.5 0.75 1 1.25 Miles

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Exhibit 8 – Color Excerpt of Town of Amherst Zoning Map

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

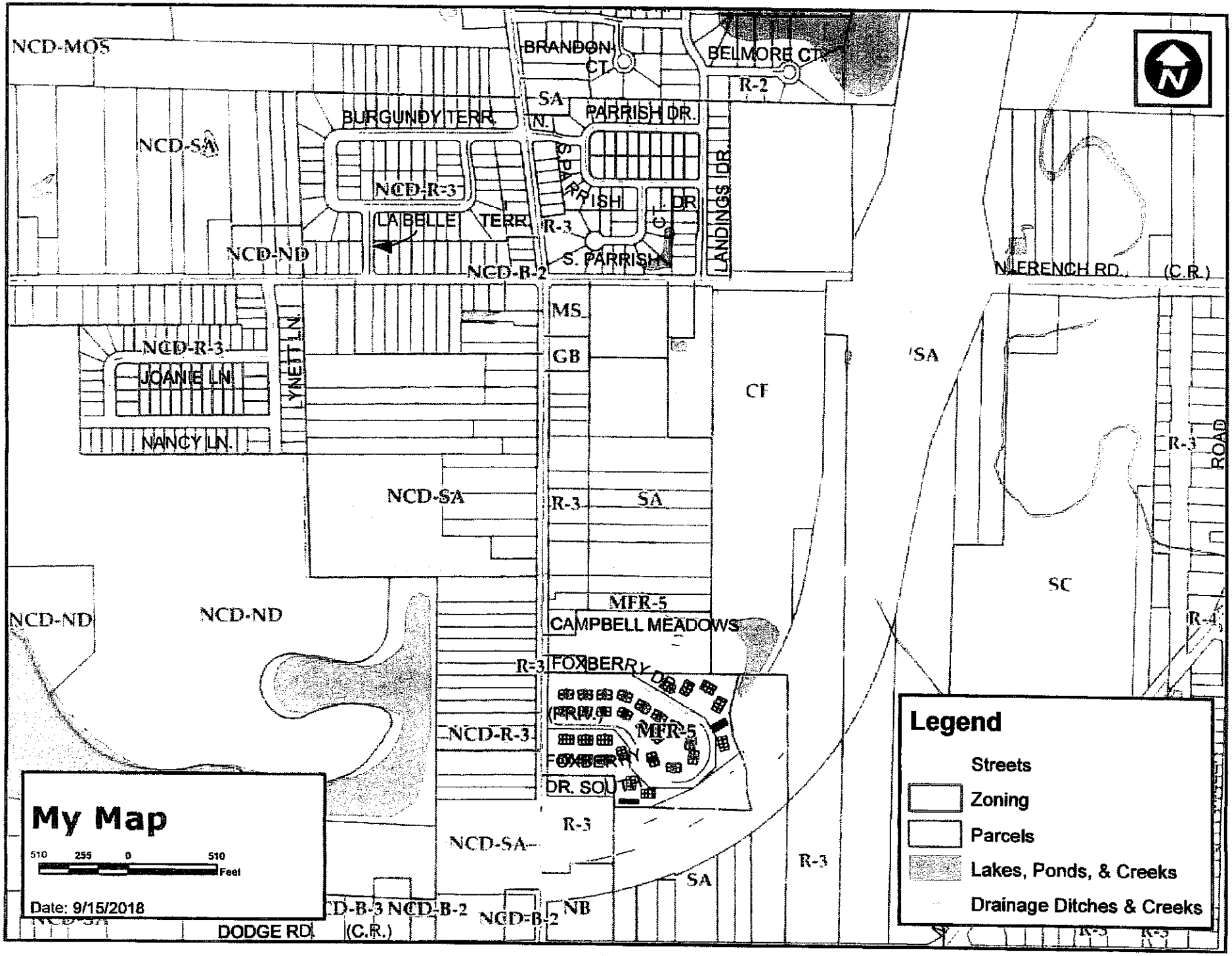
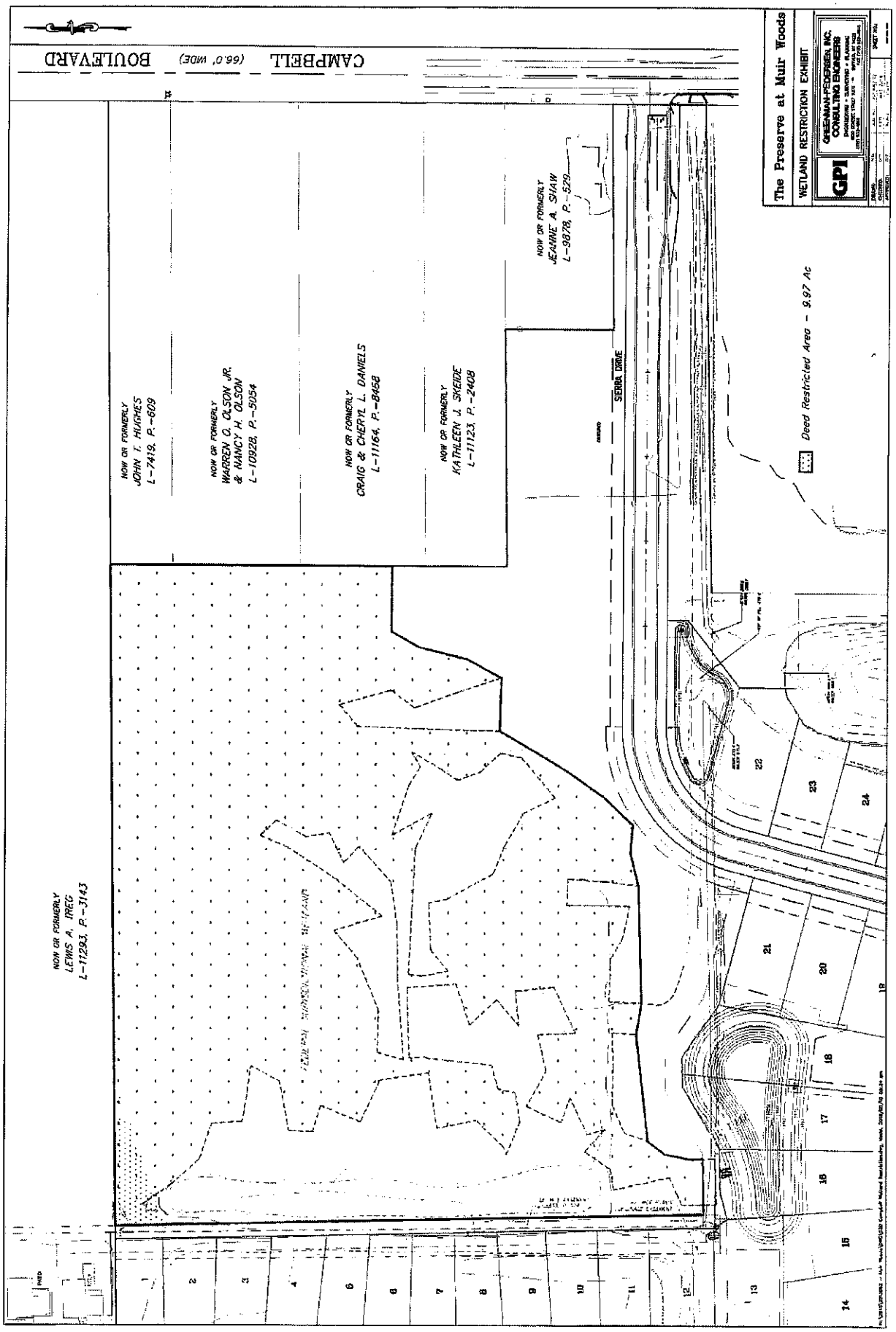

NCD-MOS
BRANDON CT.
BELMORE CT.
R-2
SA
N.
PARRISH DR.
BURGUNDY TERR.
NCD-SA
NCD-R-3
LA BELLE TERR.
R-3
S. PARRISH CT.
LANDINGS DR.
NCD-ND
NCD-R-2
S. PARRISH DR.
N. FRENCH RD. (C.R.)
MS
NCD-R-3
GB
JOANIE LN.
LYNETT LN.
NANCY LN.
CT
SA
R-3
ROAD
NCD-SA
R-3
SA
SC
MFR-5
NCD-ND
NCD-ND
CAMPBELL MEADOWS
R-4
R-3
FOXBERRY DR.
(PRIV.)
MFR-5
NCD-R-3
FOXBERRY
DR. SOUTH
R-3
NCD-SA
R-3
SA
NB
NCD-B-2
NCD-B-2
DODGE RD. (C.R.)
My Map
510 255 0 510
Feet
Date: 9/15/2018
Legend
Streets
Zoning
Parcels
Lakes, Ponds, & Creeks
Drainage Ditches & Creeks

Exhibit 9 – Wetland Restriction Plan as Prepared by GPI Engineering, Landscape, Architecture & Surveying, LLP

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)



Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Exhibit 10 – Resolution Adopted by the Town of Amherst Planning Board on November 15, 2018

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #69 TO THE AUDUBON DEVELOPMENT PLAN
Z-2018-06

NOV20'18 AM10:17 RCVD

PETITIONER

Ciminelli Real Estate Corp.
c/o Sean Hopkins, Esq.
5500 Main St., Suite 343
Williamsville, NY 14221

PROPERTY LOCATION

520 Campbell Boulevard (portion)

WHEREAS the Town of Amherst Planning Board on Thursday, October 18 **and November 15**, 2018 held public hearings on Amendment #69 to the Audubon New Community District Development Plan to include the property location for use as "The Preserve at Muir Woods" subdivision, Phase 2, and

WHEREAS the Planning Board has reviewed the Amendment plans and supporting documentation, and

WHEREAS the Amendment has been referred to the various Town review agencies, and

WHEREAS the Planning Board finds that:

A. The proposed Revision to the Development Plan meets the intent and objectives of a New Community District as expressed in Subsection 1-1.1.

B. The proposed Revision to the Development Plan meets all the requirements of Section 5-2-3 through 5-2-6.

C. The proposed Revision to the Development Plan is conceptually sound in that it meets present and future community needs.

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

E. The proposed Amendment to the Development Plan is consistent with the Town Comprehensive Plan.

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

NOW THEREFORE BE IT RESOLVED that the Planning Board, in accordance with Section 8-15-2 of the Zoning Ordinance offers a positive report and recommends Town Board **approval** of Amendment #69 to the Audubon Development Plan with the following conditions:

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #69 TO THE AUDUBON DEVELOPMENT PLAN
Z-2018-06

NOV20'19 AM10:17 RCVD

PETITIONER	PROPERTY LOCATION
Ciminelli Real Estate Corp.	520 Campbell Boulevard (portion)

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

2. That the petitioner be willing to contribute funds to an escrow account for future improvements at the intersection of North French Road and Campbell Boulevard in an amount that is proportional to the percentage share that the anticipated total trip generation of the proposed residential subdivision is contributing to the overall total trip generation at the existing intersection. Said escrow account and associated intersection improvements shall be subject to the review and approval of the New York State Department of Transportation, the agency with jurisdiction over the intersection of North French Road and Campbell Boulevard.

3. That the petitioner comply with all the requirements contained in the Muir Woods Findings statement amended by the Town Board on December 7, 2015 which include but are not limited to:

    - Prohibiting construction vehicles from using Lynette Lane as a means of access by way of a deed restriction to be included with the sale of any lots within Sites C and D (Section 8F).

    - Traffic mitigation measures including petitioner's potential obligation to make off-site improvements to Lynette lane and its intersection with North French Road (Section 8H).

    - Submittal of a current trip count report for both the a.m. and p.m. peak travel hours upon completion of Phase I development (Section 8H).

4. That the petitioner comply with the requirements of the NYSDOT as stated in its email to the Planning Department dated June 15, 2017, including the stipulation that no connection be provided between the terminus of John James Audubon Parkway and Sites C and D.

5. That the petitioner shall grant an access easement to the Town of Amherst for the purpose of authorizing the Town's Highway Department to access on-site ditches and stormwater management improvements in accordance with the Highway Department review dated April 24, 2018. A recorded copy of the Declaration of Restrictions shall be provided to the Town upon recording in the County Clerk's office.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #69 TO THE AUDUBON DEVELOPMENT PLAN
Z-2018-06

NOV20'18 AM10:17 RCVD

PETITIONER

Ciminelli Real Estate Corp.

PROPERTY LOCATION

520 Campbell Boulevard (portion)

6. That the petitioner shall form a homeowners association for the purpose of owning and maintaining the existing lake and other areas not consisting of subdivision lots for detached single-family homes. A copy of the offering plan for the homeowners association with evidence of approval by the New York State Attorney General's Office shall be provided to the Planning Department and Building Department prior to the first sale of a lot in the subdivision.

7. The Declaration of Restrictions and Restrictive Covenants to be recorded at the Erie County Clerk's Office upon approval of the Offering Plan for the homeowners association shall include the following:

   A. A recitation of the requirement that the homeowners association shall be required to comply with the terms and conditions contained in the Town of Amherst Stormwater Control Facility Maintenance Agreement to be recorded at the Erie County Clerk's Office as required by the memorandum issued by the Engineering Department dated June 15, 2017 approving the Stormwater Water Pollution and Prevention Plan once the Map Cover for the subdivision has been filed at the Erie County Clerk's Office.

   B. A restriction stating that any property owner with a residential lot or property contiguous with the existing federal jurisdictional drainage pond who desires to modify, impact, construct, disturb or in any way alter the existing shoreline of the detention pond shall be required to obtain written approval from the United States Army Corps of Engineers prior to taking any action in connection with disturbing the shoreline.

   A recorded copy of the Declaration of Restrictions shall be provided to the Town upon recording in the County Clerk's office.

8. That the petitioner provide a recorded copy of the Stormwater Control Facility Maintenance Agreement to the Planning and Engineering Departments upon recording in the County Clerk's office.

9. The petitioner shall be required to construct a recreational trail as per the plans and specifications provided within the Recreational Trail Plan prepared by Greenman- Pedersen, Inc. dated September, 2017 subject to the approval of the United States Army Corps of Engineers. The Town reserves the right, but is not obligated to, require that the trail

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #69 TO THE AUDUBON DEVELOPMENT PLAN
Z-2018-06

NOV20'18 AM10:17 RCVD

PETITIONER	PROPERTY LOCATION
Ciminelli Real Estate Corp.	520 Campbell Boulevard (portion)

improvements and associated property be conveyed to the Town at no cost following completion of construction.

10. In connection with Special Condition No. 9 of the United States Army Corps of Engineers Validated Wetland Permit No. 2001-00067, the petitioner shall be required to place a conservation easement or Declaration of Restrictions on the non-developed portions of Sites C and D, a recorded copy of which shall be provided to the Town.

11. That the use of this 1.8± acres of 520 Campbell Boulevard is limited to a maximum of eight (8) lots for detached single-family homes on individual lots.

12. That a Homeowners' Association will be formed and approved by the New York State Attorney General's Office prior to purchasers closing on the purchase of new homes within the proposed subdivision.

13. That the Homeowners' Association will be responsible for the maintenance and repair of the segment of sidewalk directly south of the existing parcel at 530 Campbell Boulevard.

14. That the Permanent Open Space to be provided on 520 Campbell Boulevard will remain permanently undeveloped and protected via the recording of a Declaration of Restrictions at the Erie County Clerk's Office.

15. That the restrictions based on the conditions contained in the wetland permits issued by the US Army Corps of Engineers will be included in the offering plan for the Homeowners' Association, a copy of which will be provided to each prospective purchaser of a home within the subdivision.

The foregoing resolution was adopted by the Town of Amherst Planning Board, November 15, 2018; ~~moved by~~ – Giuliani; seconded by – Gelber; ayes – 5, noes – 2 (Shapiro, Ulatowski).

Robert J. Gilmour, Chair — Date 11/20/18

EK/ac
X:\Current_Planning\Files\Rezonings\2018\Z-2018-06_(520_Campbell_Blvd_portion)_2018\Blurb_NCD_111518.doc
Blurb_NCD_111518
cc: Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Ciminelli Real Estate Corp., c/o Sean Hopkins, Esq., 5500 Main St., Suite 343, Williamsville, NY 14221

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Full Environmental Assessment Form
Part 1 - Project and Setting

Prepared By: Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338
E-mail: shopkins@hsr-legal.com

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Sponsor Information.

Name of Action or Project: Preserve at Muir Woods Subdivision - Proposed 8 Lot Residential Subdivision		
Project Location (describe, and attach a general location map): 520 Campbell Boulevard, Town of Amherst - Erie County		
Brief Description of Proposed Action (include purpose or need): The project ("action") consists of a residential subdivision on a portion of the approximately 14.39 acres parcel at 520 Campbell Boulevard ("Project Site") consisting of eight lots for detached single-family homes. The portion of the Project Site to be developed as single-family homes on individuals lot consists of 1.80 acres of the Project Site [12.5%] that is currently zoned NCD-SA. The Project Sponsor is seeking to amend classification of 1.80 acres of the Project Site from NCD-SA to NCD - Neighborhood District ("NCD-ND"). No impacts to the 6.88 acres of jurisdictional federal on the Project Site are being proposed and a copy of the Jurisdictional Determination issued by the U.S. Army Corps of Engineers on July 12, 2017 is provided at Attachment "A" of this Part 1 of the Full EAF. The action has been defined broadly to include all required discretionary approvals and permits as well as all site improvements including the proposed detached single-family homes, driveways, grading, sanitary sewer and water lines and connections and all other required utility improvements. The project purpose is to develop the a portion of 520 Campbell Boulevard with frontage on a public roadway as single-family homes. The project is a Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") since none of the impacts cross the threshold for a Type I action contained in 6 NYCRR Part 617.4		
Name of Applicant/Sponsor: Ciminelli Real Estate Corporation c/o Sean Hopkins, Esq.	Telephone: 510-4338 E-Mail: shopkins@hsr-legal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Project Contact (if not same as sponsor; give name and title/role): Sean W. Hopkins, Esq., Attorney for Project Sponsor	Telephone: 510-4338 E-Mail: shopkins@hsr-legal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Property Owner (if not same as sponsor): Ciminelli Muir Woods LLC	Telephone: 631-8000 E-Mail: afaeth@ciminelli.com	
Address: 50 Fountain Plaza, Suite 500		
City/PO: Buffalo	State: NY	Zip Code:

Additional Project Contact: Ken Zollitsch, GPI Engineering
4950 Genesee Street, Suite 100
Buffalo, New York 14225
Tel: 716.989-3342
E-mail: kzollitsch@gpinet.com

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B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, or Village Board of Trustees ☑Yes ☐No	Reclassification of Project Site from NCD-SA to NCD-ND & Amendment of Aud. Dev. Plan	February 22, 2021
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Site Plan Approval and Final Plat Approval	To be Determined
c. City Council, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☑Yes ☐No	Building Dept. - Building Permits; Engineering Department - SWPPP Approval	To be Determined
e. County agencies ☑Yes ☐No	ECHD - Sanitary Sewer, Water Approval and Realty Subdivision; ECWA - Water	To be Determined
f. Regional agencies ☐Yes ☐No		
g. State agencies ☑Yes ☐No	New York State Department of Environmental Conservation - SPDES Permit	To be Determined
h. Federal agencies ☐Yes ☑No		

i. Coastal Resources.
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No

ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No
iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) [Note: The action will have no adverse impacts on the West Erie Canal Corridor.] ☑Yes ☐No
If Yes, identify the plan(s):
NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No
If Yes, identify the plan(s):

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C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
The Project Site is currently zoned NCD-SA. The Project Sponsor is proposing to reclassify a portion of the Project Site from NCD-SA to NCD-ND.

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☑ No

c. Is a zoning change requested as part of the proposed action? ☐ Yes ☑ No
If Yes, [Note: The Project Sponsor is proposing to reclassify a portion of the Project Site from NCD-SA to NCD-ND.]
i. What is the proposed new zoning for the site? _____

C.4. Existing community services.

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

b. What police or other public protection forces serve the project site?
Town of Amherst Police Department

c. Which fire protection and emergency medical services serve the project site?
Getzville Fire Protection District and Twin City Ambulance

d. What parks serve the project site?
Nature View Park; Walton Woods Park and Ellicott Creek Park

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Detached single-family homes on individual lots.

b. a. Total acreage of the site of the proposed action? 14.39 acres
b. Total acreage to be physically disturbed? 1.8± acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 341± acres
[Note: 9.97 acres of 520 Campbell Boulevard will consist of Permanent Open Space subject to a Declaration of Restrictions.]

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? ☑ Yes ☐ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
Residential subdivision consisting of detached single-family homes on individual lots.
ii. Is a cluster/conservation layout proposed? ☐ Yes ☑ No
iii. Number of lots proposed? 8
iv. Minimum and maximum proposed lot sizes? Minimum 9,100± sqft Maximum 13,490± sqft

e. Will proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: 3 months
ii. If Yes:
- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

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f. Does the project include new residential uses? ☑ Yes ☐ No

If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase	8			
At completion of all phases	8			

g. Does the proposed action include new non-residential construction (including expansions)? ☐ Yes ☑ No

If Yes,

i. Total number of structures _____

ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length

iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☐ Yes ☑ No

If Yes,

i. Purpose of the impoundment: _____

ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☐ Other specify: _____

iii. If other than water, identify the type of impounded/contained liquids and their source. _____

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) ☐ Yes ☑ No

If Yes:

i. What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____

iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No

If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? ☐ Yes ☐ No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☑ No

If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

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ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments? ☐ Yes ☐ No
If Yes, describe:

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? ☐ Yes ☐ No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑ Yes ☐ No
If Yes:

i. Total anticipated water usage/demand per day: 4,200± gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☑ Yes ☐ No
If Yes:

- Name of district or service area: Town of Amherst
- Does the existing public water supply have capacity to serve the proposal? ☑ Yes ☐ No
- Is the project site in the existing district? ☑ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☑ No
- Do existing lines serve the project site? ☑ Yes ☐ No

iii. Will line extension within an existing district be necessary to supply the project? ☐ Yes ☑ No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
- Source(s) of supply for the district:

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐ Yes ☑ No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑ Yes ☐ No
If Yes:

i. Total anticipated liquid waste generation per day: 2,800± gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):

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

- Name of wastewater treatment plant to be used: Town of Amherst Water Pollution Control Facility
- Name of district: Town District 16
- Does the existing wastewater treatment plant have capacity to serve the project? ☑ Yes ☐ No
- Is the project site in the existing district? ☑ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☑ No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will line extension within an existing district be necessary to serve the project? ☐Yes ☑No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or 0.5± acres (impervious surface)

_____ Square feet or 1.8± acres (parcel size)

ii. Describe types of new point sources. New point sources will be inletting/outletting the proposed stormwater facilities. The impervious surfaces include driveways and single family homes.

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

Runoff will be directed to new stormwater facilities which will outlet to the adjacent lake which will ultimately flow to Ellicott Creek

- If to surface waters, identify receiving water bodies or wetlands: Ellicott Creek
- Will stormwater runoff flow to adjacent properties? ☐Yes ☑No

iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☑No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☑Yes ☐No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

Heavy equipment emissions during site construction.

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☑No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____ Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____ Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____ Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of semi-trailer truck trips/day: _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☐Yes ☑No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

iii. Will the proposed action require a new, or an upgrade to, an existing substation? ☐Yes ☐No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7am - 7pm or as allowed by Town
- Saturday: 7am - 7pm or as allowed by Town
- Sunday: to be determined
- Holidays: Not Anticipated

ii. During Operations:

- Monday - Friday: N/A
- Saturday: N/A
- Sunday: N/A
- Holidays: N/A

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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

During construction there will be temporary unavoidable noise impacts associated with the use of construction equipment and vehicles.

ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe:

n.. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Street fixtures and lighting on single family homes.

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally describe proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: _____ tons per _____ (unit of time)
- Operation : _____ tons per _____ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction:
- Operation:

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction:
- Operation:

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s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____

ii. If mix of uses, generally describe:

The primary use of the parcels in the vicinity of the Project Site is single-family homes on residential units. There are commercial uses at the intersection of Campbell Boulevard and North French Road and also multifamily uses to the south of the site on the east side of Campbell Boulevard.

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0	0.5±	+ 0.5±
• Forested	1.4±	0.0±	-1.4±
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	6.11±	5.71±	-0.4±
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0	0	0
• Wetlands (freshwater or tidal) [federal wetlands]	6.88	6.88	0
• Non-vegetated (bare rock, earth or fill)	-	-	-
• Other Describe: Lawns and landscaping	0	1.3±	+ 1.3±

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐Yes ☑No
If Yes,
i. Identify Facilities:

_____

_____

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

_____

_____

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐ No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

_____

_____

iii. Describe any development constraints due to the prior solid waste activities: _____

_____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

_____

_____

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑ No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No

☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____

_____

_____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

_____

_____

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

v. Is the project site subject to an institutional control limiting property uses? ☐Yes ☑No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐Yes ☐No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? greater than 5 feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? 0 %

c. Predominant soil type(s) present on project site:

Ch - Cheektowaga	63 %
Cv - Cosad	37 %
	%

d. What is the average depth to the water table on the project site? Average: 0.0-1.5 feet

e. Drainage status of project site soils:
☐ Well Drained: ____% of site
☐ Moderately Well Drained: ____% of site
☑ Poorly Drained 100 % of site

f. Approximate proportion of proposed action site with slopes:
☑ 0-10%: 100 % of site
☐ 10-15%: ____% of site
☐ 15% or greater: ____% of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? [There are 6.88 acres of federal wetlands located on the Project Site per the Jurisdictional ☑Yes ☐No

ii. Do any wetlands or other waterbodies adjoin the project site? Determination issued by the USACE on July ☑Yes ☐No
If Yes to either *i* or *ii*, continue. If No, skip to E.2.i. 12, 2017. A copy is provided at Attachment "A."]

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? [The Applicant is not proposing any impacts to the 6.88 acres of federal wetlands.] ☑Yes ☐No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name Federal Waters Approximate Size 6.88 Acres
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐Yes ☑No
If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? ☐Yes ☑No

j. Is the project site in the 100 year Floodplain? ☐Yes ☑No

k. Is the project site in the 500 year Floodplain? ☑Yes ☐No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:
i. Name of aquifer: _____

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

m. Identify the predominant wildlife species that occupy or use the project site:
Typical suburban species

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation):
ii. Source(s) of description or evaluation:
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No
If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site?
ii. Source(s) of soil rating(s):

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name:
ii. Basis for designation:
iii. Designating agency and date:

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places? ☐ Yes ☑ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based:

_____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: _____

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

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Ciminelli Real Estate Corporation Date February 22, 2021

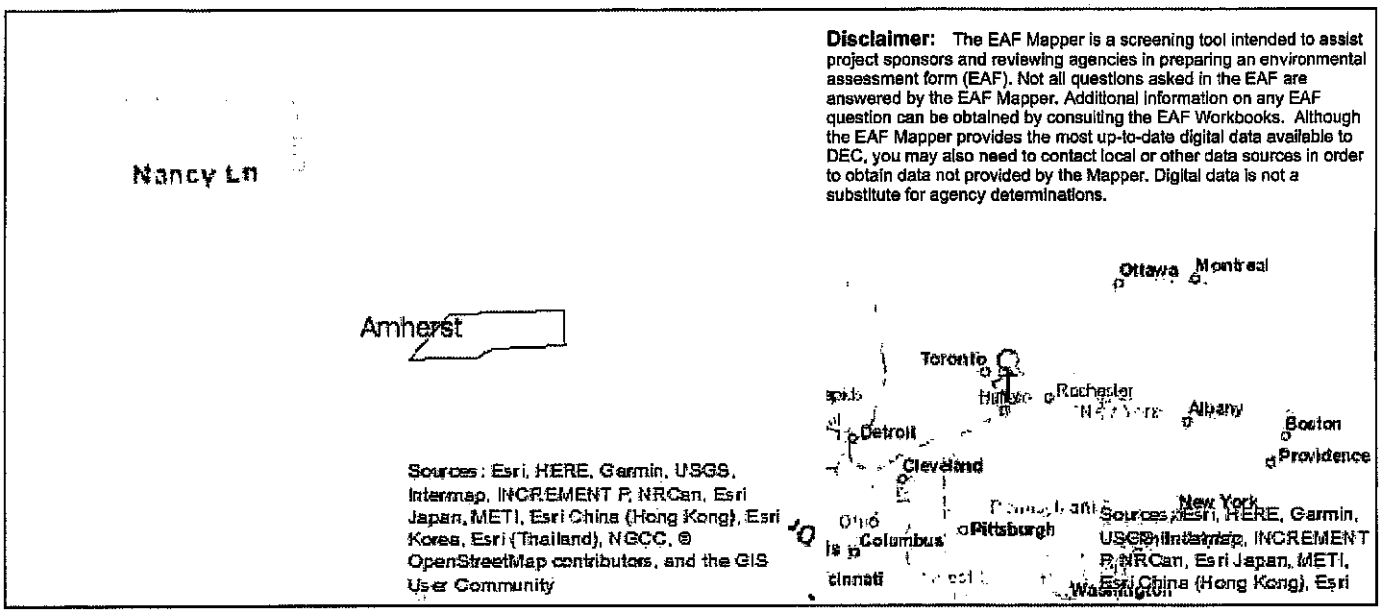
Signature _____ Title Attorney for Applicant/Project Sponsor

Sean W. Hopkins, Esq.

PRINT FORM

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

EAF Mapper Summary Report



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National Register of Historic Places]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

Application to Reclassify a Portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and Amendment of Audubon Development Plan

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

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Cheektowaga [Ch]	Severe: wetness, too clayey	Severe: wetness	Severe: wetness	Severe: wetness	Severe: wetness
Cosad [Cv]	Severe: wetness, cutbanks cave, too clayey	Severe: wetness	Severe: wetness	Severe: wetness	Moderate: wetness

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

___ Geotechnical report attached ___ Not applicable

[Note: Three copies of the Geotechnical Report prepared by Glynn Group dated October 4, 2018 are being submitted with the Application and supporting documentation.]

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ☑ No
On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ☑ No

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

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

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:

The Petitioner owns the parcels of real property 1081 and 1121 North French Road which consist of nearly 330 acres of land.

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

Describe: **There are current proposals to develop Site "B" of Muir Woods as student housing and Site "A" of Muir Woods as a mixed-use project.**

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

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

7. Maximum number of vehicular trips to be generated per hour upon completion of project: **8 vehicular trips during the weekday peak travel period.**

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

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

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:

    2,800 gpd average flow **11,200** gpd peak flow.

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

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

GGE GROUP
ENGINEERING & ARCHITECTURE, PLLC

Civil • Geotechnical
Structural • Architecture
Material Testing • Consulting

October 4, 2018

Ciminelli Real Estate Corporation
350 Essjay Road
Williamsville, New York 14221

Attn: Mr. Matt Ciminelli

Subject: **Preliminary Geotechnical Evaluation**
520 Campbell Boulevard Rezoning
Town of Amherst, New York
GGEA 18-1263

Dear Mr. Ciminelli:

Glynn Group Engineering and Architecture, PLLC (GGEA) has prepared this preliminary geotechnical evaluation to assist in rezoning efforts for the proposed development of eight (8) lots along Sierra Drive in the Town of Amherst, New York. Sierra Drive is to intersect with Campbell Boulevard in the vicinity of address 520 and will be part of the Preserve at Muir Woods Subdivision Part 2. The project site is located on the west side of Campbell Boulevard approximately 0.25 miles south of North French Road. This geotechnical evaluation is based on one (1) SPT soil boring performed Earth Dimensions, Inc. (EDI) on September 25, 2018 at the approximate southern end of Lot 138. The site was forested and undeveloped prior to the construction of Sierra Drive.

The subsurface investigation was performed in accordance with ASTM D-1586 "Standard Test Method for Standard Penetration Test (SPT) and Split-Barrel Sampling of Soils". Hollow stem augers were advanced through the overburden material to permit soil sample retrieval using a twenty-four inch long, two inch diameter split spoon sampler. Resistance values, or blow counts, were recorded for each six-inch advancement of the split spoon sampler and "N" values were calculated by totaling the resistance values for the 6/12 and 12/18 inch intervals. Retrieved soil samples were logged and visually classified by EDI in accordance with the ASEE System of Definition for Visual Identification of Soils (Burmister Classification System) and ASTM D-2488 "Standard Practice for Description and Identification of Soils (Visual - Manual Procedure)".

The soil boring was terminated in very dense glacial till at a depth of 35.0 feet below existing grade. Specific subsurface conditions can be found on the enclosed soil boring log, however subsurface conditions were found to be typical for the area and generally consist of moist, compact, silty sand (SM) to a depth of 2.5 feet, followed by moist, very stiff, lean clay with gravel (CL) to a depth of 10.0 feet, followed by extremely moist to wet, firm, lean clay (CL) to a depth of 12.0 feet, followed by wet, soft, lean clay (CL) to a depth of 25.5 feet, followed by moist, very dense, sandy silt with gravel (ML) to the boring termination depth of 35.0 feet. Bedrock is estimated at a depth of approximately 45 feet.

GLYNN GROUP ENGINEERING & ARCHITECTURE, PLLC
415 South Transit Street, Lockport, New York 14094
voice 716.625.6933 / fax 716.625.6983
www.glynngroup.com

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Groundwater was not encountered in the augers upon the completion of drilling efforts. The augers did not remain in the ground for an extended period of time to allow for groundwater to migrate through the soils and stabilize in the augers, nor was a groundwater monitoring well installed to obtain accurate groundwater elevation data. However, based on the moisture content and color of recovered soil samples, the stabilized groundwater elevation is estimated at a depth of approximately 10 feet below existing grade, where soils transition from moist to wet and begin to decrease in strength.

The native subsurface conditions at this property are of good structural quality in the upper 12 feet and will provide for the construction of shallow foundation systems for the proposed structures consisting of standard strip and spread footings. Although soft soils were encountered from approximately 12 to 14 feet, properly designed and constructed shallow foundation systems bearing within the upper stiff soils will provide adequate support for the proposed houses. The site is suitable for basement construction pending foundations are designed for an allowable bearing capacity not to exceed 2,500 psf.

In accordance with Section 1613 (Earthquake Loads) of the 2015 IBC, the site is classified as Seismic Site Class D. The site classification is based on the summation of N values for the upper 100 feet of soil in accordance with equation 20.4-2 of ASCE 7.

This completes the current scope of GGEA's services for this project. Foundation construction and design recommendations should be provided through the preparation of a full multi-boring geotechnical investigation and report prior to construction. Please contact GGEA if you should have any questions or if encountered subsurface conditions differ from those identified within this report.

Sincerely,

G. Edward Lover
Senior Geologist

STATE OF NEW YORK
MARK W. GLYNN
LICENSED PROFESSIONAL ENGINEER

Mark W. Glynn, P.E.
Consulting Engineer, Principal

/gel

encl. soil boring log, boring location plan, seismic site class

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

EARTH DIMENSIONS, INC.

Soil and Hydrogeologic Investigations • Wetland Delineations

1091 Jamison Road • Elma, NY 14059

(716) 655-1717 • FAX (716) 655-2915

IOG99i HOLE NO. B-1-18 SURF. ELEVATION —

PROJECT 520 Campbell Boulevard LOCATION North Side of Access Road

Town of Amherst, Erie County, NY

CLIENT Glynn Group Engineering & Architecture, PLLC DATE STARTED 09/25/18 COMPLETED 09/25/18

DEPTH IN FT	SN REC	0/6	6/12	12/18	18/24	N	LITH	DESCRIPTION AND CLASSIFICATION	WATER TABLE AND REMARKS
	1	9						Extremely moist to wet gray (SILTY-CLAY) fill with 3 to 7% gravel, trace sand, stiff, massive soil structure, (CL).	Clayey soil fill with trace sand and gravel to 0.2 feet over sandy soil fill with little silt, trace clay to 2.3 feet over water sorted and deposited sand with little silt to 2.5 feet over clayey lake sediment with trace sand to 25.0 feet over silty glacial till with little to some gravel, little sand to end of boring.
	17		6			13			
				7					
					6				
	2	19						0.2	
	11		18					Moist faintly mottled orangish brown (SILTY-SAND) fill with mostly very fine to fine size sand, little silt, trace clay, compact, massive soil structure, (SM) tending toward (ML).	
				15		33			
					16				
	3	4							
5	15		7			19			
				12					
					15			2.3	
	4	9						Extremely moist brown (SILTY-SAND) with mostly very fine to fine size sand, little silt, compact, thinly bedded, (SM).	
	23		8			18			
				10					
					14			grades downward to 2.5	
	5	8						Moist gray (SILTY-CLAY) with 3 to 7% gravel, trace sand, very stiff, thinly laminated with very thin coarse silt lenses, (CL).	
	24		5			12			
				7					
10					6				
	6	6						grades downward to 8.0	
	20		4					Extremely moist gray (SILTY-CLAY) with trace sand, stiff, soft below 12.0 feet, thiny laminated with very thin coarse silt lenses, (CL).	
				4		8			
					4				
	7	3							
	19		2			4			
				2					
					4				
	8	3							
15	20		4			7			
				3					
					3				
	9	4							
	23		3			6			
				3					
20					2				

N=NUMBER OF BLOWS TO DRIVE 2 " SPOON 12 " WITH 140 lb. WT. FALLING 30 " PER BLOW

LOGGED BY Jason Kryszak, Geologist, (cns) SHEET 1 OF 2

Note: Advanced bore hole with 2 1/4" ID x 6" OD hollow stem auger casing with continuous split spoon sampling to 16.0 feet and 5.0-foot interval sampling to end of boring at 35.0 feet. Bore hole was backfilled with cuttings to ground surface upon completion.

No water at completion.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

EARTH DIMENSIONS, INC.

Soil and Hydrogeologic Investigations • Wetland Delineations

1091 Jamison Road • Elma, NY 14059

(716) 655-1717 • FAX (716) 655-2915

10G99j HOLE NO. B-1-18 SURF. ELEVATION _

PROJECT 520 Campbell Boulevard LOCATION North Side of Access Road

Town of Amherst, Erie County, NY

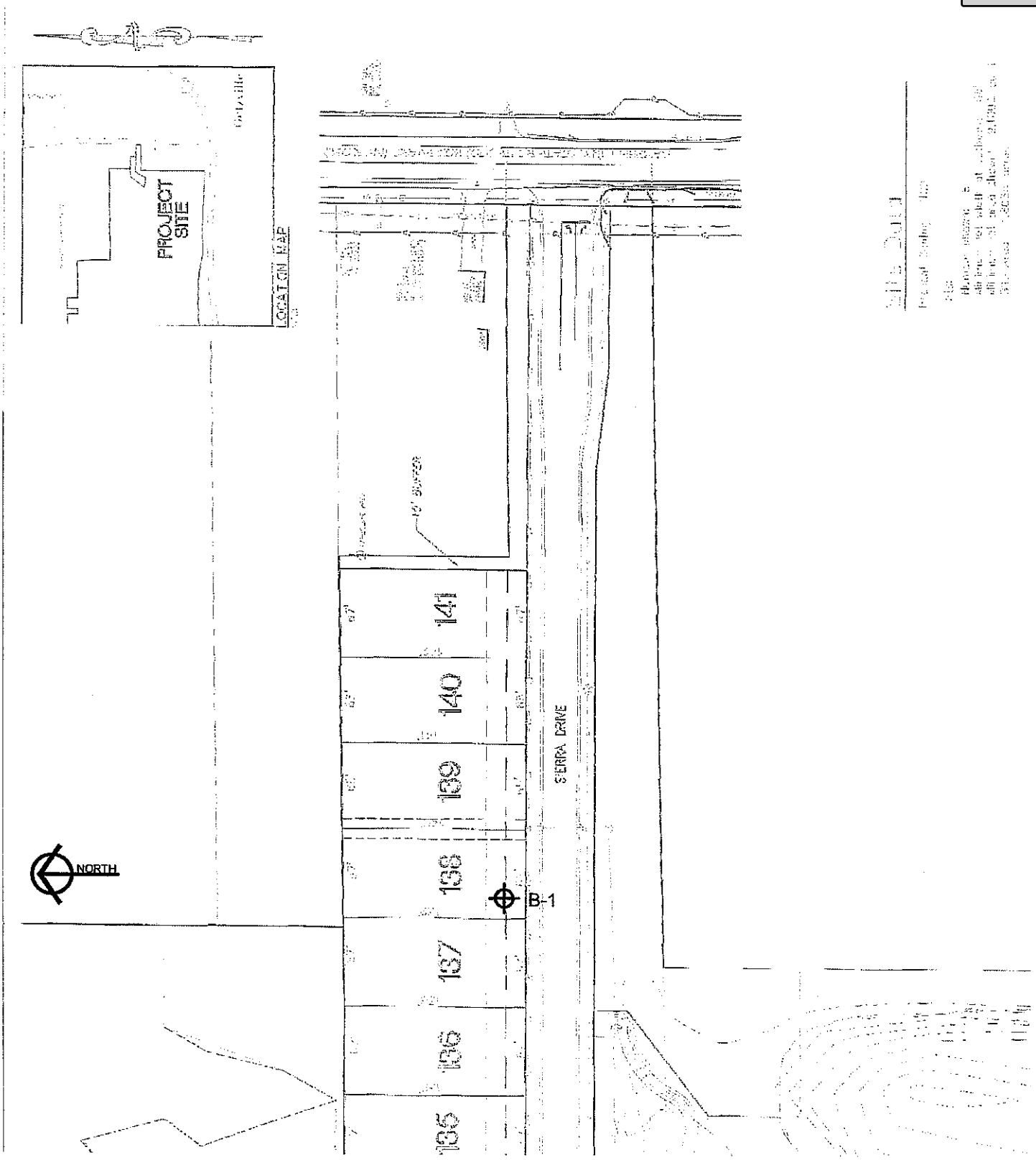
CLIENT Glynn Group Engineering & Architecture, PLLC DATE STARTED 09/25/18 COMPLETED 09/25/18

DEPTH IN FT	SN REC	0/6	6/12	12/18	18/24	N	LITH	DESCRIPTION AND CLASSIFICATION	WATER TABLE AND REMARKS
	10	2						Extremely moist gray (SILTY-CLAY) with trace sand, stiff, soft below 12.0 feet, thiny laminated with very thin coarse silt lenses, (CL).	
	24		2			5			
				3					
25					3			grades downward to 25.5	
								Moist gray gravelly (SANDY-SILT) with 15 to 25% gravel, occasional cobble, little sand, very dense, massive soil structure, (ML).	
	11	57							
	8		100/3						
30									
	12	26							
	15		40			127			
				87					
35					93			35.0	
								Boring completed at 35.0 feet	
40									

N=NUMBER OF BLOWS TO DRIVE 2 " SPOON 12 " WITH 140 lb. WT. FALLING 30 " PER BLOW

LOGGED BY Jason Kryszak, Geologist, (cns) SHEET 2 OF 2

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)



Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

GGE
ENGINEERING • DESIGN
GLYNN GEOTECHNICAL ENGINEERING
415 S. TRANSIT STREET
LOCKPORT, NEW YORK 14094
VOICE (716) 625 - 6933 / FAX (716) 625-6983
www.glynngroup.com

PROJECT: 520 CAMPBELL BOULEVARD			SHEET NO.: S1
SUBJECT: SOIL BORING LOCATION PLAN			
CLIENT: CIMINELLI REAL ESTATE CORP			
PROJ. NO.: 18-1263	SCALE: 1"= 100'-0"	DATE: 09.17.18	BY: GEL

Project : 520 Campbell Boulevard
Client: Ciminelli Real Estate Corporation
GGE # : 18-1263
Date: 10.04.18

B-1

	Depth (di)	N Value (Ni)
	2.5	13
	7.5	20
	2	8
	2	4
ASCE 7	11.5	6
Equation 20.4-2	19.5	75
	45	100

$$N = \frac{100}{\sum \frac{di}{Ni}}$$

***N* = 25.4**

ASCE 7
Table 20.3-1

$$15 \leq N \leq 50$$

SITE CLASS D

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO
ATTENTION OF:

July 12, 2017

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application No. 2001-00067.

Ciminelli Real Estate Corporation
Centerpointe Corporate Park
350 Essjay Road
Williamsville, NY 14221

Dear Mr. Brad Packard:

I have reviewed the wetland delineation map you submitted for your request for a wetland boundary verification, located at 520 Campbell Boulevard which is directly adjacent to the Muir Woods project site, Town of Amherst, County of Erie, New York.

I have evaluated your submitted wetland delineation map and have determined that the wetland and water boundaries shown on the map accurately represent on-site conditions. Please note that this is a Preliminary Jurisdictional Determination (JD). Preliminary JDs are non-binding written indications that there may be waters of the United States (WOUS) on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 16-01, any permit application made in reliance on this Preliminary JD will be evaluated as though all wetlands or waters on the site are regulated by the Corps. Further, all waters, including wetlands will be used for purposes of assessing the area of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction for any or all of the waters identified on the submitted drawings, you may request an approved jurisdictional determination (AJD) from this office. If an AJD is requested, please be aware that this is often a lengthy process and we may require the submittal of additional information.

I have enclosed the Preliminary JD Form with this letter. The form and attached table identifies the extent of waters on the site and specific terms and conditions of the Preliminary JD. Please sign and return a copy of this form to my attention. If you do not respond within 15 days, we will presume concurrence and no additional follow up is necessary prior to finalizing an action.

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of all aquatic resources on the parcel be re-evaluated by a qualified wetland biologist after five years of the

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination for Department of the Army Application No. 2001-00067.

date of this letter. This will ensure that any changes are appropriately identified and you do not inadvertently incur a violation of Federal law while constructing your project or working on your project site.

Lastly, this determination has been conducted only to identify the limits of waters that may be subject to Corps Clean Water Act or Rivers and Harbors Act jurisdiction. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

Questions pertaining to this matter should be directed to me at 716-879-4346, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: martin.h.crosson@usace.army.mil

Sincerely,

Martin H. Crosson
Biologist

Enclosures

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Ciminelli Real Estate Corporation	File Number: 2001-00067	Date: 07/12/2017
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
X	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
Martin Crosson U.S. Army Corps of Engineers 1776 Niagara Street Buffalo, New York 14207 716-879-4346 martin.h.crosson@usace.army.mil	Attn: Jacob Siegrist Great Lakes and Ohio River Division CELRD-PD-REG 550 Main Street, Room 10524 Cincinnati, OH 45202-3222 513-684-2699; FAX 513-684-2460

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

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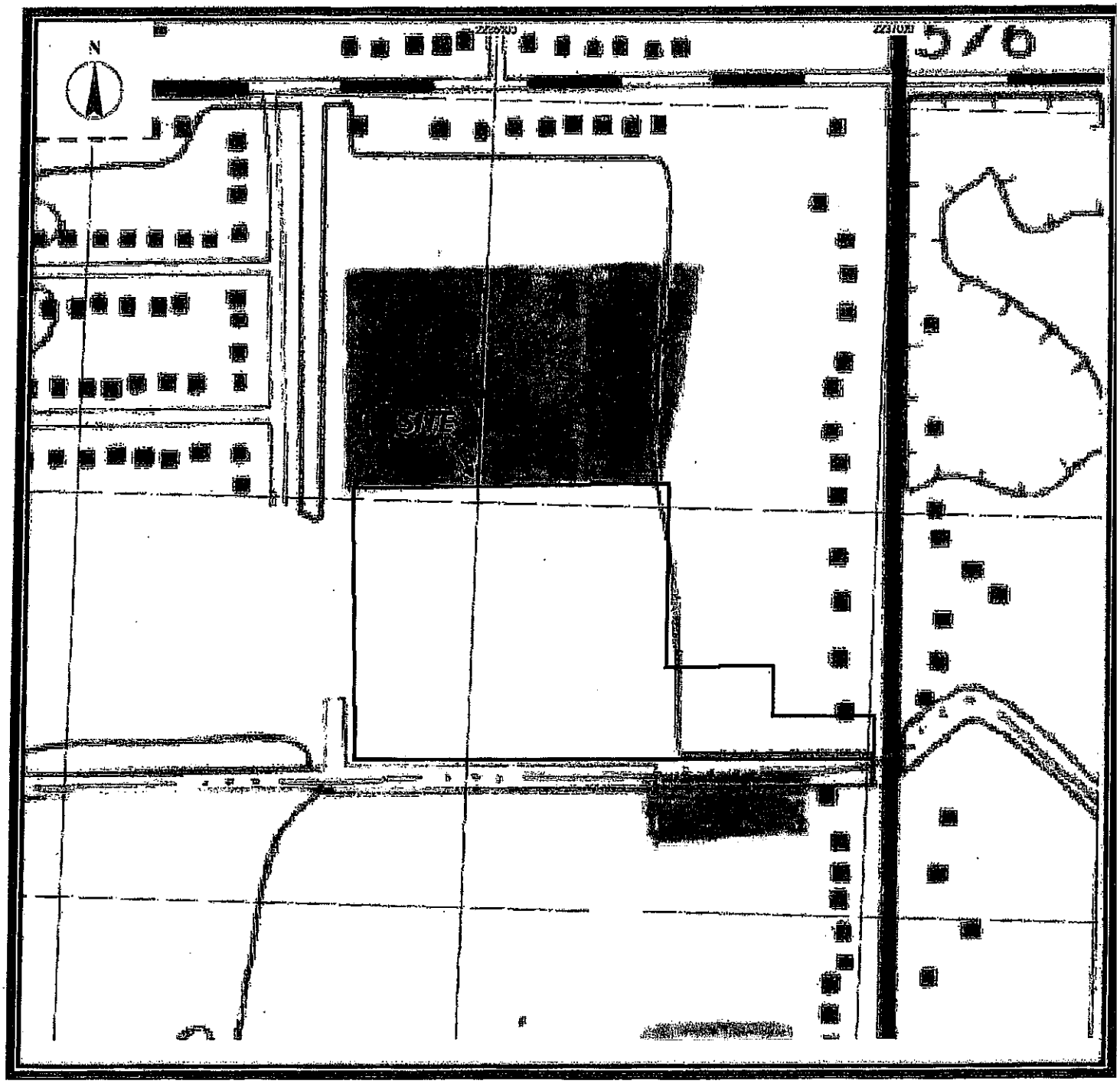


FIGURE 1: USGS 7.5 MINUTE TOPOGRAPHICAL MAP

Tonawanda East Quadrangle / 2002 DeLorme

520 Campbell Boulevard

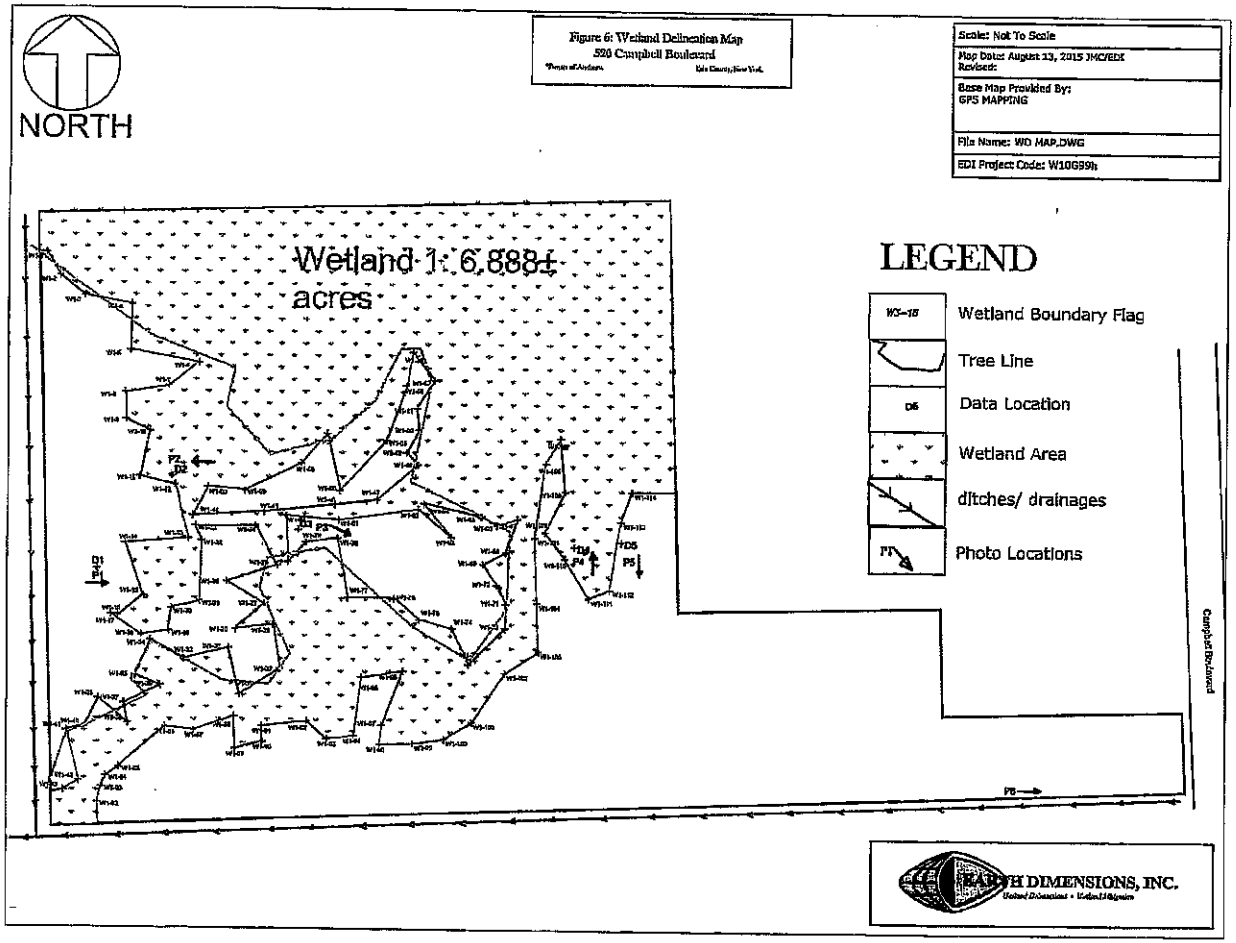
Town of Amherst, Erie County, New York

Ciminelli Real Estate Corporation
D/A Processing No. 2001-00067
Erie County, NY
Sheet 1 of 2

EARTH DIMENSIONS, INC.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Ciminelli Real Estate Corporation
D/A Processing No. 2001-00067
Erie County, NY
Sheet 2 of 2



PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PJD: July 12, 2017.

B. NAME AND ADDRESS OF PERSON REQUESTING PJD:

Ciminelli Real Estate Corporation
Centerpointe Corporate Park
350 Essjay Road
Williamsville, NY 14221

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: LRB Buffalo, Ciminelli Real Estate Corporation, 2001-00067.

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:

State: New York County/parish/borough: Erie City: Amherst

Center coordinates of site (lat/long in degree decimal format):

Lat.: 43.03126° Long.: -78.77060°

Universal Transverse Mercator: 17

Name of nearest waterbody: Ellicott Creek

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: July 12, 2017.

☒ Field Determination. Date(s): July 11, 2017.

TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
Wetland 1	43.03126°	-78.77060°	6.888	PSS/FO	404

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1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there *"may be"* waters of the U.S. and/or that there *"may be"* navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

SUPPORTING DATA. Data reviewed for PJD (check all that apply)

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

☒ Maps, plans, plots or plat submitted by or on behalf of the PJD requestor: Map: Delineation Report completed by Earth Dimensions, Inc. dated August 20, 2015.
☒ Data sheets prepared/submitted by or on behalf of the PJD requestor.
  ☒ Office concurs with data sheets/delineation report.
  ☐ Office does not concur with data sheets/delineation report. Rationale: _____.
☐ Data sheets prepared by the Corps: _____.
☐ Corps navigable waters' study: _____.
☐ U.S. Geological Survey Hydrologic Atlas: _____.
  ☐ USGS NHD data.
  ☐ USGS 8 and 12 digit HUC maps.
☒ U.S. Geological Survey map(s). Cite scale & quad name: Tonawanda East NY USGS 7.5.
☒ Natural Resources Conservation Service Soil Survey. Citation: Erie County.
☒ National wetlands inventory map(s). Cite name: fws.gov – wetland data mapper.
☐ State/local wetland inventory map(s): _____.
☐ FEMA/FIRM maps: _____
☐ 100-year Floodplain Elevation is: ____. (National Geodetic Vertical Datum of 1929)
☐ Photographs:
  ☐ Aerial (Name & Date): _____.
  ☐ Other (Name & Date): _____.
☐ Previous determination(s). File no. and date of response letter: _____.
☐ Other information (please specify): _____.

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Martin D. Crouse 07/12/2017
Signature and date of
Regulatory staff member
completing PJD

07/13/2017
Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)[1]
By: Ciminelli Muir Woods, LLC
By: Ciminelli Real Estate Corporation,
its Managing Member
Brad Packard, Director of Development & Planning
Ciminelli Real Estate Corporation

[1] Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

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New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643

NEW YORK STATE
Bernadette Castro
Commissioner

October 10, 2001

Carolyn A. Pierce
CCRG
105 Robie Avenue
Buffalo, New York 14214

Dear Ms. Pierce:

Re: SHORA
Muir Woods Mixed-Use Development
Amherst/Erie County
01PR0345

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the project in accordance with the New York State Parks, Recreation and Historic Preservation Law, Section 14.09.

Based upon this review, it is the OPRHP's opinion that your project will have No Impact upon cultural resources in or eligible for inclusion in the State and National Registers of Historic Places.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Director

RLP:cmp

RECEIVED
OCT 16 2001
CIMINELLI DEVELOPMENT COMPANY, INC.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

LOCAL LAW NO. _____-202_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE TO RECLASSIFY A PORTION OF 520 CAMPBELL BOULEVARD FROM NCD-SA TO NCD-ND & TO AMEND THE AUDUBON DEVELOPMENT PLAN AND TO AMEND THE ZONING MAP ACCORDINGLY.

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 203 of Town of Amherst Code, Known As The Zoning Ordinance To Reclassify a Portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and to Amend the Audubon Development Plan and to Amend The Zoning Map Accordingly".

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to reclassify a portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and to Amend the Audubon Development Plan and to Amend the Zoning Map Accordingly has been filed and is in proper order. The Town Board further finds that the request to reclassify a portion of 520 Campbell Boulevard from NCD-SA to NCD-ND and the Amendment of the Audubon Development Plan are consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby amends its zoning map which is incorporated by reference in the Town zoning code reclassifying from NCD-SA to NCD-ND a portion of 520 Campbell Boulevard, **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

Legal Description of Property to be Reclassified from NCD-SA to NCD-ND:

ALL THOSE TRACTS OR PARCELS OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 70, Township 12, Range 7 of the Holland Land Company's Survey, bounded and described as follows.

PARCEL 1:

BEGINNING at a point on the northerly boundary of Sierra Drive as shown on a subdivison map of The Preserve at Muir Woods recorded in the Erie County Clerk's Office under Map Cover 3754 at a distance of 276.97 feet westerly from its intersection

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

with the westerly boundary of Campbell Boulevard being a 66.00 feet wide right of way;

Thence along the northerly boundary of Sierra Drive the following two (2) courses and distances:

1) N-89°-45'-59"-W, a distance of 458.83 feet to a point of curvature;
2) Westerly along a curve to the left having a radius of 176.00 feet an arc distance of 6.17 feet to a point;

THENCE: Through the lands conveyed to Ciminelli Muir Woods LLC by deed recorded in the Erie County Clerk's Office in Liber 11322 of Deeds at page 4494 the following two (2) courses and distances:

1) N-00°-14'-01"-E, along a non-radial line a distance of 138.94 feet to a point;
2) S-89°-45'-59"-E, along a line parallel with the northerly line of said Sierra Drive a distance of 194.09 feet to the southwest corner of lands conveyed to Kathleen J. Skeide by Deed recorded in the Erie County Clerk's Office in Liber 11123 of Deeds at page 2408;

THENCE: N-89°-22'-00"-E, along the south line of said Kathleen J. Skeide lands a distance of 270.94 feet to a point;

THENCE: S-01°-14'-00"-E through said lands conveyed to Ciminelli Muir Woods LLC a distance of 142.93 feet to the POINT OF BEGINNING, Containing 1.495 acres more or less.

PARCEL 2:

BEGINNING at a point on the northwesterly boundary of Sierra Drive at the northeasterly corner of Sub Lot 21 as shown on a subdivison map of The Preserve at Muir Woods recorded in the Erie County Clerk's Office under Map Cover 3754;

THENCE: N-75°-07'-44"-W, along the northerly line of said Sub lot 21 a distance of 156.81 feet to the northeast corner of Sub lot 18 as shown on said map Cover 3754;
THENCE: N-54°-35'-00"-W, along the northeasterly line of said Sub lot 18 a distance of 75.41 feet to a northerly corner of said Sub lot 18;

THENCE: Through said lands conveyed to Ciminelli Muir Woods LLC the following two (2) courses and distances:

1) N-79°-00'-45"-E, a distance of 128.98 feet to a point;
2) S-63°-52'-36"-E, along a radial line a distance of 117.00 feet to a point on the first mentioned northwesterly boundary of Sierra Drive;

THENCE: along said northwesterly boundary of Sierra Drive the following two (2) courses and distances:

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1) Southwesterly along a curve to the left having a radius of 176.00 feet an arc distance of 34.56 feet to a point of tangency;
2) S-14°-52'-16"-W a distance of 25.55 feet to the POINT OF BEGINNING, Containing 0.308 acre more or less.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

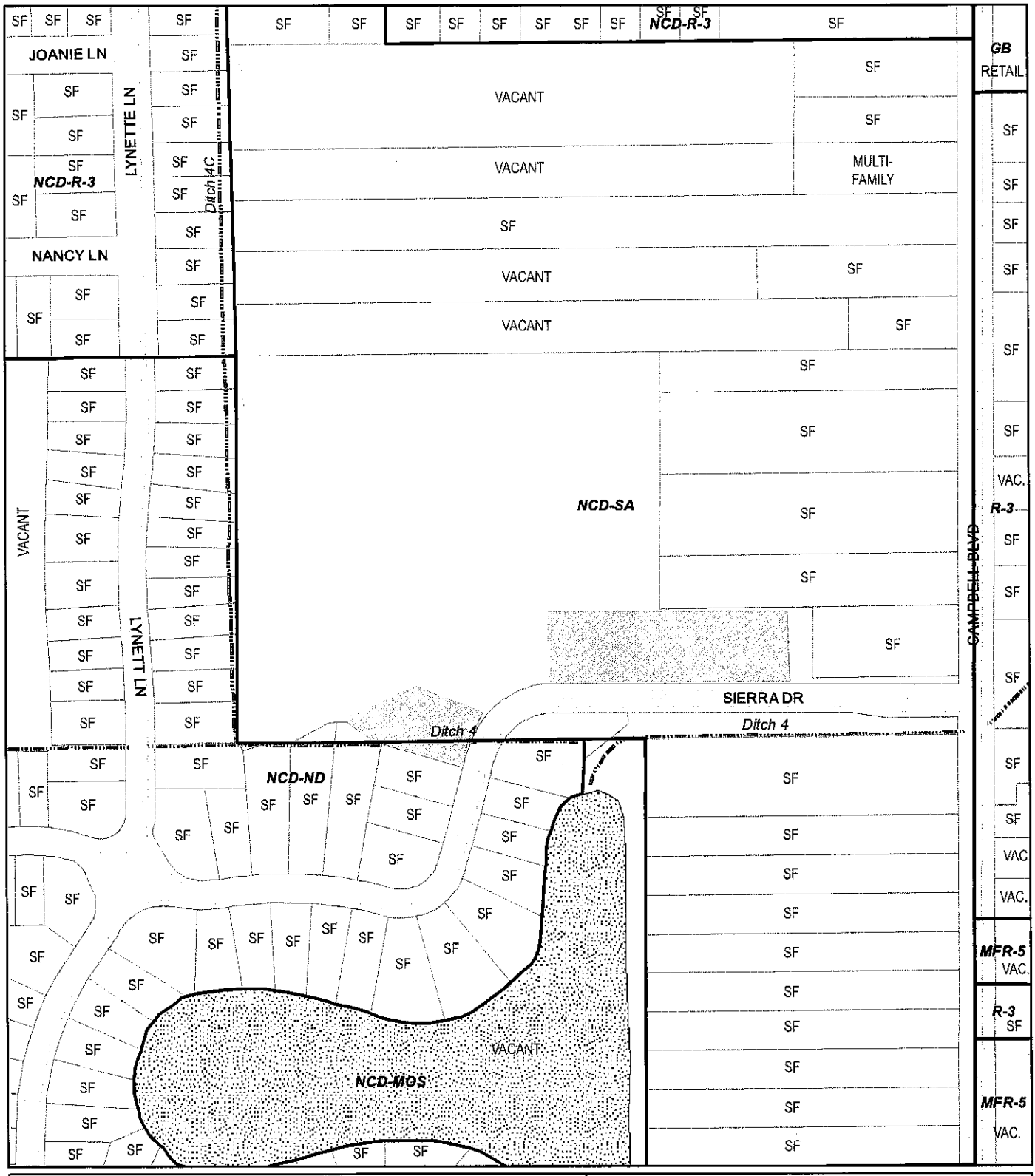
The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)



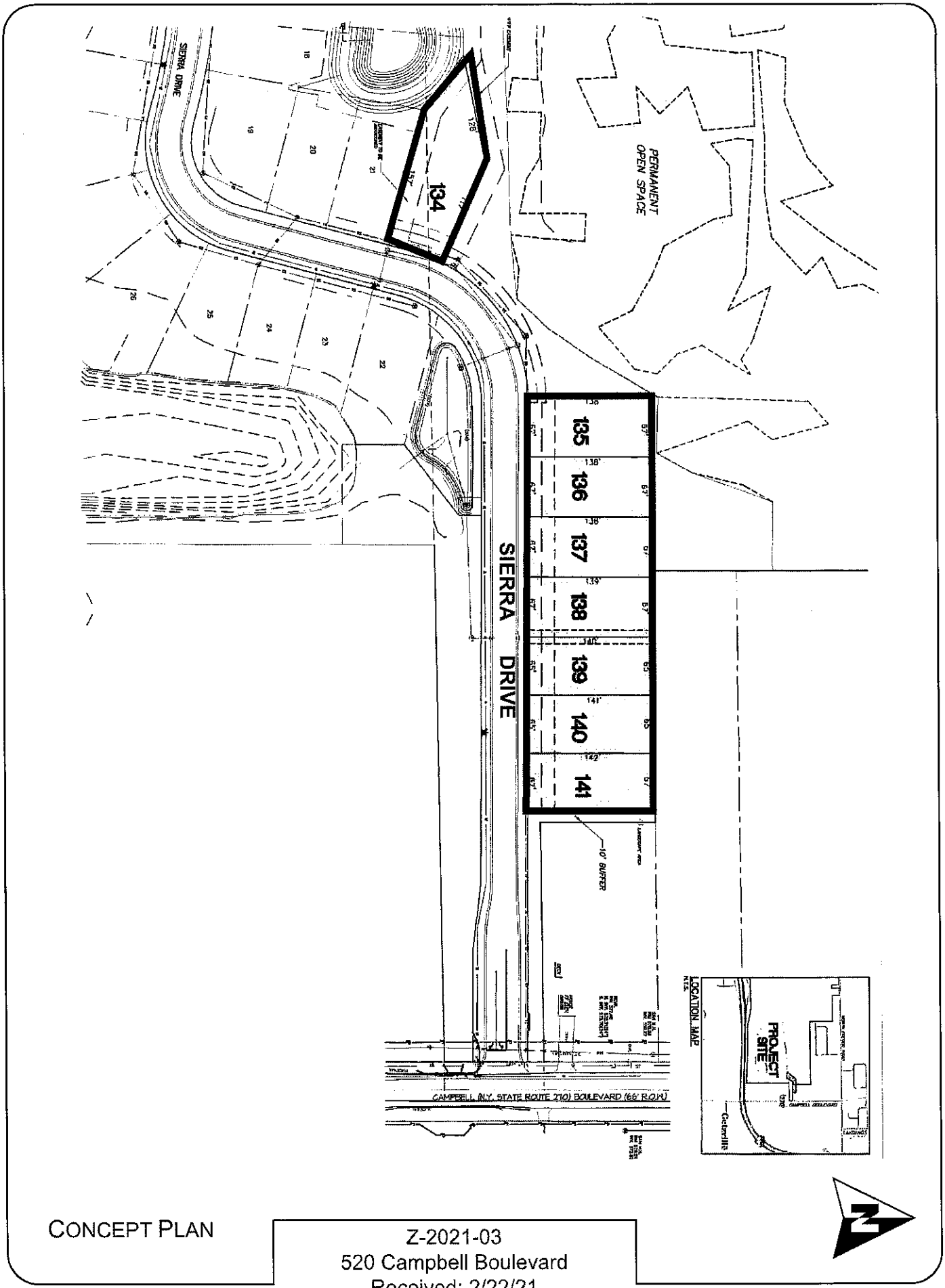
Z-2021-03

Request to Reclassify 1.8+/- AC of Land from NCD-SA to NCD-ND, Amendment #75 to the Audubon Development Plan
Property Located at 520 Campbell Boulevard (portion)
Ciminelli Real Estate, Petitioner
May 20, 2021

520 Campbell Boulevard (portion)

Prepared by the Town of Amherst Planning Department

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)



CONCEPT PLAN

Z-2021-03
520 Campbell Boulevard
Received: 2/22/21

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)



Z-2021-03

Request to Reclassify 1.8+/- AC of Land from NCD-SA to NCD-ND, Amendment #75 to the Audubon Development Plan
Property Located at 520 Campbell Boulevard (portion)
Ciminelli Real Estate, Petitioner
May 20, 2021

520 Campbell Boulevard (portion)

Prepared by the Town of Amherst Planning Department

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7165 I F: (716) 851-7168
www.dec.ny.gov

May 21, 2021

Ellen Kost
Town of Amherst Planning Department
5583 Main Street
Williamsville, New York 14221

Dear Ellen Kost:

SEQR Lead Agency Coordination
520 Campbell Blvd – Amendment 75
Audubon Development Plan
Town of Amherst, Erie County

This is to acknowledge receipt of your February 24, 2021 notice which for the above-noted project. NYSDEC has no objection to the proposed reclassification of land. Please be advised of the following:

Project plans must comply with the previously issued 401 Water Quality Certification (DEC No. 9-1422-00398/00002 issued 1/10/2019, including the approved plans entitled: The Preserve at Muir Woods (DEC Planting Exhibit, DEC Earthwork Exhibit and the Wetland Restriction Exhibit) by Greenman-Pedersen, Inc. dated May 2018.

If you have any other questions, please feel free to contact Ms. Kerri Pickard-DePriest of my staff or me at 716/851-7165.

Sincerely,

David S. Denk

David S Denk
Regional Permit Administrator

KPD

ecc: Maureen Brady, NYSDEC Office of General Counsel
Charles Rosenburg, NYSDEC Division of Fish and Wildlife
US Army Corps of Engineers, Buffalo District

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, NY AND REPLY TO MUNICIPALITY

Note: Please complete in triplicate. Send original and one copy (with attachments) to Erie County Division of Planning, Room 1053, 95 Franklin Street, Buffalo, N.Y. 14202. Retain last copy for your files.

DO NOT WRITE IN THIS SPACE

Case No.: ZR-21-237

Received: 3/3/21

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

Description of Proposed Action

1. Name of Municipality: Town of Amherst

2. Hearing Schedule: **Date** April 15, 2021 **Time** 6:30 pm **Location** 5583 Main Street, Williamsville

3. Action is before: ☐ Legislative Body ☐ Board of Appeals ☒ Planning Board

4. Action consists of: ☐ New Ordinance ☒ Rezone/Map Change ☐ Ordinance Amendment

☐ Site Plan ☐ Variance ☐ Special Use Permit ☐ Other

5. Location of Property: ☐ Entire Municipality ☒ Specific as follows 520 Campbell Blvd (portion)

6. Referral required as Site is within 500'of: ☐ State or County Property/Institution ☐ Municipal Boundary ☐ Farm Operation located in an Agricultural District

☐ Expressway ☐ County Road ☒ State Highway ☐ Proposed State or County Road, Property, Building/ Institution, Drainageway

7. Proposed change or use: (be specific) Amend the Audubon Development Plan to Reclassify 1.8± acres land from NCD-SA to NCD-ND

8. Other remarks: (ID#, SBL#, etc.) Z-2021-03

9. Submitted by: Scott A Marshall, Principal Planner February 23, 2021

Town of Amherst, 5583 Main St., Williamsville, NY 14221

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 3/8/21. **The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.**

1. ☐ **The proposed action is not subject to review under the law.**
2. ☐ **Form ZR-3, Comment on Proposed Action is attached hereto.**
3. ☐ **The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.**
4. ☒ **No recommendation; proposed action has been reviewed and determined to be of local concern**

By the Division of Planning: Jan M. Hall **Date:** 4/6/21

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

RECEIVED
MAR 05 2021
TOWN ATTORNEY

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM March 1, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District
NYSDEC

RECEIVED
MAR 23 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN, REQUEST TO RECLASSIFY 1.8± ACRES OF LAND FROM **NCD SA** TO **NCD ND. Z-2021-03**; PROPERTY LOCATED AT **520 CAMPBELL BOULEVARD (PORTION)**. CIMINELLI REAL ESTATE CORPORATION, PETITIONER.

REVIEW:

Do you agree with all statements made? Agree with all statements made.

If you do not, briefly state why: _____

General comments relative to your agency interests: none

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) none at this stage

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

Signature: _____ **Date:** 3/18/21

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc
cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Ken Zollitsch, GPI Engineering, 4950 Genesee St. Suite 100, Buffalo, NY 14225
Adam Faeth, Ciminelli Real Estate Corporation, 50 Fountain Plaza Suite 500, Buffalo, NY 14202

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
MAR 11 2021
TOWN OF AMHERST
PLANNING DEPT.

RECEIVED
Williamsville Central School District
MAR 05 2021
Asst Superintendent for
Finance & Management Services

MEMORANDUM March 1, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District
NYSDEC

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN, REQUEST TO RECLASSIFY 1.8± ACRES OF LAND FROM **NCD SA** TO **NCD ND. Z-2021-03**; PROPERTY LOCATED AT **520 CAMPBELL BOULEVARD (PORTION)**. CIMINELLI REAL ESTATE CORPORATION, PETITIONER.

REVIEW:

Do you agree with all statements made? School district does not have comments.

If you do not, briefly state why: _____

General comments relative to your agency interests: School district does not have comment

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 3/9/21

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc

cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
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Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
MAR 03 2021
TOWN ATTORNEY

MEMORANDUM March 1, 2021

RECEIVE
MAR 10 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District
NYSDEC

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN, REQUEST TO RECLASSIFY 1.8± ACRES OF LAND FROM **NCD SA** TO **NCD ND. Z-2021-03**; PROPERTY LOCATED AT **520 CAMPBELL BOULEVARD (PORTION)**. CIMINELLI REAL ESTATE CORPORATION, PETITIONER.

REVIEW:

Do you agree with all statements made? N/A.

If you do not, briefly state why: _____.

General comments relative to your agency interests: Non at this time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Stanley Sliwa **Date:** 3/9/21

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc
cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
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Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

2005.008A

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

RECEIVED
MAR 08 2021
TOWN OF AMHERST
PLANNING DEPT

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM

March 1, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District
NYSDEC

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN, REQUEST TO RECLASSIFY 1.8± ACRES OF LAND FROM **NCD SA** TO **NCD ND. Z-2021-03**; PROPERTY LOCATED AT **520 CAMPBELL BOULEVARD (PORTION)**. CIMINELLI REAL ESTATE CORPORATION, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 3/5/21

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc

cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Ken Zollitsch, GPI Engineering, 4950 Genesee St. Suite 100, Buffalo, NY 14225
Adam Faeth, Ciminelli Real Estate Corporation, 50 Fountain Plaza Suite 500, Buffalo, NY 14202

5583 Main Street • Williamsville • New York • 14221 • (716) 631-7051 • Fax (716) 631-7153

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

RECEIVED
MAR 08 2021
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM March 1, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
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Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District
NYSDEC

To: Ellen Kost
From: Dave Marrano
Subj: See Below
Date 3/9/21

cc: C. w/ front

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN, REQUEST TO RECLASSIFY 1.8± ACRES OF LAND FROM **NCD SA** TO **NCD ND. Z-2021-03**; PROPERTY LOCATED AT **520 CAMPBELL BOULEVARD (PORTION)**. CIMINELLI REAL ESTATE CORPORATION, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: N/A

General comments relative to your agency interests: Since Property will not have Condo Status, Assessors Office has no Issue

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 3/9/21

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc

cc: Scott Marshall, Principal Planner
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Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM March 1, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
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Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Williamsville School District
NYSDEC
ECDEP

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN, REQUEST TO RECLASSIFY 1.8± ACRES OF LAND FROM **NCD SA** TO **NCD ND**. **Z-2021-03**; PROPERTY LOCATED AT **520 CAMPBELL BOULEVARD (PORTION)**. CIMINELLI REAL ESTATE CORPORATION, PETITIONER.

REVIEW:

Do you agree with all statements made? Agree with statements made.

If you do not, briefly state why: _____

General comments relative to your agency interests: The dimensional standards as specified in the R-3 zoning district should be placed on the development of the lots, since the site will be within the NCD district having no dimensional standards for the placement of buildings.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ ZEO **Date:** March 8, 2021

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc

cc: Scott Marshall, Principal Planner
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Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
MAR 05 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM March 1, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
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Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District
NYSDEC

RECEIVED
MAR 03 2021
TOWN OF AMHERST
BUILDING DEPT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: AMENDMENT #75 TO THE AUDUBON DEVELOPMENT PLAN, REQUEST TO RECLASSIFY 1.8± ACRES OF LAND FROM **NCD SA TO NCD ND. Z-2021-03**; PROPERTY LOCATED AT **520 CAMPBELL BOULEVARD (PORTION)**. CIMINELLI REAL ESTATE CORPORATION, PETITIONER.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: None at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 3-4-21

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc

cc: Scott Marshall, Principal Planner
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Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
MAR 05 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM March 1, 2021

TO: Kathy Cooper, Deputy Town Clerk
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REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 3/4/21

EK/ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-03_(520_Campbell_Blvd)_2021\Z-2021-03_Transmittal_022521.doc

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Fadel, Bryan

From: Jillian Ponterio <jponterio529@aol.com>
Sent: Wednesday, May 19, 2021 6:33 PM
To: Carrato, Amy
Cc: Kost, Ellen
Subject: Muir Woods Rezoning Application

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom this concerns:

I previously submitted a petition (https://www.change.org/p/town-of-amherst-planning-department-protest-against-rezoning-development-of-520-campbell-blvd?recruiter=1092007073&utm_source=share_petition&utm_medium=sms&utm_campaign=psf_combo_share_abi&utm_term=tap_basic_share&recruited_by_id=96e760c0-9b01-11ea-90f4-d19befdbcd0c) on behalf of the residents of Muir Woods in opposition to Petitioner Ciminelli Real Estate's request to reclassify 1.8 acres of land located at 520 Campbell Blvd. in the Muir Woods subdivision. The primary factors weighing against reclassification are dangerous traffic burdens on the neighborhood, reduced green space, and the inability of Petitioner Ciminelli to demonstrate undue hardship. The safety and welfare of residents must be balanced against the economic interests of the Petitioner. The Board should be guided by the following factors when considering the request to reclassify:

(1) will the petitioner suffer significant economic injury if the petition is denied;
(2) does the proposal present a substantial change in the character of the neighborhood; and
(3) whether the "difficulty" alleged by petitioner is self-created.

(Matter of Nicefor v ***Zoning*** *Bd. of Appeals,* 147 AD2d 483; *Human Dev. Servs. v* ***Zoning*** *Bd. of Appeals,* 110 AD2d 135, 139-140, *affd* 67 NY2d 702) (*Lim-Kim v Zoning Bd. of Appeals,* 185 AD2d 346, 347 [2d Dept 1992])

In the matter at hand, upon information and belief, the subdivision plan was approved by the Board with the existing zoning in place and two of the three phases of the subdivision have been completed pursuant to such zoning. The project is substantially completed subject to the existing zoning ordinance and Petitioner cannot claim that denial o the current petition would result in "undue hardship." See In *Matter of Otto v Steinhilber* (282 **NY** 71, 76), which sets forth the classic "unnecessary hardship" test governing grant of use variances

While the proposed homes are situated in an area of similar residences, they change the essential character of the neighborhood by reducing green space, a priority for NCD zoning, and increasing traffic which will exacerbate an already dangerous traffic situation at the corner of Campbell Blvd. and Sierra Drive. The existing traffic burden on Campbell Blvd. and the surrounding neighborhood posed by Muir Woods will be further aggravated with eight additiona homes. The aesthetic integrity of the neighborhood and its green space will be compromised.

I request that the Board deny Petitioner's request for a zoning reclassification. In the alternative, I request that the Board reserve decision and commission a traffic study to determine the impact of a variance and how to best mitigate dangerous conditions, for example, by installation of a traffic light.

Thank you for your consideration. Respectfully submitted,
Jillian M. Ponterio

Jillian M. Ponterio, Esq.
LIPSITZ, PONTERIO & COMERFORD, LLC
424 Main Street | Suite 1500 | Buffalo, NY 14202
Tel. (716) 849-0701 | Ext. 228 | Fax: (716) 849-0708 | Rochester: (585) 286-9787 | Toll Free: (866) 238-1452 |
Website: www.lipsitzponterio.com<http://www.lipsitzponterio.com/>

The information transmitted is intended only for the person or entity to which it is addressed and may contain

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

Attachment: Z-2021-03_TB_Letter_071221 520 Campbell (RES-2021-570 : Reclassify a Portion of 520 Campbell Boulevard)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 23525 **RESOLUTION 2021-678** **ADJOURNED**

10060 & 10090 Transit Road Rezoning

DRAFT RESOLUTION
(August 9, 2021)

Adoption of Local Law to Amend the Zoning Map
(10060 & 10090 Transit Road & Z-2019-06)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of June 24, 2021 that the proposed Center 2.5 District (CTR-2.5), Multifamily Residential District Five (MFR-5) and Residential District Three (R-3) zoning at 10060 & 10090 Transit Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

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

1. An agricultural data statement be provided with any application for development as required by Erie County Department of Environment and Planning (ECDEP).

2. That the subject area be removed from Agricultural District 17 - Amherst prior to submittal of any application for site development as required by ECDEP.

3. As required by New York State Department of Transportation (NYSDOT) a revised Traffic Impact Study (TIS) be provided with any application for development.

4. That the Petitioner address concerns of the New York State Department of Transportation (NYSDOT) during future development review.

8/09/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:16 PM.

Jeffery Palumbo, Esq. presented and answered questions from the Board.

The following speakers addressed the Town Board:
Matt Fitzgerald, Esq., Phillips Lytle LLP, spoke in opposition on behalf of the Ransom Oaks Community Corp. and their several concerns
Colleen Bogdan, 108 Summershade Ct. - Questioned detailed reports that are not included or signed off by Engineer; Spot rezoning; not consistent with neighborhood; the neighborhood is opposed
Steve Massaro, 1116 Smith Rd. - Flooding problems; grossly oversized project; traffic
William Klein, 28 Oak Hill Ct. - Water tables; traffic on Smith; cut through on Ruby Lane.; home values
Colleen Daumen, 418 Glen Oak Dr. - Additional stress of traffic, water, sewage & to fire departments
Rick Mullaney, 25 Honey Suckle Way - Voiced his concerns

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing until Sept. 13th, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 8:04 PM.

9/13/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:25 PM.

Jeffery Palumbo, Esq. presented and answered questions from the Board.

There were no speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing and set a decision date for October 18th. The motion was seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 7:30 PM.

10/18/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:03 PM.

Jeffery Palumbo, Esq. provided an update and answered questions from the Board.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:05 PM.

RESULT:	**ADJOURNED [UNANIMOUS]**	**Next: 10/18/2021 7:00 PM**
MOVER:	Brian J. Kulpa, Supervisor	
SECONDER:	Jacqualine Berger, Deputy Supervisor	
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala	

D R A F T (August 9, 2021)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Project: Z-2019-06

Address: 5583 Main Street
Williamsville, NY 14221
(716) 631-7051

Date:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action: Rezoning Request.

SEQR Status: Type I action.

Description of Action: Rezoning of 29.21± acres of land from Suburban Agriculture District (SA) and Motor Service District (MS) to 2.95± acres of Center 2.5 District (CTR-2.5), 12.73 ± acres of Multifamily Residential District Five (MFR-5) and 13.57 ± acres of Residential District Three (R-3) to allow for the future use and development of the site for, four mixed-use buildings fronting on Transit Road which would include 23,400± sq. ft. of commercial space in the proposed CTR-2.5 zoning district; 28 single family lots and 7 townhouse buildings in the proposed MFR-5 zoning district; and 26 single family lots in the proposed R-3 zoning district area.

Location: 10060 & 10090 Transit Road, Town of Amherst, Erie County, New York

Petitioner: Forbes Capretto Homes

Attachment: Z-2019-06_Draft Neg Dec_Transit 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Full Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed rezoning of 29.21± acres of land from Suburban Agriculture District (SA) and Motor Service District (MS) to 2.95± acres of Center 2.5 District (CTR-2.5), 12.73 ± acres of Multifamily Residential District Five (MFR-5) and 13.57 ± acres of Residential District Three (R-3) to allow for the future use and development of the site for, four mixed-use buildings fronting on Transit Road which would include 23,400± sq. ft. of commercial space in the proposed CTR-2.5 zoning district; 28 single family lots and 7 townhouse buildings in the proposed MFR-5 zoning district; and 26 single family lots in the proposed R-3 zoning district area will not have a significant impact on the environment, as follows:

1. The project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on April 20, 2021 reviewed the application and EAF submitted on March 31, 2021 and Stormwater Management System Summary Report received on March 9, 2021, and had no objection to or comments. The Engineering Department notes that upon subsequent development submissions for this development the petitioner will be required to expand the hydraulics modeling report to indicate similar analysis for Town ditch 26D1 from a point 2,000 feet upstream of the Transit Road culvert through the proposed development and downstream to its confluence with Black Creek on the proposed rezoning.

2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on May 18, 2021 reviewed the application and EAF submitted on March 31, 2021 and has no objection or comments on the proposed rezoning.

4. The project is not within an area identified by the State as potentially containing significant cultural or archeological resources, nor will it impair the character or quality of important historical resources.

Attachment: Z-2019-06_Draft Neg Dec_Transit 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for rezoning from SA and MS to CTR-2.5, MFR-5 and R-3. Neighboring uses are residential and commercial and zoned SA, R-3 and General Business District (GB); therefore, the project is consistent with surrounding land use.

6. The proposed rezoning to CTR-2.5, MFR-5 and R-3 for the proposed four mixed-use buildings which would include 23,400± sq. ft. of commercial space, 54 single family lots and 7 townhouse buildings will not cause a major change in the use of either the quantity or type of energy.

7. The rezoning to CTR-2.5, MFR-5 and R-3 for the proposed four mixed-use buildings fronting on Transit Road which would include 23,400± sq. ft. of commercial space, 54 single family lots and 7 townhouse buildings will not create any hazard to human health.

8. The rezoning to CTR-2.5, MFR-5 and R-3 may cause a substantial change in the use, or intensity of use, of land particularly agricultural, land which is being actively used. However, the proposed four mixed-use buildings which would include 23,400± sq. ft. of commercial space, 54 single family lots and 7 townhouse buildings will be consistent with the scale of surrounding land uses.

9. The rezoning to CTR-2.5, MFR-5 and R-3 for the proposed four mixed-use buildings which would include 23,400± sq. ft. of commercial space, 54 single family lots and 7 townhouse buildings will increase the number of people using the site over its previous level of use.

10. The Town Traffic/Safety Board on May 12, 2021 reviewed the application and EAF submitted on March 31, 2021 and Traffic Impact Study received on March 9, 2021 and had no objection to and recommends that the internal street network be designed to calm and discourage cut-through traffic. The New York State Department of Transportation on May 24, 2019 commented that the proposed uses shown on the Concept Plan, with additional traffic generated by the proposed development may have a significant impact to traffic on the State Highway System, requiring a Traffic Impact Study to be prepared. Additionally, NYSDOT will allow only one curb cut/roadway to service this site along Transit Road and it should be located opposite Lapp Road. All indications are that through any mitigation required by the traffic study or implementation of NYSDOT requirements that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on May 18, 2021, Engineering on April 20, 2021, Traffic/Safety Board on May 12, 2021, Assessor on April 5, 2021, Fire Chiefs' Council on April 7-2021, and Right-of-Way Agent on April 2, 2021 along with outside agencies including Erie County Department of Environment & Planning on May 24, 2019, and New York State

Attachment: Z-2019-06_Draft Neg Dec_Transit 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Department of Transportation on May 24, 2021. These reviews have not identified any significant environmental issues and indicate that the rezoning request will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

BK/SM/ac

X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Draft Neg Dec_080921.docx

cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDEC
NYSDOT
Forbes Capretto Homes, 470 Cayuga Rd., Cheektowaga, NY 14225
Jeffrey Palumbo, Esq, Barclay Damon, LLP, 9276 Main St., Ste. 3, Clarence, NY 14031

Attachment: Z-2019-06_Draft Neg Dec_Transit 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

LOCAL LAW NO. _____-202_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE, TO REZONE 10060 TRANSIT ROAD and 10090 TRANSIT ROAD FROM SA/MS TO R3/MFR5/CTR-2.5 AND TO AMEND THE ZONING MAP ACCORDINGLY

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending the Zoning of 10060 Transit Road and 10090 Transit Road."

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to rezone 10060 Transit Road and 10090 Transit Road from SA – Suburban Agricultural / MS – Motor Services to R-3 Residential 3 / MFR-5 – Multifamily Residential District 5 / CTR-2.5 – Center 2.5 zoning has been filed and is in proper order. The Town Board further finds that the rezoning is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby amends its zoning map which is incorporated by reference in the Town zoning code by amending from SA – Suburban Agricultural / MS – Motor Services to R-3 Residential 3 / MFR-5 – Multifamily Residential District 5 / CTR-2.5 – Center 2.5 the zoning of 10060 Transit Road and 10090 Transit Road, **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

LANDS TO BE REZONED TO R-3

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 57 in Township 13 and Lot No. 102 in Township 12, Range 7 of the Holland Land Company's Survey and bounded and described as follows:

BEGINNING at a point in the northeasterly line of Smith Road being (66.0 feet wide) said point being the southwest corner of Sublot 2 as shown on a map filed in the Erie County Clerk's office

Attachment: LL for 10060 & 10090 -2 Transit Road (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

under Map cover 2044;

THENCE southeasterly along said northeasterly line of Smith Road a distance of 224.73 feet to an angle point;

THENCE southeasterly continuing along said northeasterly line of Smith Road a distance of 159.64 feet to the southwest corner of Sublot 5 as shown on said Map Cover 2044;

THENCE easterly on a line parallel with the north line of said Lot No. 102 a distance of 239.60 to a point in the centerline of a ditch;

THENCE southeasterly along the centerline of said ditch a distance of 468 feet more or less to a point;
THENCE through the property of lands conveyed to Herbert A. Lotter and Theresa P. Lotter by deed recorded in liber 11153 of deeds at page 5058 the following three (3) courses and distances:

1) Northeasterly along the centerline of a ditch more or less a distance of 284
   feet more or less to a point;
2) Northeasterly a distance of 197 feet more or less to a point;
3) Northerly 244 feet more or less to a point on a northerly line of said Lotter's
   land;

THENCE northerly on a line parallel with said west line of Transit Road a distance of 180.00 feet to a point;

THENCE westerly on a line parallel with the south line said Lot No. 57 a distance of 976.52 feet to the point;

THENCE southerly on a line forming an interior angle of 90%00' a distance of 208.92 feet to the point;

THENCE westerly on a line parallel with the south line said Lot No. 57 a distance of 250 feet to the point of BEGINNING.

LANDS TO BE REZONED TO MFR-5

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 57 in Township 13 and Lot No. 102 in Township 12, Range 7 of the Holland Land Company's Survey and bounded and described as follows:

COMMENCING at a point in the westerly line of Transit Road being (66.0 feet wide) said point being the southeast corner of Sublot 21 as shown on a Subdivision Map filed in the Erie County Clerk's office under Map cover 2044;

Attachment: LL for 10060 & 10090 -2 Transit Road (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

THENCE westerly on a line parallel with the south line said Lot No. 57 a distance of 205.12 feet to the point of BEGINNING.

THENCE southerly on a line parallel with said west line of Transit Road being 205.00 feet westerly at right angles from said west line a distance of 626.40 feet to a point;

THENCE westerly parallel with the north line of said Lot No. 102 a distance of 917 feet more or less the centerline of a ditch;

THENCE northerly along the centerline of said ditch a distance of 192 feet more or less to a point;

THENCE through the property of lands conveyed to Herbert A. Lotter and Theresa P. Lotter by deed recorded in liber 11153 of deeds at page 5058 the following three (3) courses and distances:

1) Northeasterly along the centerline of a ditch more or less a distance of 284 feet
   more or less to a point;
2) Northeasterly a distance of 197 feet more or less to a point;
3) Northerly 244 feet more or less to a northerly corner of said Lotter's land;

THENCE easterly on a line parallel with the south line said Lot No. 57 a distance of 460.00 feet to the point;

THENCE southerly on a line parallel with said west line of Transit Road a distance of 120.00 feet to a point;

THENCE easterly on a line parallel with the south line said Lot No. 57 a distance of 44.88 feet to the point of BEGINNING.

LANDS TO BE REZONED TO CTR-2.5

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 57 in Township 13 and Lot No. 102 in Township 12, Range 7 of the Holland Land Company's Survey and bounded and described as follows:

BEGINNING at a point in the westerly line of Transit Road being (66.0 feet wide) said point being the southeast corner of Sublot 21 as shown on a Subdivision Map filed in the Erie County Clerk's office under Map cover 2044;

THENCE southerly along said easterly line of Transit Road a distance of 626.40 feet to the southeast corner of Sublot 16 as shown on said Map cover 2044;

THENCE westerly parallel with the north line of said Lot No. 102 a distance of 205.12 feet to a point;

Attachment: LL for 10060 & 10090 -2 Transit Road (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

THENCE northerly on a line parallel with said west line of Transit Road being 205.00 feet westerly at right angles from said west line a distance of 626.40 feet to a point;

THENCE easterly on a line parallel with the south line of said Lot No. 57 a distance of 205.12 feet to the point of BEGINNING.

BEGINNING at a point in the northeasterly line of Smith Road being (66.0 feet wide) said point being the southwest corner of Sublot 2 as shown on a map filed in the Erie County Clerk's office under Map cover 2044;

THENCE through the property of lands conveyed to Herbert A. Lotter and

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: LL for 10060 & 10090 -2 Transit Road (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Directo

Daniel J. Ulatowski, A
Assistant Planning Dir

Town Board Agenda of August 9, 2021

July 30, 2021

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

Subject: Request to rezone 29.21± acres of land from Suburban Agriculture District (SA) and Motor Service District (MS) to Center 2.5 District (CTR-2.5), Multifamily Residential District Five (MFR-5) and Residential District Three (R-3); property located at 10060 & 10090 Transit Road. Forbes Capretto Homes, Petitioner. (Z-2019-06).

Honorable Members:

The subject properties comprise a 29.21± acre irregularly shaped area located on the west side of Transit Road, 1,370± ft. north of Smith Road opposite Lapp Road in the Town of Clarence. The subject properties have 626.4± ft. of frontage on Transit Road, 384.37± frontage on Smith Road and 50± ft. of frontage at the southern terminus of Ruby Lane. The requested CTR-2.5 zoned area is 2.95 ± acres, the MFR-5 zoned area is 12.73 ± acres, and the R-3 zoned area is 13.57 ± acres.

The site located at 10060 Transit Road is vacant land currently used for agricultural purposes with the southwest portion characterized by a successional wooded area. The site located at 10090 Transit Road is occupied by a 3 bedroom, 2,259 sq. ft. single-family residence, detached garage and small garage/storage building near Transit Road.

The parcel located at 10060 Transit Road is currently located in the Erie County Agricultural District.

Town Ditch #26D1 "*Hickory Creek*" crosses through the center and along the west sides of this property close to the Smith Road frontage. Town Ditch #26D1A which is an unnamed ditch from Clarence runs under Transit Road, enters the site in the southwest corner and intersects Town Ditch #26D1 in the western portion of the property.

Transit Road is a NYSDOT highway designated as a major arterial roadway; Smith Road is an Erie County highway designated as a collector roadway.

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Honorable Town Board

Rezone land from SA & MS to CTR-2.5, MFR-5 & R-3
property located at 10060 & 10090 Transit Road
Agenda of August 9, 2021

Based upon the concept plan provided the purpose of this request is to allow for the future development of four mixed-use buildings fronting on Transit Road which would include 23,400± sq. ft. of commercial space in the proposed CTR-2.5 zoning district; 28 single family lots and 7 townhouse buildings in the proposed MFR-5 zoning district; and 26 single family lots in the proposed R-3 zoning district area. The proposed roadway network shows a central roadway connecting Transit Road to Smith Road, a private roadway/driveway servicing the town house portion of the proposed development that connects Transit Road to the proposed central roadway, and a connection from the central roadway to the existing terminus of Ruby Lane.

The subject properties were zoned Suburban Agriculture (SA) and Motor Service (MS) with adoption of the Town-wide zoning map and ordinance on January 19, 1976.

The Town Board on September 20, 2020 amended the Town of Amherst Bicentennial Comprehensive Plan to extend the commercial/mixed use designation from its terminus at the intersection of Smith and Transit Roads northerly to encompass the frontage of the subject parcels (BCPA-2019-01).

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

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

The request is consistent with the Town of Amherst Bicentennial Comprehensive Plan's Conceptual Land Use Plan which projects single family residential development for the proposed subject R-3 zoned area and a portion of the proposed MFR-5 zoned area and mixed use development for the proposed CTR-2.5 zoned area.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The proposed rezoning is consistent with Section 1-2-2K of the Zoning Ordinance which seeks to guide future development of the Town to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The subject property is surrounded by residential uses to the north, south and west that are zoned Suburban Agriculture District (SA) and Residential District Three (R-3). Since an extension of the mixed-use zoning would extend from the Swormville Center to the north along Transit Road, it is considered compatible with other similar uses along this corridor.

ADEQUATE SERVICES AND UTILITIES

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Honorable Town Board

Rezone land from SA & MS to CTR-2.5, MFR-5 & R-3
property located at 10060 & 10090 Transit Road
Agenda of August 9, 2021

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

OTHER CONSIDERATIONS

To address issues and or concerns raised by the Erie County Department of Environment and Planning (ECDEP) and the New York State Department of Transportation (NYSDOT) as part of this rezoning request the following conditions should be incorporated into any approval of the rezoning action:

1. An agricultural data statement be provided with any application for development as required by Erie County Department of Environment and Planning (ECDEP).

2. That the subject area be removed from Agricultural District 17 – Amherst prior to submittal of any application for site development as required by ECDEP.

3. As required by New York State Department of Transportation (NYSDOT) a revised Traffic Impact Study (TIS) be provided with any application for development.

4. That the Petitioner address concerns of the New York State Department of Transportation (NYSDOT) during future development review.

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board's findings relative to SEQR and issue the attached Negative Declaration, and that the subject request be **approved** based on the attached resolution.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/SM/ac
Att.
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Town_Bd_Letter_07302021.doc
cc: Stanley Sliwa, Town Attorney

Planning Board Approval June 24, 2021
Ayes 4; Noes 2 (Chmiel, Penberthy), Absent (Gelber)

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2019-06

PETITIONER

Forbes Capretto Homes
c/o Jeffery Palumbo
9276 Main Street, Suite 3
Clarence, NY 14031

PROPERTY LOCATION

10060 & 10090 Transit Rd.

WHEREAS the Town of Amherst Planning Board on Thursday, May 20, 2021 held a virtual public hearing on the proposed rezoning of 29.21± acres of land from Suburban Agriculture District (SA) and Motor Service District (MS) to Center 2.5 District (CTR-2.5), Multifamily Residential District Five (MFR-5) and Residential District Three (R-3), and

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

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

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

A. The proposed zoning and development plan is generally consistent with policies of the Comprehensive Plan and the Zoning Ordinance and is consistent with the Conceptual Land Use Plan which projects single family residential development for the proposed subject R-3 zoned area and a portion of the proposed MFR-5 zoned area and mixed use development for the proposed CTR-2.5 zoned area in this area of the Town.

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

C. The proposal is compatible with the present zoning and conforming uses of nearby property and to the character of the neighborhood.

D. The subject property is suitable or will be made for suitable for the uses permitted by the current versus the proposed district.

E. The proposed change does tend to improve the balance of uses, or meets a specific demand in the Town.

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2019-06

PETITIONER	PROPERTY LOCATION
Forbes Capretto Homes	10060 & 10090 Transit Rd.

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

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

The foregoing resolution was adopted by the Town of Amherst Planning Board, June 24, 2021; moved by - Giuliani; seconded by - Gilmour; ayes 4, noes 2 (Chmiel, Penberthy); absent 1 (Gelber).

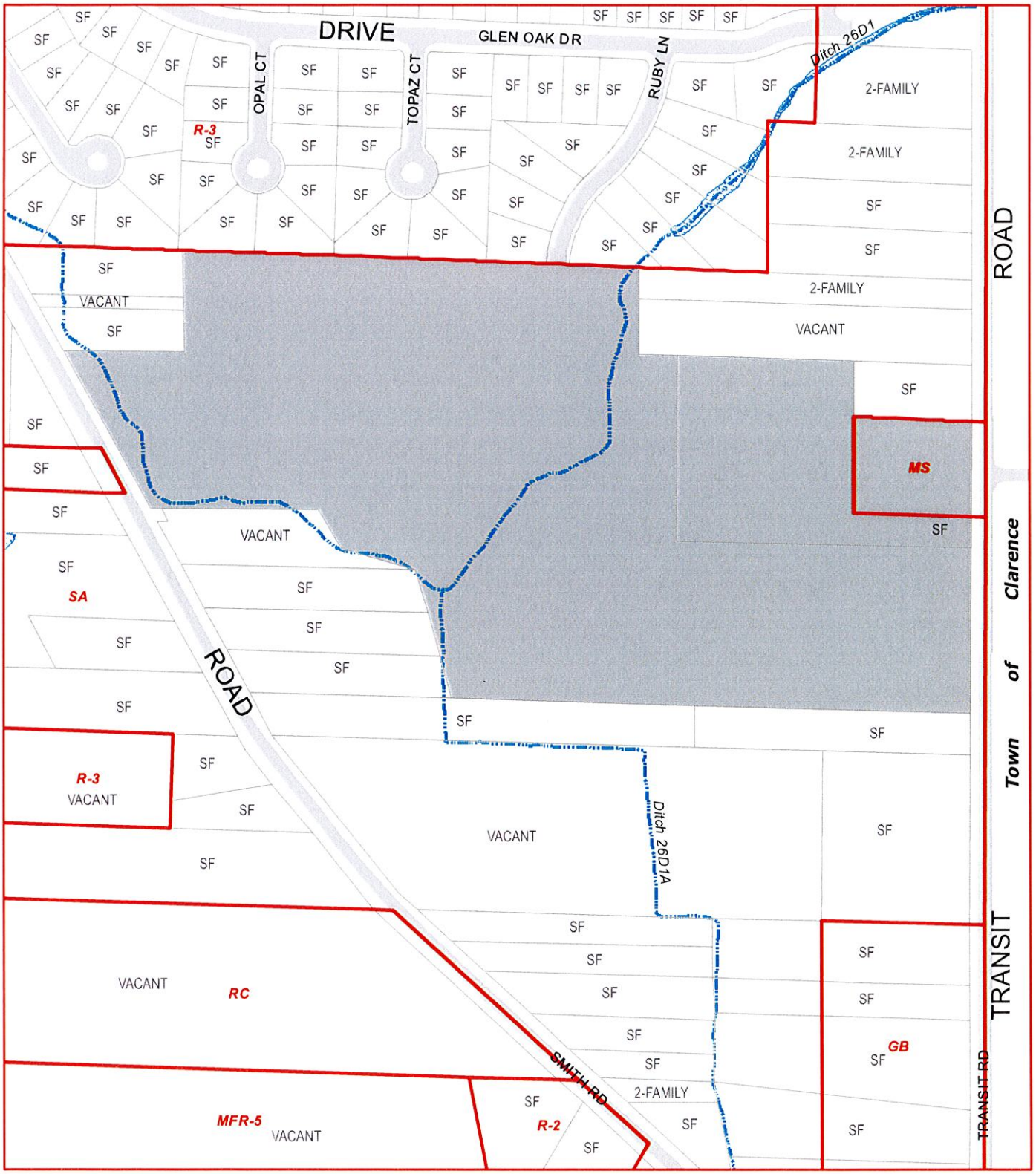
Robert J. Gilmour, Chair

7-1-21
Date

SM/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Resolution_062421.doc
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Jeff Palumbo, Barclay Damon, 9276 Main St., Suite 3, Clarence, NY 14031
Ken Zollitsch, Greenman-Pedersen, Inc., 4950 Genesee St., Suite 100, Buffalo, NY 14225

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

JUL02'21 AM10:04 RCVD



Z-2019-06

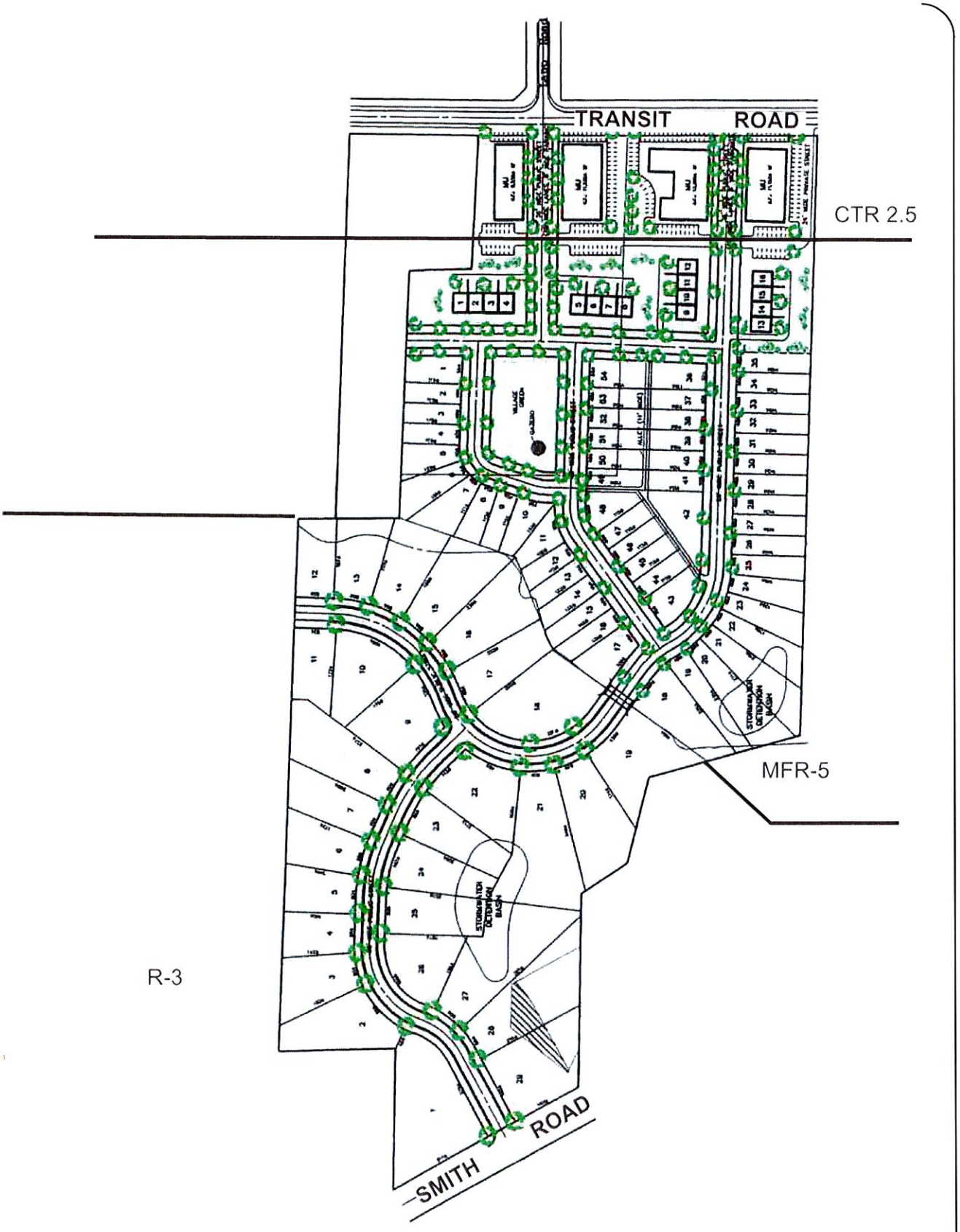
Request to Rezone 29.21+/- AC of Land from SA & MS to CTR-2.5, MFR-5, R-3
Property Located at 10060 & 10090 Transit Road

Forbes Capretto Homes, Petitioner
June 24, 2021

10060 & 10090 Transit Road

Prepared by the Town of Amherst Planning Department

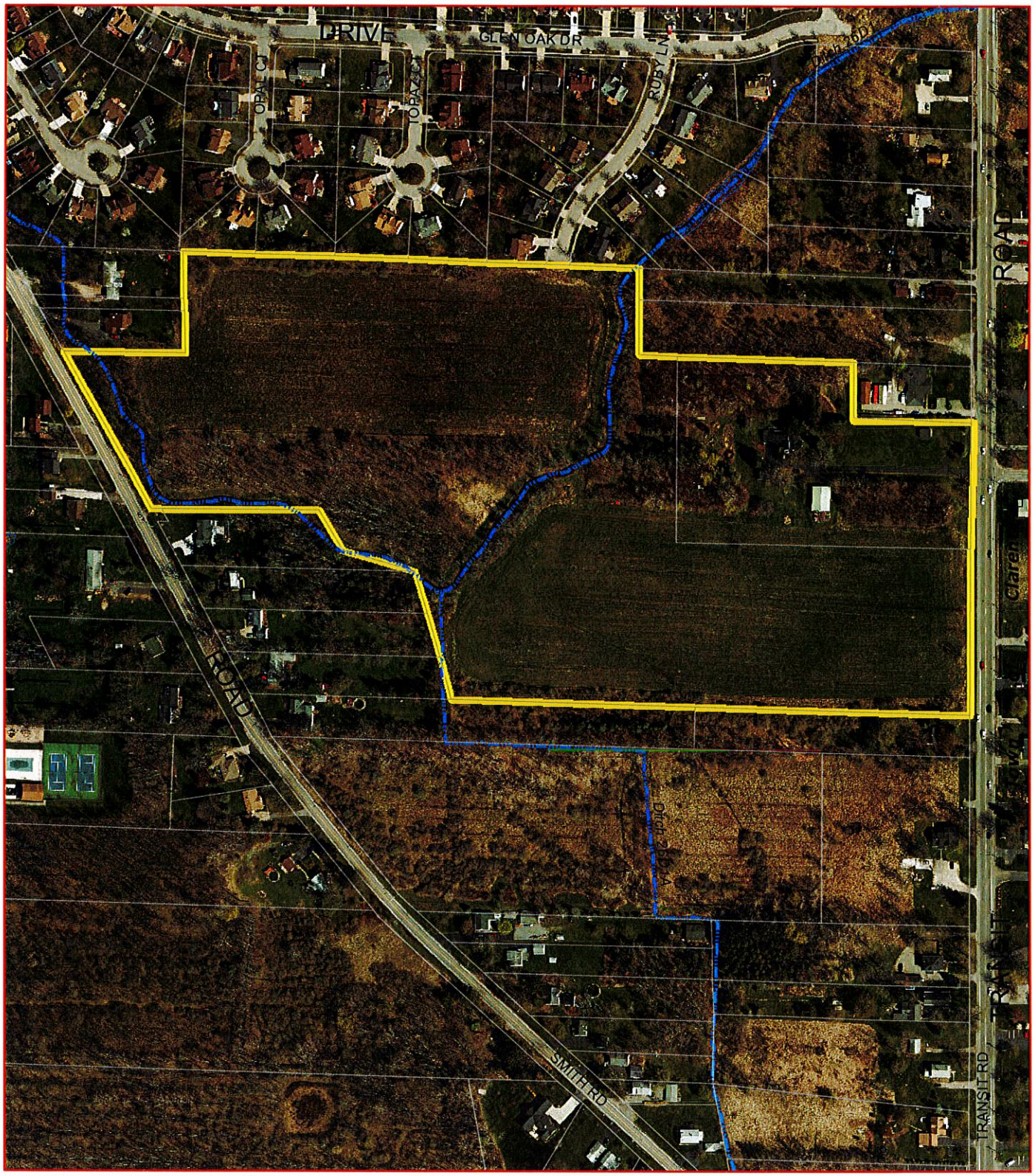
Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)



CONCEPT PLAN

Z-2019-06
10060 & 10090 Transit Road
Received: 5/13/2021

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)



Z-2019-06

Request to Rezone 29.21+/- AC of Land from SA & MS to CTR-2.5, MFR-5, R-3
Property Located at 10060 & 10090 Transit Road

Forbes Capretto Homes, Petitioner
June 24, 2021

10060 & 10090 Transit Road

Prepared by the Town of Amherst Planning Department

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

AMENDED APPLICATION 3-26-21

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2019-06 **Acreage** 29.21 acres **Fee $** 7,215.00

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid 4/17/19 ACCEPTED BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. 4/17/19 RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	_____
2 – 20 ACRES **$1,250 + $250/acres or fraction thereof over 2 acres**		_____
20 – 30 ACRES **$5,700 + $150/acre or fraction thereof over 20 acres**		7,200
OVER 30 ACRES **$6,900 +$75/acre or fraction thereof over 30 acres**		_____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	15.00
TOTAL FEE:	$7,215	

REVISED
MAR 31 2021
TOWN OF AMHERST
PLANNING DEPT.

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Forbes Capretto Homes c/o Barclay Damon LLP

Address: 9276 Main Street, Suite 3

Clarence, New York 14031
City State Zip Code

Phone: 716-858-3728 Fax: 716-858-2728

E Mail JPALUMBO@BARCLAYDAMON.COM

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

From: SA/MS District

To: R3 / MFR5 / CTR-2.5 District

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

10060/10090 Transit Road, E. Amherst, NY 14051

SBL #: 29.01-2-5.1& 29.01-2-5.2

4. **Area of land to be rezoned** (in acres): 29.21 acres

5. **Owner of Land:**

Name: Fritz Lotter/The Estate of Theresa Lotter

Address: c/o John Robshaw, Attorney at Law

Telephone: 716-633-4030

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

Name: Jeffery D. Palumbo, Esq. of Barclay Damon, LLP

Address: SEE ABOVE

City State Zip Code

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

7. **Petitioner's interest in property**

_____ Option to purchase

_____ Owner

X _____ Other (explain) Contract to purchase

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

n/a

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor.**

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

Liber _____ Page _____

11. **Information on proposed project:**

A. Description of the character of the proposed development:

Mixed use commercial/residential with variety of attached/ detached multi and single family housing proposed.

B. Rationale for rezoning request:

1. Why was this site chosen? Location on major corridor. Access to desirable community services & facilities.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

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

As the Comprehensive Plan designates this area for mixed-use development, it is evident that it is not attractive for large lot, single family development, the only residential development allowed in an SA zoning district. Its location on Transit Road and adjacent to the Swormville Village Center also makes it desirable for mixed-use development.See Comprehensive Plan 3.3.3/Exhibit A.

3. How will this rezoning impact surrounding properties?

It won't, as the parcel is adjacent to a large R-3 district to the north and west, and various MFR and GB districts exist to the north and south, particularly along Transit Rd (see Exhibit C).

4. How will this rezoning impact the school system?

As the proposed development includes a large residential component, it will expand the tax base with minimal impact on the school system.

12. Quantitative Data:

A. Total # of dwelling units 120

B. Distribution of dwelling units by type 52 single/68 multifamily

C. Gross Residential Density per acre MFR-5/R3: 3.6

D. Total amount of Open Space 2.0 acres

E. Proposed Non-Residential Floor Area +/- 23,400 SF

13. Development Schedule:

Start Fall 2021

Finish November 2025

Stages (# of) 2-3

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

Standard apartment/commercial leases.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

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

n/a

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

A. <u>The proposed zoning and development plan must be generally consistent with the policies of the Comprehensive Plan and the Town Zoning Ordinance.</u>

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

Land is within the Mixed Use/Activity Center, which is designed to provide for added economic incentive and flexibility for reuse, offer higher density housing choices and a more compact livable and walkable environment. Section 3.3.3. The Town's comprehensive plan suggests that the "village center" attributes of Swormville should be reinforced through encouragement of compatible mixed and commercial uses, which the proposed project provides. The project, which proposes close to 150 residential units along with close to 50,000 sf of commercial space, is exactly the type of development that could reinvigorate the village potential of the Swormville area.

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

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

Figure 6 should be amended to include the subject property, is now part of the identified Village Center. See Conceptual Land Use Map and identified mixed-use center attached hereto as Exhibit B.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

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

Insures orderly and beneficial residential development. Proposal will provide adequate open space and promotes coordinated development in relation to the surrounding properties. Therefore, it is aesthetically harmonious with the surrounding areas and structures and will not negatively increase the intensity of uses in the area. Finally, it represents a higher density pedestrian friendly development that transitions to lower density in harmony with surrounding properties generally consistent with the policies of the comprehensive plan (see above).

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

1. Sanitary Sewer
Sewer service district 16
2. Storm Sewer/Drainage Storm sewer will be design within site and drain to adjacent existing storm sewers.
3. Water Water service available from Town of Amherst
4. Other

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

As indicated above and represented in attached zoning map, this parcel is surrounded by single family residential zoning in various densities, and is also located upon a major commercial corridor and adjacent to a proposed mixed-use center. Accordingly, the proposed zoning is compatible and in conformity with the present uses and character of the neighborhood.

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

As evidenced by the existing zoning in the area and objectives advanced in the comprehensive plan, the subject parcel is better suited for the proposed use.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

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

Meets the ever-increasing demand for single-family homes in the Town and provides the mixed-use component desired for this area of the Town.

17. The petitioner encloses herewith the sum of $7,215.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.

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

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

Signature of Petitioner

Subscribed and sworn to before me this 26th day of March, 2021

Notary Public, Erie County, New York

TRACY A. MURRAY#01MU507729
Notary Public, State of New York
Qualified in Genesee County
My Commission Expires 05/05/

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

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

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

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

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

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

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

EXHIBIT A

Exhibit A

In 2016 the Town engaged the Code Studio Team to prepare an analysis of existing commercial and mixed use areas in the Comprehensive Plan with a particular focus on clarifying and improving the hierarchy of commercial centers and mixed use centers in the Town. As set forth in its May 17, 2016 Memorandum, the SA district is not appropriate in commercial centers of mixed use areas. Further, the Town's existing MFR and Commercial districts lack the density needed to generate housing projects that are conducive to walkability and compatible with adjacent mixed use. As a result, the Town, on or about September 3, 2019, adopted Section 5A, Mixed Use District.

On or about September 21, 2020 the Town Board amended the Town Comprehensive Plan to include the Transit Road frontage into the Mixed Use District.

Section 5A-3 of the Zoning Code provides for various "Retrofit Districts" that are intended for parcels of land that are designated commercial and mixed-use activity centers in the Town's 2018 Comprehensive Plan. The Center 2.5 District (CTR-2.5) is intended to create new walkable mixed-use places with human-scaled internal streets. Its residential uses include attached and multi-family dwelling, and commercial uses include office, personal service, restaurant and retail sales and service. (5.8). New development in the CTR-2.5 district can range from 1-2.5 stories in height and requires a minimum of 5% open space area.

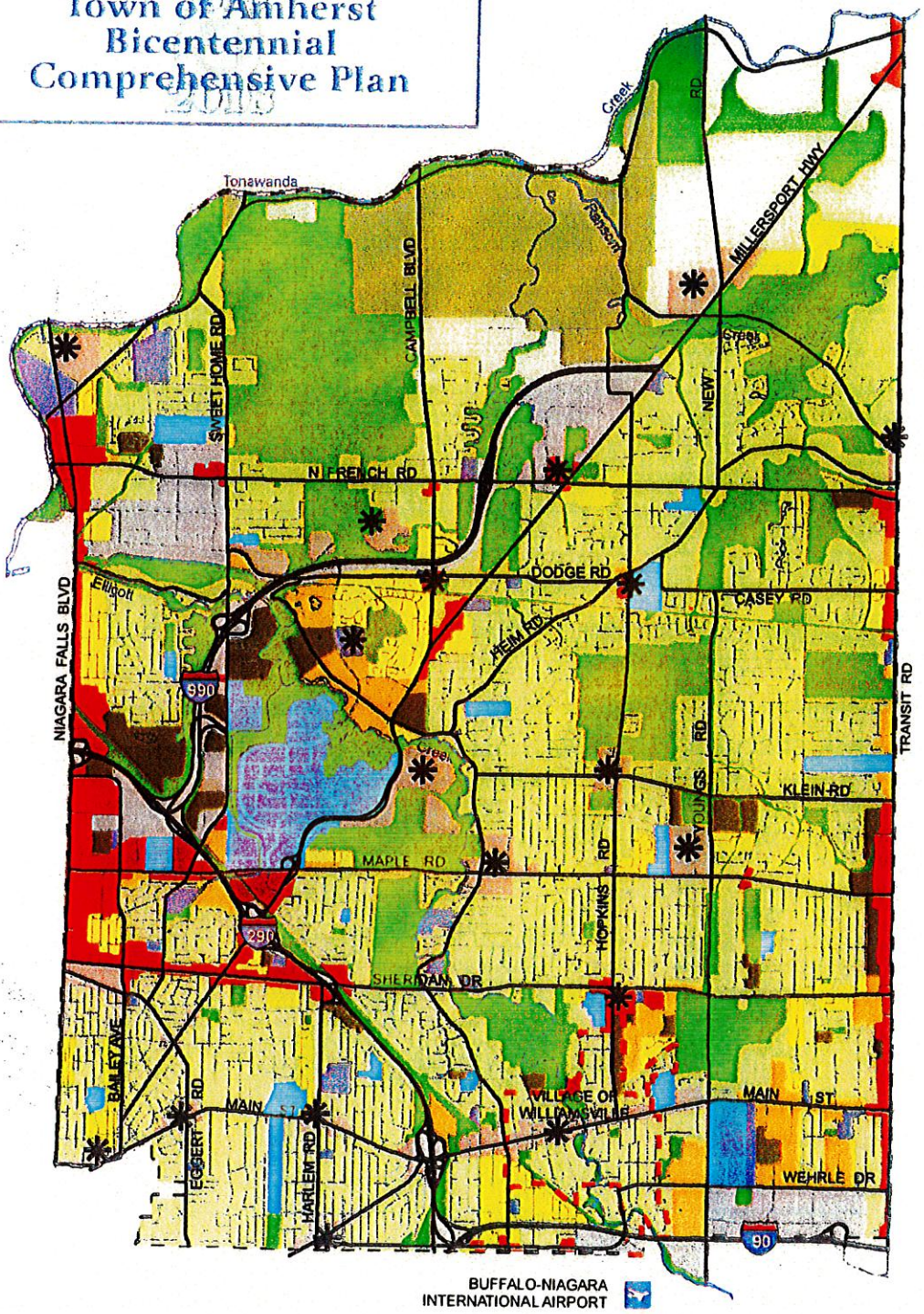
As set forth in the Town's 2018 Comprehensive Plan and Conceptual Land Use Plan, Swormville is considered a "Mixed Use" Center, for which higher density housing choices and a more compact livable and walkable environment is desired. The Comprehensive Plan suggests that the "village center" attributes of Swormville should be reinforced through encouragement of compatible mixed and commercial uses, which the proposed project provides. Zoning the proposed mixed-use portion of the property to CTR-2.5 and to be in accord with the Comprehensive Plan will achieve the objectives within the Comprehensive Plan while allowing the Town to better control development specifics to ensure consistency with its new development standards.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

EXHIBIT B

Town of Amherst Bicentennial Comprehensive Plan



CONCEPTUAL LAND USE PLAN

FIGURE 6

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

SOURCE NOTES:

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

Map Compiled by the Town of Amherst Planning Department

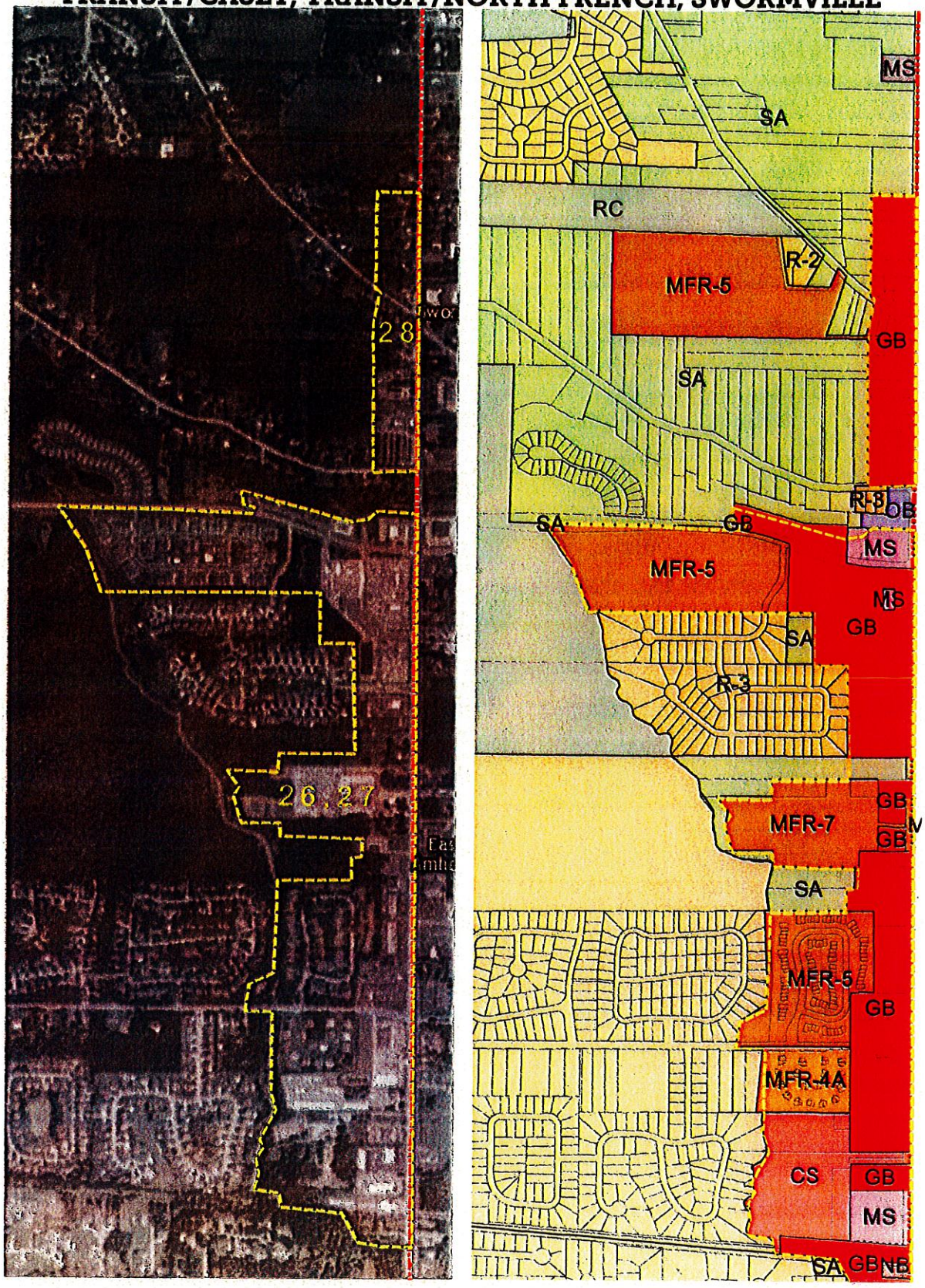
Date: March, 2009

N

0 0.25 0.5 0.75 1 1.25 Miles

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

26, 27, 28
TRANSIT/CASEY, TRANSIT/NORTH FRENCH, SWORMVILLE



Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

EXHIBIT C

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

AUTHORIZATION

Fritz Lotter, record property owner of the property located at 10090 Transit Road and 50% record property owner of the property located at 10060 Transit Road in the Town of Amherst, New York (individually and collectively, the "Property"), hereby gratuitously authorizes the law firm of Barclay Damon, LLP to file a rezoning application for both Properties, along with any and all necessary supporting documentation, including any additional applications or submittals required, with the Town of Amherst, in connection with the approvals sought for the Property. Fritz Lotter shall in no way be responsible for any charges, costs, expenses, legal fees, filing fees, etc. associated with the above work, whether to Barclay Damon LLP, or anyone else, under any legal theory in law or equity. Nothing in this Authorization shall in any way imply or create any agreement, contract, option etc. regarding the property at 10090 Transit Road, Amherst, NY between Fritz Lotter and any other person, entity or party.

By: _____
Fritz Lotter

Dated: 4/15/19

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

AUTHORIZATION

The Executors of the Estate of Theresa Lotter, record property owner of 50% of the property located at 10060 Transit Road in the Town of Amherst, New York (the "Property"), hereby authorizes the law firm of Barclay Damon, LLP to file a rezoning application for the Property, along with any and all necessary supporting documentation, including any additional applications or submittals required, with the Town of Amherst, in connection with the approvals sought for the Property.

By: Heidi A Wieczorek
Heidi A. Wieczorek

Title: Co-Executor

Dated: 4-15-2019

18347390.1

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

AMENDED

Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Ashley Green		
Project Location (describe, and attach a general location map): 10060 (24.21 acres) & 10090 (5 acres) Transit Road		
Brief Description of Proposed Action (include purpose or need): Rezoning of two parcels (29.21 acres total) from SA/MS to R-3/MFR-5 (old code) / CTR-2.5 (new code) to accommodate proposed mixed use development with townhomes, single family lots and approximately 23,400 +/- sf of commercial space.		
Name of Applicant/Sponsor: Barclay Damon LLP on behalf of Forbes Capretto Homes	Telephone: 716-858-3878 E-Mail: jpalumbo@barclaydamon.com	
Address: 9276 Main Street		
City/PO: Clarence	State: NY	Zip Code: 14031
Project Contact (if not same as sponsor; give name and title/role): Jeffery D. Palumbo, Esq.	Telephone: E-Mail:	
Address: see above		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): Mr. Fritz Lotter/The Estate of Theresa Lotter	Telephone: E-Mail:	
Address: c/o John Robshaw Attorney at Law		
City/PO:	State:	Zip Code:

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. CityCounsel, TownBoard , or Village Board of Trustees ☑Yes ☐No	Town of Amherst Town Board - rezoning approval	4/15/19
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Town of Amherst Planning Board - rezoning recommendation	4/15/19
c. City, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☐Yes ☑No		
e. County agencies ☐Yes ☑No		
f. Regional agencies ☐Yes ☑No		
g. State agencies ☑Yes ☐No	NYSDOT Permits, NYSDEC SWPPP and I/I Approval	
h. Federal agencies ☑Yes ☐No	Potential Army Corps Permit	

i. Coastal Resources.
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No

ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No
iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes ☐No
If Yes, identify the plan(s):
NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No
If Yes, identify the plan(s):

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
SA - suburban agriculture

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☑ No

c. Is a zoning change requested as part of the proposed action? ☑ Yes ☐ No
If Yes,
i. What is the proposed new zoning for the site? R-3/MFR-5 / CTR-2.5

C.4. Existing community services.

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

b. What police or other public protection forces serve the project site?
Amherst

c. Which fire protection and emergency medical services serve the project site?
Swormville

d. What parks serve the project site?
Dann Lake

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Mixed use: residential/commercial

b. a. Total acreage of the site of the proposed action? 29.21 acres
b. Total acreage to be physically disturbed? +/- 27.21 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 29.21 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? ☑ Yes ☐ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
Single detached Family Residential
ii. Is a cluster/conservation layout proposed? ☐ Yes ☑ No
iii. Number of lots proposed? 52
iv. Minimum and maximum proposed lot sizes? Minimum 6,500 sq ft Maximum 42,000 sq ft

e. Will the proposed action be constructed in multiple phases? ☑ Yes ☐ No
i. If No, anticipated period of construction: _____ months
ii. If Yes:
- Total number of phases anticipated 2-3
- Anticipated commencement date of phase 1 (including demolition) Sept month 2021 year
- Anticipated completion date of final phase Nov month 2025 year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

f. Does the project include new residential uses? ☑Yes ☐No

If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase	52			30
At completion of all phases	68			61

g. Does the proposed action include new non-residential construction (including expansions)? ☑Yes ☐No

If Yes,

i. Total number of structures 4

ii. Dimensions (in feet) of largest proposed structure: 35 +/- height; 65 +/- width; and 100 +/- length

iii. Approximate extent of building space to be heated or cooled: 23,400 +/- square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☑Yes ☐No

If Yes,

i. Purpose of the impoundment: Stormwater detention

ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☑Other specify: Stormwater runoff associated with new impervious surfaces at the project site.

iii. If other than water, identify the type of impounded/contained liquids and their source.

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: 1.5± acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): Proposed stormwater facilities will be excavated from existing earth.

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) ☐Yes ☑No

If Yes:

i. What is the purpose of the excavation or dredging?

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards):
- Over what duration of time?

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.

iv. Will there be onsite dewatering or processing of excavated materials? ☐Yes ☐No

If yes, describe.

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? ☐Yes ☐No

ix. Summarize site reclamation goals and plan:

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☑Yes ☐No

If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): Federal Wetland

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:
Two of the proposed residential lots will encroach upon wetland/buffer. Permits will be obtained and appropriate measures will be employed to preserve existing wetland in accordance with permit conditions.

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐ Yes ☑ No
If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐ Yes ☑ No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑ Yes ☐ No
If Yes:

i. Total anticipated water usage/demand per day: 48,900 ± gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☐ Yes ☐ No
If Yes:

- Name of district or service area: Amherst Water District
- Does the existing public water supply have capacity to serve the proposal? ☑ Yes ☐ No
- Is the project site in the existing district? ☑ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☑ No
- Do existing lines serve the project site? ☑ Yes ☐ No

iii. Will line extension within an existing district be necessary to supply the project? ☑ Yes ☐ No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
  Extension of waterlines into site to service proposed single family homes and commercial buildings
- Source(s) of supply for the district: Erie County Water Authority

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐ Yes ☑ No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑ Yes ☐ No
If Yes:

i. Total anticipated liquid waste generation per day: 32,600 ± gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):
Sanitary wastewater

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

- Name of wastewater treatment plant to be used: Amherst Wastewater Treatment Plant #16
- Name of district: Amherst Sewer District 16
- Does the existing wastewater treatment plant have capacity to serve the project? ☑ Yes ☐ No
- Is the project site in the existing district? ☑ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☑ No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will a line extension within an existing district be necessary to serve the project? ☑Yes ☐No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: Extension of sanitary sewer into project site.

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

_____

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or 6.3 acres (impervious surface)

_____ Square feet or 29.2 acres (parcel size)

ii. Describe types of new point sources. Outlets from stormwater facilities

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

To be determined by final design, but expected to be directed to several on-site storm water management facilities before discharging to tributary to Black Creek

- If to surface waters, identify receiving water bodies or wetlands: Tributary to Black Creek
- Will stormwater runoff flow to adjacent properties? ☐Yes ☑No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☒No

JD

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☐Yes ☑No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☐No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☐No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☑Yes ☐No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☑Evening ☐Weekend
☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): GARBAGE COLLECTIONS, RETAIL DELIVERIES ESTIMATED AT 10-15/DAY JS

iii. Parking spaces: Existing 0 Proposed 150 Net increase/decrease INC. 150

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☑Yes ☐No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: Normal Residential and commercial space usage

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): National Fuel/National Gas

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☑No

l. Hours of operation. Answer all items which apply.

i. During Construction:
- Monday - Friday: 7-5
- Saturday: 7-5
- Sunday: 7-5
- Holidays: 7-5

ii. During Operations:
- Monday - Friday: 8-8
- Saturday: 8-8
- Sunday: 8-8
- Holidays: 8-8

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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☐ Yes ☑ No

If yes:

i. Provide details including sources, time of day and duration:

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe:

n. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Parking lot lighting, street lighting and fixtures on buildings. Parking lot lighting to be dark sky compliant.

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally, describe the proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

POSSIBLE PESTICIDE LAWN TREATMENT

JC

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☑ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: _____ tons per _____ (unit of time)
- Operation : _____ tons per _____ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction:
- Operation:

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction:
- Operation:

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s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☑ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____

ii. If mix of uses, generally describe:

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0.2±	6.3±	+ 6.1±
• Forested	3.4±	1.0±	- 2.4±
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	23.5±	1.0±	- 22.5±
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0.3±	1.2±	+ 0.9±
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: Lawns and landscaping	1.8±	19.7±	+ 17.9±

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c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐Yes ☑No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐ No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:
iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑ No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____
iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

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v. Is the project site subject to an institutional control limiting property uses? ☐Yes ☑No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐Yes ☐No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? 5+ feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____%

c. Predominant soil type(s) present on project site:

Cv - Cosad loamy fine sand	70 %
NfA - Niagara silt loam	28 %
Od - Odessa silt loam	2 %

d. What is the average depth to the water table on the project site? Average: 0.5-1.5 feet

e. Drainage status of project site soils:
☐ Well Drained: ____% of site
☐ Moderately Well Drained: ____% of site
☑ Poorly Drained ____% of site

f. Approximate proportion of proposed action site with slopes:
☑ 0-10%: 100 % of site
☐ 10-15%: ____% of site
☐ 15% or greater: ____% of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☑Yes ☐No

ii. Do any wetlands or other waterbodies adjoin the project site? ☑Yes ☐No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☑Yes ☐No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name 837-48 Classification C
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name Federal Waters, Federal Waters, Federal Waters,... Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☑Yes ☐No

If yes, name of impaired water body/bodies and basis for listing as impaired:
Name - Pollutants - Uses:Ransom Creek, Lower, and tribs – Pathogens;D.O./Oxygen Demand – Recreation;Aquatic Life

i. Is the project site in a designated Floodway? ☐Yes ☑No

j. Is the project site in the 100-year Floodplain? ☑Yes ☐No

k. Is the project site in the 500-year Floodplain? ☑Yes ☐No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:

i. Name of aquifer: _____

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m. Identify the predominant wildlife species that occupy or use the project site:
Local Birds, Squirrels

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation): _____
ii. Source(s) of description or evaluation: _____
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No
If Yes:
i. Species and listing (endangered or threatened): _____

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No
If Yes:
i. Species and listing: _____

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use: _____

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☒Yes ☐No
If Yes, provide county plus district name/number: AG DISTRICT V7

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site? _____
ii. Source(s) of soil rating(s): _____

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name: _____
ii. Basis for designation: _____
iii. Designating agency and date: _____

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e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined bythe Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☐ Yes ☑ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based:

_____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☐ Yes ☑ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: _____

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

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Barclay Damon LLP Date March 26, 2021

Signature _____ Title Attorney

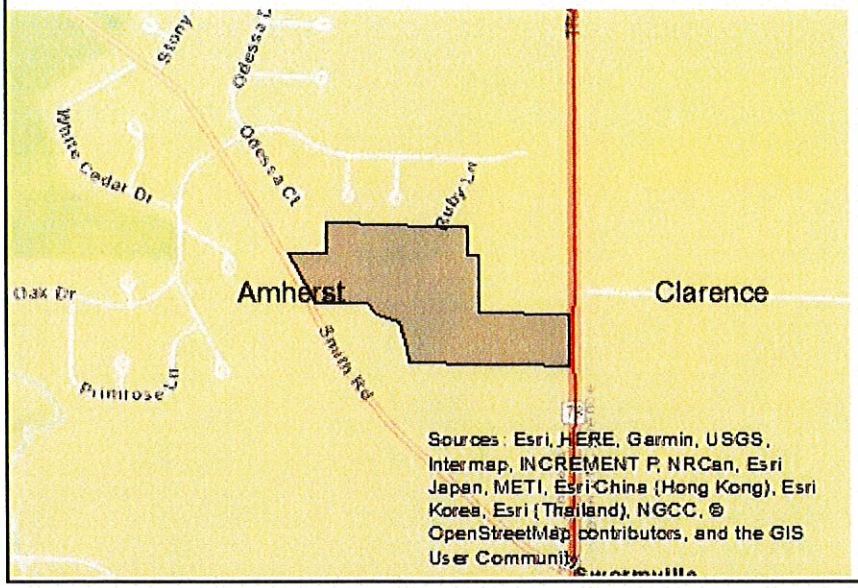
Jeffery D. Palumbo

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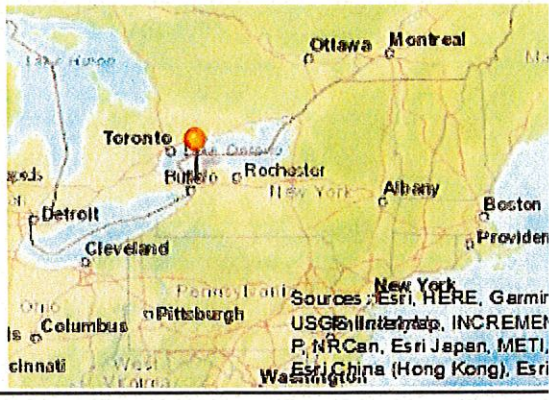
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EAF Mapper Summary Report

Sunday, April 14, 2019 6:36 PM



Disclaimer: The EAF Mapper is a screening tool intended to assis project sponsors and reviewing agencies in preparing an environment assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Althoug the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in ord to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Stream Name]	837-48
E.2.h.iv [Surface Water Features - Stream Classification]	C
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	Yes
E.2.h.v [Impaired Water Bodies - Name and Basis for Listing]	Name - Pollutants - Uses:Ransom Creek, Lower, and tribs – Pathogens;D.O./Oxygen Demand – Recreation;Aquatic Life

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E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	No
E.3.i. [Designated River Corridor]	No

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TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

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

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Cosad	Severe	Severe	Severe	Severe	Moderate
Niagara	Severe	Severe	Severe	Severe	Severe
Odessa	Severe	Severe	Severe	Severe	Severe

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

   _____Geotechnical report attached _____ Not applicable

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ☑ No
   On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ☑ No

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

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

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

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

   Describe: **<u>Not Applicable.</u>**

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

7. Maximum number of vehicular trips to be generated per hour upon completion of project: **<u>214 trips during weekday P.M. peak travel hour.</u>**

   <u>Source: ITE – TripGen 2013, see attached printout</u>

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

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

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:

    <u>31,750</u> <u>gpd</u> average flow <u>129,154</u> <u>gpd</u> peak flow.

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Trip Generation Summary - Alternative 1
Average Weekday Driveway Volumes

Project: Ashley Green
Alternative: Alternative 1

Open Date: 4/16/2019
Analysis 4/16/2019

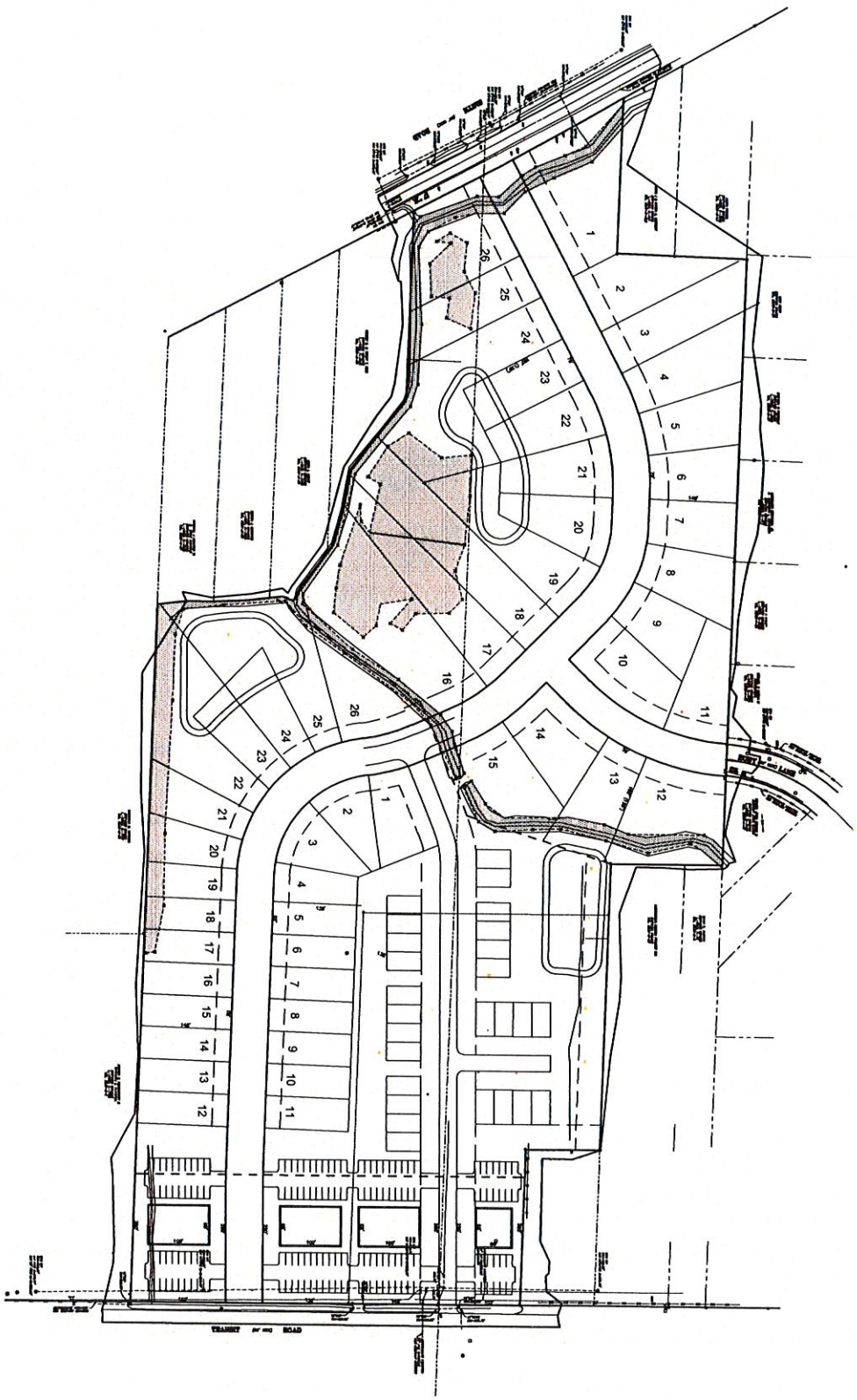
ITE	Land Use	Average Daily Trips			AM Peak Hour Adjacent Street Traffic			PM Peak Hour Adjacent Street Traffi		
		Enter	Exit	Total	Enter	Exit	Total	Enter	Exit	Tota
210	SFHOUSE 1	138	138	276	6	16	22	18	11	29
	29 Dwelling Units									
221	LRAPT 1	149	148	297	4	17	21	17	9	26
	45 Occupied Dwelling Units									
231	LRCONDO 1				3	8	11	7	5	12
	16 Dwelling Units									
233	LUXCONDO 1				7	23	30	19	11	30
	54 Occupied Dwelling Units									
826	CENTERSPECIALTY 1	953	953	1906				51	66	117
	43 Gross Leasable Area 1000 SF									
	Unadjusted Driveway Volume	1240	2193	3146	20	64	84	112	102	214
	Unadjusted Pass-By Trips	0	0	0	0	0	0	0	0	0
	Internal Capture Trips	0	0	0	0	0	0	44	44	88
	Adjusted Driveway Volume	1240	2193	3146	20	64	84	68	58	126
	Adjusted Pass-By Trips	0	0	0	0	0	0	0	0	0
	Adjusted Volume Added to Adjacent Streets	1240	2193	3146	20	64	84	68	58	126

Total AM Peak Hour Internal Capture = 0 Percent

Total PM Peak Hour Internal Capture = 41 Percent

Source: Institute of Transportation Engineers, Trip Generation Manual 9th Edition, 2012

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)



SHEET NO. 1	CONCEPT PLAN	SCALE: 1"=80'	DRAWN BY: DRAWN
		DATE: OCTOBER 2020	CHECKED BY: CHECKED
		DWG NO.: DWGNO	JOB NO.: 2020096
	ASHLEY GREEN TOWN OF AMHERST	NO.	REVISIONS: BY DATE

GPI
Greenman-Pedersen, Inc.
Engineering and Construction Services
In Western New York:
BUFFALO (716) 633-4844 • ROCHESTER (585) 486-4859 • JAMESTOWN (716) 488-2803

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

7485-B

APRIL 12, 2019

LANDS TO BE REZONED TO MFR-5
MULTIFAMILY RESIDENTIAL DISTRICT 5

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 57 in Township 13 and Lot No. 102 in Township 12, Range 7 of the Holland Land Company's Survey and bounded and described as follows:

COMMENCING at a point in the westerly line of Transit Road being (66.0 feet wide) said point being the southeast corner of Sublot 21 as shown on a Subdivision Map filed in the Erie County Clerk's office under Map cover 2044;

THENCE westerly on a line parallel with the south line said Lot No. 57 a distance of 205.12 feet to the point of BEGINNING.

THENCE southerly on a line parallel with said west line of Transit Road being 205.00 feet westerly at right angles from said west line a distance of 626.40 feet to a point;

THENCE westerly parallel with the north line of said Lot No. 102 a distance of 917 feet more or less the centerline of a ditch;

THENCE northerly along the centerline of said ditch a distance of 192 feet more or less to a point;

THENCE through the property of lands conveyed to Herbert A. Lotter and Theresa P. Lotter by deed recorded in liber 11153 of deeds at page 5058 the following three (3) courses and distances:

1) Northeasterly along the centerline of a ditch more or less a distance of 284 feet more or less to a point;
2) Northeasterly a distance of 197 feet more or less to a point;
3) Northerly 244 feet more or less to a northerly corner of said Lotter's land;

THENCE easterly on a line parallel with the south line said Lot No. 57 a distance of 460.00 feet to the point;

THENCE southerly on a line parallel with said west line of Transit Road a distance of 120.00 feet to a point;

THENCE easterly on a line parallel with the south line said Lot No. 57 a distance of 44.88 feet to the point of BEGINNING.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

7485-C

APRIL 12, 2019

LANDS TO BE REZONED TO R-3
RESIDENTIAL DISTRICT 3

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 57 in Township 13 and Lot No. 102 in Township 12, Range 7 of the Holland Land Company's Survey and bounded and described as follows:

BEGINNING at a point in the northeasterly line of Smith Road being (66.0 feet wide) said point being the southwest corner of Sublot 2 as shown on a map filed in the Erie County Clerk's office under Map cover 2044;

THENCE southeasterly along said northeasterly line of Smith Road a distance of 224.73 feet to an angle point;

THENCE southeasterly continuing along said northeasterly line of Smith Road a distance of 159.64 feet to the southwest corner of Sublot 5 as shown on said Map Cover 2044;

THENCE easterly on a line parallel with the north line of said Lot No. 102 a distance of 239.60 to a point in the centerline of a ditch;

THENCE southeasterly along the centerline of said ditch a distance of 468 feet more or less to a point;

THENCE through the property of lands conveyed to Herbert A. Lotter and Theresa P. Lotter by deed recorded in liber 11153 of deeds at page 5058 the following three (3) courses and distances:

1) Northeasterly along the centerline of a ditch more or less a distance of 284 feet more or less to a point;
2) Northeasterly a distance of 197 feet more or less to a point;
3) Northerly 244 feet more or less to a point on a northerly line of said Lotter's land;

THENCE northerly on a line parallel with said west line of Transit Road a distance of 180.00 feet to a point;

THENCE westerly on a line parallel with the south line said Lot No. 57 a distance of 976.52 feet to the point;

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

THENCE southerly on a line forming an interior angle of 90°-00' a distance of 208.92 feet to the point;

THENCE westerly on a line parallel with the south line said Lot No. 57 a distance of 250 feet to the point of BEGINNING.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direct

TOWN OF AMHERST ENGINEERING DEPARTMENT
2021 MAR 19 P 2:58
RECEIVED
MAR 08 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM February 18, 2021

TO: Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Garrett Hacker, Erie County DPW Highways Division

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, TR-3 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10080 TRANSIT ROAD**. FORBES CAPRETTO HOMES, PETITIONER

TRAFFIC IMPACT STUDY:
Received February 10, 2021

REVIEW:

Do you agree with all statements made? YES, WITH CONDITION.

If you do not, briefly state why: _____

General comments relative to your agency interests: INTERNAL STREET NETWORK MUST BE CHANGED to DISCOURAGE CUT-THROUGH TRAFFIC (EG. ROUNDABOUT OR T-INTI

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

_____

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

Signature: _____ **Date:** 3/5/21

EK/ac
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_TIS_Transmittal_021821.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

RECEIVED
APR 08 2021
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM March 31, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10090 TRANSIT ROAD**. FORBES CAPRETTO HOMES C/O JEFFREY PALUMBO, PETITIONER.

REVISED APPLICATION AND ENVIRONMENTAL ASSESSMENT FORM
Received **March 31, 2021**

This rezoning application revises the zoning districts that were requested in a previous application received in April 2019 for the same property.

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: None @ This Time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) _____

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

Signature: _____ **Date:** 4/7/21

C. Schregel

EK/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Application_and_Environmental_Assessment_033121.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
APR 05 2021
TOWN OF AMHERST
PLANNING DEPT.

RECEIVED
MAR 31 2021
TOWN ATTORNEY

MEMORANDUM March 31, 2021

FROM

TO:

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
4/4/21 ✓ Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10090 TRANSIT ROAD**. FORBES CAPRETTO HOMES C/O JEFFREY PALUMBO, PETITIONER.

REVISED APPLICATION AND ENVIRONMENTAL ASSESSMENT FORM
Received **March 31, 2021**

This rezoning application revises the zoning districts that were requested in a previous application received in April 2019 for the same property.

REVIEW:

Do you agree with all statements made? yes, agree with all statements made.

If you do not, briefly state why: _____

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

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

Signature: _____ **Date:** 4/4/21

EK/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Application_and_Environmental_Assessment_033121.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

Town of Amherst Planning Department — Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
APR 01 2021
TOWN OF AMHERST
BUILDING DEPT

MEMORANDUM March 31, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District

RECEIVED
APR 05 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10090 TRANSIT ROAD**. FORBES CAPRETTO HOMES C/O JEFFREY PALUMBO, PETITIONER.

REVISED APPLICATION AND ENVIRONMENTAL ASSESSMENT FORM
Received **March 31, 2021**

This rezoning application revises the zoning districts that were requested in a previous application received in April 2019 for the same property.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: Floodplain & Federal Wetlands on Parcels

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) _____

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

Signature: Douglas Gesel **Date:** 4-5-21

EK/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Application_and_Environmental_Assessment_033121.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM March 31, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District

4/4/21 E: Ellen Kost
F: Dave Marrano
cc: L. Walter
cc: Eric

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10090 TRANSIT ROAD**. FORBES CAPRETTO HOMES C/O JEFFREY PALUMBO, PETITIONER.

REVISED APPLICATION AND ENVIRONMENTAL ASSESSMENT FORM
Received **March 31, 2021**

This rezoning application revises the zoning districts that were requested in a previous application received in April 2019 for the same property.

REVIEW:

Do you agree with a l statements made? Yes w/ Comment below

If you do not, briefly state why: Assessor has No Issue EXCEPT if Re-Zone allows Third Residential Units with Condominium Tax Status can be sold.

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) _____

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

Signature: _____ **Date:** 4/4/21

EK/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Application_and_Environmental_Assessment_033121.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM March 12, 2021

TO: Jeffrey Burroughs, Town Engineer
Vaishali Reberholt, PE, Stormwater Management Officer (Eng.)

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, TR-3 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10080 TRANSIT ROAD.** FORBES CAPRETTO HOMES, PETITIONER

HYDRAULIC SUMMARY REPORT/STORMWATER MANAGEMENT SYSTEM SUMMARY REPORT:
Received March 9, 2021

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

_____.

General comments relative to your agency interests: Provide pretreatment before retention pond & Equipment access to post-construction measures for long term maintenance.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

_____

_____.

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

Signature: _____ **Date:** 3/31/21

EK/ac
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_SWPPP_Transmittal_031221.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7165 | F: (716) 851-7168
www.dec.ny.gov

RECEIVED
MAY 28 2019
TOWN OF AMHERST
PLANNING DEPT.

May 23, 2019

Z-2019-06

Ms. Ellen Kost, Assistant Planning Director
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Dear Ms. Kost:

SEQR Lead Agency Designation
Ashley Green Mixed-Use Development
10060 & 10090 Transit Road
Town of Amherst, Erie County

This is to acknowledge receipt of your April 26, 2019 notice which requested State Environmental Quality Review Act (SEQR) Lead Agency status for the above-noted project. The Department concurs that the Town of Amherst should act as SEQR Lead Agency since the environmental impacts of the proposal are primarily of local significance. However, please be advised of the following:

1. This proposed project requires a sanitary sewer connection that is designed to convey 2,500 gallons/day or more of municipal sewage and is therefore considered a sanitary sewer extension. The Erie County Health Department (503 Kensington Avenue, Buffalo, New York 14214, telephone: 716/961-6800), which acts as our agent, will be the approving agency.

   A detailed Downstream Sewer Capacity Analysis must be performed and submitted for the proposed project as part of the Project's Engineering Report. Recent wet weather flow monitoring data and proposed new development flow should be analyzed relative to theoretical capacity at key nodes in the downstream sewer system and at pump stations (if any) to determine if capacity exists.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Recent wet weather system flow data can consist of:

- Comprehensive information from recent Sanitary Sewer System Evaluation Studies, or

- Wet weather data collected at (minimum of 3) key downstream nodes specified by the municipality.
    - This dated information can consist of instantaneous flow measurements, or continuous flow or sewer depth measurements obtained during significant wet weather events, preferably during high groundwater conditions. Peak sewer flow recording methods are an acceptable method to collect this information.
    - Depth or flow measurements should continue until a significant wet weather event occurs, but would not have to extend beyond three months. A significant wet weather event is considered to be a daily rainfall amount of ½" or greater.

The Downstream Sewer Capacity Analysis must also contain a narrative and a detailed map showing the downstream routing of sewers from the proposed project site to the Wastewater Treatment Plant. Line sizes, theoretical capacity, and pump stations must be identified and included in the analysis.

This Downstream Sewer Capacity Analysis, as well as any required infiltration and inflow (I/I) rehabilitation offset work at a 4:1 ratio, should be part of the Project's Engineering Report. These items must be received as part of a complete sanitary sewer extension plan submission. The Town of Amherst shall coordinate the information contained in this submission. If adequate capacity is not available, the sewer extension will not be approved until an acceptable remediation plan is developed.

As stated in the attached June 1, 2018 letter from this Department to both the Town of Amherst and ECSD#5, there are existing serious sewer capacity issues during peak storm flows in the sanitary sewers on Dodge and Transit Roads. There may be sanitary sewer capacity issues for large sewer extension projects planning to tie into these trunk sewers.

The above guidance will help in the preparation of a complete Sewer Extension submission, which will facilitate our review. If you have any questions or require additional information, please contact this Department's Division of Water (telephone: 716/851-7070), or the Erie County Health Department.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

2. Since project activities will involve land disturbance of 1 acre or more, the project sponsor, owner or operator is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002). This General Permit requires the project sponsor, owner or operator to control stormwater runoff according to a Stormwater Pollution Prevention Plan (SWPPP), which is to be prepared prior to filing a Notice of Intent (NOI) and prior to commencement of the project. More information on General Permit GP-0-15-002, as well as the NOI form, is available on the Department's website at www.dec.ny.gov/chemical/43133.html. Information on permitting requirements and preparation of a necessary Stormwater Pollution Prevention Plan (SWPPP) is available on the Department's website at www.dec.ny.gov/chemical/8468.html.

   The Town of Amherst is designated as an MS4 community. The project sponsor, owner or operator of a construction activity that is subject to the requirements of regulated, traditional land use control MS4 shall have their SWPPP reviewed and accepted by the MS4 community. The "MS4 SWPPP Acceptance" form must be signed by the principle executive officer or ranking elected official from the MS4 community, or by a duly authorized representative of that person, and submitted along with the NOI, to the Department at NOTICE OF INTENT, NYSDEC, Bureau of Water Permits, 625 Broadway,4th Floor, Albany, New York 12233-3505, telephone: 518/402-8111 to receive Department approval before construction commences.

3. Note that the United States Army Corps of Engineers (USACE) has authority under federal law to regulate waterbodies and wetlands. If the proposed project will impact the on-site tributary (Black Creek) or on-site federally regulated wetlands, the project sponsor should contact USACE (1776 Niagara Street, Buffalo, New York 14207, telephone: 716/879-4330) as early as possible in the planning process to determine if the project will require a USACE permit. Depending on federal permitting, a Water Quality Certification (WQC) may be required from this Department.

4. The project site includes 100-year floodplain based on the Federal Emergency Management Agency's (FEMA) Panel No. 3602260004D and Panel No. 3602260007E. It is recommended that the project be designed to comply with the relevant Town code pertaining to floodplains and floodways.

5. Please be aware that if asbestos exists in any building(s) to be demolished, the protection of workers is regulated by the New York State Department of Labor (716/847-7126) and Occupational Safety and Health Administration (OSHA)

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

716/684-3891. In addition, the disposal of friable (readily crumbled and brittle) asbestos is regulated by this Department under 6 NYCRR Part 360-2.17(p). For more information on the disposal of friable asbestos, please contact Mr. Peter Grasso (716/851-7220) at this Department.

The presence of elemental mercury and/or lead in any building(s) being demolished is also a concern of the Department. Mercury is found in many different common items such as fluorescent lights and electrical switches, while lead is mainly found in older paints (pre-1980). For guidance on the proper handling and disposal of mercury and/or lead, please contact our Region 9 Division of Environmental Remediation at 716/851-7220 or visit the Department's Mercury webpage at http://www.dec.ny.gov/chemical/285.html.

If you have any questions, please feel free to contact me or Michelle Woznick at 716/851-7165.

Sincerely,

David S. Denk
Regional Permit Administrator

Enclosure

MRW; ml

ecc: Mr. Jeffrey Palumbo, Barclay Damon LLP
Mr. Richard Rink, NYSDEC Division of Water
Ms. Molly De Tine, NYSDEC Division of Water
Ms. Rebecca Wightman, Erie County Department of Health
Mr. Jeffrey Burroughs, Town of Amherst

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

April 29, 2019

Forbes Capretto Homes
c/o Barclay Damon LLP
9276 Main Street, Suite 3
Clarence, NY 14031

SUBJECT:	Comprehensive Plan Amendment:	**BCPA-2019-01**
	Rezoning Application Review:	**Z-2019-06**
	Proposed:	Mixed-Use Development
	Property located at:	**10060 & 10090 Transit Road**
	Application received:	April 17, 2019
	Representative:	Barclay Damon LLP

Dear Sir/Madam:

Please correct or complete the following items on the Full Environmental Assessment Form submitted with the application:

- Item D.2.e.iv: Please complete.
- Item D.2.j.ii & iii: Please complete.
- Item D.2.q: Indicate if pesticides will be used after construction for lawn maintenance.
- Item E.1.b: The change for lawns and landscaping should show as an increase of 13.5 acres.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DH/EK/ac
X:\Current_Planning\Files\Bicentennail Comp Plan Amends\BCPA-2019-01 (10060_&_10090_Transit)\Planning Review_4.29.19.doc

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Water, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7070 | F: (716) 851-7009
www.dec.ny.gov

June 1, 2018

Jeffrey Burroughs, P.E.
Town Engineer
1100 N. Forest Road
Amherst, New York 14221

Matt Salah, P.E.
Coordinator Sewer Construction Projects
Erie County Division of Sewage Management
95 Franklin Street
Buffalo, New York 14202

Dear Mr. Burroughs and Mr. Salah:

Sewer Extension Development
Tributary to Dodge Road Sewer
Town of Amherst and E.C.S.D. #5

On May 23, 2018 we received the downstream sewer capacity assessment (DSCA) for the proposed Fox Creek Phase III Development, located at 9540 Transit Road in Town of Amherst, NY. Although this project is in Erie County Sewer District #5 (ECSD#5), it is proposed to be sewered via all Town of Amherst (TOA) sewers. The flow monitoring for this project captured a 1.33 in. rain event on 4/16/18. On the previous two days, the rain totaled 0.82 in.

The installed flow meter on Dodge Road (Node 3 for this project) showed a peak surcharge condition of 91.75 inches. The surcharge condition above the 24" pipe was 67.75 in. or 5.67 ft. above the top of the pipe in the MH on Dodge Road. A similar surcharge condition was metered in the 8" pipe on Thornbury Drive (Node 2), just upstream of the Dodge Road location. After discussions with the consultants for the Fox Creek Project, and the company that provided the metering service, they affirmed their belief that the information provided was accurate and that the surcharge condition did exist at that approximate level.

This is a considerable surcharge condition that suggests significant I/I and the potential for overflows and basement backups. A better understanding of the peak wastewater flows in the Dodge Road Sewer is needed. After appropriate consideration, the Department has

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

determined that the Fox Creek Project, as well as other projects received for review prior to June 1, 2018, may move forward to gain necessary sewer extension approvals, provided that Erie County DSM and the TOA agree to perform additional flow monitoring and I/I identification and elimination as outlined below.

ECSD#5:

- Must install a flow meter at Dodge Road and Transit Road that accurately meters and records flows through the metering MH including the accurate recording of surcharges on at least a daily basis.

- Must agree to immediately initiate performing SSES/**Inflow** Investigative Work in ECSD#5 along with performing the necessary remediation identified by the investigative work.

Town of Amherst:

- Must also install metering on a temporary basis on Dodge Road for at least one year. This flowmeter must also accurately record surcharges on at least a daily basis.

- Must develop a long-term plan for conveying and/or reducing flow from this area to prevent surcharges, basement backups and potential overflows.

Please note that sewer extension projects received after June 1, 2018 in the area tributary to the Dodge Road Sewer may be reviewed but will not be considered for approval until the above flow monitoring is in place and programs are actively undertaken to identify and eliminate inflow sources in the areas tributary to the Dodge Road Sewer. A summary of the peak metering data along with a summary of the inflow investigative and remedial work must be submitted to the Department twice a year [June, December] by both the TOA and ECSD#5 for development to continue in this area.

If you have any questions regarding this letter or wish to meet to discuss it, please contact me.

Sincerely,

Richard A. Rink

Richard A. Rink, P.E.
Environmental Engineer 2

RAR/tml
cc: Mr. Jeffrey Konsella, NYSDEC, Regional Water Engineer
Ms. Rebecca Whiteman, ECHD
Ms. Jennifer Delaney, ECHD

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Marshall, Scott

BCPH -2019-01

From: Rutkowski, Edward (DOT) <Edward.Rutkowski@dot.ny.gov>
Sent: Friday, May 24, 2019 10:52 AM
To: Kost, Ellen
Cc: Marshall, Scott; Palumbo, Jeffery D.
Subject: RE: 10060 & 10090 Transit Rd, Proposed Amendment to Comp Plan ~ Residential, Office an Commercial Uses, Town of Amherst
Attachments: 10060-10090 Transit Rd.pdf

Ellen,

I have some additional comments on this project; although not necessarily an issue relative to approving the Amendment to the Comprehensive Plan, but NYSDOT will allow only one curb cut/roadway to service this site and it should be located opposite Lapp Road. Also, the Concept Plan shows parking spaces on Transit Road, partially within th Right-of-Way and it appears that access to these spaces would be directly from Transit Road. If that is the intent, NYSDOT would not permit parking with direct access from Transit Road and the parking spaces should be located entirely within the applicant's property. If the Amendment is approved, the Site Plans would need to be designed to reflect these comments.

If you have any questions, please feel free to contact me either by phone or email.

Sincerely,
Ed

From: Rutkowski, Edward (DOT)
Sent: Thursday, May 23, 2019 4:41 PM
To: Kost, Ellen <EKost@amherst.ny.us>
Cc: Marshall, Scott <SMarshall@amherst.ny.us>; Palumbo, Jeffery D. <jpalumbo@barclaydamon.com>
Subject: 10060 & 10090 Transit Rd, Proposed Amendment to Comp Plan ~ Residential, Office and Commercial Uses, Town of Amherst

Ellen,

New York State Department of Transportation (NYSDOT) reviewed the information submitted for the subject project an has the following comment:

- The EAF states that the action will not result in a substantial increase in traffic. Based on the proposed uses shown on the Concept Plan, the additional traffic generated by the proposed development may have a significant impact to traffic on the State Highway System and a Traffic Impact Study should be prepared for our review.

If you have any questions, please contact me either by email or phone.

Sincerely,
Ed Rutkowski

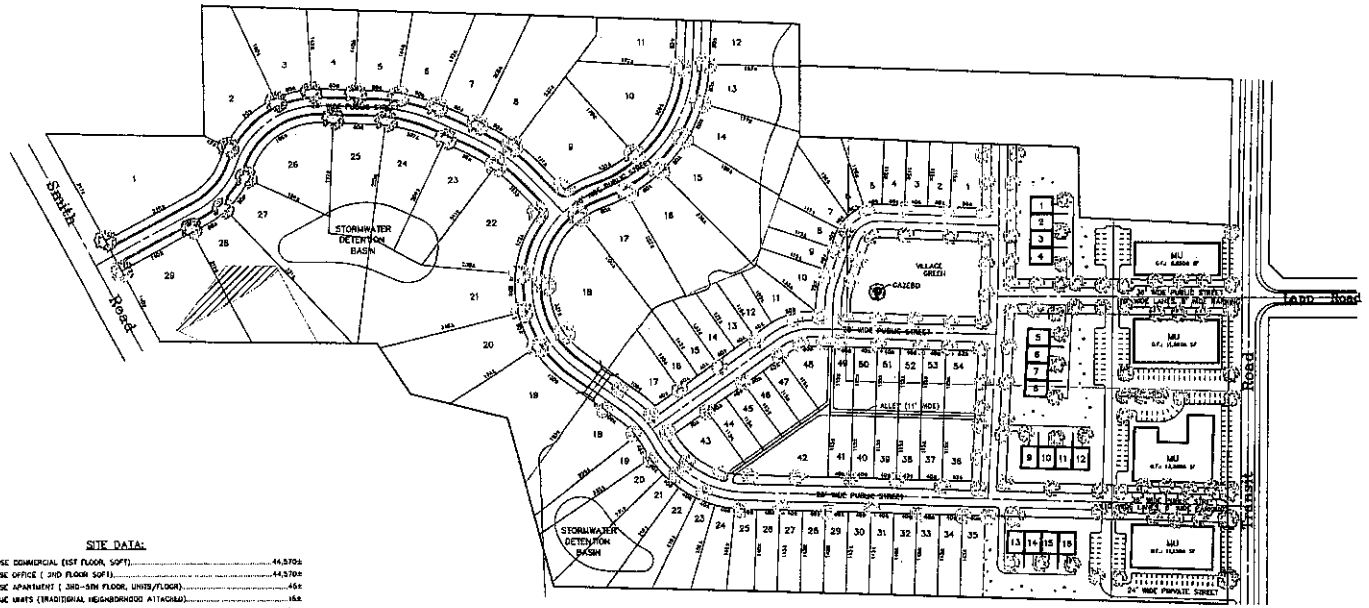
Edward S. Rutkowski, P. E.
SEQR/Site Plan Review Coordinator

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

NYSDOT - Region 5
100 Seneca Street
Buffalo, New York 14203
716-847-3575

NEW YORK STATE OF OPPORTUNITY | Department of Transportation

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)



SITE DATA:

MIXED USE COMMERCIAL (1ST FLOOR, SQFT)	44,570±
MIXED USE OFFICE (2ND FLOOR SQFT)	44,570±
MIXED USE APARTMENT (3RD-5TH FLOOR, UNITS/FLOOR)	45±
TOWNHOUSE UNITS (TRADITIONAL NEIGHBORHOOD ATTACHED)	15±
SINGLE FAMILY (TRADITIONAL NEIGHBORHOOD DETACHED)	54±
SINGLE FAMILY (R2)	29±
REQUIRED PARKING	0 MINIMUM
PROVIDED PARKING (ON-STREET, TRANSIT ROAD)	42±
PROVIDED PARKING (ON-STREET, NEIGHBORHOOD)	32±
PROVIDED PARKING (MU, REAR)	117±
PROVIDED PARKING (TOTAL)	191±

RECEIVED
APR 17 2019
TOWN OF AMHERST
PLANNING DEPT.

Community Design & Development

Town of Amherst
ERIE COUNTY, NEW YORK

Ashley Green
10060 & 10090 Transit Road, Amherst
ERIE COUNTY, NEW YORK STATE

CONCEPT PLAN

1 of 1

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

RECEIVED
MAY 24 2019
TOWN OF AMHERST
PLANNING DEPT.

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

May 22, 2019

Ellen M. Kost
Assistant Planning Director
Town of Amherst
5583 Main Street
Amherst, NY 14221

Re: **Rezoning for Subdivision – Lead Agency**

Location: **10060 & 10090 Transit Road**
Review No.: **ZR-19-279**

Dear Ms. Kost:

The County of Erie (the "County") has reviewed the above-referenced project (the "Project") referred to us by the Town o Amherst on April 26, 2019. The County offers the following comments based upon its review of the Project:

- The entire project site was included into Agricultural District 17 – Amherst during the 2016 Agricultural District Ope Enrollment period. Please amend the long form EAF to note this (section E.3.).
- Although the property is not currently in agricultural use, an agricultural data statement must be provided whe proposing subdivisions on property located within agricultural districts or within 500 feet of an active farmin operation within an agricultural district. In this case both are true. Copies of the agricultural data statement must b forwarded to the owners of identified farms, as well as the County Planning Division.
- Agricultural District 17 – Amherst is up for review in April 2023. At that time the Town or the property owner ca petition for the removal of these parcels.
- Erie County DEP has no issue with the Town of Amherst serving as Lead Agency in this matter.

This review pertains to the above-referenced municipal ordinance submitted to the Erie County Department of Environment an Planning. This letter should not be considered sufficient for any county approvals. The Town and/or developer must still obtai any other permits and regulatory approvals applicable to this Project.

Sincerely,

Elias Reden
Planner

Erie County | Environment & Planning
95 Franklin St., 1007 | Buffalo, NY 14202
P:(716) 858-1911 | F:(716) 858-7248

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM May 13, 2021

RECEIVED
MAY 19 2021
TOWN OF AMHERST
PLANNING DEPT.

TO: Daniel Ulatowski, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Francina Spoth, Town Clerk

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10080 TRANSIT ROAD**. FORBES CAPRETTO HOMES, PETITIONER.

REVISED SURVEY & LEGAL DESCRIPTION:
Received May 13, 2021

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: none at this time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Douglas Gesel **Date:** 5/18/21

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Transmittal_051321.doc
cc: Scott A. Marshall, Principal Planner
Jeff Palumbo, Barclay Damon, 9276 Main St., Suite 3, Clarence, NY 14031
Ken Zollitsch, Greenman-Pedersen, Inc., 4950 Genesee St., Suite 100, Buffalo, NY 14225

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM May 13, 2021

TO: Daniel Ulatowski, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Francina Spoth, Town Clerk

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06;** PROPERTY LOCATED **10060 & 10080 TRANSIT ROAD.** FORBES CAPRETTO HOMES, PETITIONER.

REVISED SURVEY & LEGAL DESCRIPTION:
Received May 13, 2021

REVIEW:

Do you agree with all statements made? SURVEY & LEGAL DESCRIPTIONS.

If you do not, briefly state why: CORRECTED AS REQUESTED

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 5/24/2021

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Transmittal_051321.doc

cc: Scott A. Marshall, Principal Planner
Jeff Palumbo, Barclay Damon, 9276 Main St., Suite 3, Clarence, NY 14031
Ken Zollitsch, Greenman-Pedersen, Inc., 4950 Genesee St., Suite 100, Buffalo, NY 14225

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM March 31, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10090 TRANSIT ROAD**. FORBES CAPRETTO HOMES, PETITIONER.

REVISED APPLICATION AND ENVIRONMENTAL ASSESSMENT FORM
Received **March 31, 2021**

This rezoning application revises the zoning districts that were requested in a previous application received in April 2019 for the same property.

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: Petitioner must correct the attached rezoning map exhibit to be consistent with his/her rezoning request.

General comments relative to your agency interests: Any rezoning approval should be conditioned on the protection of the existing forest community and the maintenance of the creek in its natural state.

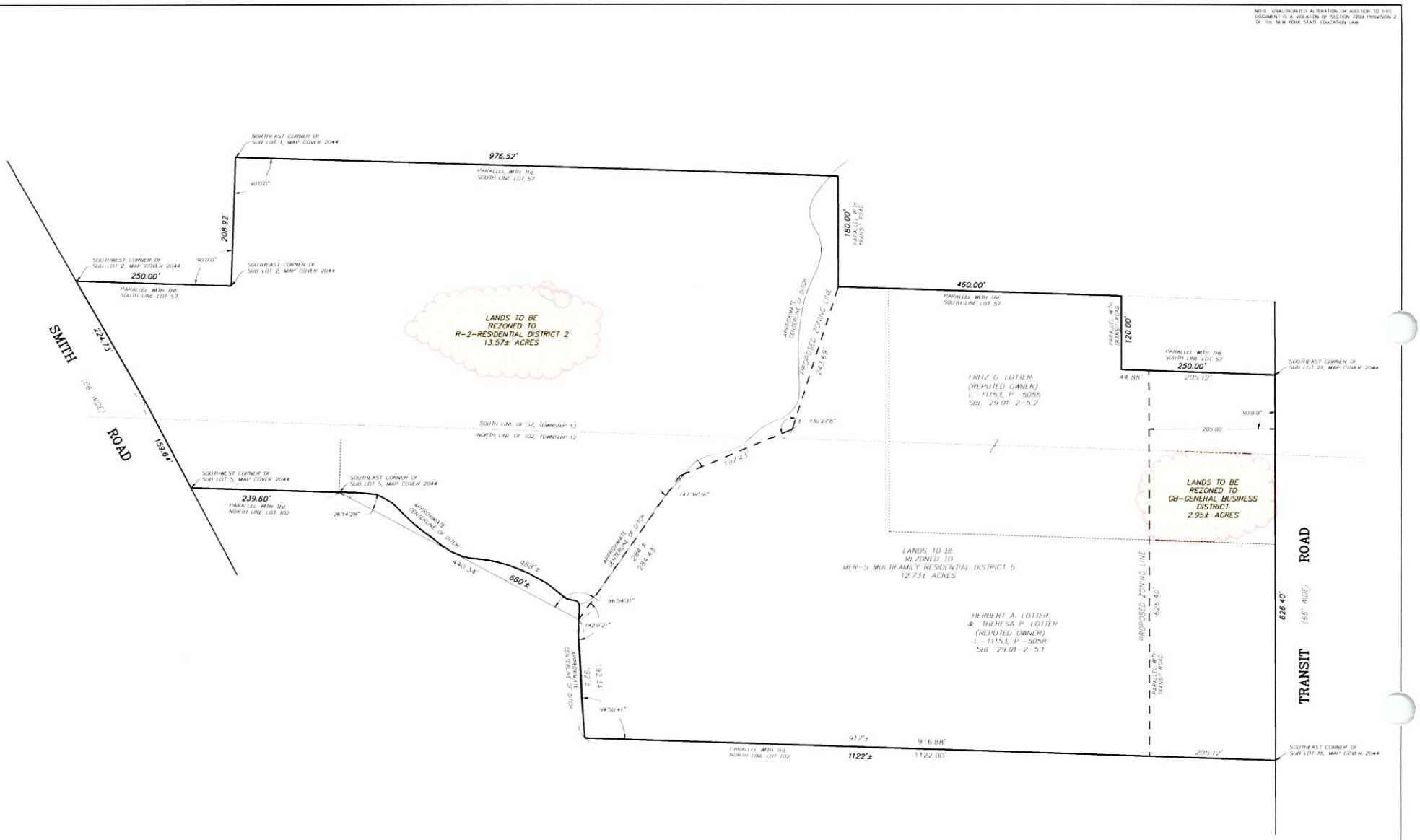
If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) _____

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

Signature: _____ **Date:** 05/11/2021

EK/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Application_and_Environmental_Assessment_033121.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)



REFERENCES:

1) BOUNDARY SURVEY PREPARED BY BISSELL STONE ASSOCIATES ENGINEERING AND LAND SURVEYING P.C. JOB NO. 55124-1, DATED MAY 6, 2008 LAST REVISED MAY 21, 2008.

2) BOUNDARY SURVEY PREPARED BY BISSELL STONE ASSOCIATES ENGINEERING AND LAND SURVEYING P.C. JOB NO. 55124-2, DATED MAY 6, 2008 LAST REVISED MAY 21, 2008.

3) SUBDIVISION MAP COVER 2044

RE-ZONING MAP
PART OF LOT 57, TOWNSHIP 13, RANGE 7
AND PART OF LOT 102, TOWNSHIP 12, RANGE 7
HOLLAND LAND COMPANY
TOWN OF AMHERST, ERIE COUNTY, NEW YORK

GPI ENGINEERING, LANDSCAPE ARCHITECTURE SURVEYING, LLP
ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE
4950 GENESEE STREET, SUITE 100
BUFFALO, NEW YORK 14225
(716) 633-4844 FAX 633-4940

Job No. 7485 Date: APRIL 12, 2019
Scale: 1" = 100' Tax No. 29.01-3-5.1 & 5.2

DATE	REVISION/TYPE

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM February 18, 2021

TO: Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Garrett Hacker, Erie County DPW Highways Division

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, TR-3 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10080 TRANSIT ROAD**. FORBES CAPRETTO HOMES, PETITIONER

TRAFFIC IMPACT STUDY:
Received February 10, 2021

REVIEW:

Do you agree with all statements made?
Yes. We have no traffic related comments to the TIS as presented.

If you do not, briefly state why: _____

General comments relative to your agency interests: We have no comments regarding this TIS as presented. However, if NYSDOT does not approve both access drives on Transit Road, we will need to see a revised TIS before we can give approval.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

_____

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

Signature: _____ **Date:** 4/21/21
ECDPW

EK/ac
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_TIS_Transmittal_021821.doc
cc: Scott A. Marshall, Principal Planner

RECEIVED
APR 21 2021
TOWN OF AMHERST
PLANNING DEPT.

5583 Main Street • Williamsville • New York • 14221 • (716) 631-7051 • Fax (716) 631-7153

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

TOWN OF AMHERST

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

DATE: April 20, 2021

TO: Ellen M. Kost, AICP – Assistant Planning Director

From: Brian J. Armstrong, EIT – Assistant Municipal Engineer

SUBJECT: Ashley Green Subdivision Request to Rezone 29.21 Acres of Land from SA & MS to CTR-2.5, MFR-5 & R-3, Z-2019-06
Town of Amherst Project No. 840127A

ADDRESS: 10060 & 10090 Transit Road

PETITIONER: Forbes Capretto Homes

Do you agree with all statements made: Yes

If you do not, briefly state why: N/A

General Comments relative to your agency interests: The petitioner's stormwater analysis and hydraulics report is very thorough and well-presented, clearly indicating that the proposed development-related improvements will have no significant impact on the Ransom Creek and Black Creek floodplains as per Town standards for floodplain developments. Upon subsequent development submissions for this development, the petitioner will however be required to expand the hydraulics modeling report to indicate similar analysis for Town Ditch 26D1 from a point 2,000 feet upstream of the Transit Road culvert, through the proposed development and downstream to its confluence with Black Creek. Assuming similar results, this ana ysis will then fully confirm that the proposed development will have no significant impacts on the entire watershed surrounding this development.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc. N/A

Signature: _____ **Date:** 4/20/21

RECEIVED
APR 20 2021
TOWN OF AMHERST
PLANNING DEPT.

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
Williamsville Central School District
APR 07 2021
Asst Superintendent for
Finance & Management Services

MEMORANDUM March 31, 2021

RECEIVED
APR 14 2021
TOWN OF AMHERST
PLANNING DEPT.

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10090 TRANSIT ROAD**. FORBES CAPRETTO HOMES C/O JEFFREY PALUMBO, PETITIONER.

REVISED APPLICATION AND ENVIRONMENTAL ASSESSMENT FORM
Received **March 31, 2021**

This rezoning application revises the zoning districts that were requested in a previous application received in April 2019 for the same property.

REVIEW:

Do you agree with all statements made? No comments at this time.

If you do not, briefly state why: _____

General comments relative to your agency interests: _____

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) _____

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

Signature: _____ **Date:** 4/9/21

EK/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Application_and_Environmental_Assessment_033121.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Amherst

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

RECEIVED
APR 09 2021
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Directo

MEMORANDUM March 31, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
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Edward Rutkowski, SEQR Review Coordinator, NYSDOT
Williamsville School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: REQUEST TO REZONE 29.21± ACRES OF LAND FROM **SA & MS TO CTR-2.5, MFR-5 & R-3, Z-2019-06**; PROPERTY LOCATED **10060 & 10090 TRANSIT ROAD**. FORBES CAPRETTO HOMES C/O JEFFREY PALUMBO, PETITIONER.

REVISED APPLICATION AND ENVIRONMENTAL ASSESSMENT FORM
Received **March 31, 2021**

This rezoning application revises the zoning districts that were requested in a previous application received in April 2019 for the same property.

REVIEW:

Do you agree with all statements made? N/A

If you do not, briefly state why: N/A

General comments relative to your agency interests: None at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) _____

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

Signature: /s/ Stanley Sliwa **Date:** 4/8/21

EK/bf
X:\Current_Planning\Files\Rezonings\2019\Z-2019-06_(10060_&_10090_Transit_Rd)_2019\Z-2019-06_Rev_Application_and_Environmental_Assessment_033121.doc
cc: Scott A. Marshall, Principal Planner

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Z-2019-06
10060-1009
Transc

COMMUNICATION 2021-69
COMPLETED DOC ID: 23369

Daumen - Opposition to Forbes/Capretto Project

Email from Francis and Colleen Daumen voicing their concerns with respect to the Forbes/Capretto project planned on the parcel at 10600 Transit Road.

6/21/2021
Referred to Planning.

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

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Cooper, Kathy

Subject: FW: Forbes/ capretto project @10060 Transit Road

From: Colleen daumen <
Date: 6/6/21 8:56 PM (GMT-05:00)
To: "Kulpa, Brian J." <bkulpa@amherst.ny.us>, "Berger, Jacqualine" <jberger@amherst.ny.us>, "Bucki, Debbie" <dbucki@amherst.ny.us>, "Lavin, Shawn A." <slavin@amherst.ny.us>, "Szukala, Michael" <mszukala@amherst.ny.us>, "Lucey, Patrick G." <plucey@amherst.ny.us>
Subject: Forbes/ capretto project @10060 Transit Road

Attention:
Brian Kulpa
J Berger
D. Bucki
S. Lavin
M. Szukala
Forbes/ Capretto Homes

We are writing this letter to inform the Town of Amherst Supervisor, Town Board, Town planning board as well as Forbes Capretto
Builders that they will be held responsible for any and all traffic accidents, pedestrian injuries, basement and sewage backups that may occur as a result of them moving forward on an ill thought out and self serving project planned on parcel at 10060 Transit Road. The 1200+ families of Ransom Oaks's have seen numerous accidents as well as a pedestrian death on Smith road ...specifically Smith and Glen oak drive.. The current heavy traffic on the 2 lane Smith and Transit Roads will only worsen the congestion and potential incidents. Entrances on Transit and Smith as well as a planned intrusion from our development on Ruby lane will further endanger our community.
Moving on to the next concern, we have also had yard , basement and road flooding as well as sewage back up due to the already overwhelmed system. This has been exacerbated since the Dockside community was wedged into a shrinking available town land space. It is my understanding from the sewage plant that some codes may not have been followed there!
The Swormville fire Department is unable to service more than a 3 story structure as well due to the fact they have no appropriate ladder truck.
To conclude..
This is an election year and when the candidates speak of being there for Amherst residents, let's hope their actions meet their words. Our residents are prepared to sign petitions and rally if needed to stop the project. There is plenty of open land in other towns of Erie County. Please stop this over development.
Francis and Colleen Daumen

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

RECEIVED
MAY 10 2021
TOWN OF AMHERST
PLANNING DEPT.

Francis X. Daumen
418 Glen Oak Dr., East Amherst, NY 14051

Francis X. Daumen
Securities Registered Principal
Financial Advisor

Telephone: 716-689-4761
Fax: 716-689-4761
Cell: 716-983-5494
fdaumen@ae.cadaretgrant.com

May 5, 2021

Amherst Planning Board

5583 Main Street

Williamsville NY 14221

Dear Sir:

In response to your recent latter egarding the rezone and building plan for 10060 and 10090 Transit Road, I am sending you a list of questions and concerns for this project. As a side note, must every square inch of Amherst be built upon?

Question and concerns:

1. Flooding from the creek that runs from Transit behind Ransom Oaks and eventually along Smith Road through the golf course. It is constantly choked with weeds that you should clean annually. It is a major source of flooding and adding many new properties will only make the problem worse.
2. I was told by the head of the sewage treatment plant that there is a major issue with pumping new, large amounts of waste along Smith to the lift pump found on the corner of Smith and New. New increased volume would not be able to be handled. He also mentioned that the large Dockside development never completed the sewer line to handle their waste as promised and they have constant issues.
3. The traffic at Smith and Transit is a huge problem today. In the morning traffic is backed up several signal changes. There have been numerous accidents at that corner. Adding multiple homes would change a problem into a nightmare.
4. Has the core of engineers done a sewage study along with a water/ground study yet? Has anyone done a traffic assessment?

It is impossible to believe that the Planning Board cannot see the many problems this proposed plan brings to East Amherst.

Sincerely yours,

Francis X. Daumen

Securities are offered through Cadaret Grant & Co., Inc. member FINRA/SIPC
One Lincoln Center, Syracuse, NY 13202 315-471-2191
Francis X. Daumen and Cadaret Grant & Co., Inc. are separate entities

Attachment: Z-2019-06 Town Board letter Transit 2 080921 (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

RANSOM OAKS

Ransom Oaks Community Corporation 101 Ransom Oaks Drive East Amherst, NY 14051

Town of Amherst Town Board
Municipal Building (Town Hall)
5583 Main Street
Williamsville, NY 14221

August 6, 2021

Re: Forbes Capretto Rezoning Proposal

Dear Chairman Kulpa and Members of the Town Board:

We are writing to you on behalf of the Ransom Oaks Community Corporation (the "**Community**") located in the Town of Amherst (the "**Town**"). As you know, the Community consists of 1,130 residences, and is adjacent to the proposed Forbes Capretto Homes ("**Forbes Capretto**" or "**Applicant**") rezoning/redevelopment project site at 10060 and 10090 Transit Road, East Amherst, NY, 14051 ("**Rezoning Site**"). As you are aware, the Applicant has proposed to rezone certain property within the Town to construct a mixed-use commercial and residential development. The Community adamantly urges the Town to reject this proposal.

The Community has reviewed the rezoning request, which we understand consists of a proposal to: rezone 29.21 acres from S-A (Suburban Agricultural) and MS (Motor Service District) to R-3 (Residential District Three, 13.57 acres), MFR-5 (Multifamily Residential District Five, 12.73 acres, and CTR-2.5 (Retrofit Zoning District 2.95 acres), all for the currently-stated purpose of constructing a "mixed use commercial/ residential with [a] variety of attached/detached multi and single family housing" development (collectively, the "**Project**"). The Project would result in 120 new dwelling units (52 single family and 68 multifamily).[1]

First and foremost, we appreciate your time in reviewing and your consideration of the issues raised in this letter.

[1] We respectfully note that the Project application materials reviewed by the Planning Board contained a number of outdated documents and references, which make it unclear whether the Applicant is proposing 120 units or as many as 150.

Attachment: Ransom Oaks Opposition Letter (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Based on a review of: (i) documentation submitted by the Applicant to the Town Planning Board, including information presented at public hearings; (ii) materials provided by the Applicant to the Community's representatives; and (iii) relevant provisions of the Zoning Ordinance of the Town ("**Zoning Code**") and the Town's Bicentennial Comprehensive Plan, amended December 14, 2020 ("**Comprehensive Plan**"), the Community feels very strongly that an approval by the Town allowing the Applicant to continue forward with the Project would be devastating to the Community and its residents, both immediately and in the long-term. The Community's reasoning is set forth below.

I. The Proposed Project is Inconsistent with the Comprehensive Plan

Through its submissions, the Applicant asserts that the Project is consistent with the Comprehensive Plan. However, the documents submitted by the Applicant offer very little in terms of details, and instead rely on generalized statements and conclusory language in an attempt to establish this purported consistency.

For instance, the rezoning documentation submitted by the Applicant states that the Comprehensive Plan encourages (at the Rezoning Site) "compatible mixed and commercial uses, which the proposed project provides." However, the rezoning submission to the Planning Board seems to rely on an outdated version of the Comprehensive Plan's Conceptual Land Use Plan ("**Land Use Plan**"). The Applicant sites to the Town's 2018 version of the Comprehensive Plan and to the March 2009 version of the Land Use Plan (see Exhibits A and B of Applicant's Planning Board submission). As discussed further below, the vast majority of the Rezoning Site appears to be designated as single-family residential (and open/green space), and not mixed-use, as asserted in the rezoning application. The current Comprehensive Plan contains an updated Land Use Plan dated December 2020, and *the Applicant should not be able to rely on an inapplicable/outdated version of the Comprehensive Plan in attempting to establish the Project's consistency with the same.*

There are two key reasons why the Project is, in fact, inconsistent with the current Comprehensive Plan, and as such, should be rejected by the Town:

1) The Project calls for multi-family residential and commercial development in an area identified primarily for single-family residential development (see Comprehensive Plan Figure 6, Land Use Plan).

Attachment: Ransom Oaks Opposition Letter (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

Contrary to the Applicant's assertions, the Rezoning Site is mostly within the single-family residential area on the Land Use Plan, with smaller portions of the Rezoning Site being within areas designated as (a) recreation, open space & greenways and (b) commercial/mixed use. The Community notes that the Applicant's submissions do not appear to identify any specific proposed recreation, open space or greenway areas or plans. Even more, the Comprehensive Plan recommends that "new infill development" in single-family residential areas should be "consistent with the established character of surrounding/connected neighborhoods." In this case, the Project is not consistent with the established (primarily) single-family residential nature of the Community, as it proposes both multi-family residential and commercial development. In fact, the Comprehensive Plan states (referring to an area slightly south of the Project):

> As an example, to the north of North French Road there exists a large area of large, deep frontage lots that reflects a rural development pattern. While this area is zoned for single-family development at higher densities, the pattern of land parcels does not lend itself to land assembly and efficient subdivision development. Therefore, in spite of the suburban zoning and the availability of utilities and public facilities, the area designated for single-family use north of North French Road should strive to retain much of its low-density rural pattern and character, avoiding long uninterrupted strips of housing.

While the lot referred to in the Comprehensive Plan is not the same as the Rezoning Site, the directive of the Comprehensive Plan remains the same - land development must reflect sensible, low-density, single-family residential development. The Project, by contrast, proposes a majority of multifamily units, and only 2 acres of open space.

> 2) The Project would disrupt the "neighborhood fabric and quality of life" by allowing undesired commercial intrusion into an area designated as single-family residential (see Comprehensive Plan section 3.3.1).

The rezoning documentation provides no discussion as to what types of commercial uses may accompany the Project, which understandably makes the Community apprehensive about a blanket approval for the desired rezoning. This is especially true because the CTR 2.5 district "is intended to provide for a variety of retail, service and commercial uses, as well as multi-family residences or offices."

Attachment: Ransom Oaks Opposition Letter (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

If the Project is approved, the Community believes it is important to point out each of the non-residential uses that are permitted by right in the CTR 2.5 district, thus, having the potential to be constructed as part of the Proposed Project[2]: (1) ambulance service; (2) business college, commercial school; (3) college, university; (4) day care*; (5) passenger station; (6) place of worship; (7) public utility service structure or facility*; (8) school, elementary/secondary; (9) utility, minor; (10) animal care*; (11) drive-through facility*; (12) lodging; (13) medical; (14) office; (15) personal service; (16) recreation, indoor; (17) restaurant; (18) restaurant with outdoor dining*; (19) retail sales and service; (20) vehicle sales, indoor; and (21) all uses and structures customarily incidental to a principal use.

Suffice it to say, approval of the Project opens the door to many potential uses that are not compatible with the character of the Community or surrounding areas. Even if the Applicant has no intention to develop any of the above commercial uses at the Rezoning Site, a future owner of the subject parcels could decide to establish one or more of these uses. At a minimum, the Town should, as a practice, consider rejecting rezoning petitions that do not clearly limit the types of commercial establishments that are proposed to be developed in largely residential areas.

Further, the development schedule provided for the Project suggests that development will span over four years. The fact that the rezoning of the Rezoning Site results in four years' worth of development activity immediately abutting residential neighborhoods is further evidence that the rezoning will impact the adjacent communities.

II. The Proposed Project is Not Consistent with the Intent and Objectives of the Zoning Code

Sections 1-2-1 and 1-2-2 of the Zoning Code set forth the purposes and objectives of the same in order to clearly identify the priorities of the Town as it pertains to land development and public health and safety, including the convenience, comfort, prosperity, and general welfare of its citizens. Although the Applicant asserts that the Proposed Project is consistent with the Zoning Code's intent and objectives, the Community quickly identified several objectives incompatible with the Proposed Project that should result in the Town rejecting the rezoning petition.

[2] A "*" denotes those uses which are permitted but subject to supplemental use standards.

Attachment: Ransom Oaks Opposition Letter (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

The following Zoning Code objectives (under section 1-2-2) are not supported by the Proposed Project:

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

  Without outright rejecting or conditioning any potential approval of the Proposed Project, the rezoning will not ensure orderly and beneficial development nor will it protect the single-family residential values or character of the Community.

- Subsections C and D - "To prevent overcrowding of the land" and "To prevent excessive concentration of population and to prevent sparse and uncoordinated development"

  The Applicant is proposing to construct a mixed-use development that will likely consist of multi-family residential and commercial establishments in an area that is well established and designated primarily as single-family residential. The Proposed Project could very easily lead to overcrowding of the Community given the close proximity between the two, and due to the proposed connecting roads.

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

  As discussed further below, the Proposed Project will create more street congestion and more instances of automobile/pedestrian interactions, thus, leading to streets that are less safe and less attractive to future potential Community residents.

- Subsection K - "To guide the future development of the town so as to bring about the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan"

Attachment: Ransom Oaks Opposition Letter (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

As discussed in detail above, the Proposed Project is not consistent with the policies of the Comprehensive Plan. For example, the Center 2.5 District "is intended to provide for a variety of retail, service and commercial uses, as well as multi-family residences or offices."

III. The Proposed Project Creates Traffic and Safety Issues

The Proposed Project intends to establish a new road that would connect directly from Transit Road, a high-traffic State Route, to Ruby Lane, a local road within the Community. This development would bring higher levels of traffic in an otherwise quiet and low-traffic, residential street, increasing the likelihood of dangerous pedestrian-automobile interactions. If approved, the Proposed Project would connect commercial establishments and multi-family residential homes to streets that have enjoyed the single-family residential nature of the community. As the new development would necessarily increase traffic flow through a residential street, Community residents would be faced with: (a) busier and noisier streets with higher levels of traffic originating from outside of the Community; and (b) streets that are undoubtedly more dangerous to children and other pedestrians.

IV. The Proposed Project Presents a Stormwater and Flooding Hazard

According to a Stormwater Management System Summary Report dated February 2021 and prepared by Greenman-Pederson, Inc. ("**Stormwater Report**"), the Project would increase impervious surface coverage of the Rezoning Site from 1.4% to 41.2%, a 29-fold increase. The Rezoning Site consists of wetlands, which act as a natural drainage area for rainwater, including from surface water runoff. However, if developed, detention ponds would need to be constructed (3 of them, according to the Stormwater Report) in order to collect and detain stormwater runoff generated from the Project. Even so, the Community (and Erie County in general) recently received near-record amounts of rainwater over the last month, and Community residents have reported valid concerns regarding any new development's impact on potential flooding issues.

Conclusion

In sum, the proposed Project would be a detriment to the Community, which is a long-established planned neighborhood of primarily single-family homes, and also patio homes, condos and town homes. Our Community markets itself as a peaceful, friendly, and private residential community ideal for relaxation and recreation for families,

Attachment: Ransom Oaks Opposition Letter (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

children and adults. The Community feels very strongly that the proposed redevelopment is premature and, if rushed through, will have lasting impacts on these important qualities, including negative impacts to aesthetics, property values, and residents' quality of life they currently enjoy as part of the Community.

Accordingly, we urge the Town to deny the rezoning petition as proposed in order to avoid potentially costly and long lasting harmful impacts to the Community.

Sincerely,

Christopher Bogdan
President, Ransom Oaks Community Corporation

Attachment: Ransom Oaks Opposition Letter (RES-2021-678 : 10060 & 10090 Transit Road Rezoning)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 23526 **RESOLUTION 2021-679** **ADOPTED**

6842 & 6846 Main Street (Portions) Rezoning

Adoption of Local Law to Amend the Zoning Map
(Portions of 6842 & 6846 Main Street, Z-2021-05)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of June 24, 2021 that the proposed Deep Corridor 5 District (DC-5) zoning at portions of 6842 & 6846 Main Street is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed zoning is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

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

1. That the maximum allowed building height on the portion of the subject rezoning area currently addressed 6842 Main Street shall be limited to 2 stories with a peak height of 35 ft. and recorded as deed restrictions on the land.

2. That the maximum allowed building height on the portion of the subject rezoning area currently addressed 6846 Main Street shall be a maximum of 4 stories with peak height of 60 ft. and recorded as deed restrictions on the land.

8/09/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 8:07 PM.

Sean W. Hopkins, Esq. presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 8:24 PM. Supervisor Kulpa then motioned to set a decision date for Sept. 13th, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

9/13/2021

A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:30 PM.

Sean W. Hopkins, Esq., presented and answered questions.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger 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 Berger and unanimously approved 5-0.

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

D R A F T (August 9, 2021)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency:	Town of Amherst Town Board	**Project**: Z-2021-05
Address:	5583 Main Street Williamsville, NY 14221 (716) 631-7051	**Date**:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action:	Rezoning Request.
SEQR Status:	Unlisted action.
Description of Action:	Rezoning of 2.58± acres of land from General Business District (GB) to Deep Corridor 5 District (DC-5) to allow for the future use and development of a mixed use (commercial and residential) project on the site.
Location:	Portions of 6842 and 6846 Main Street. Town of Amherst, Erie County, New York
Petitioner:	MEL Investors, LLC

Attachment: Z-2021-05_Draft Neg Dec_Main 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Short Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed rezoning of 2.58± acres of land from General Business District (GB) to Deep Corridor 5 District (DC-5) for a proposed mixed use development will not have a significant impact on the environment, as follows:

1. The project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on June 28, 2021 reviewed the application and EAF submitted on June 16, 2021 and had no objection or comments on the proposed rezoning.

2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on April 22, 2021 reviewed the application and EAF submitted on April 19, 2021 and has no objection or comments on the proposed rezoning.

4. The project is within an area identified by the State as potentially containing significant cultural or archeological resources, prior to any soil disturbance or construction activities The NYS Office of Parks, Recreation, Historic Preservation will review the project and determined that there will be no impact on or will it impair the character or quality of important historical resources. A Phase 1 Cultural Resources Investigation dated January 2012 was prepared by Panamerican Consultants Inc. which concluded that there were no cultural resources identified and no cultural resources will be impacted by the proposed development.

5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for rezoning from General Business District (GB) to Deep Corridor 5 District (DC-5) Neighboring uses are commercial developments and single family residences zoned General Business District (GB) and Multifamily Residential Distract Five (MFR-5); therefore, the project is consistent with surrounding land use.

Attachment: Z-2021-05_Draft Neg Dec_Main 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

6. The proposed rezoning to Deep Corridor 5 District (DC-5) for a proposed mixed use development will not cause a major change in the use of either the quantity or type of energy.

7. The rezoning to Deep Corridor 5 District (DC-5) for the proposed mixed-use development will not create any hazard to human health.

8. The rezoning to Deep Corridor 5 District (DC-5) will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed mixed-use development will be consistent with the scale of surrounding land uses.

9. The rezoning to Deep Corridor 5 District (DC-5) for the proposed mixed-use development will not significantly increase the number of people using the site over its previous level of use.

10. Review by the Town Traffic/Safety Board on June 30, 2021 indicates that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated review of the project has been undertaken by Town Departments including Building on April 22, 2021, Engineering on June 28, 2021, Traffic/Safety Board on June 30, 2021, and Assessor on June 25, 2021 along with the outside agency Erie County Department of Environment and Planning on May 25, 2021. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

BK/SM /ac
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Draft Neg Dec_080921.docxcc:
Amherst Town Clerk
Amherst Building Department
ECDEP
MEL Investors, LLC
Sean Hopkins

Attachment: Z-2021-05_Draft Neg Dec_Main 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

LOCAL LAW NO. _____-202_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE TO REZONE PORTIONS OF 6842 AND 6846 MAIN STREET FROM GB TO DC-5 AND TO AMEND THE ZONING MAP ACCORDINGLY.

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 203 of Town of Amherst Code, Known As The Zoning Ordinance, to Rezone Portions of 6842 and 6846 Main Street from GB to DC-5 and to Amend The Zoning Map Accordingly".

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to rezone portions of 6842 and 6846 Main Street from GB to DC-5 and to Amend the Zoning Map Accordingly has been filed and is in proper order. The Town Board further finds that the request including the rezoning is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby amends its zoning map which is incorporated by reference in the Town zoning code by amending from GB to DC-5, the zoning of portions of 6842 and 6842 Main Street, **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

ALL THAT TRACT OR PARCEL OF LAND, situated in the Town of Amherst, County of Erie and State of New York, being part of Lot 90, Township 12, Range 7 of the Holland Land Survey, bounded and described as follows:

BEGINNING at the intersection of the north line of Main Street (99.0 feet wide) with the east line of lands shown on a map of Tennyson Park Subdivision filed in the Erie County Clerk's Office under Map Cover 1922;

THENCE: N-01°-07'-54"-W, along the said east line of Map Cover 1922 and the east line of lands conveyed to Christian Metz by deed recorded in the Erie County Clerk's Office in Liber 235 of Deeds at Page 61, a distance of 769.45 feet to a point;

Attachment: Z-2021-05_Local Law-6842 & 6846 Main Updated Draft-06-14-21 (002) (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

THENCE: S-88°-18'-58"-E, a distance of 249.34 feet to the northwest corner of lands conveyed to Manufacturers & Traders Trust Co. by deed recorded in the Erie County Clerk's Office in Liber 10937 of Deeds at Page 4296;

THENCE: S-00°-59'-52"-E, along the said west line of Manufacturers & Traders Trust Co. lands, a distance of 420.19 feet to a point;

THENCE: S-89°-04'-24"-W, through lands conveyed to The Plaza at Transit LLC by deed recorded in the Erie County Clerk's Office in Liber 11353 of Deeds at Page 2540, a distance of 228.06 feet to a point;

THENCE: S-01°-07'-54"-E, continuing through said lands conveyed to The Plaza at Transit LLC, parallel with the first mentioned course distant 20.00 feet easterly therefrom measured at right angles, a distance of 338.89 feet to the north line of Main Street;

THENCE: N-88°-07'-09"-W, along the north line of Main Street, a distance of 20.03 feet to the POINT OR PLACE OF BEGINNING containing 2.585 acres be the same more or less.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: Z-2021-05_Local Law-6842 & 6846 Main Updated Draft-06-14-21 (002) (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Amherst
Town of Amherst Planning Department
Erie County, New York

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Directo

Daniel J. Ulatowski, A
Assistant Planning Di

Town Board Agenda of August 9, 2021

July 30, 2021

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

Subject: Request to rezone 2.58± acres of land from General Business District (GB) to Deep Corridor 5 District (DC-5); property located at 6842 & 6846 Main Street (Portion), MEL Investors, LLC, Petitioner. (Z-2021-05).

Honorable Members:

The subject property is a 2.58± acre 'L' shaped parcel located on the north side of Main Street, 440± ft. west of Transit Road. The subject area is located to the west of the existing M&T Bank office building on Transit Road and north of the existing plaza building fronting along Main Street.

The sites are predominately wooded with an open grassed area in the center of the eastern portion of the site. The remainder of the sites contain paved areas used by the adjacent businesses (8± parking spaces, turnaround and driveway) in addition to a transformer, signage and a light pole.

Main Street (Route 5) and Transit Road (Route 78) are New York State highways designated as major arterials in the Town of Amherst Bicentennial Comprehensive Plan.

A Phase 1 Cultural Resources Investigation dated January 2012 was prepared by Panamerican Consultants Inc. which concluded that there were no cultural resources identified and no cultural resources will be impacted by the proposed development.

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

The purpose of this request as indicated on the concept plan provided for the proposed development indicates the subject area would be split from two (2) Main Street parcels retaining 20 ft. of frontage on Main Street. A four story mixed use building is proposed on the eastern portion of the proposed development site consisting of 7,500 sq. ft. of first floor commercial space, 10 first floor apartments and 48 upper story apartments. On the western portion of the proposed development site a two-story 6 unit townhouse building with attached garages and two garage buildings housing 20 parking spaces (10 in each) are proposed. On-site parking is provided for 126 vehicles (26 in garages). Access to the proposed development site from both Transit Road and Main Street is proposed via existing reciprocal access agreements.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Honorable Town Board

Rezone land from GB to DC-5
property located at 6842 & 6846 Main St.
Agenda of August 9, 2021

The subject sites were zoned General Business District (GB) with the adoption of the Town-wide zoning map and ordinance on January 19, 1976.

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

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

The request is consistent with the Town of Amherst Bicentennial Comprehensive Plan's Conceptual Land Use Plan, Figure 6 which projects commercial/mixed use development and Figure 6-A which indicates suburban corridor use for the proposed subject area. This request is also consistent with two of the objectives in Section 3.2 of the Town of Amherst Bicentennial Comprehensive Plan in that it will promote the development/revitalization of walkable, higher density, mixed-use centers surrounded by lower density development, and encourage revitalization and reinvestment in older neighborhoods and commercial corridors in Amherst.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

The proposed rezoning is consistent with Section 1-2-2K of the Zoning Ordinance which seeks to guide future development of the Town to bring about the gradual conformity of land and building uses in accordance with the objectives of the Comprehensive Plan.

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

The proposed zoning is consistent and compatible with surrounding development as it will provide a transitional use between the existing commercial enterprises along Transit Road and Main Street currently zoned General Business District (GB) and the residential neighborhood on Tennyson Terrace currently zoned Multi-Family Residential District Five (MFR-5).

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is an Unlisted action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

OTHER CONSIDERATIONS

The petitioner has offered the following conditions for the Town Board's consideration.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Honorable Town Board

Rezone land from GB to DC-5
property located at 6842 & 6846 Main St.
Agenda of August 9, 2021

1. That the maximum allowed building height on the portion of the subject rezoning area currently addressed 6842 Main Street shall be limited to 2 stories with a peak height of 35 ft. and recorded as deed restrictions on the land.

2. That the maximum allowed building height on the portion of the subject rezoning area currently addressed 6846 Main Street shall be a maximum of 4 stories with peak height of 60 ft. and recorded as deed restrictions on the land.

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board's findings relative to SEQR and issue the attached Negative Declaration, and that the subject request be **approved** based on the attached resolution.

Very truly yours,

Daniel C. Howard, AICP
Planning Director

DCH/SM/ac
Att.
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_TB_Letter_07302021.doc.docx
cc: Stanley Sliwa, Town Attorney

Planning Board Approval June 24, 2021
Ayes 6, Noes 0, Absent (Gelber)

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2021-05

PETITIONER

MEL Investors, LLC
c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, NY 14221

PROPERTY LOCATION

6842 Main St. (portion) and 6846 Main St. (portion)

WHEREAS the Town of Amherst Planning Board on Thursday, June 24, 2021 held a virtual public hearing on the proposed rezoning of land from General Business District (GB) to Deep Corridor 5 District (DC-5), and

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

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

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

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

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

C. The proposal is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

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

E. The proposed change does tend to improve the balance of uses, or meets a specific demand in the Town.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived since hydric/potentially hydric soils have not been identified on the parcel.

JUL02'21 AM10:02 RCVD

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2021-05

PETITIONER	PROPERTY LOCATION
MEL Investors, LLC	6842 Main St. (portion) and 6846 Main St. (portion)

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

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

The foregoing resolution was adopted by the Town of Amherst Planning Board, June 24, 2021; moved by - Giuliani; seconded by - Gill; ayes 6, noes 0; absent 1 (Gelber).

Robert J. Gilmour, Chair — 7-1-21 Date

SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Resolution_062421.doc
cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
MEL Investors, LLC, c/o Sean Hopkins, Esq., 5500 Main St. Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris DPC, 487 Main St. Suite 500, Buffalo, NY 14203

JUL 02'21 AM10:02 RCVD

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



Z-2021-05

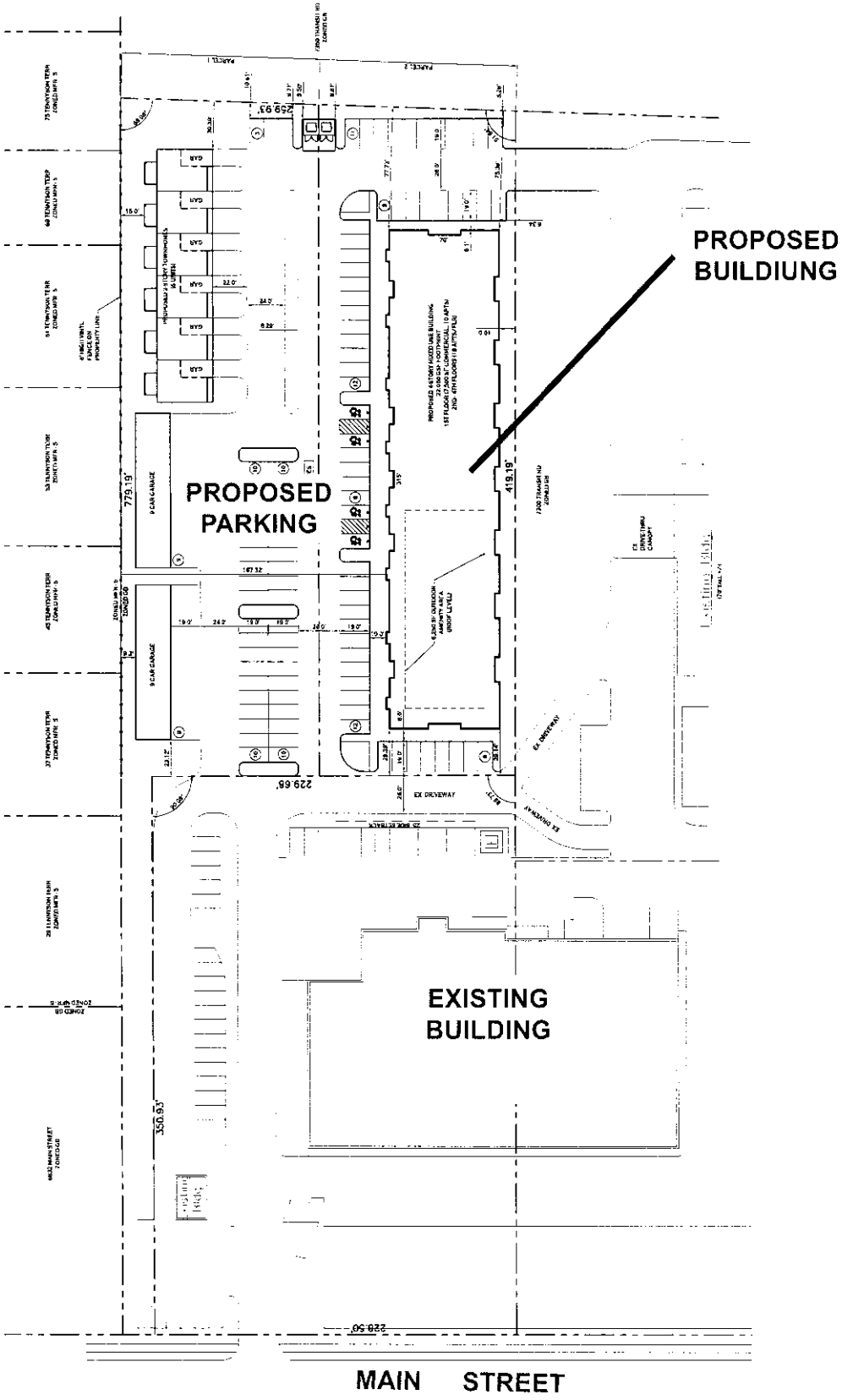
Proposed Rezoning of 2.87 Acres of Land from GB to DC-5
Property Located at 6842 Main Street (portion) and 6846 Main Street (portion)

MEL Investors LLC, Petitioner
June 24, 2021

6842 & 6846 Main Street

Prepared by the Town of Amherst Planning Department

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



CONCEPT PLAN

Z-2021-05
6842 & 6846 Main Street
Received: 4/17/21

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



Z-2021-05

Proposed Rezoning of 2.87 Acres of Land from GB to DC-5
Property Located at 6842 Main Street (portion) and 6846 Main Street (portion)
MEL Investors LLC, Petitioner

June 24, 2021

6842 & 6846 Main Street

Prepared by the Town of Amherst Planning Department

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Amended Rezoning Application & Supporting Documentation - Rezoning of Portions of 6842 and 6846 Main Street from GB to DC-5
Applicant: MEL Investors, LLC
Date: June 14, 2021

Original

Prepared by: Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 716.510-4338
E-mail: shopkins@hsr-legal.com

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

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

Address Verified by Assessor's Office _____
VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____
ACCEPTED BY DATE

Materials Checked by Building Dept. _____
RECEIVED BY DATE

Materials Received by Planning Dept. _____
RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	$1,250.00
2 – 20 ACRES **$1,250 + $250/acres or fraction thereof over 2 acres**		$250.00
20 – 30 ACRES **$5,700 + $150/acre or fraction thereof over 20 acres**		_____
OVER 30 ACRES **$6,900 +$75/acre or fraction thereof over 30 acres**		_____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	_____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	$15.00
	TOTAL FEE:	$ 1,515.00

REVISED
JUN 16 2021
TOWN OF AMHERST
PLANNING DEPT.

[Note: A completed Amended Short Full Environmental Assessment Form dated June 13, 2021 along with Page 5[a] and attachments is provided at Exhibit "2".]

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: MEL Investors, LLC

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

Phone: 510-4338 Fax:

E Mail shopkins@hsr-legal.com

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

From: GB District

To: DC-5 District

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

Portion of 6842 Main Street and Portion of 6846 Main Street

SBL #: SBL No. 70.17-3-10 and SBL No. 70.17-3-9

4. **Area of land to be rezoned** (in acres): 2.56 acres

5. **Owner of Land**:

Name: The Plaza at Transit, LLC

Address: 400 Andrews Street, Suite 500, Rochester, NY 14604

Telephone:

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

Other Representative:
Christopher Wood, P.E.
Carmina Wood Morris DPC
487 Main Street, Suite 600
Buffalo, New York 14202
Tel: 842-3165 [Ext. 103]
E-mail: cwood@cwm-ae.com

Name: Sean W. Hopkins, Esq.

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsr-legal.com
City State Zip Code

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

7. **Petitioner's interest in property** [Note: Authorization Letter of the Property Owner attached as Exhibit "1" of this Rezoning Application.]

_____Option to purchase

_____Owner

__X__Other (explain) The Petitioner has entered into a contract to purchase the Project Site.

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

Not Applicable.

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor.** Legal description of property to be rezoned from GB to DC-5 is attached as Exhibit "3" and a reduced size copy of the Survey of the Project Site is attached as Exhibit "4". Full size copy of the Survey is also attached.

10. **Said property has the following deed restrictions or Covenants:** (attach copy) Not Applicable.

Liber _____ Page _____

11. **Information on proposed project:**

A. Description of the character of the proposed development:

See Exhibit 5.

B. Rationale for rezoning request:

1. Why was this site chosen?

See Exhibit 5.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

See Exhibit 5.

3. How will this rezoning impact surrounding properties?

See Exhibit 5.

4. How will this rezoning impact the school system?

See Exhibit 5.

12. Quantitative Data:

A. Total # of dwelling units: 64

B. Distribution of dwelling units by type: The dwelling units will consist 58 apartments and 6 attached townhomes.

C. Gross Residential Density per acre: 25 units per acre.

D. Total amount of Open Space: 0

E. Proposed Non-Residential Floor Area: 7,500 sq. ft. first floor commercial space.

[Note: A reduced size copy of the Concept Site Plan [Drawing C-100] for the proposed mixed-use redevelopment project as prepared by Carmina Wood Morris is provided at Exhibit "7" and a full size copy is also attached. An 11" x 17" color Concept Site Plan with aerial photograph background is provided at Exhibit "10" and color conceptual buildings elevations are provided at Exhibits "11" and "12".]

13. Development Schedule:

Start: Fall 2021

Finish: 2022

Stages (# of): 1

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

The first floor commercial space and residential units will be leased.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

Greenspace and landscaping will be privately owned and maintained.

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

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

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

See Exhibit 6.

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

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

See Exhibit 6.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

See Exhibit 6.

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

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

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

See Exhibit 6.

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

See Exhibit 6.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

See Exhibit 6.

17. The petitioner encloses herewith the sum of $_____ to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk. [Note: Filing fee previously paid.]

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

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

[Note: Authorization Letter of Property Owner signed attached as Exhibit "1".]

Counsel for Petitioner
Signature of Petitioner

Subscribed and sworn to before me this 14th day of June, 20 21

Notary Public, Erie County, New York

MARIANNE BRAUTLACHT
Notary Public, State of New Yo
Qualified in Erie County
My Commission Expires 01/14/20

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

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

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

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

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

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

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

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

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 1 – Authorization Form Signed by The Plaza at Transit, LLC

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

AUTHORIZATION

The Plaza at Transit, LLC, as the record owner of two contiguous parcels of land consisting of portions of 6842 Main Street (SBL No. 70.17-3-10) and 6846 Main Street (SBL No. 70.17-3-9) comprised of approximately 2.867 acres of land (collectively the "Project Site") hereby authorizes MEL Investors, LLC, to seek the approvals and permits required from the municipal boards of the Town of Amherst (including but not limited to rezoning an site plan approval) for the redevelopment of the Project Site as a mixed-use project (the "Project"). MEL Investors, LLC is also authorized to seek the approvals and permits required for the Project from all other involved agencies.

Date: April 19, 2021

THE PLAZA AT TRANSIT, LLC

Signature: _____

Print Name: _____

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 2 – Amended Short Environmental Assessment Form Prepared Pursuant to the State Environmental Quality Review Act ("SEQRA") with Attached Page 5[a] and Attachment "A"

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Prepared By: Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338
E-mail: shopkins@hsr-legal.com

Short Environmental Assessment Form
Part 1 - Project Information

Instructions for Completing

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

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

Part 1 – Project and Sponsor Information

Name of Action or Project:

Proposed Mixed-Use Redevelopment Project

Project Location (describe, and attach a location map):

Portions of 6842 and 6846 Main Street - Town of Amherst - Erie County

Brief Description of Proposed Action:

The proposed project ("action") consists of a rezoning of approximately 2.58 acres of land consisting of portions of 6842 and 6846 Main Street ("Project Site") from General Business District ("GB") to Deep Corridor 5 ("DC-5") to accommodate a proposed mixed-use redevelopment project including all proposed site improvements. A copy of the updated Concept Plan [Drawing C-100] depicting the layout of the proposed mixed-use redevelopment project as prepared by Carmina Wood Morris DPC is attached to the Rezoning Application. The proposed action has been defined broadly to include all required discretionary approvals and permits as well as all proposed site improvements including proposed four-story mixed-use building, the attached townhomes, detached garage buildings, access aisles and parking spaces, lighting, storm water management improvements and all required utility improvements. The project purpose is to redevelop the Project Site for a mixed-use project per the recommended land use in Figure 6-A of the Town's adopted Comprehensive Plan. The Project Sponsor believes the project will not result in any potentially significant adverse environmental impacts and that the issuance of a negative declaration by the designated lead agency [anticipated to be the Amherst Town Board] is both appropriate and justified.

Name of Applicant or Sponsor:	Telephone: 716.510-4338
MEL Investors, LLC c/o Sean Hopkins, Esq.	E-Mail: shopkins@hsr-legal.com

Address:

5500 Main Street, Suite 343

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

	NO	YES
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.	☑	☐
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: See Attachment "A" for list of required approvals and permits and involved agencies.	☐	☑

3. a. Total acreage of the site of the proposed action? 2.56 acres
   b. Total acreage to be physically disturbed? 2.56 acres
   c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.56 acres

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

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

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

		NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	[The Project Sponsor is seeking to amend the zoning classification of the Project Site from GB to DC-5 to accommodate the proposed mixed-use redevelopment project.]	☑ ☐	☐ ☑	☐ ☐

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

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

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

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

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

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

	NO	YES
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	☑	☐
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? [SHPO issued a No Impact determination letter for the Project Site in connection with a previously approved project.]	☐	☑

	NO	YES
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	☑	☐
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	☑	☐
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____		

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional

☐ Wetland ☐ Urban ☑ Suburban

	NO	YES
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	☑	☐
16. Is the project site located in the 100-year flood plan?	☑	☐
17. Will the proposed action create storm water discharge, either from point or non-point sources?	☐	☑
If Yes, a. Will storm water discharges flow to adjacent properties?	☑	☐
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	☐	☑
If Yes, briefly describe: Storm water management improvements will be installed on the Project Site per the applicable standards.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	☑	☐
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	☑	☐
20.Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	☑	☐

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

Applicant/sponsor/name: MEL Investors, LLC Date: June 13, 2021

Signature: Title: Attorney for Project Sponsor

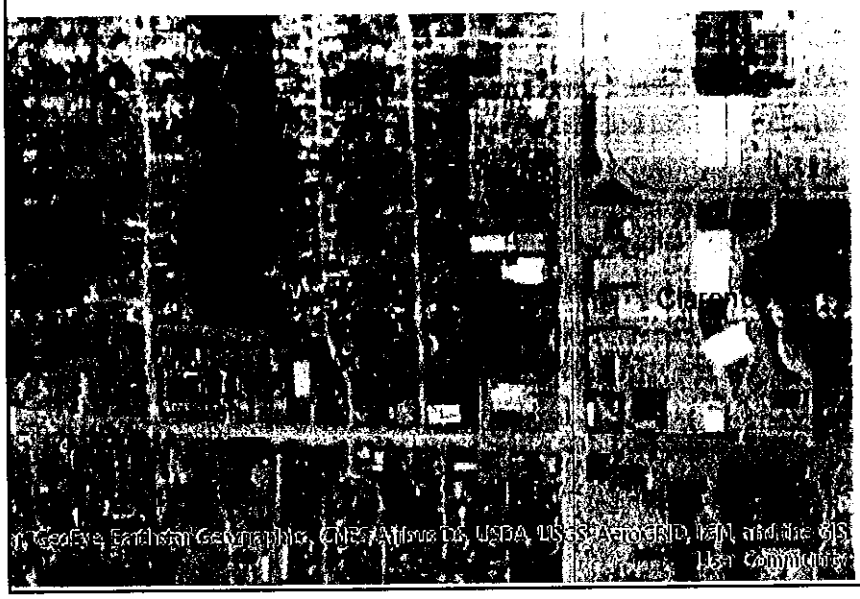
Sean W. Hopkins, Esq.

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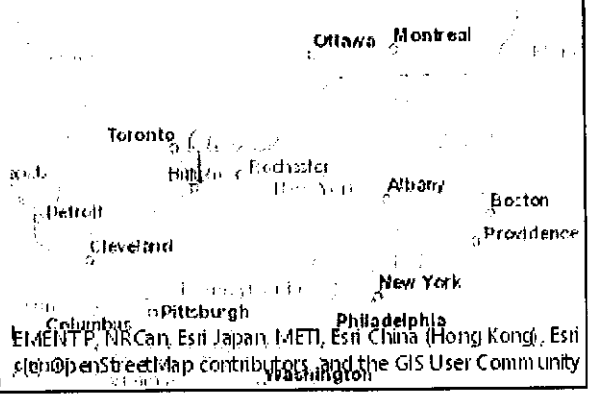
Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

EAF Mapper Summary Report

Friday, A[illegible] 16, 2021 2:16 PM



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	No
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 3 – Legal Description of Property to be Rezoned from General Business District ("GB") to Deep Corridor 5 District Three ("DC-5")

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

EXHIBIT 3 OF AMENDED REZONING APPLICATION

LEGAL DESCRIPTION OF PROPERTY TO BE REZONED FROM GENERAL BUSINESS DISTRICT ("GB") TO DEEP CORRIDOR 5 DISTRICT ("DC-5")

ALL THAT TRACT OR PARCEL OF LAND, situated in the Town of Amherst, County of Erie and State of New York, being part of Lot 90, Township 12, Range 7 of the Holland Land Survey, bounded and described as follows:

BEGINNING at the intersection of the north line of Main Street (99.0 feet wide) with the east line of lands shown on a map of Tennyson Park Subdivision filed in the Erie County Clerk's Office under Map Cover 1922;

THENCE: N-01°-07'-54"-W, along the said east line of Map Cover 1922 and the east line of lands conveyed to Christian Metz by deed recorded in the Erie County Clerk's Office in Liber 235 of Deeds at Page 61, a distance of 769.45 feet to a point;

THENCE: S-88°-18'-58"-E, a distance of 249.34 feet to the northwest corner of lands conveyed to Manufacturers & Traders Trust Co. by deed recorded in the Erie County Clerk's Office in Liber 10937 of Deeds at Page 4296;

THENCE: S-00°-59'-52"-E, along the said west line of Manufacturers & Traders Trust Co. lands, a distance of 420.19 feet to a point;

THENCE: S-89°-04'-24"-W, through lands conveyed to The Plaza at Transit LLC by deed recorded in the Erie County Clerk's Office in Liber 11353 of Deeds at Page 2540, a distance of 228.06 feet to a point;

THENCE: S-01°-07'-54"-E, continuing through said lands conveyed to The Plaza at Transit LLC, parallel with the first mentioned course distant 20.00 feet easterly therefrom measured at right angles, a distance of 338.89 feet to the north line of Main Street;

THENCE: N-88°-07'-09"-W, along the north line of Main Street, a distance of 20.03 feet to the POINT OR PLACE OF BEGINNING containing 2.585 acres be the same more or less.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 4 – Reduced Size Copy of Survey of Project Site as Prepared by GPI Engineering & Surveying

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

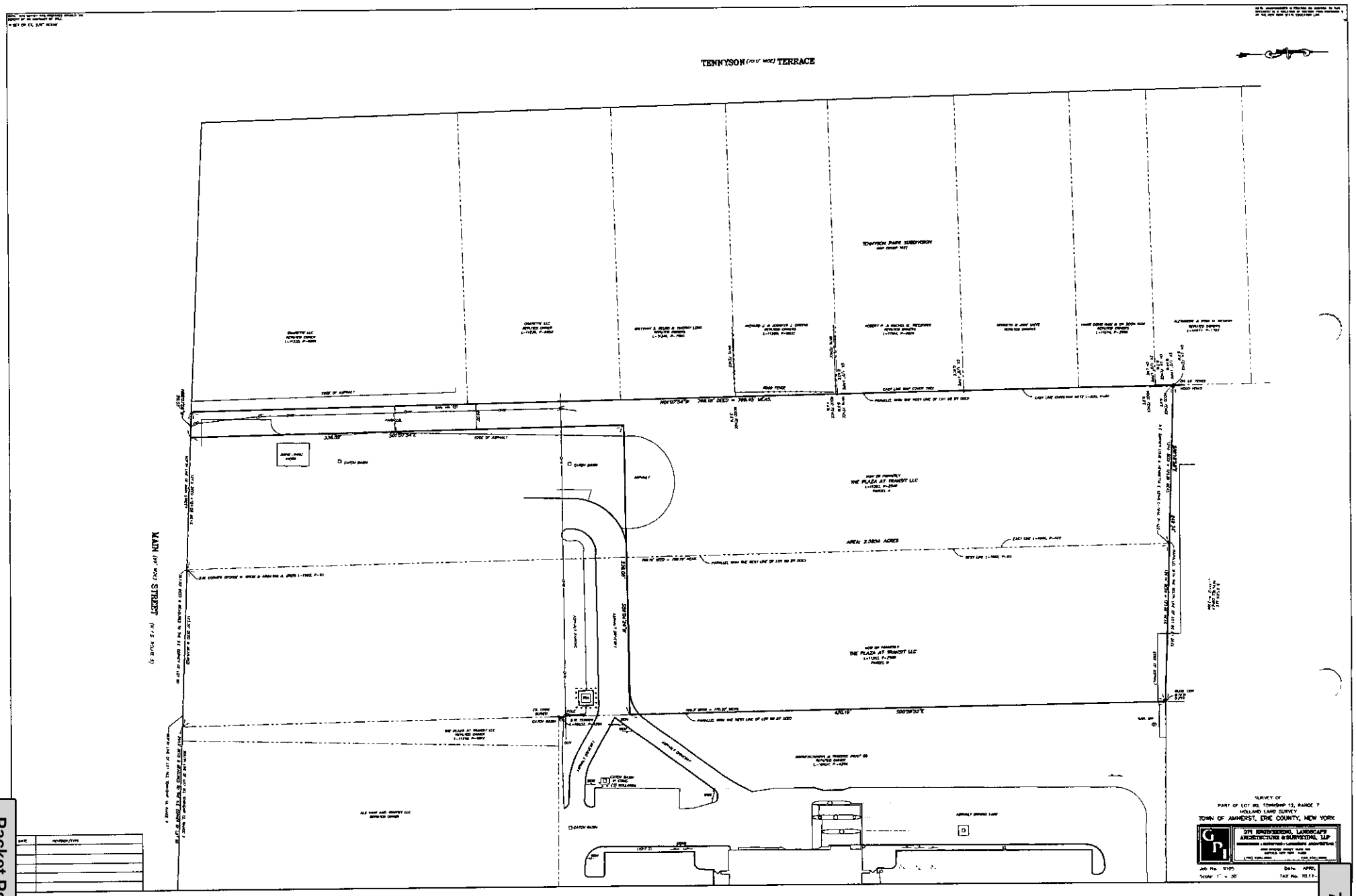

TENNYSON (70'± WIDE) TERRACE
MAIN (66'± WIDE) STREET
THE PLAZA AT TRANSIT LLC
AREA: 2.5834 ACRES
SURVEY OF
PART OF LOT 80, TOWNSHIP 12, RANGE 7
HOLLAND LAND SURVEY
TOWN OF AMHERST, ERIE COUNTY, NEW YORK
GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP

Exhibit 5 – Responses to Questions 11A & 11B of the Rezoning Application

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

EXHIBIT 5 OF AMENDED REZONING APPLICATION

REZONING OF PORTIONS OF 6842 AND 6846 MAIN STREET FROM GB TO DC-5

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

Response to Question 11(A): The proposed infill mixed-use redevelopment project on approximately 2. 2.585 acres of the portions of the parcels at 6842 and 6846 Main Street ("Project Site") will be upscale in character and will feature a four-story mixed use building on the eastern portion of the Project Site on the parcel at 6846 Main Street consisting of 7,500 sq. ft. of first floor commercial space and 10 first floor apartments with 48 upper story apartments, a residential building containing 6 attached townhome units, and an accessory buildings with ten garage spaces each.[1] A full size copy of the updated Concept Site Plan [Drawing C-100] is attached and a reduced size copy is also attached as Exhibit "7". An 11" x 17" copy of the color Concept Plan with aerial photograph background is provided at Exhibit "10" Additionally, 11" x 17" size copies of the conceptual color renderings for both the proposed four-story mixed-use building and the two-story townhome building are attached as Exhibits "11" and "12".

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

Response to Question 11(B)(1): The Project Site is an appropriate location for the requested rezoning from GB to DC-5 given that Figure 6-A of the adopted Comprehensive designates the Project Site as appropriate as Suburban Corridor. A copy of Figure 6-A of the Comprehensive Plan is attached as Exhibit "8".

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[1] A new parcel will be created consisting of the rear portions of 6842 and 6846 Main Street. A full size survey of the Project Site is attached and a reduced size copy of the Survey is attached as Exhibit "4".

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

Response to Question 11(B)(2): The Project Site is currently zoned General Business District ("GB"), a zoning classification which expressly permit mixed-use project, but would require excessive parking to be provided and would not allow any apartments to be located in the first floor of the mixed-use building. The Planning Board previously approved a Site Plan for a commercial project consisting of a warehouse/office building that would have been located on the western portion of the Project Site much closer to the east boundary of the lots on Tennyson Terrace than the proposed mixed-use building. A copy of the previously approved Site Plan is attached as Exhibit "9".

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

Response to Question 11(B)(3): The requested rezoning of the Project Site from GB to DC-5 to accommodate the proposed mixed-use project will not result in any potentially significant adverse impacts on surrounding properties. The Project Sponsor will be providing screening along the western boundary of the Project Site a Landscape Plan prepared by a licensed landscape architect will be submitted in connection with the future submission of a Site Plan Application.

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

Response to Question 11(B)(4): The proposed project will have positive impacts on the school district since the property taxes that will be generated on an annual basis will be substantially higher than the current property taxes. The proposed mixed-use project will potentially generate some demand for educational services provided by the Williamsville Central School District but will have positive fiscal impacts since the annual school taxes will exceed the cost of educational services for school age children of the owners of the detached single-family homes.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 6 – Responses to Questions 16A, 16B, 16D & 16E of the Rezoning Application

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

EXHIBIT 6 OF AMENDED REZONING APPLICATION

REZONING OF PORTIONS OF 6842 AND 6846 MAIN STREET FROM GB TO DC-5

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

Response to Question 16(A)(1): The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[1] On December 14, 2020, the Town Board most recently adopted an amendments to the Bicentennial Comprehensive Plan.

Figure 6-A of the adopted Bicentennial Comprehensive Plan is the titled Commercial and Mixed-Use Designations and it depicts the Project Site as a Suburban Corridor. A copy of Figure 6A of the Comprehensive Plan is provided at Exhibit "9". Additionally, Figure 6 of the Bicentennial Comprehensive Plan is the Conceptual Land Use Plan for the Town and it depicts the Project Site as being appropriate for "Commercial / Mixed-Use" development. The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development in the Town of Amherst.

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

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

Response to Question 16(A)(2): The Applicant does not believe that the proposed rezoning of the Project Site from GB to DC-5 to accommodate the proposed mixed-use redevelopment project requires an amendment to the adopted Bicentennial Comprehensive Plan.

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

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

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

The proposed rezoning of the Project Site from GB to DC-5 to accommodate the proposed mixed-use redevelopment project is consistent with the "Purpose" of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen (13) objectives that are discussed below as follows:

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

Response: The proposed rezoning of the Project Site from GB to DC-5 to accommodate the mixed-use redevelopment project will be consistent with the objective of protecting the character and value of existing land uses. The proposed rezoning will allow the Project Site to be utilized as a mixed-use project, which represents orderly and beneficial development.

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

Response: The proposed rezoning of the Project Site from GB to DC-5 and the proposed mixed-use project will not be inconsistent with this objective.

C. To prevent overcrowding of land;

Response: The proposed mixed-use project will not result in the overcrowding of land. The project is consistent with the type of development designated as appropriate for the Project Site.

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

Response: The proposed rezoning of the Project Site from GB to DC-5 will not result in excessive concentration of population and the mixed-use project represents an example of coordinated development.

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

Response: The responses to the Questions in Section 16 of the Rezoning Application set forth previously in this Exhibit "6" demonstrate that the proposed rezoning is consistent with the policies of the Comprehensive Plan.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

Response: The Site Plan Application review process will trigger the need for an Engineer's Report and SWPPP prepared by a licensed engineer to be prepared for review and approval by the Town's Engineering Department. The mixed-use project will not increase the likelihood of damage and injury due to fire and flood. The proposed mixed-use project will be constructed per the stringent requirements of the NYS Building Code including the fire safety standards contained therein.

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

Response: The proposed rezoning and the proposed mixed-use project will not be inconsistent with this objective. There are not significant natural features located on the Project Site.

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

Response: The development of the Project Site as mixed-use project in a manner consistent with the Concept Plan [Drawing C-100] will be aesthetically harmonious with nearby areas and structures.

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

Response: The proposed mixed-use project will have vehicular access to both Main Street and Transit Road. No new driveway connection to the roadway network are being proposed.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

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

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

Response: The proposed rezoning of the Project Site from GB to DC-5 is consistent with this objective since the infill mixed-use project is consistent with the policies contained in the Comprehensive Plan. Conceptual Elevations Plans for the proposed the proposed four-story mixed-use building and the two-story townhome building as prepared by Carmina Wood Morris are provided at Exhibits "11" and "12".

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

Response: The proposed rezoning of the Project Site from GB to DC-5 will be consistent with this objective.

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

Response: The proposed rezoning and the proposed mixed-use project will not be inconsistent with this objective.

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

Response to Question 16(C): The proposed rezoning of the Project Site from GB to DC-5 is compatible with the present zoning and conforming uses of nearby properties and the character of the neighborhood. The Project Site is currently zoned GB which would allow the proposed mixed-

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

use project but would require excessive parking to be provided and would not permit any first floor residential units.

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

Response to Question 16(D): The Project Site is suitable for uses permitted by both the existing GB zoning classification and the proposed DC-5 zoning classification.

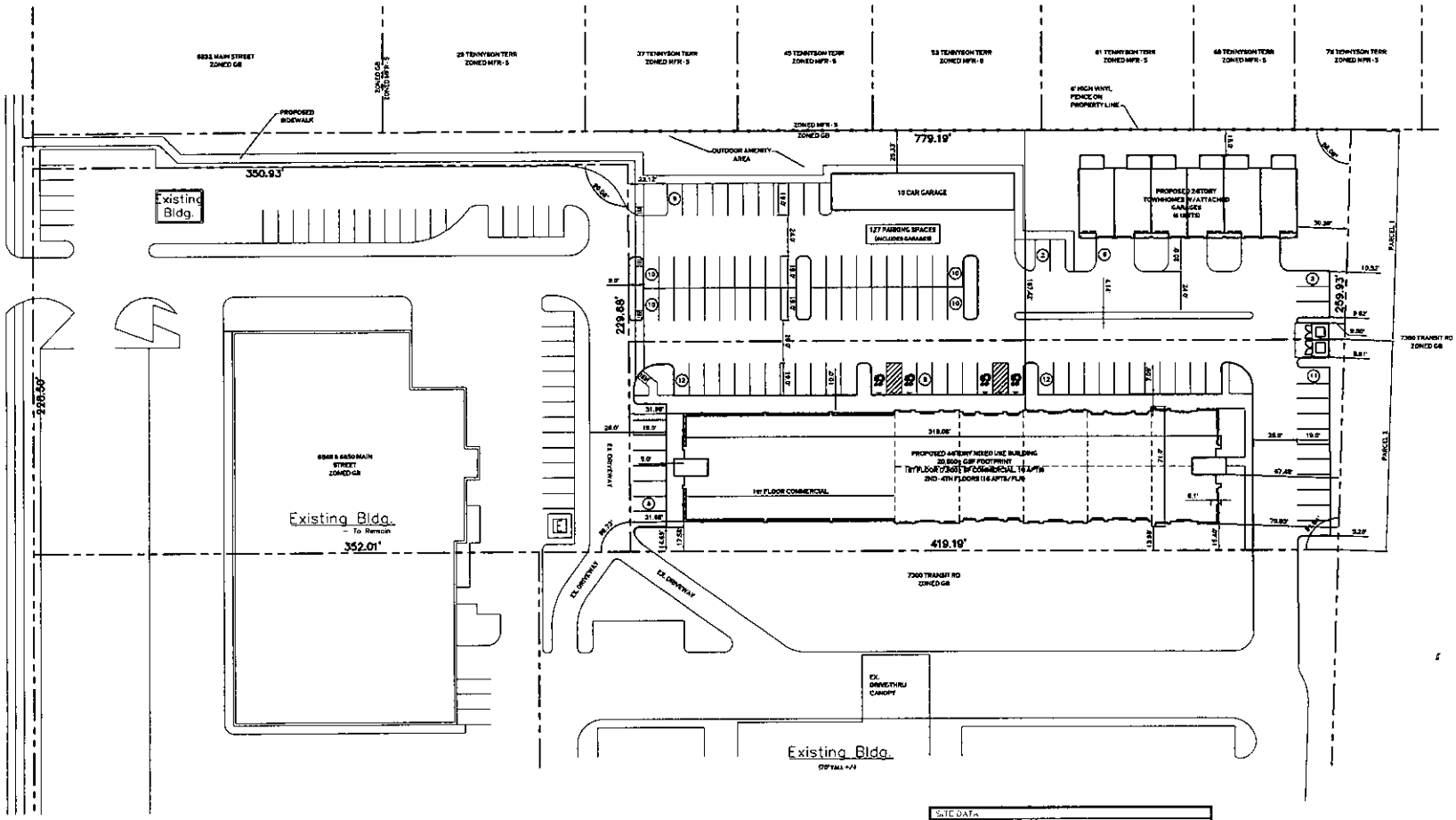
Question 16(E): **Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:**

Response to Question 16(D): The proposed change in the zoning classification of the Project Site from GB to DC-5 to accommodate the proposed mixed-use project will have positive impacts on the balance of uses in the Town by providing first floor commercial space and residential uses at an infill location in a portion of the Town that has been designated as appropriate for mixed-use infill redevelopment as proposed by the Project Sponsor.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 7 – Reduced Size Copy of the Concept Site Plan [Drawing C-100] as Prepared by Carmina Wood Morris DPC [Note: Full Size Copy of the Concept Plan is also attached]

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



© Carmina Wood Morris DPC

Carmina Wood Morris

REVISIONS:
No. Description Date

PROJECT NAME:
Site Development Plans for:
Mixed Use Development
6842 & 6846 Main St
Amherst, NY

Date: 6/3/21
Drawn by: C. Wood
Scale: As Noted

DRAWING NAME:
Concept Site Plan

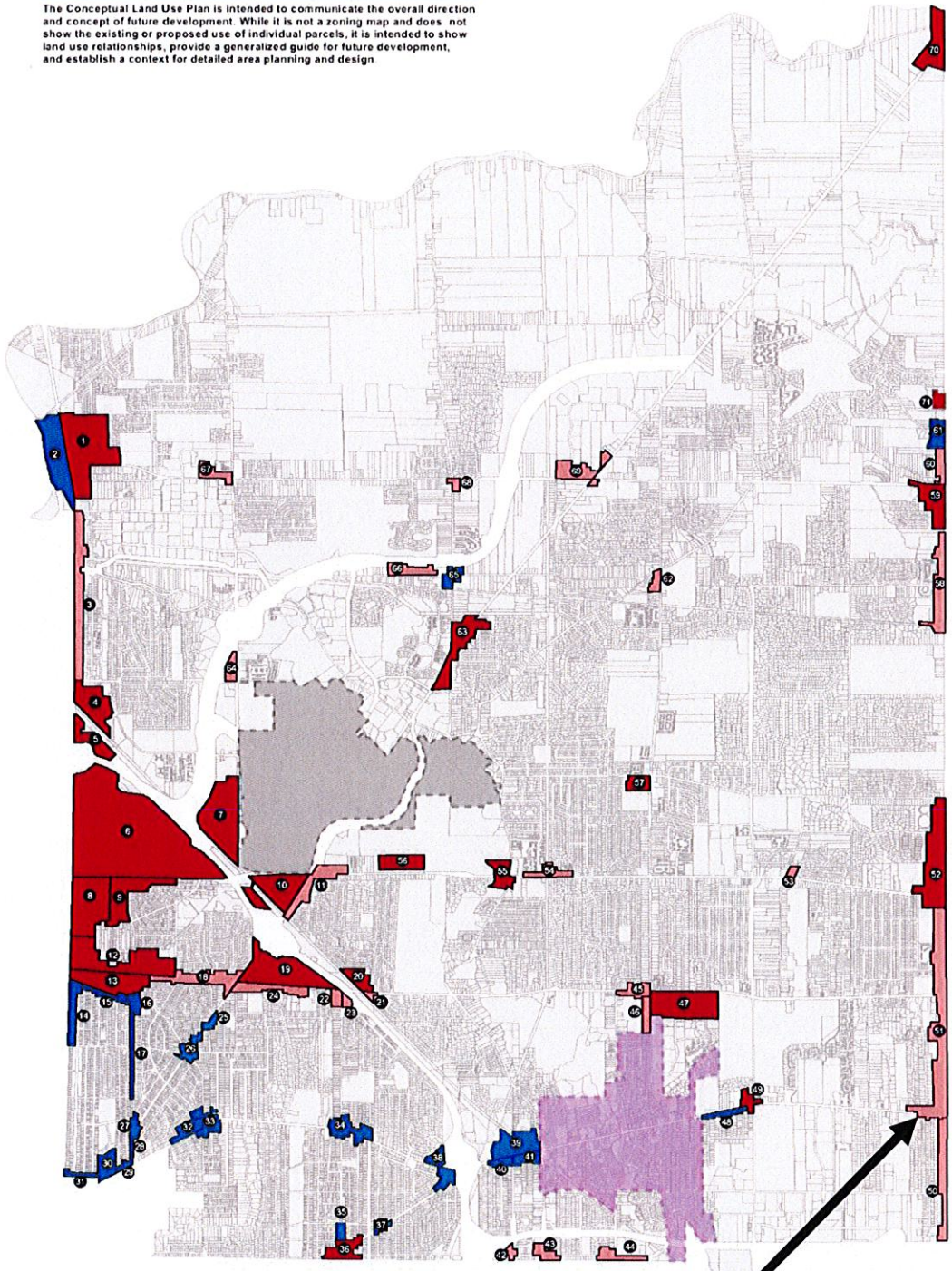
DRAWING NO.
C-100
Project no.: 21.xxx

Exhibit 8 – Color Copy of Figure 6-A of the Bicentennial Comprehensive Plan

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Town of Amherst Bicentennial Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.



1. Wegmans (NFB)
2. Walgreens (NFB)
3. NFB / Elliott Creek Strip
4. Home Depot (NFB)
5. Innsepers Lane
6. Consumer Square / Ridge Lea
7. University Place
8. Boulevard Mall
9. Wegmans (Alberta)
10. Golden Triangle
11. Maple / Amherst Manor
12. Walmart (Sheridan)
13. Northtown Plaza
14. NFB Strip
15. Eggert Strip
16. Eggert / Bailey
17. Bailey Strip
18. Sheridan / Millersport Strip
19. Northtown Auto (Sheridan)
20. Sheridan / Sunrise - North Side
21. Sheridan / Sunrise - South Side
22. Sheridan / Harlem - West Side
23. Sheridan / Harlem - East Side
24. Sheridan / Getzville Strip
25. Millersport / Arcado
26. Six Corners
27. Bailey / Grover Cleveland
28. Bailey Live Work
29. Main / Bailey
30. University Plaza
31. Kenmore Avenue
32. Eggertsville (Main / Eggert - West Side)
33. Eggertsville (Main / Eggert - East Side)
34. Snyder (Main / Harlem)
35. Harlem Strip
36. Harlem / Kensington
37. Kensington / Saratoga
38. Main / Kensington
39. West of Village - North of Main
40. West of Village - South of Main (West Side)
41. West of Village - South of Main (East Side)
42. Wehrle / South Forest
43. Wehrle / South Union
44. Wehrle / Cayuga
45. Sheridan / Hopkins
46. Evans Strip
47. Williamsville Place
48. Main Strip
49. Main / Youngs
50. Transit / Wehrle
51. Transit from Main to Maple
52. Transit / Maple
53. Maple / Ayer
54. Maple Strip
55. Maple / North Forest
56. Gun Club
57. Clearfield Plaza
58. Transit / Casey
59. Transit / North French
60. Transit / Dodge
61. Swormville
62. Hopkins / Dodge
63. Getzville Plaza
64. Sweet Home / Skinnersville
65. Campbell / Dodge
66. Dodge Strip
67. Sweet Home / North French
68. Campbell / North French
69. Crosspointe
70. Transit / Millersport
71. Transit Strip

Project Site designated as "Suburban Corridor"

FIGURE 6-A

Commercial and Mixed-Use Designations

- Suburban Center
- Suburban Corridor
- Traditional Areas
- Village of Williamsville
- University at Buffalo

SOURCE NOTES:

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

Map Compiled by the Town of Amherst Planning Department

Date: December 2020

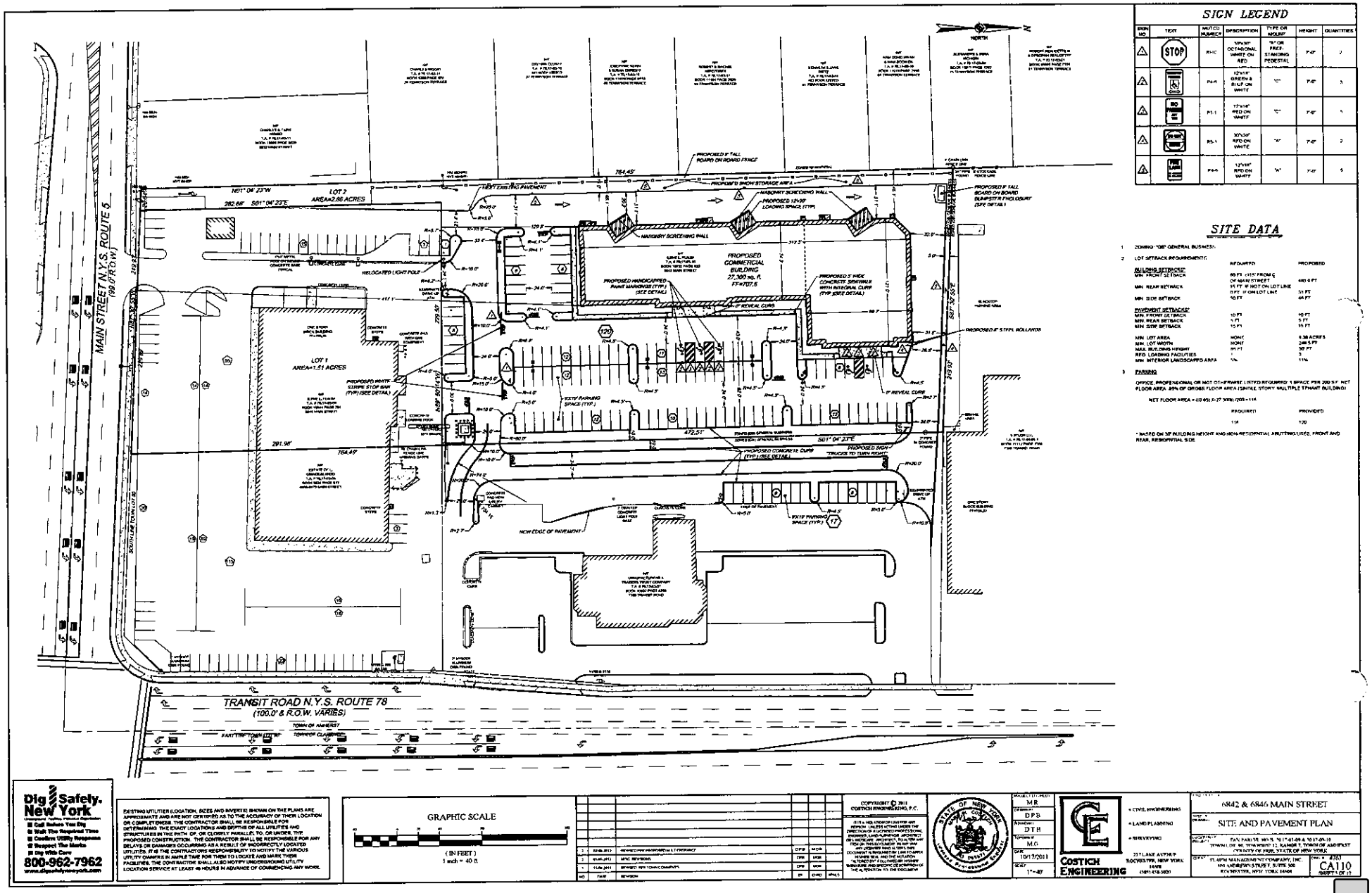
N

0 0.2 0.4 0.6 0.8 1 Miles

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 9 – Site Plan for Previously Proposed Commercial Project as Prepared by Costich Engineering dated February 6, 2021

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



SIGN LEGEND

SIGN NO.	TEXT	MUTCD NUMBER	DESCRIPTION	TYPE OF MOUNT	HEIGHT	QUANTITIES
A	STOP	R1-1	30"X30" OCTAGONAL WHITE ON RED	79" OR FREE-STANDING PEDESTAL	7'-0"	2
A		R4-7	12"X18" GREEN & BLUE ON WHITE	""	7'-0"	1
A	NO	R3-1	12"X18" RED ON WHITE	""	7'-0"	1
A		R5-1	30"X30" RED ON WHITE	""	7'-0"	2
A		R3-5	12"X18" RED ON WHITE	""	7'-0"	5

SITE DATA

1 ZONING: "GB" GENERAL BUSINESS

2 LOT SETBACK REQUIREMENTS:

	REQUIRED	PROPOSED
BUILDING SETBACKS:		
MIN. FRONT SETBACK	80 FT. (45' FROM ℄ OF MAIN STREET	460.6 FT
MIN. REAR SETBACK	15 FT. IF NOT ON LOT LINE 0 FT. IF ON LOT LINE	33 FT
MIN. SIDE SETBACK	10 FT	44 FT
PAVEMENT SETBACKS:		
MIN. FRONT SETBACK	10 FT	10 FT
MIN. REAR SETBACK	5 FT	5 FT
MIN. SIDE SETBACK	15 FT	15 FT
MIN. LOT AREA	NONE	4.38 ACRES
MIN. LOT WIDTH	NONE	248.5 FT
MAX. BUILDING HEIGHT	35 FT	30' FT
REQ. LOADING FACILITIES	1	3
MIN. INTERIOR LANDSCAPED AREA	10%	11%

3 PARKING

OFFICE, PROFESSIONAL OR NOT OTHERWISE LISTED REQUIRED: 1 SPACE PER 200 S.F. NET FLOOR AREA. 25% OF GROSS FLOOR AREA (SINGLE STORY MULTIPLE TENANT BUILDING)

NET FLOOR AREA = 60,650 S.F. 3000/200 = 114

REQUIRED	PROVIDED
114	120

* BASED ON 30' BUILDING HEIGHT AND NON-RESIDENTIAL ABUTTING USES, FRONT AND REAR, RESIDENTIAL SIDE

Dig Safely. New York
Call Before You Dig
Wait The Required Time
Confirm Utility Response
Respect The Marks
Dig With Care
800-962-7962
www.digsafelynewyork.com

EXISTING UTILITIES LOCATION, SIZES AND INVERTS SHOWN ON THE PLANS ARE APPROXIMATE AND ARE NOT CERTIFIED AS TO THE ACCURACY OF THEIR LOCATION OR COMPLETENESS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DETERMINING THE EXACT LOCATIONS AND DEPTHS OF ALL UTILITIES AND STRUCTURES IN THE PATH OF OR CLOSELY PARALLEL TO, OR UNDER, THE PROPOSED CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DELAYS OR DAMAGES OCCURRING AS A RESULT OF INCORRECTLY LOCATED UTILITIES. IT IS THE CONTRACTORS RESPONSIBILITY TO NOTIFY THE VARIOUS UTILITY OWNERS IN AMPLE TIME FOR THEM TO LOCATE AND MARK THEIR FACILITIES. THE CONTRACTOR SHALL ALSO NOTIFY UNDERGROUND UTILITY LOCATION SERVICE AT LEAST 48 HOURS IN ADVANCE OF COMMENCING ANY WORK.

GRAPHIC SCALE
(IN FEET)
1 inch = 40 ft.

NO	DATE	REVISION	BY	CHKD
3	02-06-2012	REVISED PER TOWN COMMENTS	DPB	MGR
2	01-06-2012	MINOR REVISIONS	DPB	MGR
1	11-04-2011	REVISED PER TOWN COMMENTS	DPB	MGR

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STATE OF NEW YORK — MARK D. PETERSON — LICENSED PROFESSIONAL ENGINEER

PROJECT DIRECTOR	MR
DESIGNED	DPB
DRAWN BY	DTH
CHECKED BY	MG
DATE	10/17/2011
SCALE	1"=40'

COSTICH ENGINEERING
217 LAKE AVENUE
ROCHESTER, NEW YORK 14608
(585) 436-3620

* CIVIL ENGINEERING
* LAND PLANNING
* SURVEYING

6842 & 6846 MAIN STREET

SITE AND PAVEMENT PLAN

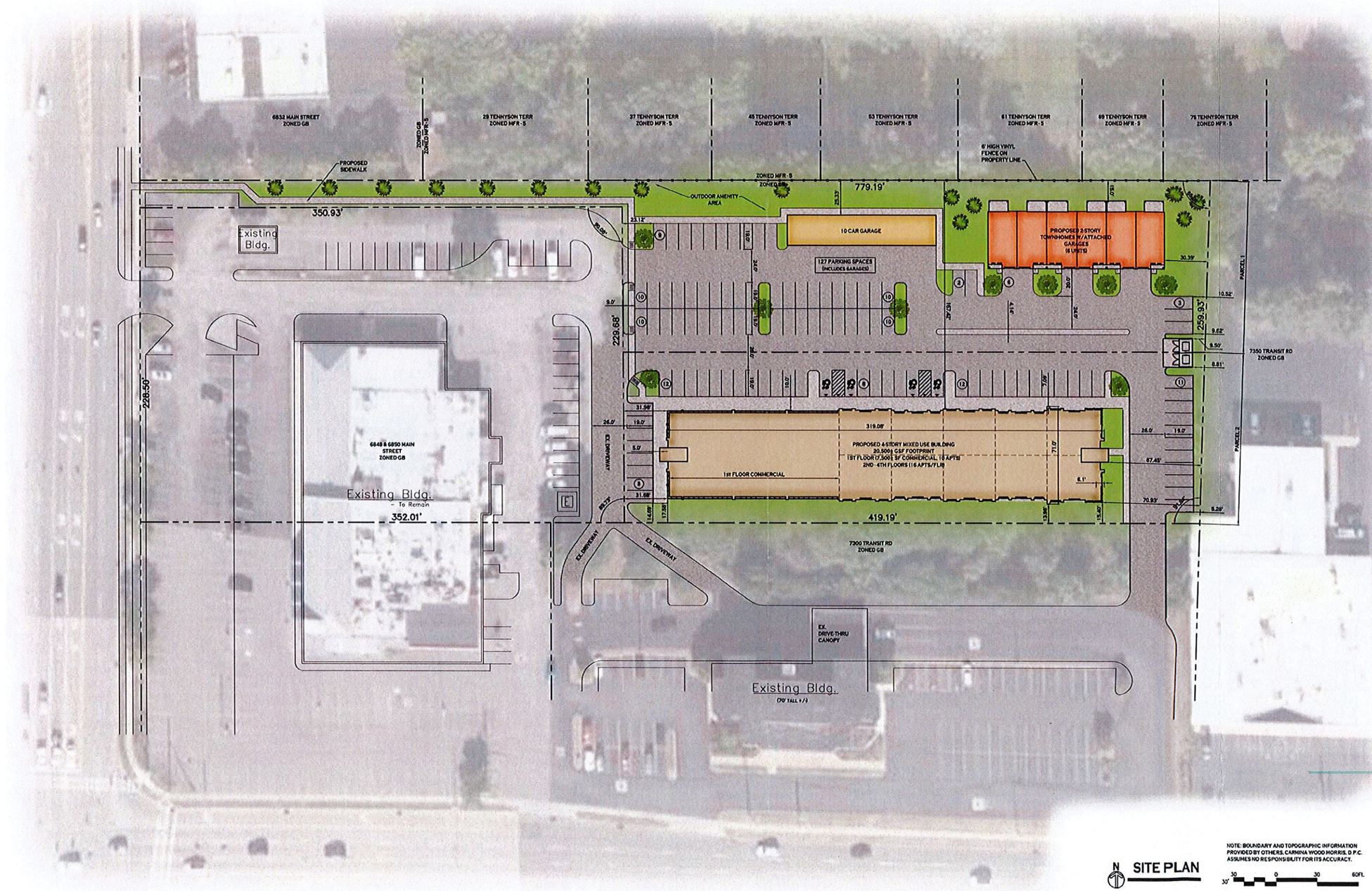
TAX PARCEL NO.'S: 16.17-61-9 & 16.17-61-10
TOWN LOT NO. 90, 10TH RSRVD 12, RANGE 7, TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

OWNER: FLAPM MANAGEMENT COMPANY, INC.
100 ANDREWS STREET, SUITE 500
ROCHESTER, NEW YORK 14604

PROJECT NO. 4761
CA110
SHEET 1 OF 12

Exhibit 10: Color Concept Plan with Aerial Photograph Background prepared by Carmina Wood Morris DPC dated June of 2021 [11" x 17"]

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



N SITE PLAN

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

30' 30 0 30 60FT.

SITE RENDERING

Carmina · Wood · Morris DPC

BLISS

Mixed Use Development

6842 & 6846 Main Street | Amherst, NY

June 2021

1

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 11 – Color Conceptual Elevation Plan [Drawing A-100] for Proposed Four-Story Mixed Use Building as Prepared by Carmina Wood Morris DPC

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



1 / A-100 TRANSIT ROAD ELEVATION
SCALE: 3/32" = 1'-0"



2 / A-100 MAIN STREET ELEVATION
SCALE: 3/32" = 1'-0"



3 / A-100 EXTERIOR PERSPECTIVE
SCALE: NTS

Carmina Wood Morris DPC
487 Main Street Suite 600
Buffalo, New York 14203
P 716.842.3105
F 716.842.0263

PRELIMINARY
NOT FOR CONSTRUCTION

PROFESSIONAL SEAL

REVISIONS:

No.	Description	Date

BLISS

PROJECT NAME:
Concept Documents for:
Mixed Use Development
6842 and 6846 Main Street
Amherst, New York

Issued for Approval:	06.04.2021
Drawn By:	BJS
Checked By:	BJS

DRAWING NAME:
Mixed Use Concept Elevations

DRAWING NO.
A-100

Project N

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 12: Color Conceptual Elevation Plan [Drawing A-101] for Proposed Two-Story Townhome Building as Prepared by Carmina Wood Morris DPC

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



1 A-101 TRANSIT ROAD ELEVATION
SCALE: 3/32" = 1'-0"



3 A-101 EXTERIOR PERSPECTIVE
SCALE: NTS

Carmina Wood Morris DPC
487 Main Street Suite 600
Buffalo, New York 14203
P 716.842.3105
F 716.842.0263

PRELIMINARY
NOT FOR CONSTRUCTION

PROFESSIONAL SEAL

REVISIONS:

No.	Description	Date

BLISS

PROJECT NAME:
Concept Documents for:
Mixed Use Development
6842 and 6846 Main Street
Amherst, New York

Issued for Approval:	06.04.2021
Drawn By:	BJS
Checked By:	BJS

DRAWING NAME:
Townhome Concept Elevations

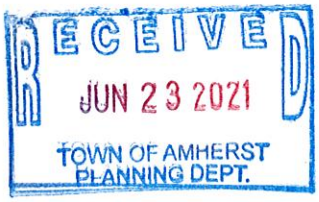
DRAWING NO.
A-101

Project N

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

HSM

June 23, 2021



Ellen Kost, AICP, Assistant Planning Director
Town of Amherst Planning Department
5583 Main Street
Williamsville, New York 14221

Re: Amended Rezoning Application & Supporting Documentation
Rezoning of Portions of 6842 and 6846 Main Street from GB to DC-5 [Z-2021-05] – Town of Amherst
Applicant/Project Sponsor: MEL Investors, LLC c/o Paul Bliss
File No. 10003.56

Dear Ellen:

Enclosed are twelve (12) full size copies of the updated Concept Site Plan [Drawing C-100 – Date: 06/22/21] prepared by Christopher Wood of Carmina Wood Morris DPC for purpose of modifying the location of the two-story attached townhome building (6 units) and the two single-story garage buildings (20 total spaces) on the western boundary of the Project Site contiguous to properties zoned MFR-5 so that these structures will comply with the required setback of thirty feet (30') as measured to the rear portion of the patios behind the six-unit townhome building and the required setback of twenty feet (20') for the two garage buildings. A reduced size copy of the updated Concept Site Plan [Drawing C-100 – Date: 06/22/21] is attached as Exhibit "1".

Per the discussion during the meeting held at the Planning Department on June 17th, the Project Sponsor is proposing two (2) zoning conditions for the consideration of the Planning Board in connection with its review of the pending request to amend the zoning classification of portions of 6842 and 6846 Main Street from GB to DC-5 as follows:

1. The maximum allowed building height on the portion of 6842 Main Street shall be 2 stories with peak height of 35 ft.

2. The maximum allowed building height on the portion of 6846 Main Street shall be 4 stories with peak height of 60 ft.

With respect to 2nd proposed zoning condition, it is important to mention that the existing GB zoning classification allows a building with a height of up to sixty-five feet (65') and the proposed DC-5 zoning classification allows a five-story building with a building height of up to seventy-five feet (75').

If you have any questions regarding this letter or the enclosed updated Concept Site Plan, please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com.

Thank you for your continued cooperation.

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsr-legal.com • www.hsr-legal.com

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

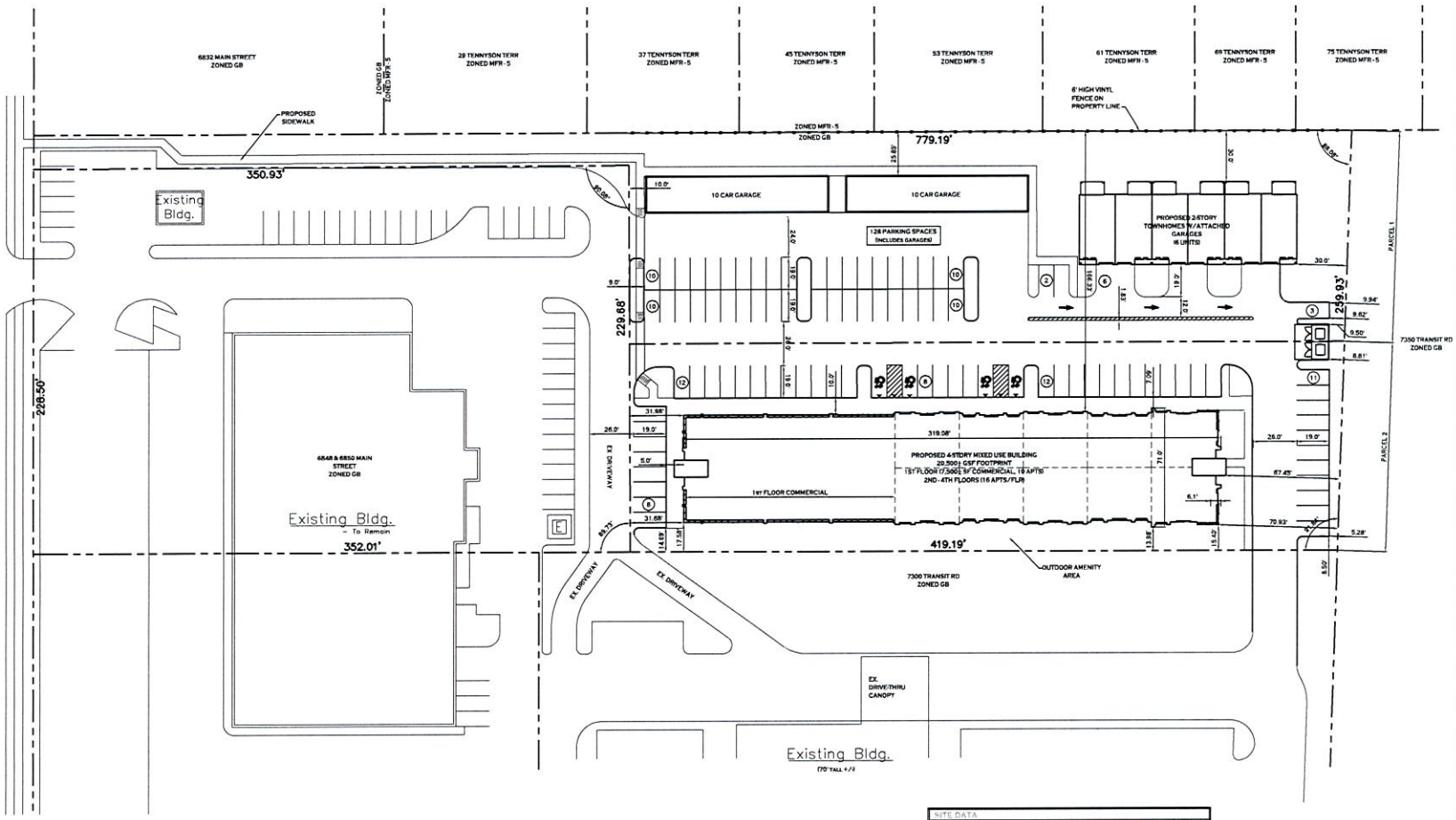
Enc.
cc: Paul Bliss, MEL Investors, LLC [Via e-mail and mail]
Christopher Wood, P.E., Carmina Wood Morris DPC [Via e-mail]
Brian J. Slevar, AIA, Carmina Wood Morris DPC [Via e-mail]

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Exhibit 1 – Reduced Size Copy of the Updated Concept Site Plan [Drawing C-100 – Date: 06/22/21] as Prepared by Carmina Wood Morris DPC

RECEIVED
JUN 23 2021
TOWN OF AMHERST
PLANNING DEPT.

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)



N

SITE PLAN

SCALE: 1"=30'

SITE DATA		
SITE AREA = 2.58 AC (COMBINED PARCEL 1 & PARCEL 2)		
ZONED: GB (GENERAL BUSINESS). REZONED TO DC - 5		
USE: PROPOSED MIXED USE MULTI-TENANT BUILDING & TOWNHOMES		
SETBACKS - BUILDING	REQUIRED	PROVIDED
FRONT	10 FT	> 10 FT
SIDE (3 STORIES / > 3 STORIES)	30 FT/60 FT	30.0' / 166.33'
REAR (3 STORIES / > 3 STORIES)	30 FT/60 FT	30.0' / 67.45'
ACCESSORY STRUCT.	20 FT	25.85'
SETBACKS - PARKING		
FRONT		> 15 FT
SIDE		8.50' MIN.
REAR		5.28' MIN.
GREENSPACE		
INTERIOR GREENSPACE:		X.XX % (X.X AC)
MAX. BUILDING HEIGHT	5 STORIES / 75'	4 STORIES / 45' ±

PARKING CALCULATION (PER SECTION 5A-9-1)
RETAIL SALES: (2,500 GSF)
REQ'D: 2.5 PER 1,000 SF
REQ'D = (2500 / 1000) x 2.5 = 10 SPACES REQ'D
OFFICE: (2,500 GSF)
REQ'D: 2.5 PER 1,000 SF
REQ'D = (2500 / 1000) x 2.5 = 10 SPACES REQ'D
RESTAURANT: (2,500 GSF)
REQ'D: 2.5 PER 1,000 SF
REQ'D = (2500 / 1000) x 2.5 = 10 SPACES REQ'D
APARTMENTS/TOWNHOMES:
REQ'D: 1 SPACE PER 2-BDRM UNIT
REQ'D = 64 UNITS ± 1 = 64 SPACES REQ'D
TOTAL PARKING SPACES REQUIRED = 94 SPACES
PARKING SPACES PROVIDED: (109) 9'x19' SPACES PROVIDED (17 GARAGE SPACES (126) TOTAL SPACES

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

30' 30 0 30 60FT.

RECEIVED
JUN 23 2021
TOWN OF AMHERST
PLANNING DEPT.

© Carmina Wood Morris DPC All rights reserved. Reuse of these documents without the expressed written permission of Carmina Wood Morris PC is prohibited. WARNING: It is a violation of article 145 sections 7209 and 7210 of the New York State Education Law for any person, unless acting under the direction of a licensed architect, licensed engineer or land surveyor to alter in any way any item bearing such architect's, engineer's or land surveyor's seal. If such person alters this item he shall affix to it his seal and the notation "alteration" followed by his signature and the date of such alteration.

Carmina Wood Morris DPC
487 Main Street Suite 600
Buffalo, New York 14203
P: 716.842.3196
F: 716.842.0263

REVISIONS:
No. Description Date

PROJECT NAME:
Site Development Plans for:
Mixed Use Development
6842 & 684[illegible] St
Amherst, N[illegible]

Date: 6/22/21
Drawn by: C. Wood
Scale: As Noted

DRAWING NAME:
Concept Site Plan

DRAWING NO.
C-10
Project no.: 21.xxx

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direc

MEMORANDUM June 24, 2021

RECEIVED
JUL 07 2021
TOWN OF AMHERST
PLANNING DEPT.

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent ademopoulos@amherst.ny.us
Francina Spoth, Town Clerk

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 2.87± ACRES OF LAND FROM **GB TO DC-5**;
PROPERTY LOCATED **6842 & 6846 MAIN STREET (PORTIONS).**
MEL INVESTORS LLC, PETITIONER. **Z-2021-05**

REVISED APPLICATION
Received June 16, 2021

REVISED CONCEPT PLAN
Received June 23, 2021

RECEIVED
JUN 24 2021
TOWN OF AMHERST
BUILDING DEPT.

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____.

General comments relative to your agency interests: none at this time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) Accessible Parking must Comply with Section 1106 of the BCNYS - Accessible dwelling unit must Comply with Section 1107 of the BCNYS.

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

Signature: Doug Gesel **Date:** 7-7-21

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Rev_Plans_Transmittal_062421.doc

cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris DPC, 487 Main St. Suite 500, Buffalo, NY 14203

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

AMHERST HIGHWAY DEPARTMENT

1042 North Forest Road Williamsville, New York 14221

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

Paul Anderson
Deputy Highway Superintendent
panderson@amherst.ny.us

PHONE (716) 631-7117

FAX (716) 631-7265

www.amherst.ny.us

RECEIVED
JUL 07 2021
TOWN OF AMHERST
PLANNING DEPT.

July 6, 2021

To: Ellen Kost, AICP, Associate Planner

From: Patrick Lucey, Superintendent of Highways PR

Re: REQUEST TO REZONE 2.87 ACRES OF LAND FROM **GB TO DC-5;**
PROPERTY LOCATED AT **6842 & 6846 MAIN STREET (PORTIONS).**
MEL INVESTORS LLC, PETITIONER.. **Z-2021-05**

REVISED APPLICATION & REVISED CONCEPT PLAN

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

/ke
C: Daniel Ulatowski, AICP, Zoning Enforcement Officer
Douglas Gesel, Supervising Code Enforcement Officer
Jeffrey Burroughs, Town Engineer
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Dave Marrano, Town Assessor
Bryan Parnell, Fire Chiefs Association (c/o Building)
Ann Demopoulos, Deputy Town Attorney, ROW Agent
Francina Spoth, Town Clerk
Scott A Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins, Sorgi & McCarthy, PLLC
5500 Main Street, Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris, DPC, 487 Main Street
Suite 500, Buffalo, NY 14203

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICI
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direct

RECEIVED
JUN 24 2021
TOWN ATTORNEY

MEMORANDUM June 24, 2021

RECEIVED
JUL 01 2021
TOWN OF AMHERST
PLANNING DEPT.

TO: From:
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent ademopoulos@amherst.ny.us
Francina Spoth, Town Clerk

7/1
~~6/24~~/21

FROM: To:
Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 2.87± ACRES OF LAND FROM **GB TO DC-5**;
PROPERTY LOCATED **6842 & 6846 MAIN STREET (PORTIONS)**.
MEL INVESTORS LLC, PETITIONER. **Z-2021-05**

REVISED APPLICATION
Received June 16, 2021

REVISED CONCEPT PLAN
Received June 23, 2021

REVIEW:

Do you agree with all statements made? Agree with all statements made.

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

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

Signature: _____ **Date:** 6/24/21 7/1/21

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Rev_Plans_Transmittal_062421.doc
cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris DPC, 487 Main St. Suite 500, Buffalo, NY 14203

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Amherst

2011.054

Town of Amherst Planning Department

Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2021 JUN 25 A 11:50

RECEIVED
JUL 01 2021
TOWN OF AMHERST
PLANNING DEPT

MEMORANDUM

June 24, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent ademopoulos@amherst.ny.us
Francina Spoth, Town Clerk

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 2.87± ACRES OF LAND FROM **GB TO DC-5**;
PROPERTY LOCATED **6842 & 6846 MAIN STREET (PORTIONS)**.
MEL INVESTORS LLC, PETITIONER. **Z-2021-05**

REVISED APPLICATION
Received June 16, 2021

REVISED CONCEPT PLAN
Received June 23, 2021

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: None at this time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 6/30/21

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Rev_Plans_Transmittal_062421.doc

cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris DPC, 487 Main St. Suite 500, Buffalo, NY 14203

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Amherst

2011.054

Town of Amherst Planning Department — Erie County, New York

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direc

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
21 JUN 25 A 11:50

RECEIVED
JUN 30 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM June 24, 2021

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent ademopoulos@amherst.ny.us
Francina Spoth, Town Clerk

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 2.87± ACRES OF LAND FROM **GB TO DC-5**;
PROPERTY LOCATED **6842 & 6846 MAIN STREET (PORTIONS)**.
MEL INVESTORS LLC, PETITIONER. **Z-2021-05**

REVISED APPLICATION
Received June 16, 2021

REVISED CONCEPT PLAN
Received June 23, 2021

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 6/28/21

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Rev_Plans_Transmittal_062421.doc
cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris DPC, 487 Main St. Suite 500, Buffalo, NY 14203

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
JUN 25 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM June 24, 2021

To: Ellen Kost
From: Dave Marrano
Date 6/25/21

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Arin Demopoulos, Deputy Town Attorney, Right-of-Way Agent ademopoulos@amherst.ny.us
Francina Spoth, Town Clerk

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 2.87± ACRES OF LAND FROM **GB TO DC-5**;
PROPERTY LOCATED **6842 & 6846 MAIN STREET (PORTIONS)**.
MEL INVESTORS LLC, PETITIONER. **Z-2021-05**

6846 - 70.17-3-10
3-9

REVISED APPLICATION
Received June 16, 2021

REVISED CONCEPT PLAN
Received June 23, 2021

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: Would Request a Merge of these two parcels

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 6/25/21

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Rev_Plans_Transmittal_062421.doc

cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris DPC, 487 Main St. Suite 500, Buffalo, NY 14203

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

MEMORANDUM June 24, 2021

TO: Daniel Ulatowski, Principal Planner Our copy
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent ademopoulos@amherst.ny.us
Francina Spoth, Town Clerk

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST TO REZONE 2.87± ACRES OF LAND FROM **GB TO DC-5**;
PROPERTY LOCATED **6842 & 6846 MAIN STREET (PORTIONS)**.
MEL INVESTORS LLC, PETITIONER. **Z-2021-05**

REVISED APPLICATION
Received June 16, 2021

REVISED CONCEPT PLAN
Received June 23, 2021

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 7/12/2021

EK/SM/bf
X:\Current_Planning\Files\Rezonings\2021\Z-2021-05_(6842 & 6846 Main St)_2021\Z-2021-05_Rev_Plans_Transmittal_062421.doc
cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., Hopkins Sorgi & McCarthy PLLC, 5500 Main St. Suite 343, Williamsville, NY 14221
Chris Wood, Carmina Wood Morris DPC, 487 Main St. Suite 500, Buffalo, NY 14203

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, NY AND REPLY TO MUNICIPALITY

Note: Please complete in triplicate. Send original and one copy (with attachments) to Erie County Division of Planning, Room 1053, 95 Franklin Street, Buffalo, N.Y. 14202. Retain last copy for your files.

DO NOT WRITE IN THIS SPACE

Case No.: ZR-21-285

Received: 4/30/21

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

Description of Proposed Action

1. Name of Municipality: Town of Amherst

2. Hearing Schedule: **Date** June 17 2021 **Time** 6:30pm **Location** 5583 Main Street, Williamsville

3. Action is before: ☐ Legislative Body ☐ Board of Appeals ☒ Planning Board

4. Action consists of: ☐ New Ordinance ☒ Rezone/Map Change ☐ Ordinance Amendment

☐ Site Plan ☐ Variance ☐ Special Use Permit ☐ Other

5. Location of Property: ☐ Entire Municipality ☒ Specific as follows portions of 6842 and 6846 Main Street

6. Referral required as Site is within 500'of: ☐ State or County Property/Institution ☐ Municipal Boundary ☐ Farm Operation located in an Agricultural District

☐ Expressway ☐ County Road ☒ State Highway ☐ Proposed State or County Road, Property, Building/ Institution, Drainageway

7. Proposed change or use: (be specific) Request to rezone 2.8 acres from GB to DC-5

8. Other remarks: (ID#, SBL#, etc.) Z-2021-05

9. Submitted by: Thomas Voigt, Assistant Planner April 28, 2021

Town of Amherst, 5583 Main St., Williamsville, NY 14221

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 4/30/21. **The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.**

1. ☐ **The proposed action is not subject to review under the law.**
2. ☐ **Form ZR-3, Comment on Proposed Action is attached hereto.**
3. ☐ **The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.**
4. ☒ **No recommendation; proposed action has been reviewed and determined to be of local concern**

By the Division of Planning: Dan M. Hoel **Date:** 5/25/21

Attachment: Z-2021-05 Town Board letter Main St. 2 080921 (RES-2021-679 : 6842 & 6846 Main Street Rezoning)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 24649 **RESOLUTION 2021-772** **ADOPTED**

All-Way Stop at Dawnbrook Lane & Morningstar Court

A public hearing for the installation of a third stop sign at the intersection of Dawnbrook Lane & Morningstar Court making it an all-way stop intersection.

> "The intersection of Dawnbrook Lane & Morningstar Court is hereby designated as an all-way stop intersection and stop signs shall be installed on all legs of the intersection."

9/13/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:33 PM.

Christopher Schregel, Traffic Safety Liaison, presented.

There were no speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:36 PM.

A motion to approve was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0.

FINANCIAL IMPACT:

None.

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

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 24707 **RESOLUTION 2021-773** **ADOPTED AS AMENDED**

Relief from Zoning Condition - 3800 Sheridan Drive

Adoption of Local Law for Relief from a Zoning Condition
(3800 Sheridan Drive, Z-2004-26_A)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of August 19, 2021, that the proposed relief of zoning condition for a proposed automobile dealership with overhead doors, is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed relief of a zoning condition is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to grant relief from a zoning condition that prohibited overhead doors that face north or west, on the subject property.

Supervisor Kulpa made the following request: that the Applicant and the Town of Amherst Planning Board, along with New York State Department of Transportation, consider adding to the pedestrian realm and offering more significant pedestrian refuge along Sheridan Drive.

9/13/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:36 PM.

Sean Hopkins, Esq., presented and answered questions.

There were no speakers therefore, Supervisor Kulpa moved to close the hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was closed at 7:45 PM.

A motion to approve was made by Supervisor Kulpa and seconded by Councilmember Lavin. A motion was then made by Supervisor Kulpa to amend, seconded by Councilmember Bucki and unanimously approved 5-0. Amendment is underlined above.

A motion to approve as amended was made by Supervisor Kulpa, seconded by

Councilmember Bucki and unanimously approved 5-0.

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

Attachment: draft neg dec 3800 Sheridan (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

D R A F T (09/13/2021)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency: Town of Amherst
Town Board

Project: Z-2004-26_A

Address: 5583 Main Street
Williamsville, NY 14221
(716) 631-7051

Date:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action: Relief of zoning condition

SEQR Status: Unlisted action

Description of Action: Relief of a zoning condition that no overhead doors face north or west on the subject property, placed as a condition of rezoning by the Town Board at their meeting of February 28, 2005.

Location: 3800 Sheridan Drive, Town of Amherst, Erie County, New York

Petitioner: Northtown Automotive Companies

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Full Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed relief of zoning condition that no overhead doors can face north or west on the subject property, for a proposed automotive dealership will not have a significant impact on the environment, as follows:

1. The project is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on July 2, 2021 reviewed the application and EAF submitted on June 28, 2021, and had no objection or comments on the proposed rezoning.

2. The project will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The project is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on July 7, 2021 reviewed the application and EAF submitted on June 28, 2021, and has no objection or comments on the proposed request for relief of the rezoning condition.

4. The project is not within an area identified by the State as potentially containing significant cultural or archeological resources, nor will it impair the character or quality of important historical resources.

5. The project will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for relief of a zoning condition. Neighboring uses are an auto body shop to the west, a commercial office to the east, a parking lot to the south and multi-family residential to the north and zoned MS, GB, MS, and MFR-7 respectively; therefore, the project is consistent with surrounding land use.

6. The proposed relief of zoning condition that prohibited overhead doors that face north or west, on the subject property, for a proposed automobile dealership with overhead doors will not cause a major change in the use of either the quantity or type of energy.

7. The relief of zoning condition that prohibited overhead doors that face north or west, on the subject property for the proposed automobile dealership with overhead doors will not create any hazard to human health.

Attachment: draft neg dec 3800 Sheridan (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

8. The relief of zoning condition that prohibited overhead doors that face north or west, on the subject property, will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed automobile dealership with overhead doors will be consistent with the scale of surrounding land uses.

9. The relief of zoning condition that prohibited overhead doors that face north or west, on the subject property, for the proposed automobile dealership with overhead doors will not significantly increase the number of people using the site over its previous level of use.

10. Review by the Town Traffic/Safety Board on July 1, 2021**,** indicats that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on July 7, 2021, Engineering on July 2, 2021, Traffic/Safety Board on July 1, 2021, Assessor on July 6, 2021, and Right-of-Way Agent on July 1, 2021 along with outside agencies including Erie County Department of Environment & Planning on July 9, 2021. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

TV/ac
X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26_A_draft neg dec_091321.docx
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDOT
Sean Hopkins, Esq., 5500 Main St., Suite 343, Williamsville, NY 14221
Northtown Automotive Companies, 1135 Millersport Hwy., Amherst, NY 14226
Jason Burford, Greenman-Pedersen, 4950 Genesee St., Suite 100, Buffalo, NY 14225

Attachment: draft neg dec 3800 Sheridan (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

LOCAL LAW NO. _____-202_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW
GRANTING RELIEF OF A CONDITION OF REZONING
OF PROPERTY LOCATED AT 3800 SHERIDAN DRIVE

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, “A Local Law Granting Relief of a Rezoning Condition for Property Located at 3800 Sheridan Drive”.

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application for relief of a condition imposed by the Town Board on May 28, 2005 in connection with the Town Board’s approval of the rezoning of property located at 3800 Sheridan Drive from GB and MFR-5 to MS has been filed and is in proper order. The Town Board further finds that the requested relief is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby grants relief of the condition imposed on May 28, 2005 for the property at 3800 Sheridan Drive stating that “No automotive bays or overhead doors on any future buildings face north or west”, **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

Parcel "A":

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 72, Township 12, Range 7 of the Holland Land Company's survey and further distinguished as part of Subdivision Lot No.'s 14 & 15 according to a Subdivision Map for the heirs of Florence Fruehauf by C.C. Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. 1172, described as follows:

Beginning at the intersection of the north line of Sheridan Drive at its intersecti9n with the east line of subdivision Lot No. 21 according to a Subdivision Map for the heirs of Florence · Fruehauf by C.C: Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. 1172;·

Attachment: local law 3800 sheridan (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Thence northerly along the east line of subdivision Lot No. 21 a distance of 80.93 feet to the southwest corner of subdivision Lot No. 16;

Thence easterly along the south line of subdivision Lot No. 16 a distance of 323.24 feet to the west line of Getzville Road (formerly Skinnersville New Home Road);

Thence southerly along the west line of Getzville Road (formerly Skinnersville New Home Road) a distance of 70.46 feet more or less to the northerly line of lands acquired by the State of New York by Notice of Appropriation filed in the Erie County Clerks Office on October 30, 1997 in Uber 10923, Page 1713;

Thence southwesterly along the northerly line of lands acquired by the State of New York by Notice of Appropriation filed in the Erie County Clerks Office on October 30, 1997 in Liber 10923, Page 1713 a distance of 54.56 feet more or less to the north line of Sheridan Drive;

Thence westerly along the north line of Sheridan drive a distance of 268.43 feet to the Point or Place of Beginning. Containing 0.652 acre more or less.

Parcel "B":

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 72, Township 12, Range 7 of the Holland Land Company's survey and further distinguished as all of Subdivision Lot No.'s ;16, I7, 18, 19 and part of subdivision Lot No. 20 according to a Subdivision Map for the heirs of Florence Fruehauf by C.C. Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. I I72; described as follows:

Beginning at the intersection of the East line of Lot 2 r·according to a Subdivision Map for the heirs of Florence Fruehauf by C.C. Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. I I72 and the south line of Hartford Road (Formerly New Road);

Thence easterly along the south line of Hartford Road a distance of 411.96 feet to a point on the west line of Getzville Road, (Formerly Skinnersville New Home Road),

Thence southwesterly along the west line of Getzville Road a distance of 145.72 feet to a point;

Thence southerly along the west line of Getzville Road a distance of 256.65 feet the southeasterly corner of subdivision Lot No. I6;

Thence westerly along the southerly line of subdivision Lot No. 16 a distance of 323.24 feet to the east line of subdivision Lot No. 21;

Attachment: local law 3800 sheridan (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Thence northerly along the East Line of Subdivision Lot No. 21, Parallel with the west line of Lot 72, Township 12, Range 7 a distance of 390.01 feet to the Point or Place of Beginning, containing 3.195 acres more or less.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: local law 3800 sheridan (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Amherst

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

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Directo

Daniel J. Ulatowski, A
Assistant Planning Di

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Town Board Agenda of September 13, 2021

August 31, 2021

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

Subject: Request for relief of a zoning condition that no overhead doors face north or west on the subject property, placed on the rezoning of the property from GB and MFR-5 to MS by the Town Board at their meeting of February 28, 2005 (Z-2004-26). Property located at 3800 Sheridan Drive, Northtown Automotive Companies, Petitioner. (Z-2004-26A).

Honorable Members:

The subject property is a 3.85± acre rectangular parcel located on the northwest corner of Sheridan Drive and Getzville Road.

The site is currently used as a vehicle inventory storage lot which largely consists of crushed stone with some asphaltic areas (permitted under temporary use permit issued by the Zoning Board of Appeals (ZBA-2015-0017).

The concept plan illustrates a new automotive dealership that includes overhead doors, both for service and delivery, that face east, west, north, and south. The remainder of the site is the associated, required parking and landscaping. There are two curb cuts shown on the site plan, one at the northeast corner of the site onto Getzville Road, and the other at the southwest of the site onto Sheridan Drive.

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

The purpose of this request is for the relief of a zoning condition that prohibits overhead doors from facing in the north and west directions. The original zoning condition was imposed to help buffer this site from surrounding land uses. Since then, new iterations of the zoning ordinance have been adopted that now require a landscape buffer and screening methods to help soften this use to its surroundings

The history of previous rezoning requests or site plan approvals for the subject property is as follows:

Honorable Town Board

Relief of zoning condition, property located at 3800 Sheridan Drive; Agenda of September 13, 2021

Rezoning:

The subject property was zoned General Business District (GB) along the Sheridan Drive frontage and Multi-Family Residential District Five (MFR-5) on the remainder of the subject site with adoption of the 1976 Town-wide zoning maps on January 19, 1976.

Z-2004-26 The Town Board on 2/28/05 rezoned 3800 Sheridan Drive and 590, 600, 606 & 616 Getzville Road from GB and MFR-5 to MS with the following conditions:

1. That no automotive bays or overhead doors on any future building face north or west.
2. That a landscape buffer 30± feet wide be provided along the north and west property lines adjacent to property zoned residential.
3. That there be no vehicular access from the subject parcels to Hartford Rd.
4. That there be no off-premises signs (billboards) permitted on the subject parcels.
5. That there be no outdoor public address or other similar system on the subject parcels.
6. That a lighting plan be provided at site plan and that spillover light onto adjacent residentially-zoned property shall not exceed 0.2-foot candles, measured at the lot line.

Site Plan:

SP-1986-15 Site plan to convert an existing restaurant on the site to a dental office was approved by the Planning Board on April 17, 1986. Driveway, parking and landscape changes were subsequently approved.

SP-1986-15_A Minor Modification to the site plan to re-use the existing Sheridan Dr. driveway in lieu of relocating per the plan approved for the office building was denied by the Planning Director on December 2, 1986.

SP-1986-15_C Minor Modification to the site plan to relocate the driveway and add 6 parking spaces along with revisions to landscaping for the office building was approved by the Planning Director on September 23,1993.

SP-1986-15_B Minor Modification to the site plan for parking and landscape revision resulting in the loss of 4 parking spaces for the office building was approved by the Planning Director on October 31, 1994.

SP-2005-24 Site plan for a 6,670 sq. ft. auto display/service facility with three bays and a 316-space vehicle outdoor display area was approved by the Planning Board on October 20, 2005 but never finalized.

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Honorable Town Board

Relief of zoning condition, property located at 3800 Sheridan Drive; Agenda of September 13, 2021

SP-2013-21 Site plan for a 32,000 sq. ft. new car sales and service building with 262 vehicle parking spaces was approved by the Planning Board on January 16, 2014 and approved plans were issued on July 14, 2014; the building was never constructed.

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

INTENT AND OBJECTIVES OF THE COMPREHENSIVE PLAN

This amendment to the rezoning condition is consistent with the Comprehensive Plan. Figure 6 of the Comprehensive Plan outlines this parcel as a commercial/ mixed-use center. The proposed relief and subsequent development will be in context with the intent of the land use designation.

This parcel is located away from single-family residential uses and has direct access to Sheridan Drive, a heavily trafficked commercial corridor. The use associated with this proposal is singular in nature, but contributes to a larger mixture of uses along the Sheridan Drive corridor. The zoning condition placed on the subject site was an attempt to help create a buffer between uses. With the adoption of the Bicentennial Comprehensive Plan outlined in section 3.2, buffering and screening requirements were enacted as part of the Zoning Ordinance. The buffering and screening requirements help to create a buffer between uses and therefore the original zoning condition of limitation of overhead doors is no longer necessary.

INTENT AND OBJECTIVES OF THE ZONING ORDINANCE

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

CONSISTENCY/COMPATIBILITY WITH SURROUNDING DEVELOPMENT/ZONING

This property is zoned Motor Service (MS) and is consistent with the surrounding land uses. There is an auto body shop to the west, a commercial office to the east, a parking lot to the south and multi-family residential to the north. These properties are zoned, Motor Service (MS), General Business (GB), Motor Service (MS), and Multi Family Residential 7 (MFR-7) respectively.

ADEQUATE SERVICES AND UTILITIES

All services and utilities necessary for the proposed rezoning are available and adequate at the subject location. This is an unlisted action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Honorable Town Board

Relief of zoning condition, property
located at 3800 Sheridan Drive;
Agenda of September 13, 2021

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board's findings relative to SEQR and issue the attached Negative Declaration, and that the subject request be approved based on the attached resolution.

Very truly yours,

for Daniel C. Howard, AICP
Planning Director

DH/ TV/ac
Att.
X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26_A_TB letter.docx
cc: Stanley Sliwa, Town Attorney

Planning Board Approval; August 19, 2021
Ayes; 7 Noes; 0

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2004-26A

PETITIONER

Northtown Automotive Companies
1135 Millersport Highway
Amherst, NY 14226

PROPERTY LOCATION

3800 Sheridan Drive

WHEREAS the Town of Amherst Planning Board on Thursday, August 19, 2021 held a public hearing on an application to remove a condition of rezoning that prohibited overhead doors facing north or west on the rezoning of land at 3800 Sheridan Drive, zoned MS, and

WHEREAS the Planning Board has reviewed plans and other materials regarding the request to remove a rezoning condition, and

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

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

A. The proposed removal of a condition of prohibiting overhead doors facing north or west generally consistent with the policies of the Comprehensive Plan and the Zoning Ordinance.

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

C. The proposal is compatible with the present zoning and conforming uses of nearby property and with the character of the neighborhood.

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

E. The proposed change does not tend to improve the balance of uses, nor meets a specific demand in the Town.

F. Review by the US Army Corps of Engineers under Section 404 of the Clean Water Act may be waived because the parcel is developed.

Pursuant to Local Law #3-82, as amended, the Planning Board recommends that the Town Board determine that the requirements of SEQR are complete and that the request to remove a condition of rezoning that prohibited overhead doors facing north or west is not expected to have a significant adverse effect on the environment.

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

TOWN OF AMHERST
PLANNING BOARD
ZONING RESOLUTION
Z-2004-26A

PETITIONER	PROPERTY LOCATION
Northtown Automotive Companies	3800 Sheridan Drive

NOW THEREFORE BE IT RESOLVED that the Planning Board recommends to the Town Board in accordance with Section 8-3-4 of the Zoning Ordinance, that the application to remove a condition of the rezoning that prohibited overhead doors facing north or west be approved.

The foregoing resolution was adopted by the Town of Amherst Planning Board, August 19, 2021; moved by - Gelber; seconded by - Guliani; ayes 7, noes 0.

Robert J. Gilmour, Chair

8-26-21
Date

TV/ac
X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26A_Resolution_081321.docx
Cc: Town Clerk
Commissioner of Building
Highway Superintendent
Town Engineer
Traffic/Safety Coordinator
Northtown Automotive Companies, 1135 Millersport Hwy., Amherst, NY 14226
Sean Hopkins, Esq., 5500 Main St., Suite 343, Williamsville, NY 14221
Jason Burford, Greenman-Pedersen, 4950 Genesee St., Suite 100, Buffalo, NY 14225

AUG27'21 AM 9:17 RCVD

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

DRAFT RESOLUTION
(09/13/2021)

Adoption of Local Law for Relief from a Zoning Condition
(3800 Sheridan Drive, Z-2004-26_A)

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of August 19, 2021, that the proposed relief of zoning condition for a proposed automobile dealership with overhead doors, is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed relief of a zoning condition is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed zoning at this location, and be it further

RESOLVED, that in accordance with Section 203-8-3 of the Town Code (Zoning), the Town Board adopts Local Law (#) to grant relief from a zoning condition that prohibited overhead doors that face north or west, on the subject property.

X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26_A_TB letter.docx

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Application to Modify Zoning Conditions
3800 Sheridan Drive
Applicant: Northtown Automotive Companies
c/o Sean Hopkins, Esq.

Original

Prepared By: Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 716.510-4338
E-mail: shopkins@hsr-legal.com

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2004-26 A **Acreage** 3.85± **Fee $** 1215—

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____ ACCEPTED BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. 6/28/2021 RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	_____
2 – 20 ACRES **$1,250 + $250/acres or fraction thereof over 2 acres**		_____
20 – 30 ACRES **$5,700 + $150/acre or fraction thereof over 20 acres**		_____
OVER 30 ACRES **$6,900 +$75/acre or fraction thereof over 30 acres**		_____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	$1,200.00
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	$15.00
	TOTAL FEE:	**$** 1,215.00

RECEIVED
JUN 28 2021
TOWN OF AMHERST
PLANNING DEPT.

[Note: A completed Part 1 of the Full Environmental Assessment Form with Page 5[a] dated June 22, 2021 is attached as Exhibit "1". Full size copies of the Site Plan [Drawing C-02] depicting the layout of the proposed Northtown Volkswagen Project and the Landscape Plan [Drawing L-01] are attached and reduced size copies are attached as Exhibit "5" and "6".]

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Northtown Automotive Companies

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

Phone: 510-4338 Fax:

E Mail shopkins@hsr-legal.com

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

From: District

To: District

[The Petitioner is requesting that a zoning condition imposed by the Town Board on February 28, 2005 prohibiting overhea doors on the north or west be eliminated. A copy of the zonin conditions are attached as Exhibit "2".]

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

3800 Sheridan Drive

SBL #: 67.12-5-9.1

4. **Area of land to be rezoned** (in acres): Not Applicable - The Project Site consists of 3.75 acres.

5. **Owner of Land:**

Name: North Properties II LLC c/o Sean Hopkins

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

Telephone: 510-4338 - E-mail: shopkins@hsr-legal.com

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

Other Representative:
Jason Burford, GPI Engineering
4950 Genesee St., Suite 100
Buffalo, New York 14225
Tel: 989-3336
E-mail: jasonburford@gpinet.com

Name: Sean W. Hopkins, Esq.

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsr-legal.com
City State Zip Code

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7. **Petitioner's interest in property**

_____Option to purchase

__X__Owner

_____Other (explain) _____

_____

_____

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

Not Applicable.

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor.** Legal description of Project Site is attached as Exhibit "3" and copy of the Survey prepared by GPI is attached as Exhibit "4".

10. **Said property has the following deed restrictions or Covenants:** (attach copy) Not Applicable.

Liber _____ Page _____

11. **Information on proposed project:**

A. Description of the character of the proposed development:

The proposed project will consists of a new Volkswagen automotive dealership will improve the character of the Project Site which currently consists of a vehicle storage lot.

B. Rationale for rezoning request:

1. Why was this site chosen?

The Project Site is properly zoned Motor Services District ("MS") and is owned by the Petitioner.

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

The Petitioner is not seeking to amend the zoning classification of the Project Site.

3. How will this rezoning impact surrounding properties?

The project will have positive community character impacts.

4. How will this rezoning impact the school system?

The project will generate annual school taxes revenues that will benefit the school district without creating any demand for educational services.

12. Quantitative Data:

A. Total # of dwelling units: Not Applicable

B. Distribution of dwelling units by type: Not Applicable

C. Gross Residential Density per acre: Not Applicable

D. Total amount of Open Space: Not Applicable

E. Proposed Non-Residential Floor Area: 27,725 sq. ft.

[Note: A reduced size copy of the Site Plan prepared by GPI is provided at Exhibit "7" and a full size copy is also attached.]

13. Development Schedule:

Start: Summer/Fall 2021

Finish: 2022

Stages (# of): 1

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

Not applicable.

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

Greenspace and landscaping will be privately owned and maintained.

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

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

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

The proposed project consists of a new Volkswagen dealership is consistent with the adopted Bicentennial Comprehensive Plan. The Project Site is properly zoned Motor Services District ("MS") and is located along a segment of Sheridan Drive that consists of numerous motor services uses including dealership and repair facilities.

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

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

Not Applicable. The proposed redevelopment project does not require an amendment of the adopted Comprehensive Plan.

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

The Petitioner is not seeking to amend the zoning classification of the Project Site. The requested modification of a zoning condition imposed by the Town Board on February 28, 2005 to allow the new Volkswagen dealership building to have overhead doors facing to the north and west is consistent with the intent and objectives of the Zoning Code since it will accommodate the redevelopment of the Project Site in a manner that will improve the character of the Project Site and that will include substantial greenspace and landscaping.

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

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

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

The proposed redevelopment project is consistent with the zoning classification of the Project Site and existing uses along Sheridan Drive and will result in positive community character impacts.

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

Not Applicable. The Project Site is properly zoning MS District.

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

There are very parcels in the Town of Amherst that are properly zoned and large enough to accommodate a new automotive dealership.

17. The petitioner encloses herewith the sum of $ 1,215.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.

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

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

Counsel for Petitioner
Signature of Petitioner

Subscribed and sworn to before me this 22nd day of June, 20 21

Notary Public, Erie County, New York

MARIANNE BRAUTLACHT
Notary Public, State of New Yo
Qualified in Erie County
My Commission Expires 01/14/20

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

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

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

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

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

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

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

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

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Exhibit 1 – Part 1 of the Full Environmental Assessment Form Prepared Pursuant to the State Environmental Quality Review Act ("SEQRA") with Attached Page 5[a]

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Full Environmental Assessment Form
Part 1 - Project and Setting

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Northtown Volkswagen Auto Dealership proposed		
Project Location (describe, and attach a general location map): 3800 Sheridan Drive @ Getzville Road, Town of Amherst, NY 14226 (SBL 67.12-5-9.1)		
Brief Description of Proposed Action (include purpose or need): Development of new auto dealership (sales and service) on existing vacant parcel currently used for excess auto inventory storage. New facility to connect to existing public water and sanitary sewer utilities. Site to incorporate new building and necessary asphalt parking and driveway areas. Stormwater management to include underground retention storage. Existing curb cut onto Sheridan Drive to remain while adding a curb cut/driveway on the west side of Getzville Road. The proposed action is an Unlisted Action pursuant to the State Environmental Quality Review Act ("SEQRA") and the action has been defined broadly to include all proposed site improvements as well as required approvals and permits needed from the municipal boards of the Town of Amherst as well as involved agencies.		
Name of Applicant/Sponsor: Northtown Automotive Companies c/o Sean Hopkins, Esq.	Telephone: 716-510-4338 E-Mail: shopkins@hsr-legal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: New York	Zip Code: 14221
Project Contact (if not same as sponsor; give name and title/role): Jason Burford, Project Manager for Greenman-Pedersen, Inc. consulting engineers	Telephone: 716-989-3336 E-Mail: jasonburford@gpinet.com	
Address: 4950 Genesee Street, Suite 100		
City/PO: Cheektowaga	State: New York	Zip Code: 14225
Property Owner (if not same as sponsor): Northtown Properties II LLC	Telephone: E-Mail:	
Address: 1135 Millersport Highway		
City/PO: Amherst	State: New York	Zip Code: 14226

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B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, or Village Board of Trustees ☑Yes ☐No	Town of Amherst Town Board - Modification of Zoning Condition from February 28, 2005	June 22, 2021
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Town of Amherst Planning Board - Site Plan Approval	April 19, 2021
c. City, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☑Yes ☐No	Town of Amherst Building Department - Building Permit	TBD
e. County agencies ☑Yes ☐No	Erie County Health Department - Water and Sanitary Sewer	TBD
f. Regional agencies ☐Yes ☑No		
g. State agencies ☑Yes ☐No	NYSDEC - SPDES permit	TBD
h. Federal agencies ☐Yes ☑No		

i. Coastal Resources.

i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No

ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No

iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes ☐No

If Yes, identify the plan(s):

NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No

If Yes, identify the plan(s):

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C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
MS - Motor Service

b. Is the use permitted or allowed by a special or conditional use permit? ☑ Yes ☐ No

c. Is a zoning change requested as part of the proposed action? ☐ Yes ☑ No
If Yes,
i. What is the proposed new zoning for the site?

C.4. Existing community services.

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

b. What police or other public protection forces serve the project site?
Town of Amherst Police

c. Which fire protection and emergency medical services serve the project site?
Amherst - Eggertsville

d. What parks serve the project site?
Garnet Park

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? commercial

b. a. Total acreage of the site of the proposed action? 3.75 acres
b. Total acreage to be physically disturbed? 3.75 acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 4.95 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☑ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)
ii. Is a cluster/conservation layout proposed? ☐ Yes ☐ No
iii. Number of lots proposed? _____
iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: 6 months
ii. If Yes:
- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

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f. Does the project include new residen uses? ☐Yes ☑No
If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase				
At completion of all phases				

g. Does the proposed action include new non-residential construction (including expansions)? ☑Yes ☐No
If Yes,
i. Total number of structures 1
ii. Dimensions (in feet) of largest proposed structure: 24 height; 142 width; and 220 length
iii. Approximate extent of building space to be heated or cooled: 27,725 square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☑Yes ☐No
If Yes,
i. Purpose of the impoundment: stormwater runoff to be directed to underground detention facility after pretreatment facilities
ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☐ Other specify:
stormwater runoff
iii. If other than water, identify the type of impounded/contained liquids and their source.
not applicable
iv. Approximate size of the proposed impoundment. Volume: TBD million gallons; surface area: 0 acres
v. Dimensions of the proposed dam or impounding structure: height; length
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):
high density polyethylene arches for underground storage

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? ☑Yes ☐No
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
If Yes:
i. What is the purpose of the excavation or dredging? excavation for underground stormwater detention
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
- Volume (specify tons or cubic yards): TBD
- Over what duration of time? TBD

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.
Excavation of site to install underground storage system
iv. Will there be onsite dewatering or processing of excavated materials? ☑Yes ☐No
If yes, describe. dewatering as necessary
v. What is the total area to be dredged or excavated? TBD acres
vi. What is the maximum area to be worked at any one time? TBD acres
vii. What would be the maximum depth of excavation or dredging? TBD feet
viii. Will the excavation require blasting? ☐Yes ☑No
ix. Summarize site reclamation goals and plan:
Some excavated material will be used to re-grade the site. Any excess material will be removed from the site as permitted by the Town.

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐Yes ☑No
If Yes:
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description):

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ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:
not applicable

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐Yes ☑No
If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes ☑No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑Yes ☐No
If Yes:

i. Total anticipated water usage/demand per day: TBD gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☑Yes ☐No
If Yes:

- Name of district or service area: ECWA
- Does the existing public water supply have capacity to serve the proposal? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No
- Do existing lines serve the project site? ☑Yes ☐No

iii. Will line extension within an existing district be necessary to supply the project? ☑Yes ☐No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
  service line only with connection to existing mainline
- Source(s) of supply for the district: Erie County Water Authority (Lake Erie)

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐Yes ☑No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:
not applicable

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑Yes ☐No
If Yes:

i. Total anticipated liquid waste generation per day: TBD gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):
sanitary wastewater

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

- Name of wastewater treatment plant to be used: Town of Amherst Wastewater Treatment Plant #16
- Name of district: Town of Amherst
- Does the existing wastewater treatment plant have capacity to serve the project? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No

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- Do existing sewer lines serve the project site? ☑ Yes ☐ No
- Will a line extension within an existing district be necessary to serve the project? ☑ Yes ☐ No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: service line to connect to existing mainline

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐ Yes ☑ No

If Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- What is the receiving water for the wastewater discharge?

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

not applicable

vi. Describe any plans or designs to capture, recycle or reuse liquid waste:

none

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑ Yes ☐ No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or 3.25 acres (impervious surface)

_____ Square feet or 3.75 acres (parcel size)

ii. Describe types of new point sources. downspouts and catch basins to underground conveyance system to underground retention facility

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

on-site stormwater management underground structure

- If to surface waters, identify receiving water bodies or wetlands: not applicable
- Will stormwater runoff flow to adjacent properties? ☐ Yes ☑ No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐ Yes ☑ No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☑ Yes ☐ No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

occasional delivery vehicles

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

none

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

none

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐ Yes ☑ No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐ Yes ☐ No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____ Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____ Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____ Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or ...t methane (including, but not limited to, sewag... ...atment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☑No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☑Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☑No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☑No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☑Yes ☐No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: TBD

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): via local utility

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☑No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7 am - 5 pm
- Saturday: 7 am - 1 pm
- Sunday: none
- Holidays: none

ii. During Operations:

- Monday - Friday: 9 am - 6 pm
- Saturday: 9 am - 5 pm
- Sunday: none
- Holidays: none

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m. Will the proposed action produce no[ ]hat will exceed existing ambient noise levels d[ ], construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

construction equipment during construction

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe:

n. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

exterior lighting on building and poles in parking lot for safety

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☑ Yes ☐ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

equipment exhaust during construction

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally, describe the proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: _____ tons per _____ (unit of time)
- Operation : _____ tons per _____ (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction:
- Operation:

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction:
- Operation:

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

s. Does the proposed action include col[illegible]uction or modification of a solid waste managem[illegible] facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☑ Urban ☐ Industrial ☑ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____

ii. If mix of uses, generally describe:

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	3.0	3.25	+.25
• Forested	0.0	0.0	0.0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	.25	0.0	-.25
• Agricultural (includes active orchards, field, greenhouse etc.)	0.0	0.0	0.0
• Surface water features (lakes, ponds, streams, rivers, etc.)	0.0	0.0	0.0
• Wetlands (freshwater or tidal)	0.0	0.0	0.0
• Non-vegetated (bare rock, earth or fill)	.5	0.0	-.5
• Other Describe: Landscaping/greenspace	0.0	.5	+.5

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐Yes ☑No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☑No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____

iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

v. Is the project site subject to an insti[illegible]onal control limiting property uses? ☐Yes ☑No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐Yes ☑No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? >6 feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %

c. Predominant soil type(s) present on project site:

Churchville Silt Loam	82 %
Ilion Silt Loam	18 %
	%

d. What is the average depth to the water table on the project site? Average: 1 feet

e. Drainage status of project site soils:

☐ Well Drained:	% of site
☐ Moderately Well Drained:	% of site
☑ Poorly Drained	100 % of site

f. Approximate proportion of proposed action site with slopes:

☑ 0-10%:	100 % of site
☐ 10-15%:	% of site
☐ 15% or greater:	% of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☐Yes ☑No

ii. Do any wetlands or other waterbodies adjoin the project site? ☑Yes ☐No

If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☑Yes ☐No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name further investigation reveals no regulated water features Classification _____
- Lakes or Ponds: Name adjoining the site. The vast majority of the site and surroun Classification _____
- Wetlands: Name areas have been disturbed previously. Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☐Yes ☑No

If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? ☐Yes ☑No

j. Is the project site in the 100-year Floodplain? ☐Yes ☑No

k. Is the project site in the 500-year Floodplain? ☐Yes ☑No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:

i. Name of aquifer: _____

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

m. Identify the predominant wildlife sp s that occupy or use the project site:
foragers - rabbit, rodent

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation): _____
ii. Source(s) of description or evaluation: _____
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No
If Yes:
i. Species and listing (endangered or threatened): _____

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No
If Yes:
i. Species and listing: _____

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use: _____

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No
If Yes, provide county plus district name/number: _____

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site? _____
ii. Source(s) of soil rating(s): _____

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name: _____
ii. Basis for designation: _____
iii. Designating agency and date: _____

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☐ Yes ☑ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based:

_____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☐ Yes ☑ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: _____

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

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Northtown Automotive Companies Date June 22, 2021

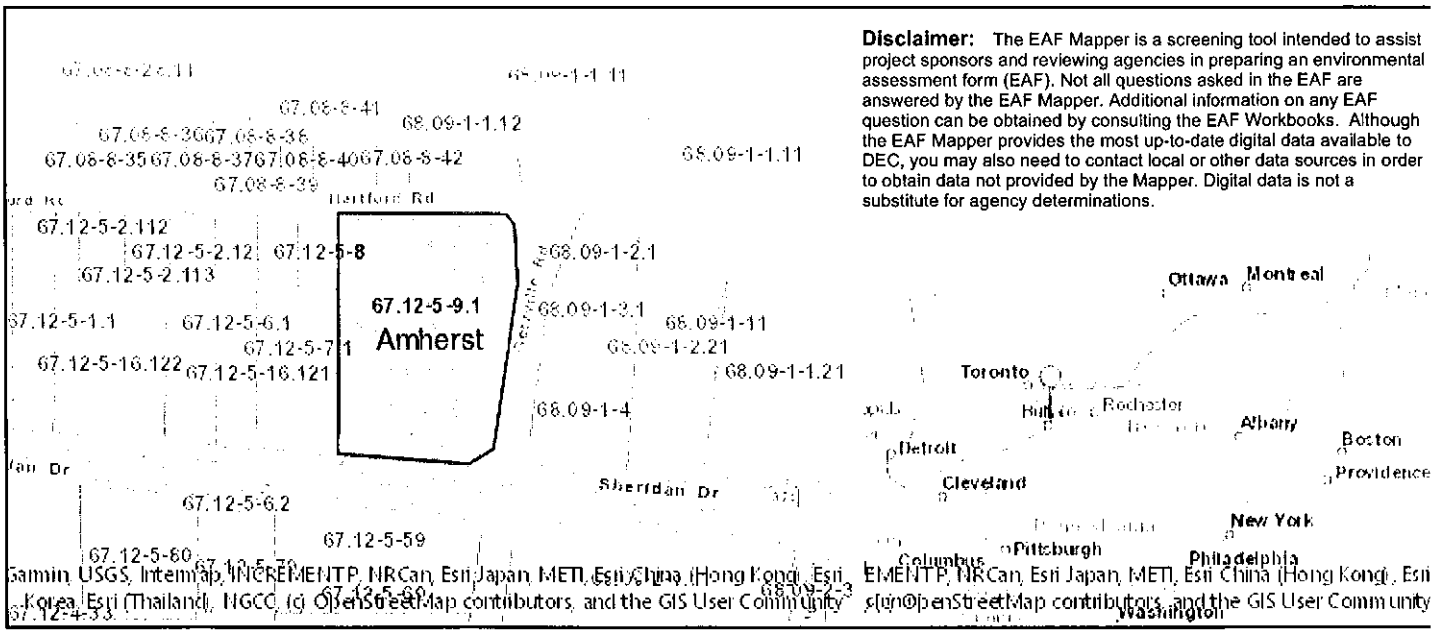
Signature _____ Title Counsel for Project Sponsor

PRINT FORM

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

EAF Mapper Summary Report

Thursday, February 18, 2021 1:32 PM



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	No
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	No
E.2.k. [500 Year Floodplain]	No
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	No
E.3.i. [Designated River Corridor]	No

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

TOWN OF AMHERST ATTACHMENT
State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM

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

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Churchville silt loam	severe	severe	severe	severe	severe
Ilion silt loam	severe	severe	severe	severe	severe

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

   ✓ Geotechnical report attached ____ Not applicable

3. Is your property located: On Youngs Road between Dodge and Klein Roads? ☐ Yes ☑ No
   On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? ☐ Yes ☑ No

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

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

5. Location and size of real property owned by petitioner within one (1) mile of subject proposal:
   3795 Sheridan Drive 1.2 acres, 621 Getzville Road 9.1 acres, 3890 Sheridan Drive 11.4 acres

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

   Describe_____

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

7. Maximum number of vehicular trips to be generated per hour upon completion of project TBD
   Source: _____

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

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

10. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:

    TBD average flow TBD peak flow.

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

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Exhibit 2 – Correspondence of Town Clerk's Office dated March 3, 2005 with List of Zoning Conditions Imposed by the Town Board on February 28, 2005

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Z-26-04

Amherst Town Clerk's Office

5583 Main Street Williamsville, New York 14221

Susan K. Jaros
Town Clerk

Janice Miller
Linda Weisser
Deputy Town Clerks

Phone (716) 631-7021
Fax (716) 631-7152

www.amherst.ny.us

March 3, 2005

Northtown Properties, LLC
1135 Millersport Hwy.
Amherst, New York 14226

RE: Rezoning of 3800 Sheridan Drive (Parcel A) & 590, 600, 606 and 616 Getzville Road (Parcel B)

Gentlemen:

The Amherst Town Board, at their meeting held February 28 2005, approved your request to rezone 3800 Sheridan Drive (Parcel A) and 590, 600, 606 and 616 Getzville Road (Parcel B) from GB and MFR-5 to MS subject to the following amended Planning Board conditions:

1. That no automotive bays or overhead doors on any future buildings face north or west.
2. That a landscape buffer 30± feet wide be provided along the north and west property lines adjacent to property zoned residential.
3. That there be no vehicular access from the subject parcels to Hartford Road.
4. That there be no off-premises signs (billboards) permitted on the subject parcels.
5. That there be no outdoor public address or other similar system on the subject parcels.
6. That a lighting plan be provided at site plan and that spillover light onto adjacent residentially-zoned property shall not exceed 0.2 foot candles, measured at the lot line.

Thank you for your interest in our community.

Very truly yours,

Susan K Jaros

Susan K. Jaros
Town Clerk

SKJ:dd
cc: Attorney
Assessor
Building
Planning
Supervisor
Councilmembers
Renaldo & Palumbo

RECEIVED
MAR - 3 2005
TOWN OF AMHERST
PLANNING DEPT

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Exhibit 3 – Legal Description of Property at 3800 Sheridan Drive

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

EXHIBIT 3 OF APPLICATION TO MODIFY ZONING CONDITION

LEGAL DESCRIPTION OF PROPERTY AT 3800 SHERIDAN DRIVE

Parcel "A":

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 72, Township 12, Range 7 of the Holland Land Company's survey and further distinguished as part of Subdivision Lot No.'s 14 & 15 according to a Subdivision Map for the heirs of Florence Fruehauf by C.C. Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. 1172, described as follows:

Beginning at the intersection of the north line of Sheridan Drive at its intersecti9n with the east line of subdivision Lot No. 21 according to a Subdivision Map for the heirs of Florence · Fruehauf by C.C: Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. 1172;·

Thence northerly along the east line of subdivision Lot No. 21 a distance of 80.93 feet to the southwest corner of subdivision Lot No. 16;

Thence easterly along the south line of subdivision Lot No. 16 a distance of 323.24 feet to the west line of Getzville Road (formerly Skinnersville New Home Road);

Thence southerly along the west line of Getzville Road (formerly Skinnersville New Home Road) a distance of 70.46 feet more or less to the northerly line of lands acquired by the State of New York by Notice of Appropriation filed in the Erie County Clerks Office on October 30, 1997 in Uber 10923, Page 1713;

Thence southwesterly along the northerly line of lands acquired by the State of New York by Notice of Appropriation filed in the Erie County Clerks Office on October 30, 1997 in Liber 10923, Page 1713 a distance of 54.56 feet more or less to the north line of Sheridan Drive;

Thence westerly along the north line of Sheridan drive a distance of 268.43 feet to the Point or Place of Beginning. Containing 0.652 acre more or less.

Parcel "B":

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie and State of New York, being part of Lot No. 72, Township 12, Range 7 of the Holland Land Company's survey and further distinguished as all of Subdivision Lot No.'s ;16, I7, 18, 19 and part of subdivision Lot No. 20 according to a Subdivision Map for the heirs of Florence Fruehauf by C.C. Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. I I72; described as follows:

Beginning at the intersection of the East line of Lot 2 r·according to a Subdivision Map for the heirs of Florence Fruehauf by C.C. Witmer, Surveyor, filed in the Erie County Clerks Office under Cover No. I I72 and the south line of Hartford Road (Formerly New Road);

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Thence easterly along the south line of Hartford Road a distance of 411.96 feet to a point on the west line of Getzville Road, (Formerly Skinnersville New Home Road),

Thence southwesterly along the west line of Getzville Road a distance of 145.72 feet to a point;

Thence southerly along the west line of Getzville Road a distance of 256.65 feet the southeasterly corner of subdivision Lot No. I6;

Thence westerly along the southerly line of subdivision Lot No. 16 a distance of 323.24 feet to the east line of subdivision Lot No. 21;

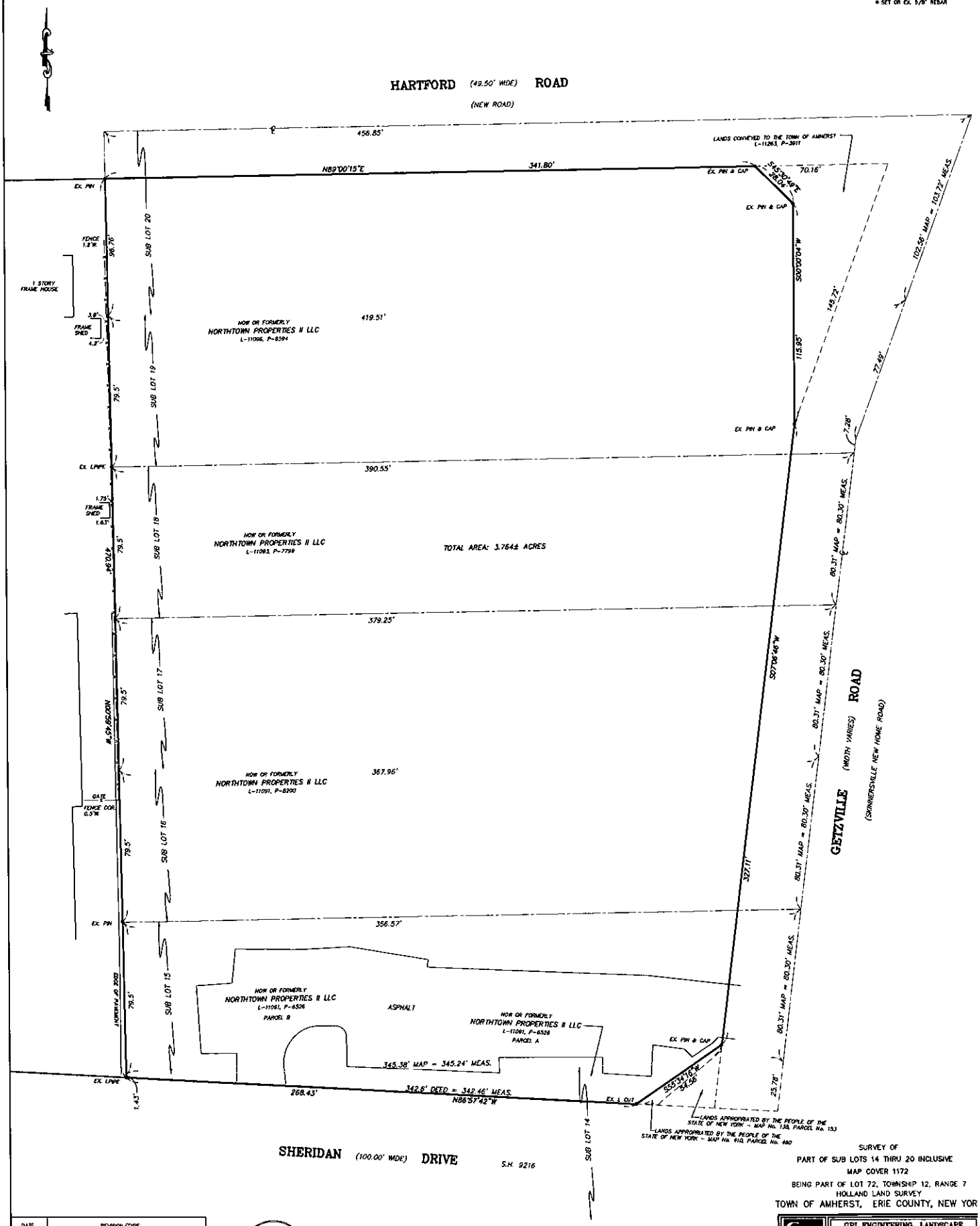
Thence northerly along the East Line of Subdivision Lot No. 21, Parallel with the west line of Lot 72, Township 12, Range 7 a distance of 390.0l feet to the Point or Place of Beginning, containing 3.195 acres more or less.

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Exhibit 3 of Application
Legal Description of 3800 Sheridan Drive
Page 2 of 2

Exhibit 4 – Reduced Size Copy of Survey of Project Site as Prepared by GPI Engineering & Surveying

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)



SURVEY OF
PART OF SUB LOTS 14 THRU 20 INCLUSIVE
MAP COVER 1172
BEING PART OF LOT 72, TOWNSHIP 12, RANGE 7
HOLLAND LAND SURVEY
TOWN OF AMHERST, ERIE COUNTY, NEW YOR

DATE	REVISION/TYPE

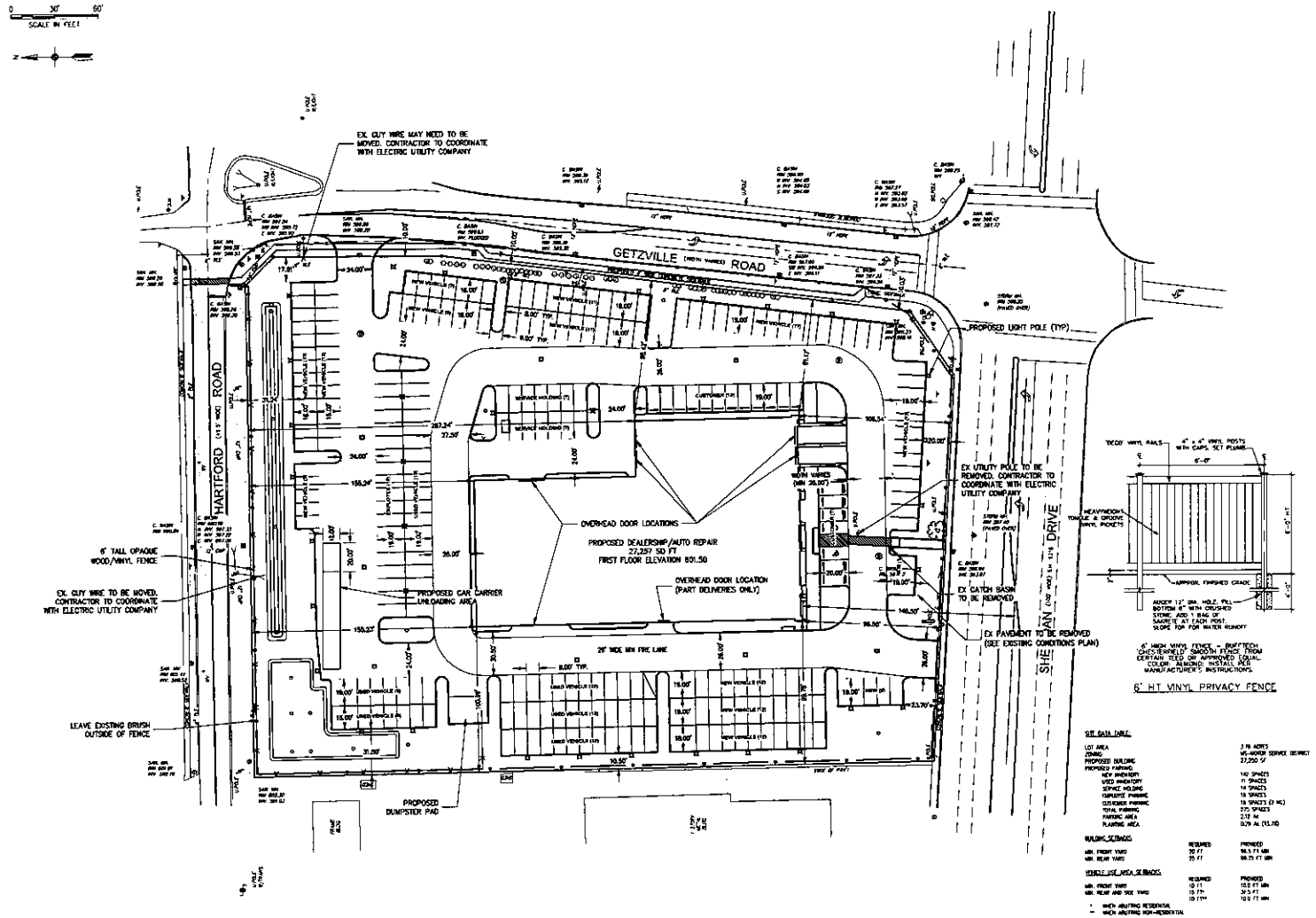
GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP
ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE
4556 GENESEE STREET, SUITE 100
BUFFALO, NEW YORK 14225
(716) 633-4844 FAX 633-4940

Job No. 2021014 Date: FEBRUARY 22, 2021
Scale 1" = 30'

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Exhibit 5 – Reduced Size Copy of the Site Plan [Drawing C-02]

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)



Goree

1151 San Felipe Street, Suite 1700
Houston, Texas 77056
713.600.6100
www.goree.com

GPI
Greenman-Pedersen, Inc.
40 Fountain Plaza, Suite 100
Buffalo, NY 14203

GEOTECHNICAL ENGINEER
BARRON & ASSOCIATES, P.C.
10668 MAIN STREET
CLARENCE, NY 14031
716.759.7621

STRUCTURAL ENGINEER
DAILY + ASSOCIATES INC.
9990 RICHMOND AVE, SUITE 440
HOUSTON, TX 77042
713.337.8661

MEP ENGINEER
SJA INC.
8140 N. CENTRAL EXPWY, SUITE N-2100
DALLAS, TX 75206
214.739.8885

NORTHTOWN VOLKSWAGEN

A NEW VOLKSWAGEN FACILITY TO INCLUDE A VEHICLE SHOWRROM AND SERVICE SHOP

3800 SHERIDAN DR, AMHERST, NY 14226

NORTHTOWN AUTOMOTIVE COMPANIES
AMHERST, NY 14226

NOT FOR CONSTRUCTION

WNY-2021014.00

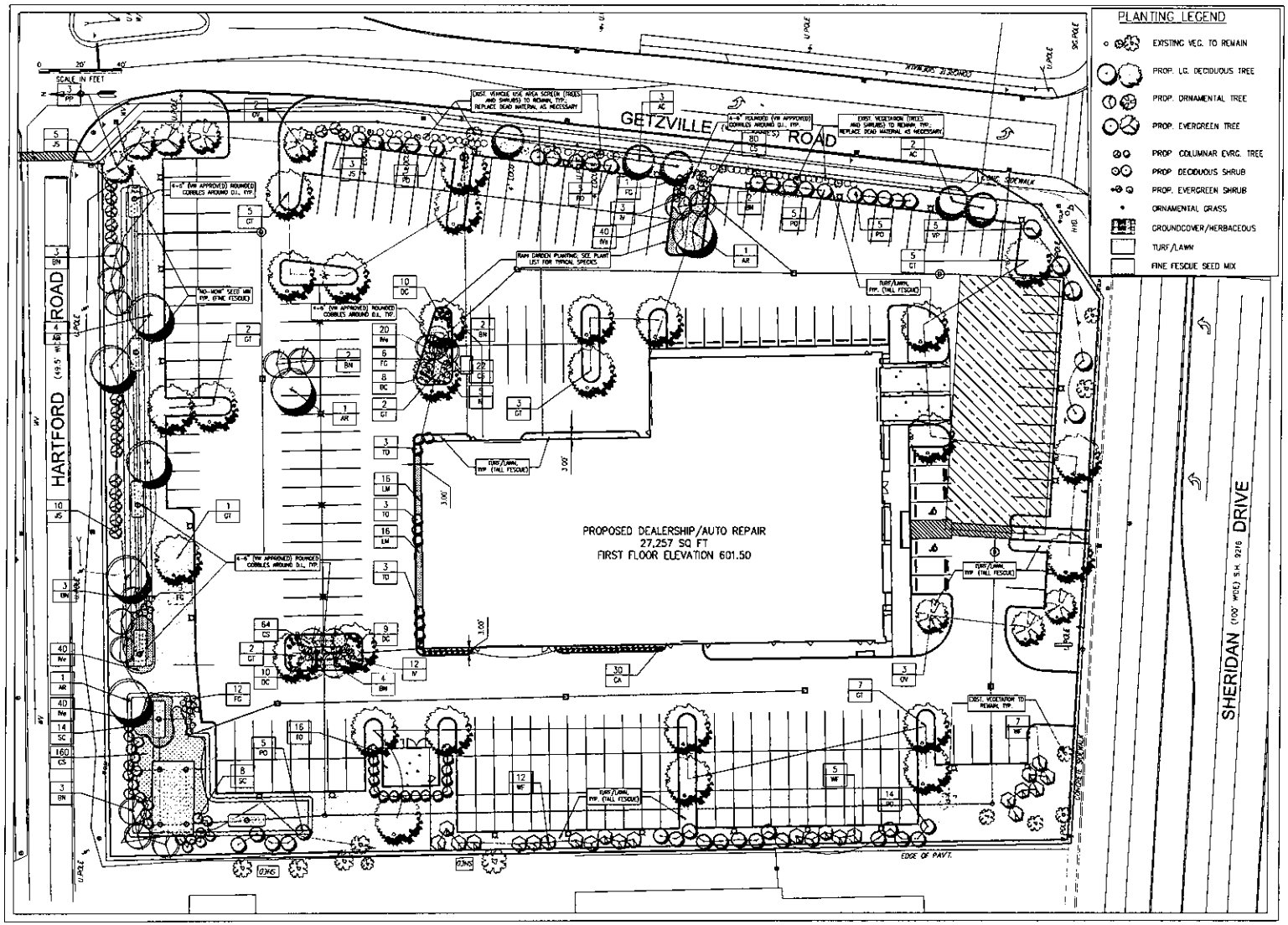
04/19/2021

SITE PLAN

C-02

Exhibit 6 – Reduced Size Copy of the Landscape Plan [Drawing L-01]

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)



Goree

GPI

NORTHTOWN VOLKSWAGEN

A NEW VOLKSWAGEN FACILITY TO INCLUDE A VEHICLE SHOWRROM AND SERVICE SHOP

3800 SHERIDAN DR, AMHERST, NY 14226

NORTHTOWN AUTOMOTIVE COMPANIES
AMHERST, NY 14226

FOR INTERIM REVIEW. NOT INTENDED FOR BIDDING, PERMITTING OR CONSTRUCTION PURPOSES.

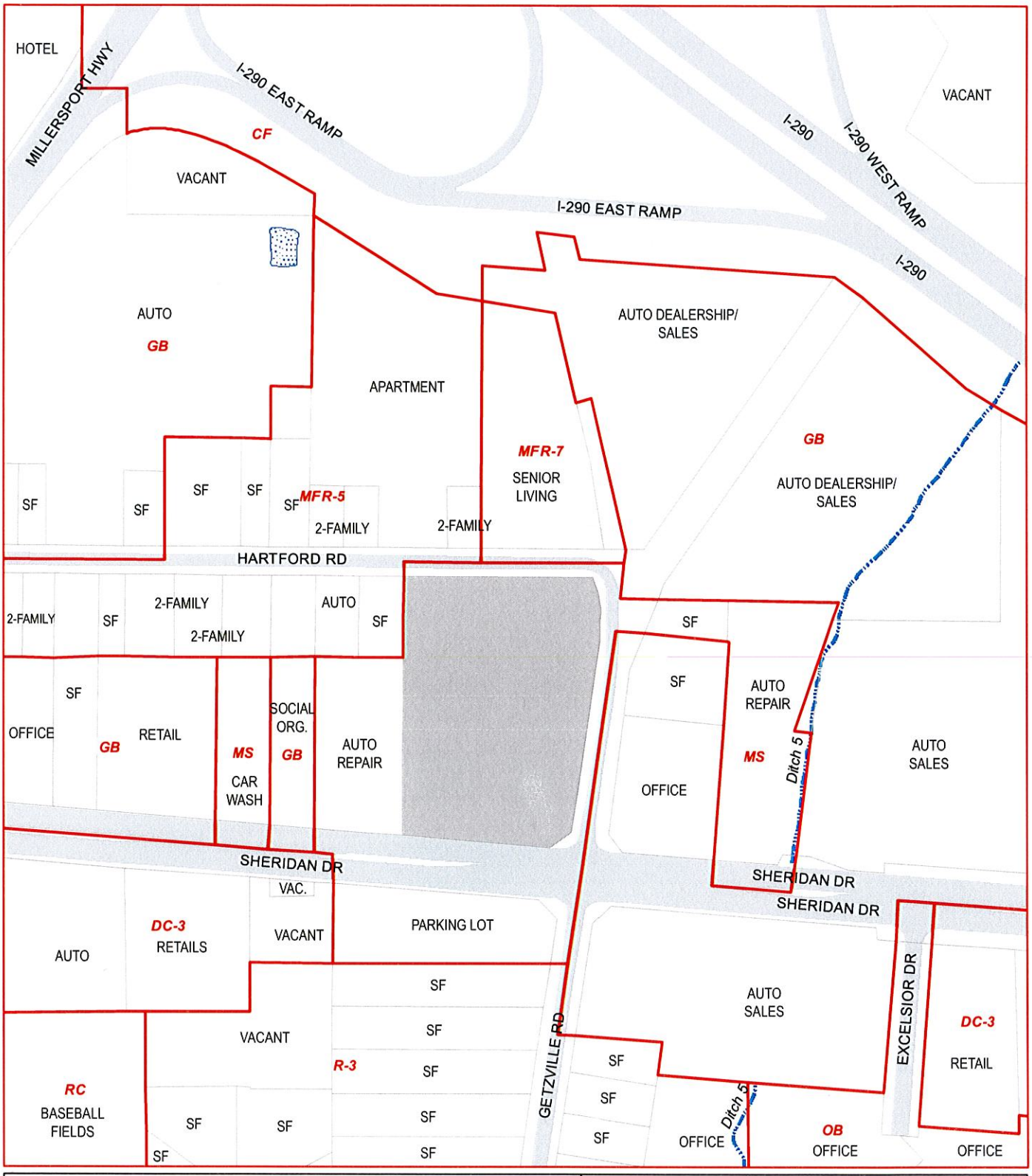
NOT FOR CONSTRUCTION

WNY-2021014.00

04/19/2021

LANDSCAPE PLAN

L-01



Z-2004-26A

Request for Relief of a Condition of Zoning Approval
Property Located at 3800 Sheridan Drive

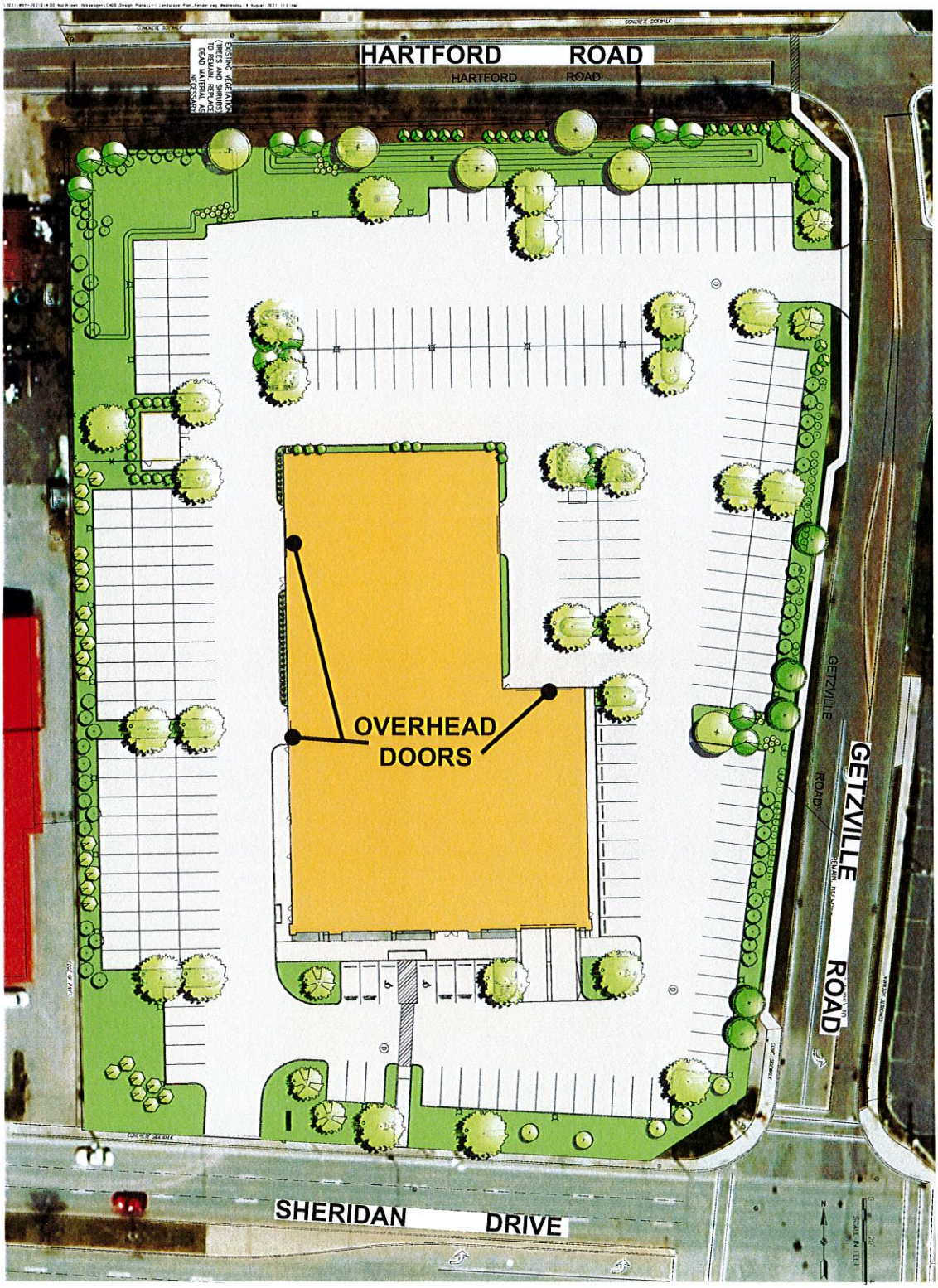
Northtown Automotive Companies, Petitioner

August 19, 2021

3800 Sheridan Drive

Prepared by the Town of Amherst Planning Department

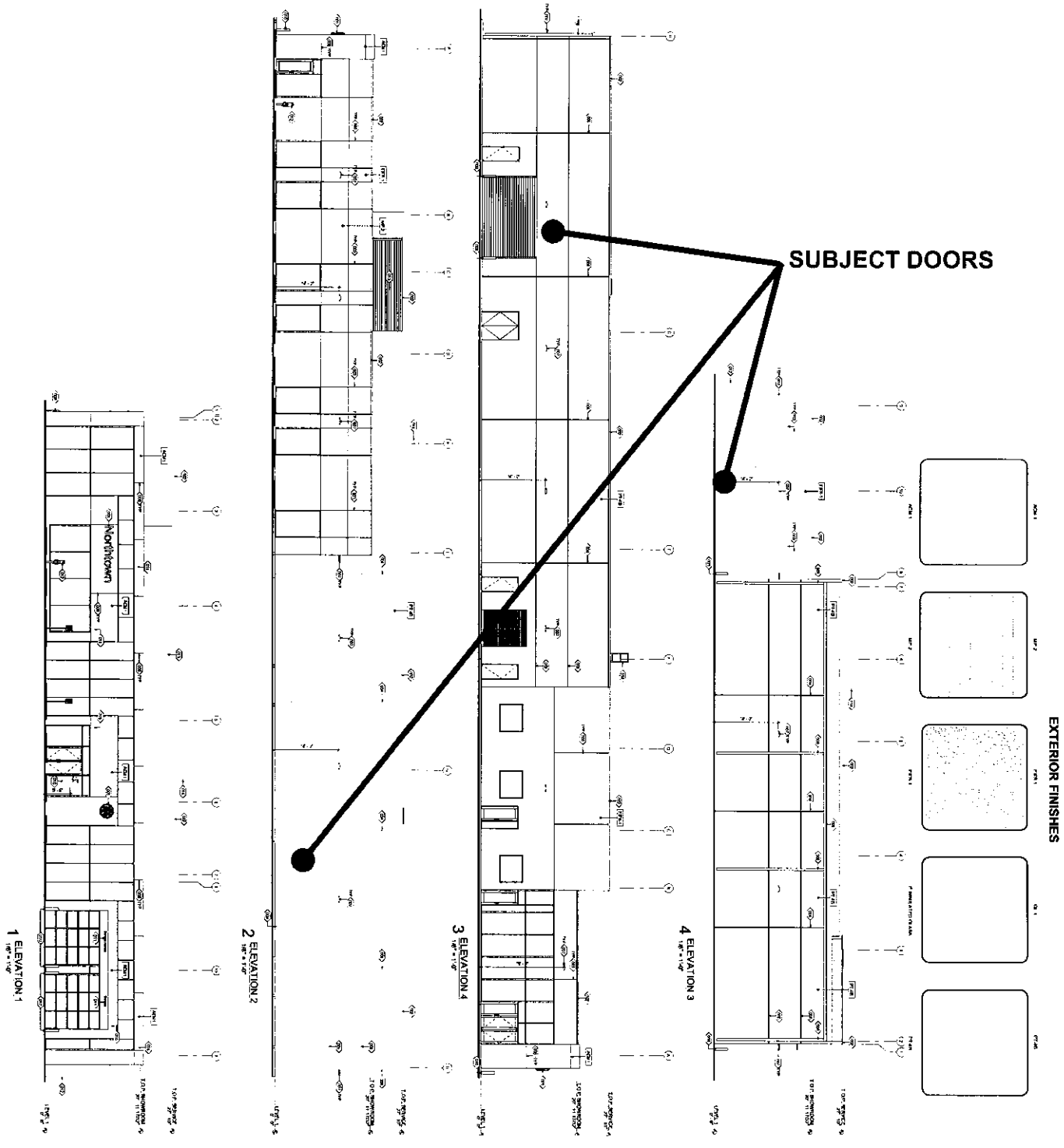
Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)



CONCEPT PLAN

Z-2004-26A
3800 Sheridan Drive
Received: 8/5/21

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)



ELEVATION

Z-2004-26A
3800 Sheridan Drive
Received: 5/25/21

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)



Z-2004-26A

Request for Relief of a Condition of Zoning Approval
Property Located at 3800 Sheridan Drive

Northtown Automotive Companies, Petitioner

August 19, 2021

3800 Sheridan Drive

Prepared by the Town of Amherst Planning Department

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

RECEIVED
JUL 09 2021
TOWN OF AMHERST
PLANNING DEPT.

SITE PLAN OR ZONING REFERRAL TO COUNTY OF ERIE, NY AND REPLY TO MUNICIPALITY

Note: Please complete in triplicate. Send original and one copy (with attachments) to Erie County Division of Planning, Room 1053, 95 Franklin Street, Buffalo, N.Y. 14202. Retain last copy for your files.

DO NOT WRITE IN THIS SPACE

Case No.: SP-21-415

Received: 6/30/2021

The proposed action described herein is referred in accordance with the provisions of the General Municipal Law, which provides that if no reply is received in 30 days after receipt of full information including a SEQR EAF if applicable, the municipal agency may take final action without considering such reply. If, however, reply is received at any time prior to municipal Action, such reply must be considered.

Description of Proposed Action

1. Name of Municipality: Town of Amherst

2. Hearing Schedule: **Date** August 19, 2021 **Time** 6:30pm **Location** 5583 Main Street, Williamsville

3. Action is before: ☐ Legislative Body ☐ Board of Appeals ☒ Planning Board

4. Action consists of: ☐ New Ordinance ☐ Rezone/Map Change ☐ Ordinance Amendment

☐ Site Plan ☐ Variance ☐ Special Use Permit ☒ Other Relief of zoning conditions

5. Location of Property: ☐ Entire Municipality ☒ Specific as follows 3800 Sheridan Drive

6. Referral required as Site is within 500'of: ☐ State or County Property/Institution ☐ Municipal Boundary ☐ Farm Operation located in an Agricultural District

☐ Expressway ☐ County Road ☒ State Highway ☐ Proposed State or County Road, Property, Building/ Institution, Drainageway

7. Proposed change or use: (be specific) relief of zoning conditioning that no overhead doors face north or west.

8. Other remarks: (ID#, SBL#, etc.) Z-2004-26A

9. Submitted by: Scott A. Marshall Principal Planner June 29 2021

Town of Amherst, 5583 Main St., Williamsville, NY 14221

Reply to Municipality by Erie County Division of Planning

Receipt of the above-described proposed action is acknowledged on 7/5/21. **The Division herewith submits its review and reply under the provisions of applicable state and local law, based on the information submitted with this referral.**

1. ☐ **The proposed action is not subject to review under the law.**
2. ☐ **Form ZR-3, Comment on Proposed Action is attached hereto.**
3. ☐ **The proposed action is subject to review; the Division makes the recommendation shown on Form ZR-4, Recommendation on Proposed Action, which is attached hereto.**
4. ☒ **No recommendation; proposed action has been reviewed and determined to be of local concern**

By the Division of Planning: Dan R. Hall **Date:** 7/9/21

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, Al
Planning Director
Ellen M. Kost, AIC
Assistant Planning Dir

MEMORANDUM June 29, 2021

RECEIVED
JUL 07 2021
TOWN OF AMHERST
PLANNING DEPT.

RECEIVED
JUN 30 2021
TOWN OF AMHERST
BUILDING DEPT

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST FOR RELIEF OF CONDITION OF ZONING APPROVAL FOR THE REZONING FROM **GB & MFR-5** TO **MS, Z-2004-26A**; PROPERTY LOCATED AT **3800 SHERIDAN DRIVE**. NORTHTOWN AUTOMOTIVE COMPANIES, PETITIONER.

Seeking relief of condition #1. That no automotive bays or overhead doors on any future building face north or west.

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: none at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Douglas Gesel **Date:** 7 July 21

EK/SM/ac
X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26_A_Transmittal_062921.doc

cc: Scott Marshall, Principal Planner
Sean Hopkins, Esq., 5500 Main St., Suite 343, Williamsville, NY 14221
Northtown Automotive Companies, 1135 Millersport Hwy., Amherst, NY 14226
Jason Burford, Greenman-Pedersen, 4950 Genesee St., Suite 100, Buffalo, NY 14225

Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
JUL 06 2021
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM June 29, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
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Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
Edward Rutkowski, SEQR Review Coordinator, NYSDOT

see Planning copy

To: Ellen Kost
From: Dave Marrano
Date 7/1/21

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST FOR RELIEF OF CONDITION OF ZONING APPROVAL FOR THE REZONING FROM **GB & MFR-5** TO **MS, Z-2004-26A**; PROPERTY LOCATED AT **3800 SHERIDAN DRIVE**. NORTHTOWN AUTOMOTIVE COMPANIES, PETITIONER.

Seeking relief of condition #1. That no automotive bays or overhead doors on any future building face north or west.

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: No Issues from Assessor's Office

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

N/A

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

Signature: _____ **Date:** 7/1/21

EK/SM/ac
X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26_A_Transmittal_062921.doc

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Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direc

2005.099

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2021 JUN 30 P 1:20

MEMORANDUM June 29, 2021

RECEIVED
JUL 02 2021
TOWN OF AMHERST
PLANNING DEPT.

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
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Seeking relief of condition #1. That no automotive bays or overhead doors on any future building face north or west.

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: NON

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 6/30/21

EK/SM/ac
X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26_A_Transmittal_062921.doc
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Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

Amherst

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

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2021 JUN 30 P 1:20

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direc

MEMORANDUM June 29, 2021

RECEIVED
JUL 01 2021
TOWN OF AMHERST
PLANNING DEPT

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
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Seeking relief of condition #1. That no automotive bays or overhead doors on any future building face north or west. OK

REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: None.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 6/30/21

EK/SM/ac
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Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AIC
Planning Director
Ellen M. Kost, AICP
Assistant Planning Direc

RECEIVED
JUN 30 2021
TOWN ATTORNEY

MEMORANDUM June 29, 2021

TO: Kathy Cooper, Deputy Town Clerk
Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
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RECEIVED
JUL 01 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

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REVIEW:

Do you agree with all statements made? Yes.

If you do not, briefly state why: _____

General comments relative to your agency interests: None at this time.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)
N/A

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

Signature: Stanley Sliwa **Date:** 6/30/21

EK/SM/ac
X:\Current_Planning\Files\Rezonings\2004\Z-2004-26_A_(3800_Sheridan_Dr)_2021\Z-2004-26_A_Transmittal_062921.doc
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Amherst

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

Brian J. Kulpa
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Daniel C. Howard, AIC
Planning Director
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Assistant Planning Direc

RECEIVED
JUN 30 2021
TOWN ATTORNEY

MEMORANDUM June 29, 2021

TO: Kathy Cooper, Deputy Town Clerk
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RECEIVED
JUL 07 2021
TOWN OF AMHERST
PLANNING DEPT.

7/1/21 @ ✓

TO:

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: REQUEST FOR RELIEF OF CONDITION OF ZONING APPROVAL FOR THE REZONING FROM **GB & MFR-5** TO **MS, Z-2004-26A**; PROPERTY LOCATED AT **3800 SHERIDAN DRIVE**. NORTHTOWN AUTOMOTIVE COMPANIES, PETITIONER.

Seeking relief of condition #1. That no automotive bays or overhead doors on any future building face north or west.

REVIEW:

Do you agree with all statements made? Agree with all statements made.

If you do not, briefly state why: _____

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

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

Signature: _____ **Date:** 7/1/21

EK/SM/ac
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Attachment: Z-2004-26A TB letter 091321 (RES-2021-773 : Relief from Zoning Condition - 3800 Sheridan Drive)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Supervisor
Initiated by: **Brian J. Kulpa**
Co-Sponsored by:

DOC ID: 24751 **RESOLUTION 2021-774** **ADOPTED**

Elected Officials' Salaries for 2022

BE IT RESOLVED that Elected Officials' salaries be set for the year 2022 as follows:

	2021 Salary	2022 Proposed
Supervisor	$105,000	$105,000
Deputy Supervisor	$ 4,000*	$ 4,000*
Councilmembers	$ 35,000	$ 35,000
Town Clerk	$ 82,000	$ 82,000
Highway Superintendent	$100,000	$100,000
Town Justices	$102,000	$102,000

BE IT FURTHER RESOLVED that these salaries be part of the preliminary budget and part of the notice of hearing of the preliminary budget.

* Stipend for Deputy Supervisor

9/13/2021
Consent

FINANCIAL IMPACT:

None for resolution

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

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Attorney
Initiated by: **Ann Demopoulos**
Co-Sponsored by:

DOC ID: 24727 **RESOLUTION 2021-775** **ADOPTED**

Abandonment and Sale of S. Linden

AGENDA ITEM : SEPTEMBER 13th, 2021

TO: **Town Board**

FROM: **Ann Demopoulos, Esq., Deputy Town Attorney**

DATE: **September 7, 2021**

RE: **Schedule Public Hearing**
Abandonment and Sale of S. Linden Street (Paper Street)

At its meeting held June 7th, 2021, the Town Board authorized the abandonment and sale of S. Linden Street (2021-469). The Public Hearing was withdrawn from the agenda on August 9th, 2021. In furtherance of that authorization and subsequent action, kindly adopt a resolution scheduling a Public Hearing for October 18th, 2021 at 7:00 p.m. to serve as notice to any and all interested parties of the Town's intention to sell the abandoned street.

Thank you.

c: Kathy Cooper, Deputy Town Clerk
(**Agenda Item : September 13th, 2021**)
Dan Howard, Director of Planning
Patrick G. Lucey, Superintendent of Highway

9/13/2021
Consent

FINANCIAL IMPACT:

None for the purposes of this resolution.

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

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 24728 **RESOLUTION 2021-776** **ADOPTED**

Master Small Cell License Agreement - CRS #2877

AGENDA ITEM : SEPTEMBER 13th, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **September 8, 2021**

RE: **Master Small Cell License Agreement Between Bell Atlantic Mobil Systems LLC d/b/a Verizon Wireless and the Town of Amherst (CRS #2877)**

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

Thank you.

SJS:nmb
Attachment
c: Kathy Cooper, Deputy Town Clerk
(**Agenda Item : September 13th, 2021**)

9/13/2021
Consent

FINANCIAL IMPACT:

$270 per permit per year - A0001.02410

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

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

MASTER SMALL CELL LICENSE AGREEMENT

THIS MASTER SMALL CELL LICENSE AGREEMENT (the "Agreement") is dated as of _____, 20 ___ (the "Execution Date"), and entered into by and between the TOWN OF AMHERST ("Town"), a New York municipal corporation (the "Licensor"), and Bell Atlantic Mobile Systems LLC d/b/a Verizon Wireless ("Licensee") with respect to the following:

RECITALS

A. WHEREAS, the Licensor is the owner of certain Poles (as defined in §1.11, below) located in the Town's Rights-of-Way (as defined in Section 1.13 below) or is the owner of a municipal facility; and,

B. WHEREAS, Licensee, is duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees, are authorized to conduct business in the State of New York; and,

C. WHEREAS, Licensee desires to use space in the Town's Rights-of-Way or on the Town's municipal facilities for construction, operation and maintenance of its telecommunications network (as defined in §1.10, below) serving Licensee's wireless customers and utilizing equipment (as defined in §1.6, below), permitted by the Federal Communications Commission ("FCC") and in accordance with FCC rules and regulations; and,

D. WHEREAS, for the purpose of operating the Network, Licensee wishes to locate, place, attach, install, operate, control, and maintain equipment on the poles in the Town's Rights-of-Way, on municipal facilities and on other structures owned by third parties; and,

E. WHEREAS, Licensee is willing to compensate the Licensor in exchange for a grant of a license on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. DEFINITIONS

The following definitions shall apply generally to the provisions of this Agreement:

1.1 Affiliate. Affiliate means each person or entity which falls into one or more of the following categories: (a) each person or entity having, directly or indirectly, a controlling interest in Licensee; (b) each person or entity in which Licensee has, directly or indirectly, a controlling interest; or (c) each person or entity that, directly

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

or indirectly, is controlled by a third party which also directly or indirectly controls Licensee. An "Affiliate" shall in no event mean any creditor of Licensee solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, Licensee.

1.2 Assignment or Transfer. "Assignment" or "Transfer" means any transaction in which the rights and/or obligations held by Licensee under this Agreement or a Special Use Permit or zoning authorization are transferred, directly or indirectly, to a party other than an Affiliate. An "Assignment" shall not include a mortgage, pledge or other encumbrance as security for money owed.

1.3 Town. "Town" means the Town of Amherst, a municipality under the laws of the State of New York.

1.4 Commence Installation. "Commence Installation" shall mean the date that Licensee commences to install its equipment, or any expansion thereof, in Licensor Right-Of-Way.

1.5 Commence Operation. "Commence Operation" shall mean the date that Equipment is installed and operational by Licensee pursuant to this Agreement.

1.6 Equipment. "Equipment" means the equipment cabinets, antennae, radios, utilities and fiber optic cables, wires, meters and related equipment, whether referred to singly or collectively, to be installed and operated by Licensee and as approved by the Town under a particular Special Use Permit and that comprise a Small Cell installation.

1.7 Facilities. "Facilities" means the equipment cabinets, antennae, radio equipment, electrical wiring or equipment, fiber optic cables, appurtenances and related equipment operated by provider under a particular permit, whether referred to singly or collectively.

1.8 Information Service. "Information Service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information and content via telecommunications, and includes electronic publishing, as the same may evolve over time.

1.9 Laws. "Laws" means any and all applicable federal, state and local statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other legal requirements as may be amended from time to time, including, but not limited to, the Code of the Town of Amherst, New York, Chapter 203, §§6-11-1, *et seq.*

1.10 Municipal Facilities. "Municipal Facilities" means Town-owned poles, light standards, traffic control standards, lighting fixtures, or electroliers located within

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the public Rights-of-Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.11 Network. "Network" or collectively "Networks" means the telecommunication network operated by Licensee to serve its customers.

1.12 Poles. "Poles" shall mean pole(s) owned by the Licensor and leased by the Licensee pursuant to this Agreement.

1.13 Public Rights-of-Way. "Public Rights of Way" or "PROW" shall mean real property owned by the Town which is devoted to (i) public transportation purposes; or (ii) the placement of the Town's municipal utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right of way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the Town which are owned by the Town.

1.14 Small Cell. "Small Cell" shall mean a wireless communication facility meeting the following conditions:

(a) The facilities are mounted on structures 50 feet or less in height including their antennas, or are mounted on structures no more than 10 percent taller than adjacent structures, or do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(b) each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume, and

(c) all other wireless equipment associated with the structure including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

1.15 Special Use Permit (SUP). "Special Use Permit" (SUP) shall mean a permit by which the Petitioner is allowed to construct and use personal wireless facilities as granted or issued by the Town or zoning authorizations issued by the Town.

1.16 Telecommunications Services. "Telecommunications Services" or "Services" has the same meaning as that term is defined in the United States Code, 47 U.S.C. 153 (53) or any other use authorized by and licensed to Licensee by the FCC.

1.17 Town Code. "Town Code" shall mean the code of ordinances as adopted by the Town of Amherst.

2. TERM.

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2.1 Term of Agreement. The term of this Agreement shall commence on the Execution Date and continue in effect for 10 years, unless sooner terminated as set forth below. This agreement shall automatically renew for additional 5 year periods unless either party provides notice of intent not to renew the agreement at least 90 days prior to the expiration of the Agreement.

2.2 Term of Special Use Permit. The term of each SUP shall be 10 years beginning on the first day of the month following the Commence Operation date. Unless Licensee provides written notice to the Licensor prior to the expiration of the then current term that Licensee will not renew any SUP, each SUP will automatically renew for 3 consecutive 5 year periods.

3. REPRESENTATION CONCERNING SERVICES; TERMINATION WITHOUT CAUSE

This Agreement, including all SUPs or zoning authorizations issued in connection therewith, shall automatically terminate without any notice from Town being required under this Agreement at any time that Licensee ceases to operate as a provider of telecommunications services under applicable law. Licensee shall remove its equipment in accordance with Chapter 203 §6-11 of the Code of the Town of Amherst, and restore each site no later than ninety (90) days from the date of such termination.

4. SCOPE OF LICENSE

Licensor hereby grants to Licensee a nonexclusive revocable license to install, operate and maintain equipment for small cell installations in the PROW and on municipal facilities pursuant to the terms of this Agreement and individual SUPs or zoning authorizations. Any and all rights expressly granted to Licensee under this Agreement, which shall be exercised at Licensee's sole cost and expense, shall be subject to the prior and continuing right of the Licensor under applicable laws to use any and all parts of the ROW or municipal facility exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the ROW or municipal facility as of the date of the individual SUP.

4.1 Attachment to Municipal Facilities. In accordance with applicable laws, including the Town Code or other regulations for processing permits for use of the PROW, Licensee will submit to the authorized representative of the Licensor a proposed design for any proposed small cell installation that will include equipment that Licensee proposes to use for Licensor's approval. Any approved equipment shall be included and attached to the application for a SUP or other zoning authorization. Licensee may install the approved equipment in accordance with the SUP and building permit or zoning authorization issued by the Licensor. . In addition, Licensee agrees to affix emergency contact information, as feasible, at each small cell installation.

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4.1.1 Subject to the conditions herein and as authorized by the Town, Licensee may enter upon the PROW or municipal facility and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace equipment permitted and approved by the Town in or on identified municipal facilities pursuant to individual SUP or zoning authorization for the purposes of operating the network and providing telecommunications services, which includes upgrading, densifying, or modifying the coverage as determined by Licensee.

4.1.2 Licensee shall comply with all applicable requirements of the Town Code, for any permit or other approval conditions, including any requirements regarding the placement, size, quantity, shape, color and camouflage, concealment or stealth equipment provided that such requirements are consistent with the standards set by applicable laws.

4.1.3 If Licensee selects a pole that is structurally inadequate to accommodate equipment, Licensee shall at its sole cost and expense replace the pole (a "Replacement Pole") with one that is acceptable to and approved by the Licensor and dedicate such Replacement Pole to the Licensor

4.1.4 In the event that the Licensor must access or perform work on a municipal facility on which Licensee has installed equipment and where Licensor's employees or agents by proximity to the equipment may exceed the limits for occupational/controlled exposure per FCC OET Bulletin 65, which may be amended from time to time, will contact Licensee at the contact telephone number referenced in §14.3 herein to request immediate deactivation, and Licensor shall deactivate within twenty-four (24) hours upon notification. If Licensee fails to deactivate the equipment within twenty-four (24) hours of notification, the Licensor may deactivate the equipment unilaterally.

4.2 Attachment to Third-Party or Licensee Owned Structures or poles. Subject to obtaining the written permission of the owner(s) of the affected property and necessary permits per the Town Code, the Licensor authorizes Licensee to enter upon the PROW and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of equipment in or on poles or other structures lawfully owned and operated by Licensee or third parties within the PROW as may be permitted by the pole or structure owner. To the extent applicable, Licensee shall furnish to the Licensor documentation in a form reasonably acceptable to the Licensor of such permission from the property owner responsible.

4.3 No Interference. Licensee in the performance and exercise of its rights and obligations under this Agreement shall not unreasonably interfere in any manner with the existence and operation of any and all public and private rights-of-way,

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sanitary sewers, water mains, storm drains, gas mains, fiber optic network infrastructure, poles, aerial and underground electrical and telephone wires, traffic signals, communication facilities owned by the Licensor, electroliers, cable television, location monitoring services, public safety, and other existing telecommunications equipment, utility, municipal property or municipal operations, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable permit, applicable Laws and this Agreement. Licensee agrees to correct any interference under this paragraph within a reasonable time period.

4.4 Compliance with Laws. Licensee shall comply with all applicable laws in the exercise and performance of its rights and obligations under this Agreement.

4.5 No Authorization to Provide Other Services. Licensee represents, warrants and covenants that its equipment installed pursuant to this Agreement and each SUP or zoning authorization will be utilized solely for providing the telecommunications services identified herein and any information services that may be provided over the network, including uses ancillary to which are necessary to provide such services, and Licensee is not authorized to and shall not use its equipment to offer or provide any other services not specified herein without Licensor consent.

4.6 Nonexclusive Use Rights. Notwithstanding any other provision of this Agreement, any and all rights expressly or impliedly granted to Licensee under this Agreement shall be non-exclusive, and shall be subject and subordinate to (a) the continuing right of the Licensor under applicable laws to use for municipal purposes any and all parts of the PROW or municipal facilities, and (b) the public easement for streets and any and all other deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title (collectively, "Encumbrances") which may affect the PROW or municipal facilities now or at the time of issuance of any permit under this Agreement, including, without limitation any encumbrances granted, created or allowed by the Licensor.

4.7 Twenty-Four (24) Hour Contact. Licensee shall be available to the staff employees of any Licensor department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven days a week, to respond to emergency problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the equipment. Licensee's emergency contact information shall be provided to the Licensor and maintained in a visible location on the equipment itself. Licensee's current 24 hour contact number is (800)621-2622 and Licensee will provide notify Licensor in the event that the number changes.

5. COMPENSATION

Licensee shall be responsible for the payment of an Annual License Fee (which may be referred to as the "Rental Amount") for each Special Use Permit, as set forth below:

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5.1 Annual License Fee. In order to compensate the Licensor for costs incurred as a result of Licensee's entry upon and deployment of equipment on poles, within the PROW, or upon any municipal facility, Licensee shall at the commencement of each Term, pay to the Licensor, on an annual basis, an amount equal to the following for each location:

Annual License Fee for a Small Cell collocated upon a Municipal Facility in the PROW:
$270

Annual license fee for Small Cell attachments to 3rd-party utility poles is not applicable as rights are apportioned from 3rd-party pole owners.

5.2. Payment of Annual License Fee. The Annual License Fee for the initial year shall be immediately due upon the first day of the month following 90 days after the date the SUP or zoning authorization is issued by Licensor, and shall be prorated by the number of remaining months in the calendar year, through December 31st. Thereafter, the Annual License Fee for each pole shall be due on January 31st of each year during term of this Agreement. For any year that any permit is in effect for less than a twelve (12) month period commencing from January 1 up through December 31st, the amount of Annual License Fee shall be prorated by the number of days that the SUP or zoning authorization is in effect. Payment of the Annual License Fee shall be made by check payable to the Town of Amherst, mailed or delivered to the following address:

Town of Amherst
5583 Main Street
Williamsville, New York 14221
Attention: Building Commissioner

The Agreement Number identified on the payment. In lieu of payment by check, Licensee may pay the Annual License Fee by wire transfer in accordance with wire transfer instructions provided by the Town's Comptroller, or other payment form as may be mutually agreed upon by the parties in writing.

i. Courtesy Invoices. In the event the Licensor or its administrator provides an invoice to Licensee, such invoice shall be deemed a courtesy to the Licensee and the Licensee shall be obligated to pay the Annual License Fee whether or not an invoice is provided.

ii. Application of Invoices. All payments received by the Licensor from Licensee shall be applied to the oldest payment obligation owed by the Licensee to the Licensor. No designation by Licensee, either in a separate writing or on a check shall modify this clause or have any force or effect.

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5.3 Application Fee: Licensee shall pay an application fee to the Licensor as set by the Town of Amherst Town Board per Sections 6-11-5A and 6-11-11 of the Town's Small Cell Law. The recurring and non-recurring fees assessed shall not exceed those permitted by federal law.

5.4 Power. Licensee, at its own cost and expense, will provide the site with power as approved in the construction plans.

6. CONSTRUCTION

Licensee shall comply with all applicable Laws related to the construction, installation, operation, maintenance, and repair of Licensee's Equipment installed in the PROW or on municipal facilities. Except as otherwise provided herein, Licensee shall not attach, install, maintain, or operate any equipment in or on the PROW and/or on municipal facilities without the prior written approval of an authorized representative of the Licensor for each location.

6.1 Commencement of Installation and Operation. Licensee shall commence installation of its initial small cell approved by the Licensor no later than two (2) years after the issuance of an applicable SUP or other authorization, and shall commence operation no later than six (6) months after installation; provided, however, these dates may be extended by the parties in the event of force majeure events or other agreement of the parties. If Licensee fails to commence installation and operation of any applicable small cell as provided above, after notice and opportunity to cure, the Licensor may terminate the SUP or zoning authorization upon thirty (30) day notice. Notwithstanding the foregoing, Licensee's obligations under this section shall be conditioned upon Licensee's completion of its due diligence with regard to a particular small cell.

6.2 Obtaining Required Permits. It is understood and agreed that Licensee's ability to use the Municipal Facilities and/or PROW is contingent upon its obtaining and paying all applicable fees for all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any federal, state or local authorities, as well as a satisfactory fiber and electrical connection which will permit Licensee's use of the licensed area. Licensor shall promptly respond to Licensee's requests for permits and shall otherwise cooperate with Licensee in facilitating the deployment of the network in the PROW or municipal facility in a reasonable and timely manner pursuant to Town Code and applicable law. In the event that (i) any of such applications for such governmental approvals should be finally rejected; (ii) any governmental approval issued to Licensee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Licensee determines that such governmental approvals may not be obtained in a timely manner; (iv) Licensee determines that it will be unable to obtain in a satisfactory manner, or maintain any fiber or power connection; or (v) Licensee determines that the licensed area is no longer needed for its purposes, Licensee shall

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have the right to terminate a SUP or zoning authorization in accordance with §6.6 below.

6.3 Relocation and Displacement of Equipment. Licensee understands and acknowledges that Licensor may require Licensee to relocate one or more of its equipment installations. Licensee shall at Licensor's direction and upon ninety (90) days prior written notice to Licensee, relocate such equipment at Licensee's sole cost and expense whenever Licensor reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, modification, completion, repair, relocation, or maintenance of a Licensor or other public agency project; (b) because the Equipment is interfering with or adversely affecting proper operation of Licensor-owned Poles, traffic signals, communications, or other municipal facilities used for public safety; or (c) to protect or preserve the public health or safety. If Licensee shall fail to relocate any equipment as requested by the Licensor in accordance with the foregoing provision, Licensor shall be entitled to remove or relocate the equipment at Licensee's sole cost and expense, without further notice to Licensee. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal work and any storage of Licensee's property after removal within thirty (30) days of the date of a written demand for this payment from the Licensor. To the extent the Licensor has actual knowledge thereof, the Licensor will attempt promptly to inform Licensee of the displacement or removal of any pole on which any equipment is located. If the municipal facility is damaged or downed for any reason, and as a result is not able to safely hold the equipment, the Licensor will have no obligation to repair or replace such municipal facility for the use of Licensee's equipment. Licensee shall bear all risk of loss of its equipment as a result of damaged or downed municipal facilities pursuant to §6.8 below, and may choose to replace such municipal facilities. Licensee shall not be required to obtain a new SUP or zoning authorization in the event that Licensor requests relocation under this Section 6.3.

6.4 Relocations at Licensee's Request. In the event Licensee desires to relocate any equipment from one municipal facility to another, Licensee shall submit a written request to Licensor. Licensor will use reasonable efforts to accommodate Licensee in accordance with applicable law.

6.5 Damages Caused by Licensee. Licensee shall, at its sole cost and expense: (a) remove, repair or replace any of its equipment that is damaged or becomes detached; and/or (b) repair any damage to PROW, municipal facilities or other property, whether public or private, caused by Licensee, its agents, employees or contractors in their actions relating to attachment, operation, repair or maintenance of equipment to the condition it was in prior to the Commence Installation date. If Licensee does not remove, repair or replace such damage to its equipment or to PROW, municipal facilities or other property, the Licensor shall have the option, upon thirty (30) days prior written notice to Licensee, to perform or cause to be performed such removal, repair, or replacement on behalf of Licensee and shall charge Licensee for the actual costs incurred by the Licensor. If such damage causes a public health or safety

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emergency, as reasonably determined by the Licensor, the Licensor may immediately perform reasonable and necessary repair or removal work on behalf of Licensee and will notify Licensee as soon as practicable. Upon the receipt of a demand for payment by the Licensor, Licensee shall, within thirty (30) days of such receipt, reimburse the Licensor for such costs. The terms of this provision shall survive the expiration, completion or earlier termination of this Agreement.

6.6 Termination. Licensee shall have the right to terminate any SUP or zoning authorization on thirty (30) day notice to Licensor. Such notice shall be given to the Licensor in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Licensee, or upon such later date as designated by Licensee in said notice. In the event of such termination, Licensee shall remove its equipment and restore the municipal facilities in accordance with §6.7 below. All Fees paid to said termination date shall be retained by Licensor. Upon such termination, the SUP or zoning authorization shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder.

6.7 Removal of Equipment; and Restoration of Municipal Facilities and PROW. Within 90 days after the expiration or earlier termination of a SUP or zoning authorization, Licensee shall promptly, safely and carefully remove the equipment from all municipal facilities and PROW and to restore the municipal facilities and PROW to conform to municipal design specifications to the condition it was in prior to the Commence Installation date. Such obligation of Licensee shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, there shall be no obligation to restore conduit systems, electrical meters, and electrical wiring ("electrical fixtures") required to provide electrical power to the pole in SUP, unless otherwise notified in writing by Licensor. Upon expiration or termination of a SUP or zoning authorization, such electrical fixtures shall automatically become owned by, and property of Licensor.

6.8 Failure to Remove Equipment or Restore Municipal Facilities. If Licensee fails to complete this removal and restoration work pursuant to Section 6.7 above, then the Licensor, upon written notice to Licensee, shall have the right at the Licensor's sole election, but not the obligation, to perform the removal and restoration work and charge Licensee for the actual costs and expenses, including, without limitation, reasonable administrative costs. Licensee shall pay to the Licensor actual costs and expenses incurred by the Licensor in performing any removal and restoration work and any storage of Licensee's property after removal within 90 days of the date of a written demand for this payment from the Licensor. After the Licensor receives the reimbursement payment from Licensee for the removal work performed by the Licensor, the Licensor shall promptly make available to Licensee the property belonging to Licensee and removed by the Licensor pursuant to this Section at no liability to the Licensor. If the Licensor does not receive reimbursement payment from Licensee within 90 days, or if Licensor does not elect to remove such items at the Licensor's cost after Licensee's failure to so remove

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pursuant to this Section, or if Licensee does not remove Licensee's property within 90 days of such property having been made available by the Licensor after Licensee's payment of removal reimbursement as described above, any items of Licensee's property remaining on or about the ROW, Municipal Facilities, or stored by the Licensor after the Licensor's removal thereof may, at the Licensor's option, be deemed abandoned and the Licensor may dispose of such property in any manner by law. Alternatively, the Licensor may elect to take title to abandoned property, provided that Licensee shall submit to the Licensor an instrument satisfactory to the Licensor transferring to the Licensor the ownership of such property. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

6.9 Risk of Loss. Except in the event of the Licensor's gross negligence or intentional misconduct**,** Licensee acknowledges and agrees that Licensee, subject to the terms of this Agreement bears all risks of loss or damage or relocation or replacement of its equipment and materials installed pursuant to this Agreement from any cause, and the Licensor shall not be liable for any cost of replacement or of repair to damaged equipment.

7. INDEMNIFICATION AND WAIVER

To the fullest extent permitted by law, Licensee shall indemnify, defend, protect, and hold harmless the Licensor, its council, boards and officers, officials, employees, or volunteers ("Indemnified Party") from and against any and all actions, causes of action, claims, demands, lawsuits, losses, including pole warranty invalidation, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") arising out of: (i) Licensee's use of this License, (ii) acts or omissions of the Licensee, its employees, contractors, sub-consultants in connection with the License; (iii) furnishing or supplying work, services, materials, equipment or supplies in connection with the License; and (iv) activities or operations of Licensee pursuant to this Agreement. The obligation to defend and indemnify the Indemnified Party does not extend to losses arising from or caused by the sole negligence or willful misconduct of the Indemnified Party.

7.1 Waiver of Claims. Licensee waives any and all claims, demands, causes of action, and rights it may assert against the Licensor on account of any loss, damage, or injury to any equipment or any loss or degradation of the telecommunications services or information service as a result of any event or occurrence which is beyond the reasonable control of the Licensor.

7.2 Limitation on Consequential Damages. Except as otherwise set forth in this Agreement, neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such

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damages, whether under theory of contract, tort (including negligence), strict liability or otherwise

8. SECURITY FOR PERFORMANCE

Before any construction begins in the PROW by Licensee, and if requested by Licensor, Licensee shall provide the Licensor with performance bond and, if considered necessary by the Licensor, payment bonds, in amounts equal to the full amount of the written construction contract pursuant to which such construction is to be done. The payment bond shall be solely for the protection of claimants supplying labor or materials for the required construction work and the performance bond shall be solely for the protection of the Licensor, conditioned upon the faithful performance of the required construction work. Bonds shall be executed by a surety company duly authorized to do business in New York, and acceptable to the Licensor and shall be kept in place for the duration of the work.

9. INSURANCE

9.1 Liability Insurance. Lessee shall obtain and maintain at all times during the term of this Agreement and shall provide a certificate of insurance as proof of coverage reasonably acceptable to the Town of commercial general liability in an amount of Seven Million Dollars ($7,000,000) per occurrence for bodily injury and property damage and Seven Million Dollars ($7,000,000) general aggregate. The Town shall be included as an additional insured as their interests may appear under this agreement excluding workers' compensation and employer's liability. Claims-made policies are not acceptable. Umbrella or excess coverage shall also be in effect, it must follow the form of the underlying coverage.

9.2 Workers' Compensation Insurance. Workers' Compensation in compliance with the statutory requirements of New York State.

9.3 Insurance Companies. Insurance companies from which coverage is obtained must be admitted in New York and rated at least B+:IX in the current Best's Insurance Guide.

9.4 Proof of Insurance. Before commencing work, a certificate of insurance showing proof of the required coverage shall be provided to the Town.

10. NOTICES

10.1 Method and Delivery of Notices. Unless otherwise provided by in this Agreement, all notices pursuant to this Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; or (b) by means of prepaid overnight delivery service, addressed as follows:
If to the Licensor:

Town of Amherst

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5583 Main Street
Williamsville, New York 14221
Attention: Building Commissioner

with a copy to:

Town of Amherst
5583 Main Street
Williamsville, New York 14221
Attention: Town Attorney

If to the Licensee:

Bell Atlantic Mobile Systems LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

10.2 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery or certified mail delivery or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

11. DEFAULT AND CURE

11.1 Licensee Default and Notification. This Agreement is granted upon each and every condition herein and each of the conditions is a material and essential condition to the granting of this Agreement. In the event of default by Licensee, Licensor shall notify the Licensee in writing and provide Licensee with an opportunity to cure within 90 days from the date of the notice or as otherwise set forth in this Agreement. This provision shall not apply to emergency situations impacting health and public safety.

11.2 Cure Period. If the nature of the violation is such that it cannot be fully cured within 90 days, the cure period may be extended by the Licensor for such additional time as approved in writing by the Licensor, provided that Licensee has promptly begun to cure and is diligently pursuing its efforts to cure.

11.3 Licensor Default. If Licensor breaches any covenant or obligation of Licensor under this Agreement in any manner and if Licensor fails to commence to cure such breach within 90 days after receiving written notice from Licensee specifying the violation (or if Licensor fails thereafter to diligently prosecute the cure to

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completion), then Licensee may enforce any and all of its rights and/or remedies provided under this Agreement or by law.

11.4 Remedies Available Upon Default. Upon the failure of the defaulting party to cure any default, after notice and an opportunity to cure, the non-defaulting party shall have the right, at its option, to any or all of the following:

i. Terminate individual SUPs without further liability upon providing written notice of such termination to the defaulting party;

ii. Terminate the Agreement without any further liability upon providing written notice of such termination to the defaulting party;

iii. Perform or cause to be performed any unfulfilled obligation of the defaulting party. The defaulting party shall reimburse the non-defaulting party of the reasonable cost thereof, plus interest at the rate of eight percent (8%) per annum, within thirty (30) days after delivery to the defaulting party of written receipts reflecting the cost and evidencing the fulfillment of such obligations;

iv. Pursue any legal remedies it may have under this Agreement, as well as under applicable Law or principles of equity. Any unpaid Annual License Fees or any other monetary obligations of Licensee under the terms of this Agreement shall bear interest from the due date at the maximum rate then allowable by law.

12. AGREEMENT

This Agreement shall not be assigned by Licensee without the express written consent of the Licensor, said consent not to be unreasonably withheld. Notwithstanding the foregoing, the transfer of the rights and obligations of Licensee to an affiliate or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the ROW is located by reason of a merger, acquisition or other business reorganization (collectively, "Exempted Transfers") shall not require the consent of the Licensor; however, Licensee shall provide prompt notice of such Exempted Transfers. In the event of a proposed assignment, Licensee will provide to Licensor a written notice stating the proposed assignee's identity and ability to comply with the terms of this Agreement, and insurance that comports with the requirements of Section 9. Within fourteen (14) days of the request for assignment, Licensor will notify Licensee as to whether or not consent is granted, and if such consent is withheld, describing in reasonable detail the basis therefore. Any transfer of this Agreement or individual SUP shall be amended to reflect the new assignee or transferee.

13. MISCELLANEOUS PROVISIONS

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

The provisions that follow shall apply generally to the obligations of the parties under this Agreement.

13.1 Waiver of Breach. The waiver by either party of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Agreement.

13.2 Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

13.3 Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of New York. Any suit brought by either party against the other for claims arising from this Agreement shall be brought in the state courts of the State of New York for the County of Erie. This Agreement shall not constitute a waiver of any parties' rights under applicable Laws.

13.4 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the party's respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 4.2 above.

13.5 Amendment of Agreement. This Agreement may not be amended except pursuant to a written instrument signed by both parties.

13.6 Entire Agreement. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement shall not be modified except upon written agreement of both the Licensor and Licensee.

13.7 Public Records. Licensee acknowledges that information submitted to the Licensor may be open to public inspection and copying under state law. Licensee may identify and prominently mark information, such as trade secrets, proprietary financial records, customer information or technical information, submitted to the Licensor as confidential. The Licensor retains the final discretion to determine

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

whether to release the requested confidential information, in accordance with applicable laws.

13. 8 Non-Exclusive Remedies. No provision in this Agreement made for the purpose of securing enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies herein provided are deemed to be cumulative.

13.9 No Third-Party Beneficiaries. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize anyone to maintain a suit for personal injuries or property damage pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Licensor with respect to third parties shall remain as imposed by state law.

13.10 Construction of Agreement. The terms and provisions of this Agreement shall not be construed strictly in favor of or against either party, regardless of which party drafted any of its provisions. This Agreement shall be construed in accordance with the fair meaning of its terms.

13.11. Town Authority. Nothing in this Agreement shall be construed as restraining, impairing or restricting the Town's lawful exercise of its regulatory capacity, or granting any rights upon the Licensee with respect to any use of the License Area in a manner not consistent with applicable law.

13.12. Rights Limited to Revocable License. The rights provided hereunder are limited to a revocable license, and under no circumstance shall the license granted herein ripen into a lease or easement (whether under a claim of prescriptive right or otherwise).

13.13. Interruption of License Rights Due to Emergency. In the event of an emergency that jeopardizes the health, safety or welfare of the public or any individual, the Town after making reasonable efforts to contact and notify Licensee, may remove Licensee from the municipal facilities and regain possession without notice to the Licensee. The exercise of the Town's rights under this Section shall be at the Town's sole and absolute discretion. In the event that the Town exercises its right under this Section 13.13, the Town shall cooperate in good faith to ensure that Licensee is timely informed of such interruptions and that Licensee can continue to providing telecommunications services with as little disruption as reasonably possible.

13.14. Taxes. The term "Taxes" as used herein shall mean and refer to any and all taxes imposed or levied upon Licensee or its assignees in connection with this Agreement or SUP or zoning authorization by any federal, state, county and local governmental agency. This may include sales, use, possessory interest, excise,

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

business license taxes, or other transaction or personal property taxes. Licensee shall be obligated to pay any applicable taxes assessed, levied or imposed in connection with this Agreement or SUP or zoning authorization when due. When applicable, Licensee shall furnish Licensor a valid and properly executed tax exemption/resale certificate(s) for any request of exemption from taxes. Any exemption/resale certificate shall be effective only for fees invoiced subsequent to the receipt of the exemption/resale certificate. To the extent administratively feasible, Licensee and Licensor agree to make commercially reasonable efforts to cooperate with each other and coordinate their mutual efforts concerning audits, or other such inquiries, filings, reports, as may relate to the taxes pursuant to this Agreement.

****THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY****

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be legally executed in duplicate the day and year first written above.

Licensor:
TOWN OF AMHERST

By: _____
Brian J. Kulpa
Town Supervisor

APPROVED AS TO FORM:

By: _____
Stanley J. Sliwa, Esq.
Town Attorney

Licensee:

By: DocuSigned by: Rommel Angeles CB0404E9DCBB429...
Name: Rommel Angeles
Title: Director - Network Engineering
Aug 22, 2021

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

EXHIBIT A

Wireless Special Use Permit
Small Cell

Permit Number: Permit Issue Date:

Today's Date Expiration Date:

Licensee Project Information:

SITE INFORMATION

Nearest Street Address:

Description of Site:

License area:

Pole Number (if any):

Licensee INFORMATION

Organization/Business:

Address:

City:

Point of Contact:

Primary Phone Number:

Emergency Phone Number:

CARRIER COMPANY INFORMATION

Company:

This is a Wireless Special Use Permit as referenced in that certain Master Small Cell Agreement between the City and Licensee. All of the terms and conditions of the Agreement are incorporated hereby reference and made a part hereof. In the

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

DocuSign Envelope ID: 072171AC-8F16-4538-8BFA-BC5A26F548F3

event of a contradiction, modification or inconsistency between the terms of the Agreement and this Wireless Special Use Permit, the terms of the Agreement shall govern.

The term of this Wireless Special Use Permit shall be as set forth in Section 2 of the Agreement.

The fees for this Wireless Special Use Permit are for processing and review of the application material as required by Town Code and are due prior to issuance of this Wireless Special Use Permit. The annual license fee for the term of this Wireless Special Use Permit shall be as determined in accordance with Section 5.1 of the Agreement.

_____

Licensor Signature

Attachment: Partially Executed MLA - Amherst and Verizon Wireless (RES-2021-776 : Master Small Cell License Agreement - CRS #2877)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 24739 **RESOLUTION 2021-777** **ADOPTED**

License Agreement - 146 Florence Lane (Collymore) (CRS #2869)

AGENDA ITEM : SEPTEMBER 13TH, 2021

TO: **Town Board**

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

DATE: **September 8, 2021**

RE: **Request for License Agreement (CRS #2869)**
Installation of Fence
Property Located At:
146 Florence Lane, Amherst, New York 14228

Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement.

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

This request was reviewed and approved by the Engineering Department.

Thank you for your consideration.

NMB:hs
Attachment
c: Kathy Cooper, Deputy Town Clerk
(w/attachment, **Agenda Item: September 13th, 2021**)
Jeffrey S. Burroughs, PE, Town Engineer *(w/attachment)*

9/13/2021
Consent

FINANCIAL IMPACT:

$150.00 - Fee For License Agreement

$80.00 - ECCO Filing Fee

Both fees paid to the Town in one check by homeowners - $230.00

A5010.02724

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

Return to: Town of Amherst
Attorney's Office
5583 Main Street
Williamsville, New York 14221

TOWN OF AMHERST
LICENSE AGREEMENT

THIS AGREEMENT, made as of this ____ day of August, 2021, between the Town of Amherst, a municipal corporation existing under and by virtue of the laws of the State of New York, having its principal office at 5583 Main Street, Williamsville, New York 14221, Party of the First Part hereinafter referred to as the "Town" and

Kelvin V. Collymore and Tracy D. Collymore
146 Florence Lane
Amherst, New York 14228
SBL: 26.11-7-29

Parties of the Second Part hereinafter referred to as the "Owners."

WITNESSETH:

WHEREAS, the Owners are presently the owners of following described premises:

All of that tract or parcel of land situate in the Town of Amherst, County of Erie, and State of New York, being part of Lot No. 45, Township 12, Range 7 of the Holland Land Company's Survey and according to a map filed in the Erie County Clerk's Office under Map Cover No. 3765 is known as Subdivision Lot No. 38. Together with the benefits and subject to the burdens of restrictions, easements, agreement and rights of way of record, including Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens – ("Briar Hollow") recorded on July 25, 2019 in the Erie County Clerk's Office in Liber 11347 of Deeds at page 3252, as amended.

It is more commonly known as:

146 Florence Lane
Amherst, New York 14228
SBL: 26.11-7-29

WHEREAS, the Town became the holder of a Sanitary Sewer Easement as shown on the Subdivision Map filed in the Erie County Clerk's Office under Cover No. 3765. Said sanitary sewer easement is shown on the survey attached hereto as Exhibit "A;"

Attachment: LicenseAgreementOwnerSigned (RES-2021-777 : License Agreement - 146 Florence Lane (Collymore) (CRS #2869))

WHEREAS, the Owners are desirous of utilizing a portion of the aforementioned easement area:

To install a fence that will encroach into the 30' wide sanitary sewer easement; said approval for construction of that fence as detailed on the attached Exhibit "A" being subject to the Town of Amherst Zoning Board of Appeals granting the necessary relief from the height restrictions imposed upon the construction of fences as outlined in the Town of Amherst Zoning Code and said fence also being subject to the limitations of the clear vision triangle as outlined in the Town of Amherst Zoning Code unless the necessary relief is also granted also by the Town of Amherst Zoning Board of Appeals;

as shown on a sketch labeled Exhibit "A," attached hereto and made a part hereof. Said fence is to be constructed in accordance with the guidelines above and as more fully detailed on Exhibit "A" attached hereto and made a part hereof.

WHEREAS, the intended use as hereinafter provided does not interfere with the municipal purpose of which said Sanitary Sewer Easement was acquired.

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar ($1.00) paid to the Town, the receipt whereof is hereby acknowledged, and the covenants and promises hereinafter set forth the parties agree as follows:

The Town does hereby grant to the Owners, his/her successors, distributees and assigns a license and/or privilege to install, maintain, and use a portion of the Sanitary Sewer Easement areas as shown on Exhibit "A," subject to the following conditions:

a. There shall not be installed or placed devices, equipment or structures within the said easement area without prior approval of the Town;

b. The use of said license in the Sanitary Sewer Easement area shall not interfere or restrict the operation, maintenance, repair and/or reconstruction of the Sanitary Sewer Facilities;

c. If it becomes necessary to remove said encroachment(s) for the purpose of repair and/or reconstruction of the Sanitary Sewer facilities, the cost of the removal and reinstallation of said improvements shall be at the expense of the Owners, his/her successors, distributees and assigns.

Attachment: LicenseAgreementOwnerSigned (RES-2021-777 : License Agreement - 146 Florence Lane (Collymore) (CRS #2869))

d. If at any time the Sanitary Sewer facilities are exposed, unearthed or damaged, the Town shall be promptly notified and allowed inspection of the easement areas.

e. Owners acknowledge and accept all consequences, including, but not limited to, damage to any and all structures/fixtures/assemblies that encroach into the easement area as a result of a high water event.

The Owners shall defend, indemnify and hold harmless the Town from any and all claims or causes of action arising out of the use and exercise of this agreement.

This Agreement shall commence on the 23rd day of August, 2021 and shall terminate one (1) year thereafter.

This Agreement, however, shall automatically extend for one (1) year periods unless the same is cancelled as herein provided.

Either party may cancel this Agreement by giving sixty (60) days written notice to the other of such cancellation and during said sixty (60) days cancellation shall remove said fence and shall restore the area to the same condition that existed prior.

This Agreement shall ensure to the benefit of the parties, hereto, their successors, distributees, and assigns.

IN WITNESS WHEREOF, the parties to this Agreement have executed the same, the day and year first above written.

TOWN OF AMHERST

_____

Brian J. Kulpa
Supervisor

PROPERTY OWNER

Kelvin V. Collymore

PROPERTY OWNER

Tracy D. Collymore

Attachment: LicenseAgreementOwnerSigned (RES-2021-777 : License Agreement - 146 Florence Lane (Collymore) (CRS #2869))

ERIE COUNTY }SS:

On the _____day of _____ in the year 2021 before me, the undersigned, personally appeared, **Brian J. Kulpa,** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK }
ERIE COUNTY }SS:

On the 23RD day of AUGUST in the year 2021 before me, the undersigned, personally appeared, **Kelvin V. Collymore** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DARLENE A. HORVATH
NOTARY PUBLIC STATE OF NEW YORK
ERIE COUNTY
LIC. #01HO5067798
COMM. EXP. 10/28/2022

_____
Notary Public

STATE OF NEW YORK }
ERIE COUNTY }SS:

On the 23RD day of AUGUST in the year 2021 before me, the undersigned, personally appeared, **Tracy D. Collymore**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DARLENE A. HORVATH
NOTARY PUBLIC STATE OF NEW YORK
ERIE COUNTY
LIC. #01HO5067798
COMM. EXP. 10/28/2022

_____
Notary Public

Collymore, Kelvin V. and Tracy D.
License Agreement - 146 Florence Lane
TBA : 8.23.2021

Attachment: LicenseAgreementOwnerSigned (RES-2021-777 : License Agreement - 146 Florence Lane (Collymore) (CRS #2869))

Attachment: ExhibitA.146FlorenceLane-09082021101922 (RES-2021-777 : License Agreement - 146 Florence Lane (Collymore) (CRS #2869))

Property Line

Proposed Fence (6' privacy vinyl)

House

Shed

Fence 3ft from Winterbrook Dr sidewalk

Shed 10 feet from rear property line &13 feet from fence

Fence 7ft from rear property line

Exhibit "A"

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 24750 **RESOLUTION 2021-778** **ADOPTED**

Fireworks Permit - Williamsville North High School

Request for fireworks permit on September 23, 2021 at 9:00 PM at Williamsville North High School, 1595 Hopkins Road with the following conditions:

1. Minimum secured diameter of site shall be 140 feet.
2. That the audience be 140 feet from the fireworks discharge location for vertical mortars. (maximum of 2 inch shells)
3. That one (1) 5-lb. ABC fire extinguisher, with a current inspection tag, is located at the firing site with a qualified operator. Additional extinguishers may be required depending on the site layout.
4. That the trajectory of shells shall not come within 25 feet of overhead objects.
5. That the actual shooters listed on the application be present at the site or a substitute shooters list be submitted five (5) or more days prior to the event.
6. Display shall follow NFPA 1123-2018 & IFC 2018.
7. Crowds over 1000 people require a crowd manager.
8. If you would like to start the display earlier than the time proposed you must call 689-1212 before starting to be approved by our office.

9/13/2021
Consent

FINANCIAL IMPACT:

$100.00 permit fee is paid.

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

TOWN OF AMHERST
BUILDING DEPARTMENT
ERIE COUNTY, NEW YORK
5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221

PHONE: (716) 631-7080
FAX: (716) 631-7192

Mark Berke, P.E.
Commissioner of Building

Memorandum

DATE: September 8, 2021

TO: Francina Spoth, Town Clerk

FROM: Bryan W. Parnell, Senior Fire Inspector

RE: Fireworks Display – Williamsville North High School At 1595 Hopkins Road

DATE & TIME: Thursday, September 23, 2021 about 9:00PM. All items required on the application appear to be in order. Therefore, we hereby recommend the approval of this application with the following conditions.

1) Minimum secured diameter of site be 140 feet.
2) That the audience be 140 feet from the fireworks discharge location for vertical mortars. (maximum of 2 inch shells)
3) That one (1) 5-lb. ABC fire extinguisher, with a current inspection tag, is located at the firing site with a qualified operator. Additional extinguishers maybe required depending on site layout.
4) That the trajectory of shells shall not come within 25 feet of overhead objects.
5) That the actual shooters listed on the application be present at the site or a substitute shooters list be submitted five (5) or more days prior to the event
6) Display shall follow NFPA 1123-2018 & IFC 2018.
7) If you would like to start the display earlier than the time proposed you must call 689-1212 before starting to be approved by our office.
8) Crowds over 1000 people require certified crowd managers.

Bryan W. Parnell
Senior Fire Inspector
Fire Safety Division

X:\DOCS\BWP\fireworks display\2021\1595 Hopkins Rd - Williamsville North 9-23-2021.docx

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

TOWN OF AMHERST
BUILDING DEPARTMENT
DIVISION OF FIRE SAFETY
5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
(716) 631-7142

FIRE PREVENTION / OPERATING PERMIT

APPLICATION DATE	DATE ISSUED	EXPIRATION DATE	PERMIT NUMBER
09/08/2021	09/08/2021	03/08/2022	FP-2021-0082

APPLICANT	ADDRESS	PHONE NUMBER
SKYLIGHTERS OF WNY	3362 BAKER RD.. ORCHARD PARK	716-903-3291

LOCATION OF ACTIVITY: SKYLIGHTERS OF WNY - (SITE) 1595 Hopkins Rd, Amherst, NY

THE ABOVE NAMED INDIVIDUAL/BUSINESS HEREBY MAKES APPLICATION TO CONDUCT THE FOLLOWING ACTIVITY PER CHAPTER 83 OF THE BUILDING CONSTRUCTION ADMINISTRATION CODE OF THE TOWN OF AMHERST. AND FOR THE KEEPING, STORAGE, OCCUPANCY, USE, SALE, HANDLING, OR MANUFACTURE OF THE FOLLOWING: (STATE QUANTITIES NORMALLY TO BE STORED, HOW STORED, OR USED GIVING AMOUNTS FOR EACH KIND OR CATEGORY.)

Fireworks display on 9/23/2021 @ 9 PM
2 inch Max Shells
Minimum of 140 foot clearance required
fire extinguishers required

Must Follow NFPA 1123 and IFC
See memo dated 9/8/2021 for additional requirements

IN ACCORDANCE WITH THE FIRE PREVENTION CODE OR NFPA SECTION(S):

APPROVED BY FIRE OFFICIAL	DATE	FEE PAID
B. Pucci	09/08/2021	100.00

THIS PERMIT MUST BE POSTED ON THE ABOVE MENTIONED PREMISES

STATEMENT

I HEREBY ACKNOWLEDGE THAT: I HAVE READ THIS APPLICATION, THAT THE INFORMATION GIVEN IS CORRECT, AND THAT I AM THE OWNER OR DULY AUTHORIZED TO ACT IN THE OWNER'S BEHALF AND AS SUCH HEREBY AGREE TO COMPLY WITH THE APPLICABLE REQUIREMENTS OF THE FIRE PREVENTION CODE.

Signature Title

DO NOT WRITE BELOW THIS LINE

COMMENTS:

APPROVED BY FIRE OFFICIAL DATE

WHERE APPLICABLE - SEPARATE PERMITS ARE REQUIRED FOR BUILDING CONSTRUCTION ACTIVITY INCLUDING ELECTRICAL, PLUMBING, AND MECHANICAL INSTALLATIONS.

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

APPLICATION FOR FIREWORKS DISPLAY

The undersigned hereby make application to the Town Board of the Town of Amherst to acquire a license pursuant to Chapter 68 (Amusements) of the Code of the Town of Amherst for the public display of fireworks in the Town of Amherst, Erie County, New York.

1. Name of individual/company sponsoring the display and the names of the persons to be in charge of the firing of the display:
   - Williamsville North High School
   - Skylighters of New York, LLC
2. Date and time at which display is to be held: 9/23/21 9pm
3. Exact location of display: 1595 Hopkins Rd. Williamsville, NY 14221
4. Age, experience, and physical characteristics of individuals who are to discharge fireworks:
   Mark Mangeon 50+ years old, 10+, white male
   Nick Leo 21+ years old, 5+, white male
5. Number and kind of fireworks to be discharged:
   15 100 Shot Cakes
6. Manner and place of storage of these fireworks prior to the display:
   Brought to the site the day of
7. Attached is a diagram of the grounds on which the fireworks display is to be held. This diagram shows the point at which the fireworks are to be discharged, the location of all buildings, highways, and other lines of communications in addition to the lines behind which the audience will be restrained, the location of all nearby trees, telegraph or telephone lines and other overhead obstructions.
8. This application must be accompanied by a bond or policy of public liability insurance with a limit of $3,000,000 for personal injuries, a limit of $1,000,000 for property damage, and proof of Worker's Compensation Insurance.
9. This application for a Fire Prevention Operating Permit (Code 52) must be accompanied by a check in the amount of $90 made out to "Town of Amherst"

Date: 8/30/21

[signature]
(Company, Corporation or Individual)

By: MATT SHAW

State of New York)
County of Erie)
Town of Amherst)

Sworn to before me this 30th day of August in the year 2021

[signature]
Notary Public

MARY REINHARDT
Notary Public, State of New York
Reg. No. 01RE6395690
Qualified in Erie County
Commission Expires July 29, 2023

SEP02'21 PM 2:29 RCVD

\\amherstinfo\building\forms\firediv\fireworkspermit 9/30/2009

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

STATE OF NEW YORK
DEPARTMENT OF LABOR

DIVISION OF
SAFETY AND HEALTH

LICENSE TO DEAL IN OR MANUFACTURE EXPLOSIVES

Expires: 9/30/2021

Skylighters of New York, LLC
PO Box 1357
Orchard Park, NY 14127

Matthew T Shaw

THIS LICENSE MUST BE POSTED IN YOUR PLACE OF BUSINESS

License No 5799

is hereby licensed to deal in or manufacture explosives in compliance with the requirements of the Labor Law and Industrial Code Rules. Any change in the conditions under which this license is granted may cause it to be revoked.

Eileen M. Franko, Acting Director FOR
THE COMMISSIONER OF LABOR

Every person selling, delivering or giving away any explosives must keep at the principal place of business within the state, a record of each transaction, including:

1) the NAME or TYPE and QUANTITY of explosives SOLD, DELIVERED or GIVEN. Note: No license is needed to purchase smokeless powder, or black powder in quantities not exceeding five pounds for use in firing antique firearms or artifacts or replicas thereof. However, dealers MUST post all such transactions on the "Dealer-Manufacturer Report of Explosives Transactions".

2) the DATE OF EACH SALE, DELIVERY or GIFT.

3) the NAME, LICENSE NUMBER, and BUSINESS ADDRESS of the purchaser, donee, or person to whom the explosives were delivered and the firm, if any, represented by such person.

4) the NAME, ADDRESS, and LICENSE NUMBER of the person TAKING THE EXPLOSIVES AWAY from the seller or donor.

SH-862 (5-98)

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Federal Explosives License/Permit
(18 U.S.C. Chapter 40)

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF Correspondence To: ATF - Chief, FELC 244 Needy Road Martinsburg, WV 25405-9431	License/Permit Number: **6-NY-029-51-4C-01005**
Chief, Federal Explosives Licensing Center (FELC) Maria Howard	Expiration Date: **March 1, 2024**

Name
SKYLIGHTERS OF NEW YORK LLC

Premises Address (Changes? Notify the FELC at least 10 days before the move.)
5495 RICE ROAD
BOSTON, NY 14025-

Type of License or Permit
51-IMPORTER OF EXPLOSIVES

Purchasing Certification Statement

The licensee or permittee named above shall use a copy of this license or permit to assist a transferor of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or e-mailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensee (FEL) or a responsible person of the FEL. I certify that this is a true copy of a license or permit issued to the licensee or permittee named above to engage in the business or operations specified above under "Type of License or Permit."

Mailing Address (Changes? Notify the FELC of any changes.)

SKYLIGHTERS OF NEW YORK LLC
PO BOX 1357
ORCHARD PARK, NY 14127-

Licensee/Permittee Responsible Person Signature _____ Position/Title _____

Printed Name _____ Date _____

Previous Edition is Obsolete SKYLIGHTERS OF NEW YORK LLC:5495 RICE ROAD:14025:6-NY-029-51-4C-01005:March 1, 2024:51-IMPORTER OF EXPLOSIVES

ATF Form 5400.14/5400.15 Part 1
Revised September 2011

Federal Explosives License (FEL) Customer Service Information

Federal Explosives Licensing Center (FELC)
244 Needy Road
Martinsburg, WV 25405-9431

Toll-free Telephone Number: (877) 283-3352
Fax Number: (304) 616-4401
E-mail: FELC@atf.gov

ATF Homepage: www.atf.gov

Change of Address *(27 CFR 555.54(a)(1))*. Licensees or permittees may during the term of their current license or permit remove their business or operations to a new location at which they intend regularly to carry on such business or operations. The licensee or permittee is required to give notification of the new location of the business or operations not less than 10 days prior to such removal with the Chief, Federal Explosives Licensing Center. The license or permit will be valid for the remainder of the term of the original license or permit. **(The Chief, FELC, shall, if the licensee or permittee is not qualified, refer the request for amended license or permit to the Director of Industry Operations for denial in accordance with § 555.54.)**

Right of Succession *(27 CFR 555.59)*. (a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same address shown on, and for the remainder of the term of, a current license or permit. Such persons are: (1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and (2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors. (b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit for for that business or operations for endorsement of such succession to the Chief, FELC, within 30 days from the date on which the successor begins to carry on the business or operations.

(Continued on reverse side)

Cut Here ✂

Federal Explosives License/Permit (FEL) Information Card

License/Permit Name: **SKYLIGHTERS OF NEW YORK LLC**

Business Name:

License/Permit Number: **6-NY-029-51-4C-01005**

License/Permit Type: **51-IMPORTER OF EXPLOSIVES**

Expiration: **March 1, 2024**

Please Note: Not Valid for the Sale or Other Disposition of Explosives.

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

NYSIF
New York State Insurance Fund

225 OAK STREET, BUFFALO, NEW YORK 14203-1685
| nysif.com

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

^^^^^^ 383857391
SKYLIGHTERS OF NEW YORK LLC
PO BOX 1357
ORCHARD PARK NY 14127

SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER	CERTIFICATE HOLDER
SKYLIGHTERS OF NEW YORK LLC PO BOX 1357 ORCHARD PARK NY 14127	TOWN OF AMHERST 5583 MAIN ST WILLIAMSVILLE NY 14221

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
B2174 989-0	812190	12/07/2020 TO 12/07/2021	8/31/2021

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2174 989-0, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW, AND, WITH RESPECT TO OPERATIONS OUTSIDE OF NEW YORK, TO THE POLICYHOLDER'S REGULAR NEW YORK STATE EMPLOYEES ONLY.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP. THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THIS POLICY DOES NOT COVER THE SOLE PROPRIETOR, PARTNERS AND/OR MEMBERS OF A LIMITED LIABILITY COMPANY.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR,INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 171738262

U-26.3

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 8/31/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Britton Gallagher
One Cleveland Center, Floor 30
1375 East 9th Street
Cleveland OH 44114

CONTACT NAME:
PHONE (A/C, No, Ext): 216-658-7100 **FAX (A/C, No):** 216-658-7101
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Everest National Insurance Company	10120
INSURER B : Axis Surplus Insurance Company	26620
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED 7847
Skylighters of New York LLC
PO Box 1357
Orchard Park NY 14127

COVERAGES **CERTIFICATE NUMBER:** 655364465 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	**GENERAL LIABILITY** X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC			SI8GL00259-201	12/5/2020	12/5/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 500,000 $ $ 1,000,000 $ 2,000,000 $ 2,000,000
A	**AUTOMOBILE LIABILITY** X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS			SI8CA00022-201	12/5/2020	12/5/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
B	**UMBRELLA LIAB** X OCCUR X **EXCESS LIAB** CLAIMS-MADE DED RETENTION $			P-001-000056857-03	12/5/2020	12/5/2021	EACH OCCURRENCE AGGREGATE	$ 4,000,000 $ 4,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Additional Insured extension of coverage is provided by above referenced General Liability policy where required by written agreement.
Display Date: September 23, 2021
Location: 1595 Hopkins Road
Additional Insured: Williamsville North High School and Town of Williamsville

CERTIFICATE HOLDER

Williamsville North High School
1595 Hopkins Road
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

© 1988-2010 ACORD CORPORATION. All rights reserved.

The ACORD name and logo are registered marks of ACORD

Attachment: DOC090821-09082021130856 (RES-2021-778 : Fireworks Permit - Williamsville North High School)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Building/Building Maintenance
Initiated by: **Mark S. Berke**
Co-Sponsored by:

DOC ID: 24754 **RESOLUTION 2021-779** **ADOPTED**

Regional Environmental Demolition, Inc

Please authorize the Supervisor to sign contract between Town of Amherst and Regional Environmental Demolition, Inc. 6281 Wendt Dr., Niagara Falls, NY 14304.

9/13/2021
Consent

FINANCIAL IMPACT:

A1620 - 4220 $5247.81

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

Regional Environmental Demolition Inc.

6281 Wendt Drive Niagara Falls New York 14304 · Office (716) 284-3366 Fax (716)284-7331/

8/25/21

Town of Amherst
5583 Main Street
Williamsville, New York 14221

Re: Asbestos Abatement of 95sqft of Transite Paneling, 5sqft of Floor Tile and Interior Demolition of Remaining Wall located at 5583 Main Street Williamsville, New York 14221.

Regional Environmental Demolition Inc. is pleased to supply the following quote for the above noted project. Price includes legal disposal of all waste generated by scope of work below. All work will be performed in accordance with all Local, State, Federal Rules and Regulations including NYS code Rule 56, OSHA and EPA Requirements.

Scope of Work: Asbestos Abatement and Interior Demolition

- Mobilization of Equipment and Crew
- NYS Prevailing Wage Rates Apply
- Installation of Decon and Dumpster
- Installation of Critical Barriers
- Installation of Negative Air Handler
- Removal of ACM as per Spec.
- Disposal of Transite as ACM Debris
- Demolition of Remaining Wall
- Disposal of Metal and Soft Debris as C/D
- Demobilization
- Proper Dump Tickets and any Documents returned to Owners Rep.

Exclusions:
Penalties, Liabilities, & Liquidated Damages

Conditions and Clarifications:
RED Inc. will be reimbursed for delays caused by third party.
RED Inc. will commence work upon notice to Proceed
RED Inc. General Liability Insurance are as Follows: General Aggregate $2mil, Each Occurrence $2mil, Product and Completed Operations 2mil, Personal and Advertising Injury 2mil, Medical Expense 5k, Pollution Coverage 2mil, Microbial Substance Occurrence 1mil, Aggregate 2mil, Excess Umbrella Liability 5mil.

Owners to Provide:
Entrance to Property
Water
Electricity

Bonds/Insurance/Taxes:
If Bond is required, the cost will be 3% of bid price
Sales Tax Exempt (Please Provide Proper Documentation)

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

Payment Terms:

Net 30 days.

The release of retainage, if applicable, is due no later than thirty (30) days after the fulfillment of this agreement.

Asbestos Abatement and Interior Demolition Total: $5247.81

Acceptance of this quote binds the authorized company to Regional Environmental Demolition, Inc. Terms & Conditions as per this page and the attached General Terms and Conditions and applicable sales tax. Should you have any questions or if we may be of further service to you, please do not hesitate to contact us directly at 716-284-3366.

Respectfully Submitted,
REGIONAL ENVIRONMENTAL DEMOLITION, INC.

Enrico D. Liberale,
Vice President

Should this proposal be acceptable, please sign below and return to Regional Environmental Demolition, Inc. along with the signed and initialed Terms and Conditions.

Authorized Signature: _____ *Date:* _____

Printed Name & Title: _____

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

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.

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Contractor, in accordance with its status as an independent Contractor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

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:

Regional Environmental Demolition, Inc.
Print Name of Company

By: _____
Signature

Enrico D. Liberale
Printed name

Date: 8-26-2021

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

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: Regional Environmental Demolition, Inc.

Signature: E D Liberale

Print Name: Enrico D. Liberale

Title: Vice President

Date: 8-26-2021

DIANNE DIAPAUL
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01D16408838
Qualified In Niagara County
Commission Expires September 14,2024

Sworn To Before Me This

26th Day of August, 2021

Dianne DiaPaul

Notary Public

Revised 4.2017

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/26/2021

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
Evans Insurance Agency
6460 Main Street
Suite 200
Williamsville NY 14221

CONTACT NAME: Jeanne Kubicki, Senior Account Manager
PHONE (A/C, No, Ext): (716) 562-3458 **FAX (A/C, No):** (716) 926-8690
E-MAIL ADDRESS: jkubicki@evansagencyins.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Cincinnati Insurance Co	10677
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Regional Environmental Demolition Inc and CR Development Inc
6281 Wendt Drive
Niagara Falls NY 14304

COVERAGES **CERTIFICATE NUMBER:** 20-21 Master - Auto **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	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	OTHER:							$
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	☒ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS			EBA0590526	09/30/2020	09/30/2021	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 $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)	N/A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Leased & Rented Contractors Equipment			ENP0590516	09/30/2020	09/30/2021	Limit: $100,000 Deductible $1,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

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

© 1988-2015 ACORD CORPORATION. All rights reserved

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

REGIENV-01 RJUDASZ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 8/26/2021

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 License # 1009544 Lawley Construction Solutions 361 Delaware Avenue Buffalo, NY 14202	CONTACT NAME: PHONE (A/C, No, Ext): (716) 849-8618 FAX (A/C, No): (716) 849-8291 E-MAIL ADDRESS:
INSURED Regional Environmental Demolition Inc 6281 Wendt Drive Niagara Falls, NY 14304	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Great Divide Insurance Co — 25224 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			ECP200387319	9/30/2020	9/30/2021	EACH OCCURRENCE	$ 2,000,0(
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,0(
	X Includes Contractual						MED EXP (Any one person)	$ 5,0(
	X Contractors Pollutio						PERSONAL & ADV INJURY	$ 2,000,0(
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,0(
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,0(
	OTHER: Capped at $5,000,000						CONT POLL LIAB	$ 2,000,0(
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB X OCCUR			FFX200656318	9/30/2020	9/30/2021	EACH OCCURRENCE	$ 5,000,0(
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 5,000,0(
	DED X RETENTION $ 0							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A		WCA153500419	9/30/2020	9/30/2021	X PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y						E.L. EACH ACCIDENT	$ 1,000,0(
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,0(
							E.L. DISEASE - POLICY LIMIT	$ 1,000,0(

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
When required by written executed contract, the following endorsements apply (See Acord 101):

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

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Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

AGENCY CUSTOMER ID: REGIENV-01 RJUDASZ

LOC #: 1

ADDITIONAL REMARKS SCHEDULE

AGENCY	License # 1009544	NAMED INSURED
Lawley Construction Solutions		Regional Environmental Demolition Inc 6281 Wendt Drive Niagara Falls, NY 14304
POLICY NUMBER		
SEE PAGE 1		
CARRIER	NAIC CODE	EFFECTIVE DATE: SEE PAGE 1
SEE PAGE 1	SEE P 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Endorsements
General Liability/Pollution:
ECP 1004 08 16 - Additional Insured - Blanket
ECP 1021 10 06 - Designated Construction Project(s) General Aggregate Limit
ECP 1058 08 16 - Additional Insured - Lessor of Leased Equipment - Blanket
ECP 1080 08 16 - Additional Insured - Engineers, Architects or Surveyors Not Engaged By The Named Insured
ENV 2004 06 18 - Waiver of Subrogation

Excess:
FFX 8000 03 20 - Follow Form Excess Liability Coverage Form

Workers Compensation:
WC 00 03 13 04 84 - Waiver of Our Right to Recover From Others Endorsement

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Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name and address of Insured (Use street address only)	1b. Business Telephone Number of Insured
Regional Environmental Demolition, Inc 6281 Wendt Drive Niagara Falls, NY 14304	(716) 471-3134 **1c. NYS Unemployment Insurance Employer Registration Number of Insured**
Work Location of Insured *(Only required if coverage is specifically limited to certain location in New York State, i.e. a Wrap-Up Policy)*	**1d. Federal Employer Indentification Number of Insured or Social Security Number** 27-0472838
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)	**3a.Name of Insurance Carrier**
Town of Amherst 5583 Main St Williamsville, NY 14221	Great Divide Insurance Co **3b. Policy Number of entity listed in box "1a":** WCA153500419 **3c. Policy effective period:** 9/30/2020 to 9/30/2021 **3d. The Proprietor, Partners or Executive Officers are:** ☐ **included** (Only check box if all partners/officers included) ☑ **all excluded or certain partners/officers excluded**

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy). The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

Please Note: Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved By: William Lawley Jr.
(Print name of authorized representative or licensed agent of insurance carrier)

Approved By: _____ 8/26/21
(Signature) (Date)

Title: Managing Partner

Telephone Number of authorized representative or licensed agent of insurance carrier: CarrierPhone

Please Note: Only insurance carriers and their licensed agents are authorized to issue the C-105.2 form. Insurance brokers are NOT authorized to issue it.

C-105.2 (9-17) **www.wcb.ny.gov**

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

Workers' Compensation Law

Section 57. Restriction on issue of permits and the entering contracts unless compensation is secured.

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.

2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.

C-105.2 (9-17) REVERSE

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)

Regional Environmental Demolition Inc.
6281 Wendt Drive
Niagara Falls, NY 14304

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) 471-3134

1c. Federal Employer Identification Number of Insured or Social Security Number

27-0472838

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)

Town of Amherst
5583 Main Street
Williamsville, NY 14221

3a. Name of Insurance Carrier

Standard Security Life Insurance Co of NY

3b. Policy Number of Entity Listed in Box "1a"

R78684-000

3c. Policy effective period

1/1/2021 to 1/1/2022

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 08/26/2021 By _____

(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (716) 849-8618 Name and Title William Lawley, Jr., Principal

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____

(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

DB-120.1 (10-17)

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices my be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and not withstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

Attachment: Reginal Environmental Demo (RES-2021-779 : Regional Environmental Demolition, Inc CRS #2865)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Comptroller
Initiated by: **Daryl Bramer**
Co-Sponsored by:

DOC ID: 24730 **RESOLUTION 2021-780** **ADOPTED**

Budget Transfers and Amendments

For September 13, 2021 Town Board Agenda

To: Town Board
From: Office of Town Comptroller
Date: 9/8/2021
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 - 2021

FROM:	***TO:***
A1990.4000 Contingency $23,200.00	A1420.4090 Law- Prof. Services $23,200.00
To transfer budgeted funds from contingency for attorney professional services to cover additional outside firm costs.	
A1990.4000 Contingency $27,087.92	A1110.1000 Court - Pers. Srvs. $25,162.95 A1110.8020 Court - FICA $1,924.97
A7146.4350 North Forest- Chemicals $837.48	A7141.4350 Recreation- Chemicals $837.48
A7140.4110 Amherst Rec. - Contractual $10,000 A7145.4150 Recreation - Spec. Celebration $5,000	A7253.4220 Ice Rink - Bldgs. & Grounds $15,000
Per department's request.	
A3120.4430 Police - Miscellaneous $5,500	A3121.4050 Officer - Mileage $500 A3121.4120 Officer - Training $5,000
Per department's request.	
A1990.4000 Contingency $15,000	A8020.4090 Planning - Prof. Srvs. $15,000
To transfer funds into Planning Professional Services for design and planning consulting support.	
A1620.2100 Bldg.- Furniture, Desk & Chairs $12,261.30 A1620.2150 Bldg.- Improve & Equip $12,387.42	A1620.4220 Buildings & Grounds $24,648.72
To recognize transfer funds into building and grounds for Council Chambers project that was covered under APRA.	

BUDGET AMENDMENTS - 2021

INCREASE:	***INCREASE:***
A1410.01255 Town Clerk - Fees $60,000	A1410.1000 Personal Services $55,736.18 A1410.8030 FICA $4,263.82
To recognize increase revenue amount for dog licenses fees and increase personal services for transfer of employee to Town Clerk.	
A3310.02680 Traffic Signals - Ins. Proceeds $4,142.98	A3310.4430 Miscellaneous $4,142.98
To recognize insurance proceeds and increase expenditure for damages to a signal box for repairs.	

N2144.02785 Cheek HOME Rehab $11,740.50 N2144.4000 Contractual $11,740.50
N2149.02785 Cheek HOME Admin $1,304.50 N2149.4003 Admin $1,304.50
To recognize Community Development program income from 80 Pamela Drive, Cheektowaga.

N2155.02785 Amherst Home - PI $4,566.42 N2155.4000 Admin $4,566.42
To recognize Community Development program income from 22 Woodcrest Drive, Amherst.

N2155.02785 Amherst Home - PI $15,471.90 N2155.4000 Admin $15,471.90
N2154.02785 Amherst Home Admin $1,719.10 N2154.4003 Admin $1,719.10
To recognize Community Development program income from 68 Dellwood Rd, Amherst.

N2155.02785 Amherst Home - PI $6,123.60 N2155.4000 Admin $6,123.60
N2154.02785 Amherst Home Admin $680.40 N2154.4003 Admin $680.40
To recognize Community Development program income from 459 Campus Drive, Amherst.

N2123.02785 CDBG & VG PI $18,760.00 N2123.4000 Admin $18,760.00
N2125.02785 CDBG & VG Admin $4,690.00 N2125.1000 Personal Services $4,356.71
N2125.8030 FICA $333.29
To recognize Community Development program income from 143 Mill Street, Amherst.

N2155.02785 Amherst Home - PI $12,800.00 N2155.4000 Admin $12,800.00
To recognize Community Development program income from 111 Garland Drive, Amherst.

N2155.02785 Amherst Home - PI $13,040.42 N2155.4000 Admin $13,040.42
N2154.02785 Amherst Home Admin - PI $1,448.94 N2154.4003 Admin $1,448.94
To recognize Community Development program income from 75 Oakbrook Drive, Amherst.

A3649.04589 ARPA- Federal Aid $32,276.14 A3649.1000 Personal Services $7,128.80
A3649.8030 FICA $498.62
A3649.2150 Bldg. Improve & Equip $24,648.72
To recognize Council Chambers project under ARPA.

N2123.02785 CDBG & VG PI $800.00 N2123.4000 Admin $800.00
N2125.02785 CDBG & VG Admin $200.00 N2125.1000 Personal Services $185.79
N2125.8030 FICA $14.21
To recognize Community Development program income from 6 Campus Drive N, Amherst

N2144.02785 Cheek HOME Rehab $2,938.90 N2144.4000 Contractual $2,938.90
N2149.02785 Cheek HOME Admin $326.54 N2149.4003 Admin $326.54
To recognize Community Development program income from 30 Carol Drive, Cheektowaga.

N0001.20084 CDBG Income 21/22 $640,103 See Attached $640,103
N0001.20085 Amherst Home 21/22 $376,759 See Attached $376,759
N0001.20086 Cheektowaga Home 21/22 $282,570 See Attached $282,570
N0001.20087 Tonawanda Home 21/22 $282,570 See Attached $282,570
See attached detail of expenditure accounts.

9/13/2021
Consent

FINANCIAL IMPACT:

See Descriptions.

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

Town of Amherst
2021 - 2022 N Fund Budget Amendment

		Increase	Increase
N0001.20084	CDBG Income 21/22	640,103.00	
N2120.4000	Stabilization / Rehab of Historic Village Section House		44,807.00
N2121.4000	CDBG Housing Rehabilitation		38,596.00
N2122.4000	Glen Park Nature Center Roof / Rehab / Conversion		10,000.00
N2123.4000	CDBG & VG Program Income Rehab		-
N2124.1000	CDBG Payroll - Personal Services		67,078.86
N2124.1300	CDBG Payroll - Longevity		2,440.00
N2124.4050	CDBG Payroll - Mileage		4,021.00
N2124.8030	CDBG Payroll - FICA		6,165.08
N2124.8010	CDBG Payroll - Retirement		12,750.02
N2124.8050	CDBG Payroll - Health Insurance		27,438.66
N2124.8051	CDBG Payroll - Dental		96.30
N2124.8052	CDBG Payroll - Vision		10.08
N2125.1000	CDBG Admin Staff & Fringe - Personal Services		60,880.60
N2125.1300	CDBG Admin Staff & Fringe - Longevity		870.00
N2125.4050	CDBG Admin Staff & Fringe - Mileage		104.00
N2125.8030	CDBG Admin Staff & Fringe - FICA		5,530.20
N2125.8010	CDBG Admin Staff & Fringe - Retirement		11,437.03
N2125.8050	CDBG Admin Staff & Fringe - Health Insurance		29,066.69
N2125.8051	CDBG Admin Staff & Fringe - Dental		101.20
N2125.8052	CDBG Admin Staff & Fringe - Vision		10.28
N2126.4010	CDBG Office Expenses		1,200.00
N2127.4000	Public Information Advertising		2,000.00
N2128.4000	Lead Based Paint Testing / Clearance		8,000.00
N2129.4000	Weatherization Services		12,000.00
N2130.4000	YWCA of WNY, Inc.		25,000.00
N2131.4000	Community Policing / Recreation		-
N2132.4000	Youth Boys & Girls Club		40,000.00
N2133.4000	Façade Program		30,000.00
N2134.4000	HOME Fair Housing Counseling		10,000.00
N2135.4000	Belmont Housing Counseling Services		16,500.00
N2136.4000	BUL Predatory Lending Counseling		6,000.00
N2137.4000	Public Infrastructure, Historic Preservation & Facilities in LMI Areas		140,000.00
N2138.4000	Family Justice Center Signage		-
N2139.4000	CDBG Acquisition Rehab Resale		28,000.00
	Total CDBG Budget	***640,103.00***	***640,103.00***

To set up 2021 - 2022 CDBG Budget.

N0001.20085	Amherst Home 21/22	376,759.00	
N2140.4000	Amherst Home Housing Rehab		82,569.00
N2141.4000	Amherst 1st Time Homebuyer Assistance		-
N2142.4000	Amherst Acquisition Rehab / New Construction		100,000.00
N2155.4000	Amherst HOME Rental Subsidy		100,000.00
N2154.1000	Amherst Home Admin Prog Delivery - Personal Services		50,205.93
N2154.1300	Amherst Home Admin Prog Delivery - Longevity		1,190.00
N2154.4050	Amherst Home Admin Prog Delivery - Mileage		1,073.00
N2154.8030	Amherst Home Admin Prog Delivery - FICA		5,143.16

Attachment: 2021-2022 Budget N Fund Accounts 9.13.2021 (RES-2021-780 : Budget Transfers and Amendments)

N2154.8010	Amherst Home Admin Prog Delivery - Retirement		10,636.89
N2154.8050	Amherst Home Admin Prog Delivery - Health Insurance		25,841.42
N2154.8051	Amherst Home Admin Prog Delivery - Dental		90.30
N2154.8052	Amherst Home Admin Prog Delivery - Vision		9.30
		376,759.00	*376,759.00*

To set up 2021 - 2022 Amherst Home Budget.

N0001.20086	Cheektowaga Home 21/22	282,570.00	
N2144.4000	Cheektowaga Home Rehabilitation		141,285.00
N2145.4000	Cheektowaga Acquisition Rehab		-
N2146.4000	Cheektowaga Acquisition / New Construction		141,285.00
N2147.4000	Cheektowaga 1st Time Homebuyer		-
N2148.4000	Cheektowaga Home Rental Subsidy		-
N2149.4000	Cheektowaga Home Admin		-
		282,570.00	*282,570.00*

To set up 2021 - 2022 Cheektowaga Home Budget.

N0001.20087	Tonawanda Home 21/22	282,570.00	
N2150.4000	Tonawanda Home Rehabilitation		10,000.00
N2151.4000	Tonawanda 1st Time Homebuyer Assistance		5,000.00
N2152.4000	Tonawanda Home Rental Subsidy		267,570.00
N2153.4000	Tonawanda Home Admin		-
		282,570.00	*282,570.00*

To set up 2021 - 2022 Tonawanda Home Budget.

Total Home Budget	***941,899.00***	***941,899.00***

Attachment: 2021-2022 Budget N Fund Accounts 9.13.2021 (RES-2021-780 : Budget Transfers and Amendments)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by:

DOC ID: 24671 **RESOLUTION 2021-781** **ROLL CALL VOTE (ADOPTED)**

Award Bid #2021015 - Sports Field Materials - CRS #2838, 2840 & 2842

WHEREAS, the Contract Compliance and Administration Department opened Bid #2021015 Sports Field Materials on May 27, 2021; and

WHEREAS, the bid process resulted in responses from three (3) vendors, as per the attached bid tabulation form;

NOW, THEREFORE, BE IT RESOLVED, the Town Board authorizes the Contract Compliance and Administration Department to award this bid as follows: items #5, 6, 8, 19, 20, 22-26, 28, & 32-36 to Andre and Son; items #1-4, 9, 10, 12, 15, 16, 21-23, 27, 29-31, 33, 34, 37, 38, 41, 43, 47, & 48 to Site One Landscape Supply; and items #7, 11, 13, 14, 17, 18, 28, 40, & 44-46 to Professional Turf Services; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contracts with Andre and Son, Site One Landscape Supply and Professional Turf Services.

FINANCIAL IMPACT:

Town Wide - Various Accounts - Amount TBD

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

Bid #2021015 Sports Field Materials

	Low Bidder										
	Vendor Name:		Andre & Son			Site One			Professional Turf Services		
Item #		Q Specified in Bid	Unit Price	Packaging Info.	Total Price	Unit Price	Packaging Info.	Total Price	Unit Price	Packaging Info.	Total Price
	ADJUVANTS										
1	Non-Ionic Spreader Sticker	2 x 2.5 G	$140.00	2 x 2.5 g.	$140.00	$65.95	2.5 g.	$131.90			
2	Floratine FP 747	2 x 2.5 G				$19.95	1 g.	$99.75			
3	Penetrating/Retentionary Type Wetting Agent	2.5 G				$201.81	2.5 g.	$201.81			
4	Blue Spray Dye	~~4 x 1 G~~ 5 G	$230.00	2 x 2.5 g	$230.00	$146.58	2 x 2.5 g.	$146.58			
	FERTILIZERS										
5	Granular Fertilizer 36% Mg, 100 sgn	50 lb	$60.00	50 lb.	$60.00						
6	Granular Micronutrients	50 lb	$55.00	50 lb.	$55.00						
7	Custom Blended Sports Turf Fertilizer	50 lb							$63.00	50 lb.	$63.00
8	Sul-Po-Mag (0-0-22)	50 lb	$24.00	50 lb.	$24.00	$43.28	50 lb.	$43.28			
9	High Ca Micro Prilled Lime, 100 SGN Soil Amendment - Granular	50 lb	$8.90	50 lb.	$8.90	$8.47	50 lb.	$8.47			
10	Tiger 90CR Sulphur	50 lb	$26.00	50 lb.	$26.00	$22.69	50 lb.	$22.69			
11	Starter Fertilizer	50 lb	$24.00	50 lb.	$24.00	$25.94	50 lb.	$25.94	$18.00	50 lb.	$18.00
12	Granular Fertilizer	50 lb	$21.00	50 lb.	$21.00	$49.19	50 lb.	$49.19			
13	Triple Superphosphate Micro-prilled 00-46-00	50 lb							$29.00	50 lb.	$29.00
14	Sulfate of Potash Turf Blend Green-Grade, 0-0-50 SOP	50 lb	$34.00	50 lb.	$34.00	$32.16	50 lb.	$32.16	$29.00	50 lb.	$29.00
15	Granular Fertilizer	50 lb	$53.80	40 lb.	$67.25	$28.19	50 lb.	$28.19			
16	KNIFE PLUS 12-0-0+6 Fe	Not specified	$90.00	2 x 2.5 g	$90.00	$76.00	2 x 2.5 g.	$76.00	$123.00	2.5 g.	$246.00
17	Floratine, Largo	2 x 2.5 G							$126.00	2.5 g.	$252.00
18	Liquid Fertilizer 10-0-10	15 G	$90.00	2 x 2.5 g	$270.00	$35.05	2.5 g.	$210.30	$9.50	1 g.	$142.50
19	Liquid Fertilizer	2 x 2.5 G	$141.00	2 x 2.5 g	$141.00	$79.51	2.5 g.	$159.02			
	FUNGICIDES										
20	ECHO 720	2 x 2.5 G	$165.00	2 x 2.5 g	$165.00	$211.02	2 x 2.5 g.	$211.02	$89.00	2.5 g.	$178.00
21	EMERALD	10 x .49 lb	$1,204.50	10 x 0.49 lb.	$1,204.50	$1,063.30	10 x 0.49 lb.	$1,063.30			
22	HERITAGE	1 lb bottle	$323.00	1 lb.	$323.00	$323.00	1 lb.	$323.00			
23	INSTRATA	2 x 2.5 G	$810.00	2 x 2.5 g	$810.00	$810.00	2 x 2.5 g.	$810.00			
24	IPRODIONE	2 x 2.5 G	$289.00	2 x 2.5 g	$289.00	$326.50	2 x 2.5 g.	$326.50	$165.00	2.5 g.	$330.00
25	ProPensity 1.3 ME	2 x 2.5 G	$249.00	2 x 2.5 g	$249.00	$348.79	2 x 2.5 g.	$348.79	$117.00	1 g.	$585.00
26	Pro Star 70	~~10 x 1 G~~ 12 lb.	$850.00	4 x 3 lb.	$850.00	$231.65	3 lb.	$926.60			
27	Tee Off	2 x 2.5 G	$295.00	2 x 2.5 g	$295.00	$244.42	2 x 2.5 g.	$244.42	$125.00	2.5 g.	$250.00
	GROWTH REGULATORS	**50 lb**									
28	GROOM PGR	2 x 1 G	$220.00	2 x 1 g	$220.00	$230.63	2 x 1 g.	$230.63	$275.00	2.5 g.	$220.00

Attachment: Bid Tab 2021015 Sports Field Materials (RES-2021-781 : Award Bid #2021015 - Sports Field

	Vendor Name:		Andre & Son			Site One			Professional Turf Services		
Item #		Q Specified in Bid	Unit Price	Packaging Info.	Total Price	Unit Price	Packaging Info.	Total Price	Unit Price	Packaging Info.	Total Price
	HERBICIDES										
29	CORNERSTONE PLUS	2 x 2.5 G	$105.00	2 x 2.5 g	$105.00	$83.77	2 x 2.5 g.	$83.77			
30	Oryzalin	2 x 2.5 G				$366.60	2 x 2.5 g.	$366.60			
31	Fertilizer with DIMENSION	50 lb	$23.00	50 lb.	$23.00	$22.64	50 lb.	$22.64			
32	Fertilizer with LockUp Herbicide	~~40 lb~~ 50 lb	$22.50	50 lb.	$22.50	$24.11	50 lb.	$24.11			
33	Broadleaf Herbicide Flowable	2 x 2.5 G	$402.00	2 x 2.5 g	$402.00	$201.00	2.5 g	$402.00			
	INSECTICIDES										
34	ACELPRYN	4 x .5 G	$1,031.50	1/2 g	$4,126.00	$1,031.50	64 oz.	$4,126.00			
35	Granular Insecticide	50 lb	$14.00	50 lb.	$14.00						
36	Flowable Insecticide	4 x 1 G	$190.00	4 x 1 g.	$190.00	$199.14	4 x 1 g	$199.14			
37	Carbaryl 4L	2 x 2.5G	$280.00	2 x 2.5 g.	$280.00	$274.83	2 x 2.5 g.	$274.83			
	SEED										
38	Bluegrass Blend	50 lb	$125.00	50 lb.	$125.00	$123.25	50 lb.	$123.25			
39	Bluegrass Blend with Coating	50 lb									
40	Penn Mulch	~~50 lb~~ 40 lb	$19.00	40 lb.	$19.00	$20.47	40 lb.	$20.47	$17.95	40 lb.	17.95
41	Ryegrass Blend	50 lb	$88.00	50 lb.	$88.00	$82.85	50 lb.	$82.85			
42	Ryegrass Blend with Coating	50 lb									
43	Turf Type Tall Rescue Brand	50 lb	$83.00	50 lb.	$83.00	$76.04	50 lb.	$76.04			
	TOPDRESSING MATERIAL/SAND/SOIL										
44	Athletic Field Topdressing Sand Specifications	bulk delivery per ton							$34.75	33 Ton	$1,146.75
45	Bioretention and Dry Swale Soil Blend	bulk delivery per ton							$40.00	33 Ton	$1,320.00
	SOIL TESTING										
46	Soil Testing	Each	$30.00		$30.00	$27.27		$27.27	$20.00	Per Sample	$20.00
	MISCELLANEOUS										
47	Spray Tank Defoamer	1 G	$13.00	Qt.	$52.00	$23.69	2 x 32 oz	$47.38			
48	Spray Foam Indicator	1 G	$15.00	Qt.	$60.00	$32.00	1 g.	$32.00			
	No additional charges will be allowed										

NOTES:

Line item #12 - Andre does not meet the spec - bid 19-1-19 and the bid spec called for 20-0-25.

Under Q Specified - if quanitity is crossed out and replaced it is because all vendors bid based on a different quantity and total pricing was calculated according to quantities submitted by bidders.

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Contract Compliance
Initiated by: **Lynda Juul**
Co-Sponsored by:

DOC ID: 24698 **RESOLUTION 2021-782** **ADOPTED**

Award Bid #2021012 - Town Wide Tree Planting - CRS #2857

WHEREAS, the Contract Compliance and Administration Department received bids on May 13, 2021 for Bid #2021012 Tree Planting; and

WHEREAS, the bid process resulted in responses from three (3) 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 Scott Lawn Yard, Inc.; and

BE IT FURTHER RESOLVED, the Town Board authorizes the Supervisor to sign the contract with Scott Lawn Yard, Inc.

9/13/2021
Consent

FINANCIAL IMPACT:

Town Wide; Various Accounts; Amount TBD

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

	Low Bid		Bid #2021012 Tree Planting			
			VENDOR	Gleason's Nursery	North Spur	Scott Lawn Yard
Item #	QTY	U/M	Description			
1	1	EA	Freeman Maple – 1-3/4” – 2” Caliper Minimum	$279.00	$584.00	$570.00
2	1	EA	Red Maple - 1-3/4” – 2” Caliper Minimum	$279.00	$584.00	$570.00
3	1	EA	Common Hackberry - 1-3/4” – 2” Caliper Minimum	$299.00	$594.00	$580.00
4	1	EA	Katsura Tree - 1-3/4” – 2” Caliper Minimum	$305.00	$624.00	$620.00
5	1	EA	Yellowwood - 1-3/4” – 2” Caliper Minimum	$313.00	$644.00	$645.00
6	1	EA	Ginko or Maidenhair Tree - 1-3/4” – 2” Caliper Minimum	$365.00	$664.00	$668.00
7	1	EA	Kentucky Coffee tree - 1-3/4” – 2” Caliper Minimum	$313.00	$624.00	$620.00
8	1	EA	Dawn Redwood - 1-3/4” – 2” Caliper Minimum	$275.00	$574.00	$560.00
9	1	EA	Black Tupelo or Sour Gum or Black Gum	$383.00	$635.00	$632.00
10	1	EA	American Hophornbeam or Ironwood – not Carpinius Carolina - 1-3/4” – 2” Caliper Minimum	$313.00	$634.00	$630.00
11	1	EA	London Plane tree - 1-3/4” – 2” Caliper Minimum	$279.00	$579.00	$564.00
12	1	EA	Hedge Maple - 1-3/4” – 2” Caliper Minimum	$299.00	$624.00	$620.00
13	1	EA	Cardinal Crab Apple - 1-3/4” – 2” Caliper Minimum	$259.00	$594.00	$580.00
14	1	EA	Japanese Tree Lilac - 1-3/4” – 2” Caliper Minimum	$303.00	$629.00	$625.00

Attachment: Bid Tab 2021012 Tree Planting (RES-2021-782 : Award Bid #2021012 - Town Wide Tree

			VENDOR	Gleason's Nursery	North Spur	Scott Lawn Yard
Item #	QTY	U/M	Description			
15	1	EA	Tartanian Maple - 1-3/4” – 2” Caliper Minimum	$279.00	$594.00	$580.00
16	1	EA	Callery Pear - 1-3/4” – 2” Caliper Minimum	$291.00	$559.00	$540.00
17	1	EA	Common Bald cypress - 1-3/4” – 2” Caliper Minimum	$279.00	$594.00	$580.00
18	1	EA	Bradford Pear - 1-3/4” – 2” Caliper Minimum	$291.00	$559.00	$540.00
19	1	EA	Little Leaf Linden - 1-3/4” – 2” Caliper Minimum	$275.00	$579.00	$564.00
20	1	EA	Crimean Linden -1-3/4” – 2” Caliper Minimum	$275.00	$584.00	$570.00
21	1	EA	Elm Hybrids - 1-3/4” – 2” Caliper Minimum	$299.00	$614.00	$606.00
22	1	EA	Japanese Zelkova - 1-3/4” – 2” Caliper Minimum	$303.00	$614.00	$606.00
23	1	EA	Cleveland Pear - 1-3/4” – 2” Caliper Minimum	$291.00	$659.00	$540.00
24	1	EA	Linden - 1-3/4” – 2” Caliper Minimum	$275.00	$584.00	$570.00
25	1	EA	Large Elm Hybrid - 1-3/4” – 2” Caliper Minimum	$299.00	$614.00	$606.00
26	1	EA	Swamp White Oak – 2” – 4” Caliper Minimum	$355.00	$634.00	$630.00
27	1	EA	Pin Oak - 2” – 4” Caliper Minimum	$343.00	$634.00	$630.00
28	1	EA	Northern Red Oak - 2” – 4” Caliper Minimum	$355.00	$634.00	$630.00
29	1	EA	Skyline or Honey Locust - 2” – 4” Caliper Minimum	$329.00	$619.00	$615.00
30	1	EA	Heritage and Dura-Heat River Birch - 2” – 4” Caliper Min.	$315.00	$629.00	$625.00

Attachment: Bid Tab 2021012 Tree Planting (RES-2021-782 : Award Bid #2021012 - Town Wide Tree

			VENDOR	Gleason's Nursery	North Spur	Scott Lawn Yard
Item #	QTY	U/M	Description			
31	1	EA	Evergreen – 5’ – 6’ High	$309.00	$539.00	$515.00
32	1	EA	Tulip Tree – 1 -3/4 “ - 2” Caliper Minimum	$299.00	$604.00	$594.00
33		EA	Serviceberry – 3-4 multi-stem	$227.00	$554.00	$532.00
34	1	EA	Eastern Redbud – 2.5” – 3.0” Caliper Minimum	$449.00	$684.00	$693.00
35	1	EA	White Flowering Dogwood - single stem	$355.00	$604.00	$594.00
36	1	EA	Adirondack Crabapple – 2.5” – 3.0” Caliper Minimum	$403.00	$724.00	$742.00
37	1	EA	Golden Weeping Willow – 1.75”-2.0” Caliper Minimum	$241.00	$594.00	$580.00
38	1	EA	Arborvitae (Dark American or Green Giant) 5’ High Minimum	$213.00	$505.00	$472.00
39	1	EA	Arborvitae (Dark American or Green Giant) 8’ High Minimum	$355.00	$644.00	$645.00
40	1	EA	Canadian Hemlock 5’ High Minimum	$213.00	$560.00	$540.00
			TOTAL	**$12,182.00**	**$24,303.00**	**$23,823.00**

NOTES:

Gleason's Nursery withdrew bid and award was made to next lowest responsible bidder.

Attachment: Bid Tab 2021012 Tree Planting (RES-2021-782 : Award Bid #2021012 - Town Wide Tree

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Engineering Services
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 24747 **RESOLUTION 2021-783** **ADOPTED**

Award of Bid - Dann Lake Park Improvements Floating Dock Installation

On August 26, 2021, one (1) bid was received for the above referenced project. The bid tabulation sheet is attached. At this time, we recommend award of the contract to RW Weaver Corp d/b/a Anchor Marine and Greater Lakes EZ-Dock, 1501 Ferry Rd, Grand Island, NY 14072, per their low base bid $30,429.50 and alternate A.1 $14,500.00 for a total contract amount of $44,929.50 and authorize the Supervisor to execute the contract associated with the bid award.

The funds for this project are available from Bond Account No. KP 2106 - 4972.

May we have your approval to award RW Weaver Corp d/b/a Anchor Marine and Greater Lakes EZ-Dock, the above referenced contract?

Thank you for considering this request.

9/13/2021
Consent

FINANCIAL IMPACT:

KP-2106-4972; $44,929.50

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

Dann Lake Park Safety/ Inclusive Access Improvements - Flaoting Dock Installation

Town Project No. 2016.038

Bid Opening - 08/26/2021 @ 12.00 pm

Contractor	Base Bid	Alternate 1
		Kayak Launch
RW Weaver Corp d/b/a Anchor Marine and Greater Lakes EZ-Dock	$ 30,429.50	$ 14,500.00

Attachment: bid tab-dock- (RES-2021-783 : Award of Bid - Dann Lake Park Improvements)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Engineering Services
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 24752 **RESOLUTION 2021-785** **ADOPTED**

Award of Bid - Williamsville Junior Football Fields Project Northeast Diversification, Inc.

On September 2, 2021, bids were received for the above referenced project. After review of the two (2) bids received (bid tabulation attached), the Engineering Department recommends award of this contract to Northeast Diversification, Inc., 2 Cadby Industrial Pkwy, Lancaster, NY, 14086 in the amount of $1,203,150 to include the base bid, alternate bid item 1 (plastic fence caps), and alternate No. 2 (black vinyl fencing) and authorize the Town Supervisor to execute the contract(s) associated with the bid award.

Funding for this contract shall be from project account KP2134-4972.

May we have your approval to award the above contract and also authorization of the Town Supervisor to execute the contract associated with the bid award?

9/13/2021
Consent

FINANCIAL IMPACT:

$1,203,150.00; KP2134-4972

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

PROJECT : Town of Amherst - Williamsville Junior Football Fields
TOA Project No: 2021.035A
DATE : Thursday, September 2, 2021

TABULATION OF BIDS
PAGE 1

++ INDICATES CONTRACTOR ERROR

ITEM #	DESCRIPTION	QUANTITY	UNITS	NO. 1 Northeast Diversification, Inc. Lancaster, New York 14086 YES UNIT PRICE	NO. 1 EXTENDED TOTAL		NO. 2 Greenauer Blacktop, Inc. West Seneca, New York 14224 YES UNIT PRICE	NO. 2 EXTENDED TOTAL	
Item No. 1	Williamsville Junior Football Fields: Contract documents and specifications	1	LS	1,084,400.00	1,084,400.00	0	1,485,000.00	1,485,000.00	0
Item No. 2	Additional Unclassified Excacation (per spec 312000.1.3.F.1)	25	CY	25.00	625.00	0	60.00	1,500.00	0
Item No. 3	Additional Drainage Material	25	CY	45.00	1,125.00	0	32.72	818.00	0
Item No. 4	Contingency Allowance	1	Allow	100,000.00	100,000.00	0	100,000.00	100,000.00	0
				Subtotal No. 1 Amount = $	**$1,186,150.00**		Subtotal No. 1 Amount = $	**$1,587,318.00**	
Item No. 5	Alternate 1: Plastic Fence Caps	1	LS	11,000.00	11,000.00		11,000.00	10,440.00	
				Subtotal No. 2 Amount = $	1,197,150.00		Subtotal No. 2 Amount = $	1,597,758.00	
Item No. 6	Alternate 2: ADD Black Coated Vinyl Fencing DEDUCT Galvanized Fencing (provide cost difference)	1200	LF	5.00	6,000.00		3.86	4,632.00	
				Subtotal No. 3 Amount = $	1,203,150.00		Subtotal No. 3 Amount = $	1,602,390.00	
Item No. 7	Alternate 3: Davis Bacon Rates (provide cost difference)	1	LS	49,500.00	49,500.00		No Bid	No Bid	
				CON TOTAL=:$	**$1,252,650.00**	0	CON TOTAL=$	**$1,602,390.00**	0
MIN BID =	0.00			ACT TOTAL=:$	$1,252,650.00		ACT TOTAL=$	$1,602,390.00	
				BID RANKING	1		BID RANKING	23	

Attachment: WJF Bid Tab - 2021.035As (RES-2021-785 : Award of Bid - Williamsville Junior Football

wendel

Attachment: 210907 ROA Letter WJF - 2021.035A (RES-2021-785 : Award of Bid - Williamsville Junior Football Fields Project)

September 8, 2021

Town of Amherst Engineering Department
Jeffrey Burroughs, Town Engineer
1100 North Forest Road
Williamsville, New York 14221

SUBJECT: **RECOMMENDATION OF AWARD**
TOWN OF AMHERST
WILLIAMSVILLE JUNIOR FOOTBALL FIELDS (WJF)
TOWN OF AMHERST PROJECT NO. 2021.035A
WENDEL PROJECT NO. 2613-47

Dear Mr. Burroughs:

On September 2, 2021, bids were received for the Williamsville Junior Football Fields (WJF) Project in the Town of Amherst. The bids results are as follows:

Contractor	Base Bid	Alt. Bid No. 1	Alt. Bid No. 2	Alt. Bid No. 3
Northeast Diversification, Inc.	$ 1,186,150.00	$ 11,000.00	$ 6,000.00	$ 49,500.00
Greenauer Blacktop, Inc.	$ 1,586,218.13	$ 10,440.00	$ 4,640.00	$ No Bid

Wendel WD Architecture, Engineering, Surveying & Landscape Architecture, P.C. (Wendel) and the Town of Amherst has reviewed the Contract Documents. Northeast Diversification was subsequently contacted, and we were able to confirm their understanding of project scope, schedule and their qualifications to complete such work.

We therefore recommend award of Base Bid and Alternates 1 and 2 to Northeast Diversification, Inc. Alternate 3 will ***not*** be awarded.

Wendel will issue the Notice of Award to the Contractor once the project is awarded.

We are pleased with the bid results and look forward to proceeding with the project.

Sincerely,

Leanne E. Voit, AICP, LEED AP
Project Manager

cc: File

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Engineering Services
Initiated by: **Jeffrey S. Burroughs**
Co-Sponsored by:

DOC ID: 24753 **RESOLUTION 2021-786** **ADOPTED**

Award of Bid - Amherst Girls Softball Fields Occhino Corp.

On September 2, 2021, bids were received for the above referenced project. After review of the three (3) bids received (bid tabulation attached), the Engineering Department recommends award of this contract to Occhino Corp., 2650 Seneca Street, West Seneca, NY, 14224 in the amount of $1,955,222.00 to include the base bid and alternate bid item 3 (deduct for Town construction of storm line) and authorize the Town Supervisor to execute the contract(s) associated with the bid award.

Funding for this contract shall be from project account T2107-4001.

May we have your approval to award the above contract and also authorization of the Town Supervisor to execute the contract associated with the bid award?

9/13/2021
Consent

FINANCIAL IMPACT:

$1,955,222.00; T2107-4001

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

PROJECT : Town of Amherst - Amherst Girls Softball Fields
TOA Project No: 2021.035B
DATE : Thursday, September 2, 2021

TABULATION OF BIDS
PAGE 1

ITEM #	DESCRIPTION	QTY	UNITS	NO. 1 Northeast Diversification, Inc. Lancaster, New York 14086 YES UNIT PRICE	NO. 1 EXTENDED TOTAL	NO. 2 Greenauer Blacktop, Inc. West Seneca, New York 14224 YES UNIT PRICE	NO. 2 EXTENDED TOTAL	NO. 3 Occhino Corp. West Senca, New York 14224 Yes UNIT PRICE	NO. 3 EXTENDED TOTAL
Item No. 1	Amherst Girls Softball Fields: Contract documents and specifications	1	LS	2,057,000.00	2,057,000.00	2,409,000.00	2,409,000.00	1,889,000.00	1,889,000.00
Item No. 2	Additional Unclassified Excacation (per spec 312000.1.3.F.1)	25	CY	625.00	625.00	1,500.00	1,500.00	65.00	1,625.00
Item No. 3	Additional Drainage Material (per spec 312000.2.1.G)	25	CY	45.00	1,125.00	818.13	818.13	40.00	1,000.00
Item No. 4	Contingency Allowance	1	Allow	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00	85,000.00
				Subtotal No. 1 Amount = $	**$2,143,750.00**	Subtotal No. 1 Amount = $	**$2,496,318.13**	Subtotal No. 1 Amount = $	**$1,976,625.00**
Item No. 5	Alternate 1: Plastic Fence Caps	1	LS	30,000.00	30,000.00	28,160.00	28,160.00	28,860.00	28,860.00
				Subtotal No. 2 Amount = $	2,173,750.00	Subtotal No. 2 Amount = $	2,524,478.13	Subtotal No. 2 Amount = $	2,005,485.00
Item No. 6	Alternate 2: ADD Black Coated Vinyl Fencing DEDUCT Galvanized Fencing (Provide Cost Difference)	3020	LF	27,000.00	27,000.00	14,920.00	14,920.00	7.90	23,858.00
				Subtotal No. 3 Amount = $	2,200,750.00	Subtotal No. 3 Amount = $	2,539,398.13	Subtotal No. 3 Amount = $	2,029,343.00
Item No. 7	Alternate 3: 10" HDPE Storm Sewer Trunk & Appurtenances	570	LF	16,500.00	-16,500.00	21,403.00	-21,403.00	-38.60	-22,002.00
				CONTRACTOR TOTAL=:$	**$2,184,250.00** 0	CON TOTAL=$	**$2,517,995.13** 0	CON TOTAL=$	**$2,007,341.00** 0
				ACTUAL TOTAL=:$	$2,184,250.00	ACT TOTAL=$	$2,517,995.13	ACT TOTAL=$	$2,007,341.00
MIN BID =	2007341.00			BID RANKING	2	BID RANKING	3	BID RANKING	1

Attachment: Maple Bid Tab - 2021.035B (RES-2021-786 : Award of Bid - Amherst Girls Softball Fields)

Attachment: 210907 ROA Letter Amherst Girls Softball - 2021.035B (RES-2021-786 : Award of Bid - Amherst Girls Softball Fields)

September 8, 2021

Town of Amherst Engineering Department
Jeffrey Burroughs, Town Engineer
1100 North Forest Road
Williamsville, New York 14221

SUBJECT: **RECOMMENDATION OF AWARD**
TOWN OF AMHERST
AMHERST GIRLS SOFTBALL FIELDS
TOWN OF AMHERST PROJECT NO. 2021.035B
WENDEL PROJECT NO. 2613-48

Dear Mr. Burroughs:

On September 2, 2021, bids were received for the Amherst Girls Softball Fields Project in the Town of Amherst. The bids results are as follows:

Contractor	Base Bid	Alt. Bid No. 1	Alt. Bid No. 2	Alt. Bid No. 3
Occhino Corp.	$ 1,976,625.00	$ 28,860.00	$ 23,858.00	$ -21,403.00
Northeast Diversification, Inc.	$ 2,143,750.00	$ 30,000.00	$ 27,000.00	$ -16,500.00
Greenauer Blacktop, Inc.	$ 2,496,318.13	$ 28,160.00	$ 14,920.00	$ -22,002.00

Wendel WD Architecture, Engineering, Surveying & Landscape Architecture, P.C. (Wendel) and the Town of Amherst has reviewed the Contract Documents. Occhino Corporation was subsequently contacted, and we were able to confirm their understanding of project scope, schedule and their qualifications to complete such work.

We therefore recommend award of the Base Bid and Alternate 3 to Occhino Corporation. Alternates 1 and 2 will ***not*** be awarded.

Wendel will issue the Notice of Award to the Contractor once the project is awarded.

We are pleased with the bid results and look forward to proceeding with the project.

Sincerely,

Leanne E. Voit, AICP, LEED AP
Project Manager

cc: File

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Finance
Initiated by: **Lynda Juul**
Co-Sponsored by:

DOC ID: 24724 A **RESOLUTION 2021-787** **ADOPTED**

Authorize Travel for NRPA National Playground Safety Inspector Course

WHEREAS, Dan Rizzo has been assisting the Highway Department and the Youth and Recreation Department in the coordination of repairs and improvements to various parks and playgrounds within the Town; and

WHEREAS, it would be beneficial for him to become a Certified Playground Safety Inspector;

NOW, THEREFORE, BE IT RESOLVED, Dan Rizzo is hereby authorized to attend the New York State Recreation & Park Society's National Playground Safety Inspector course in Fairport, NY from October 19-22, 2021.

9/13/2021
Consent

FINANCIAL IMPACT:

Not to exceed $1,470.15: A1345-4040 - $795.15; A1345-4120 - $675.00

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

TRAVEL EXPENSE APPROVAL / REIMBURSEMENT FORM

☐ $250 or LESS and under 75 miles — Department Head Approval ONLY Required

☑ $250 + or greater than 75 miles — Department Head AND Town Board Approval Required

Revised 2/22/2021

NAME	Employee #	Department	Phone Number
Daniel J. Rizzo		Finance	631-7102

Destination and Purpose of Trip

Date of Departure	Date of Return	Destination	Purpose/Justification
10/19/2021	10/22/2021	Fairport NY 14450	Attend Certified Playground Safety Inspector Course.

Expenses		Estimated	Budget A/C #	Actual
Transportation:				
Mileage @ $0.56	225	$ 126.00	A1345-1040	
Tolls		$ 12.00	A1345-1040	
Parking				
Local Transportation (bus/taxi)				
Plane/Rail/Bus				
Lodging:		$		
# nights 3 @ $	114.00	$ 342.00	A1345-1040	
Meals:	45.00	90.00	A1345-1040	
IRS Per Diem Per Day: $	~~44.00~~	~~$ 132.00~~		
1st & Last Day of Travel @ 75%	45.75	$ 91.50	↓	
# Breakfasts @ $				
# Lunches @ $				
# Dinners @ $				
# Incidentals @ $				
Registration/Conference Fee		$ 675.00	A1345-4120	
Other				
Subtotal		$ 1336.50		N/A
Contingency - 10% of subtotal or $200		$ 133.65		N/A
TOTAL		$ 1470.15		

Request Approved By:

Lynda L. Quinn

Department Head Signature

9/7/2021

Date

Town Board :

Town Board Resolution & Date

I hereby certify that I have expended the above itemized amounts for business purposes for the Town of Amherst. Required receipts are attached.

Employee Signature — Date

Print Employee Name

Reimbursement Approved By:

Department Head Signature — Date

Complete Shaded Area For Expense Reimbursement

Attachment: D Rizzo Travel Form - Playground Safety Inspector Course (RES-2021-787 : Authorize Travel for NRPA National Playground Safety

Enter search string

New York State Recreation and Park Society

New York State Recreation & Park Society

Back

Add to my calendar

CPSI Fairport Oct. 20-22, 2021

Start	*10/20/2021 8:00 AM*
End	*10/22/2021 12:00 PM*
Location	99 O'Connor Rd. Fairport, NY 14450

Registration

- **CPSI Exam Only – $150.00** For participants who would like to take ONLY THE EXAM and not need the full two day classroom instruction and books.
- **Host Special Rate – $360.00** Host location is entitled a special discount rate for each CPSI course registered.
- **NYSRPS Member Rate CPSI Course – $600.00**
- **NYSRPS Non-Member Rate CPSI Course – $675.00**

Register

The NRPA National Playground Safety Inspector course is the most comprehensive training program on playground hazard identification and risk management methods offered. Advanced reading and 15 hours of training will prepare you to sit for the Certified Playground Safety Inspector exam given at the end of the course.

All course materials and instructions for the exam will be shipped to the address that is registered for the participant approximately **1 month prior** to the course. Be sure to use this time to review the material and study ahead of time. Allow for 1 week turnaround time from registration for materials to ship if you register less than one month before the class.

Training Center:

Course Days
Wednesday, October 20th & Thursday, October 21st
8am-5pm
Check in begins at 7:30 am each day – no early birds please!
Exam Day- Friday, October 22nd

Exam check-in at 8am
Exam 9am-11am

You MUST bring 2 forms of ID for the test, including one picture ID- No exceptions.

Lunch by Panera Bread on Wednesday and Thursday is included with your registration and your order will be taken prior to the class. Snacks, juice and water will be provided.

Event cancellation policy in effect for this class- please visit nysrps.org/refunds for details. Submission of event registration is acceptance of the terms and conditions given per the Refund Policy.

Lodging is up to you. Hotels.com is a great way to search for options that satisfy your budget.

Questions? Please contact NYSRPS at: lisa@nysrps or 518-584-0321

Need to get in touch the day(s) of class? NYSRPS cell phone: 518-429-0461

Attachment: D Rizzo Travel Form - Playground Safety Inspector Course (RES-2021-787 : Authorize Travel for NRPA National Playground Safety

We are looking forward to seeing you! -Lisa Morahan, NYSRPS Executive Director

New York State Recreation & Park Society 501 C3 Not-for-Profit Organization

19 Roosevelt Drive, Suite 200 Saratoga Springs, NY 12866

Attachment: D Rizzo Travel Form - Playground Safety Inspector Course (RES-2021-787 : Authorize Travel for NRPA National Playground Safety

GSA U.S. General Services Administration

FY 2021 Per Diem Rates for New York

Meals & Incidentals (M&IE) Breakdown

Primary Destination	County	M&IE Total	Continental Breakfast/Breakfast	Lunch	Dinner	Incidental Expenses	First & LastDay of Travel
Rochester	Monroe	$61	$14	$16	$26	$5	$45.75
Standard Rate	Applies for all locations without specified rates	$55	$13	$14	$23	$5	$41.25

Attachment: D Rizzo Travel Form - Playground Safety Inspector Course (RES-2021-787 : Authorize Travel for NRPA National Playground Safety

U.S. General Services Administration

FY 2021 Per Diem Rates for New York

Max lodging by month (excluding taxes.)

Primary Destination	County	2020 Oct	Nov	Dec	2021 Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Rochester	Monroe	$114	$114	$114	$114	$114	$114	$114	$114	$114	$114	$114	$114
Standard Rate	Applies for all locations without specified rates	$96	$96	$96	$96	$96	$96	$96	$96	$96	$96	$96	$96

Attachment: D Rizzo Travel Form - Playground Safety Inspector Course (RES-2021-787 : Authorize Travel for NRPA National Playground Safety

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Finance
Initiated by: **Lynda Juul**
Co-Sponsored by:

DOC ID: 24729 **RESOLUTION 2021-788** **ADOPTED**

Authorize Vendors for Amherst Market at Bassett Park - CRS #2885 & 2886

WHEREAS, contract documents and vendors for the Amherst Market at Bassett Park were approved on June 7, 2021 via RES-2021-492; and

WHEREAS, additional vendors have requested to participate and filled out the appropriate documentation;

NOW, THEREFORE, BE IT RESOLVED, the Town Board hereby approves contracts with the following vendors:

CRS #2885 Mack's
CRS #2886 Boy Scouts of America - Pack 222

9/13/2021
Consent

FINANCIAL IMPACT:

N/A

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

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 24699 **RESOLUTION 2021-789** **ADOPTED**

Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854

NOW THEREFORE BE IT RESOLVED, that the Town of Amherst is approved to piggyback on the Erie County Contract with COMPASS MINERALS, INC. for road salt materials and sand, Bid #221190-004 for the period 9/1/2021 to 8/31/2022 for 8,000 tons.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Amherst Town Board authorizes the Supervisor to sign this contract. This contract has completed the CRS # 2854 Contract Routing System and Town Attorney approval.

9/13/2021
Consent

FINANCIAL IMPACT:

D5142 : 4350

TBD

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

AGREEMENT

Let this document stand as an Agreement between COMPASS MINERALS, INC.
9900 W. 109th Street, Suite 1000, Overland Park, KS 66210 and the
Town of Amherst permitting the Town of Amherst to participate in the purchase of :

COUNTY OF ERIE-ROAD SALT MATERIALS AND SAND
BID REFERENCE # 221190-004
9/1/2021 through 8/31/2022
ROAD SALT DELIVERED AT 8,000 TONS AT $37.52 PER TON

from Compass Minerals, Inc. under Erie County Road Salt Materials and Sand
Specifications of BID REFERENCE #221190-004 for the period from 9/1/2021 TO 8/31/2022.

Agreed to and Accepted by:

COMPASS MINERALS INC.

By: _____
Signature

Joel Gerdes
Print Name

Director of Sales
Title

Date: 9/12/2021

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian J. Kulpa
Supervisor

Date: _____

Attachment: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

Attachment: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

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: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

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,

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:

Compass Minerals America Inc.
Print Name of Company

By: _____
Signature

Joel Geides
Printed name

Date: 8/12/2021

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Revised 12.30.19 SJS

Attachment: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New Y provision was added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Und Act, the Commissioner of the Office of General Services (OGS) will develop a list (prohibited entitie of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law) list is posted on the OGS website.

By submitting a response to this solicitation, or by assuming the responsibility un Contract/Lease awarded hereunder, Bidder/Contractor/Vendor (or any assignee) certifies that it wi 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 se to renew or extend a Contract/Lease (or assume responsibility of a Contract/Lease awarded must c at the time the Contract/Lease is renewed, extended or assigned that it is not included on the prohi entities list.

During the term of the Contract/Lease, should the Town of Amherst (Town) receive inform that a person is in violation of the above-referenced certification, the Town will offer the perso opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in investment which is in violation of the Act within 90 days after the determination of such violation, the Town shall take such action as appropriate including, but not limited to, imposing sanctions, see 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 en that appears on the prohibited entities list prior to the award of a Contract/Lease, and to pursu responsibility review with respect to any entity that is awarded a Contract/Lease and appears on prohibited entities list after Contract/Lease award.

Company Name: Compass Minerals America Inc.

Signature: [signature]

Print Name: Joel Gerdes

Title: Director of Sales

Date: 8/12/2021

Sworn To Before Me This

12th Day of August, 2021

[signature]

Notary Public

NOTARY PUBLIC - State of Kansas
Alan Emmons
My Appt. Expires 4/1/2025

Revised 4.2

Attachment: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/23/2020

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 Marsh USA Risk & Insurance Services 15 West South Temple, Suite 700 Salt Lake City, UT 84101 CN101916390-STND-GAWU-20-21	**CONTACT NAME:** **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED Compass Minerals International, Inc. 9900 West 109th Street, Suite 600 Overland Park, KS 66210	**INSURER(S) AFFORDING COVERAGE** — **NAIC #** **INSURER A :** ACE American Insurance Company — 22667 **INSURER B :** ACE Property And Casualty Ins Co — 20699 **INSURER C :** **INSURER D :** **INSURER E :** **INSURER F :**

COVERAGES **CERTIFICATE NUMBER:** SEA-003458510-20 **REVISION NUMBER:** 6

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** CLAIMS-MADE [X] OCCUR X SIR $500,000 GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY [ ] PRO-JECT [ ] LOC OTHER:			XSLG27630431	11/01/2020	11/01/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000, $ 100 $ $ 2,000, $ 4,000, $ 4,000,
A	**AUTOMOBILE LIABILITY** X ANY AUTO OWNED AUTOS ONLY [ ] SCHEDULED AUTOS HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY			ISAH08873628	11/01/2020	11/01/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) COMP/COLL DED	$ 1,000, $ $ $ $ 2,
B	X **UMBRELLA LIAB** X OCCUR **EXCESS LIAB** CLAIMS-MADE DED X RETENTION $ 10,000			G28187981005	11/01/2020	11/01/2021	EACH OCCURRENCE AGGREGATE	$ 5,000, $ 5,000,
A A	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? **(Mandatory in NH)** Y/N [N] N/A If yes, describe under DESCRIPTION OF OPERATIONS below			WLRC68929921 (AOS) SCFC68929933 (WI)	11/01/2020 11/01/2020	11/01/2021 11/01/2021	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000, $ 1,000, $ 1,000,

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 (except workers' compensation) where required by written contract. This insurance is primary and non-contributory over any existing insurance and limited to liabi arising out of the operations of the named insured and where required by written contract.

CERTIFICATE HOLDER

Town of Amherst
5583 Main Street
Williamsville, NY 14231

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
of Marsh USA Risk & Insurance Services

Tiffani Berrett

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Attachment: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERA

1a. Legal Name & Address of Insured (use street address only) Compass Minerals America Inc 9900 W 109th Street Suite 100 Overland Park KS 66210 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 (913) 344-9100 1c. NYS Unemployment Insurance Employer Registration Number c Insured 1d. Federal Employer Identification Number of Insured or Social Sec Number 481047632
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 14231	3a. Name of Insurance Carrier ACE American Insurance Company 3b. Policy Number of Entity Listed in Box "1a" WLR C68929921 3c. Policy effective period 11/1/2020 to 11/1/2021 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 Ite on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will s 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 can 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 ame extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in th referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effec

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: ANNETTE D'URSO
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: [signature] 11/4/20
(Signature) (Date)

Title: VICE PRESIDENT

Telephone Number of authorized representative or licensed agent of insurance carrier: 302.476.6307

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are N authorized to issue it.

C-105.2 (9-17)

www.wcb.ny.g

Attachment: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
Compass Minerals International, Inc.
9900 W 109th Street Suite 100
Overland Park, KS 66210
Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*

1b. Business Telephone Number of Insured

1c. Federal Employer Identification Number of Insured or Social Security Number
48 1047632

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 14231

3a. Name of Insurance Carrier
First Unum Life Insurance Company

3b. Policy Number of Entity Listed in Box "1a"
913941

3c. Policy effective period
1/1/2021 to 1/1/2022

4. Policy provides the following benefits:
- [X] A. Both disability and paid family leave benefits.
- [ ] B. Disability benefits only.
- [ ] C. Paid family leave benefits only.

5. Policy covers:
- [ ] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- [ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 8/18/2021 By ***Dennis A. Ouellette 8/18/2021 9:55 AM EST***
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 1-800-ASK-UNUM Name and Title Dennis Ouellette, DBL Specialist

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

DB-120.1 (10-17)

Attachment: COMPASS AGREEMENT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

COUNTY OF ERIE

DIVISION OF PURCHASE
95 FRANKLIN STREET
BUFFALO, NY 14202

Bid for Road Salt Materials and Sand for use
By Erie County Department of Public Works
Division of Highways

Submitted in accordance with New York State Specifications
For the period September 1, 2021 – August 31, 2022

BID #221190-004

Attachment: COMPASS CONTRACT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

COMPANY	PHONE
Compass Minerals 9900 W 109th St. Suite 1000 Overland Park, KS 66210	(800) 323-1641x1 FAX- 913-433-9616 Email highwayorders@compassminerals.com
D&H Materials 11939 Rt. 98 South Arcade, NY 14009	(716) 492-4956
Gernatt Asphalt Products, Inc. PO Box 400 Collins, NY 14034	(716) 532-3371

Attachment: COMPASS CONTRACT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

Sand	F.O.B. Trucks at Source	Source	Clarence	Tonawanda	Lancaster	Cheektowaga Harlem & Clinton	Hamburg	Angola	Aurora	Protection	East Concord	Collins
D&H	$3.75	Delevan	14.00	14.00	12.00	12.00	12.00	11.65	11.00	7.00	7.95	10.00
Gernatt	$3.70	Chaffee	15.60	15.85	13.60	13.35	9.80	11.50	10.85	6.85	7.75	9.20
Gernatt	$5.20	**Freedom**										
Gernatt	$6.20	Springville										
Gernatt	$7.95	wanda & Hanover										
Gernatt	$6.95	S.Dayton										

Sand Con't	Village of Akron	Town of Alden	Village of Alden	Amherst Central School Dist.	Town of Amherst	Town of Brant	Town of Aurora	Village of Blasdell	BOCES Cheektowaga	BOCES Orchard Park	Town of Boston	City of Buffalo
D&H	$17.00	$16.00	16.00	17.00	17.00	16.00	10.00	14.00	13.00	13.00	11.00	16.00
Gernatt	$17.35	$16.10	16.10	17.60	17.60	11.20	9.20	13.05	12.95	12.95	9.05	15.35

Sand Con't	Town of Cheektowaga	Town of Clarence	Cheektowaga Maryvale	Town of Colden	Town of Collins	Town of Concord	Village of Depew	Village of East Aurora	Town of Eden	Town of Elma	Town of Evans	Village of Gowanda
D&H	$13.00	$17.00	14.00	10.00	10.00	7.85	16.00	10.00	11.00	11.00	11.60	13.00
Gernatt	$12.95	$15.60	12.95	8.80	9.20	7.75	15.85	10.25	10.40	10.80	11.50	9.20

Sand Con't	Town of Grand Island	Town of Hamburg	Village of Hamburg	Town of Holland	Kenmore School...	Village of Kenmore	Town of Lancaster	City of Lackawanna	Town of Marilla	Town of Newstead		Town of N. Collins
D&H	$21.00	$13.00	13.00	7.70	17.00	17.00	13.00	14.00	11.95	19.00		11.90
Gernatt	$19.95	$11.60	11.60	7.50	17.85	17.85	13.85	14.35	11.85	19.75		10.35

Sand Con't		Town of Orchard Park	Village of Orchard Park	Town of Sardinia	Village of Sloan	Village of Springville	City of Tonawanda	Town of Tonawanda	Town of Wales	Town of W. Seneca	Village of Williamsville
D&H		$12.00	12.00	6.95	14.00	9.00	17.00	17.00	9.95	13.00	17.00
Gernatt		$11.95	11.95	6.70	15.10	7.90	18.60	18.60	8.80	14.35	18.10

ROAD SALT

Name of Bidder	SALT PRICE PER TON	PRICE PER TON DELIVERED								
	Total	ERIE COUNTY	CITY OF BUFFALO	BFLO SEWER AUTH	AKRON CENTRAL SCHOOL	VILLAGE OF AKRON	TOWN OF ALDEN	VILLAGE OF ALDEN	TOWN OFAMHERST	TOWN OF AURORA
Compass Minerals	$33.00	$37.54	$35.78	$35.96	$38.26	$38.26	$37.83	$37.83	$37.52	$36.80

Name of Bidder	PRICE PER TON DELIVERED									
	TOWN OF BOSTON	TOWN OF BRANT	TOWN OF CHEEKTOWAGA	CHEEKTOWAGA-MARYVALE UFSD	TOWN OF CLARENCE	TOWN OF COLDEN	TOWN OF COLLINS	TOWN OF CONCORD	VILLAGE OF DEPEW	VILLAGE OF EAST AURORA
Compass Minerals	$37.52	$38.26	$37.52	$36.80	$37.83	$37.52	$38.26	$38.26	$36.80	$36.80

Name of Bidder	PRICE PER TON DELIVERED									
	TOWN OF EDEN	TOWN OF ELMA	ERIE COMMUNITY COLLEGE	ERIE COUNTY MEDICAL CENTER	ERIE COUNTY WATER AUTHORITY	TOWN OF EVANS	VILLAGE OF GOWANDA	TOWN OF GRAND ISLAND	TOWN OF HAMBURG	VILLAGE OF HAMBURG
Compass Minerals	$36.80	$36.80	$35.96	$36.80	$35.96	$37.83	$38.26	$37.52	$36.80	$36.80

Name of Bidder	PRICE PER TON DELIVERED									
	TOWN OF HOLLAND	KENMORE-TONAWANDA UFSD	VILLAGE OF KENMORE	CITY OF LACKAWANNA	TOWN OF LANCASTER	TOWN OF MARILLA	TOWN OF NEWSTEAD	TOWN OF NORTH COLLINS	TOWN OF ORCHARD PARK	VILLAGE OF ORCHARD PARK
Compass Minerals	$38.26	$35.96	$35.96	$35.59	$36.80	$37.52	$38.26	$37.83	$35.96	$35.96

Name of Bidder	PRICE PER TON DELIVERED									
	TOWN OF SARDINIA	VILLAGE OF SLOAN	VILLAGE OF SPRINGVILLE	CITY OF TONAWANDA	TOWN OF TONAWANDA	TOWN OF WALES	TOWN OF WEST SENECA	VILLAGE OF WILLIAMSVILLE	VILLAGE OF BLASDELL	
Compass Minerals	$39.59	$35.96	$38.26	$37.52	$36.80	$37.52	$35.96	$37.52	$35.96	

Name of Bidder	PRICE PER TON DELIVERED									
	NFTA 465 CAYUGA	NFTA BNIA MAINTENANCE	NFTS COLD SPRING GARAGE	NFTA FRONTIER GARAGE	NFTA BABCOCK GARAGE					
Compass Minerals	$36.67	$36.67	$36.67	$36.67	$36.67					

Attachment: COMPASS CONTRACT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

Bulk

Price Per Ton Bulk	Gernatt (Springville Only)		
1 To 1	34.10		
2 To 1	26.60		
3 To 1	22.80		
4 To 1	20.60		
5 To 1	19.00		

Sand Salt Pre Mix		Location of Plant	Clarence	Tonawanda	Lancaster	Harlem	Hamburg	Angola	Aurora	Protection	East Concord	Collins
Gernatt Asphalt Products, Inc.	1 to 1	Springville	47.45	46.45	45.95	45.70	41.95	43.95	41.20	40.70	37.95	40.45
	1 to 2		39.95	38.95	38.45	38.20	34.45	36.45	33.70	33.20	30.45	32.95
	1 to 3		36.15	35.15	34.65	34.40	30.65	32.65	29.90	29.40	26.65	29.15
	1 to 4		33.95	32.95	32.45	32.20	28.45	30.45	27.70	27.20	24.45	26.95
	1 to 5		32.35	31.35	30.85	30.60	26.85	28.85	26.10	25.60	22.85	25.35
	1 to 1											
	1 to 2											
	1 to 3											
	1 to 4											
	1 to 5											
	1 to 1											
	1 to 2											
	1 to 3											
	1 to 4											
	1 to 5											

Sand Salt Pre Mix		Akron Central School Dist.	Village of Akron	Town of Alden	Village of Alden	Town of Amherst	Town of Aurora	Village of Blasdell	City of Buffalo	BOCES Cheektowaga	BOCES Orchard Park	Town of Boston
Gernatt Asphalt Products, Inc.	1 to 1	49.20	49.20	48.20	48.20	46.70	43.45	43.20	44.70	45.70	42.20	40.20
	1 to 2	41.70	41.70	40.70	40.70	39.20	35.95	35.70	37.20	38.20	34.70	32.70
	1 to 3	37.90	37.90	36.90	36.90	35.40	32.15	31.90	33.40	34.40	30.90	28.90
	1 to 4	35.70	35.70	34.70	34.70	33.20	29.95	29.70	31.20	32.20	28.70	26.70
	1 to 5	34.10	34.10	33.10	33.10	31.20	28.35	28.10	29.60	30.60	27.10	25.10

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Sand Salt Pre Mix		Town of Brant	City of Buffalo	Town of Cheektowaga	Town of Clarence	Cheektowaga-Maryvale UFSD	Town of Colden	Town of Collins	Town of Condord	Village of Depew	Village of East Aurora	Town of Eden
Gernatt Asphalt Products, Inc.	1 to 1	43.70	44.70	45.70	47.45	45.95	39.45	40.95	37.70	46.45	43.45	43.45
	1 to 2	36.20	37.20	38.20	39.95	38.45	31.95	33.45	30.20	38.95	35.95	35.95
	1 to 3	32.40	33.40	34.40	36.15	34.65	28.15	29.65	26.40	35.15	32.15	32.15
	1 to 4	30.20	31.20	32.20	33.95	32.45	25.95	27.45	24.20	32.95	29.95	29.95
	1 to 5	28.60	29.60	30.60	32.35	30.85	24.35	25.85	22.60	31.35	28.35	28.35

Sand Salt Pre Mix		Town of Elma	ECC Orchard Park	ECMCC Buffalo	Erie County Water Cheektowaga	Town of Evans	Village of Gowanda	Town of Grand Island	Town of Hamburg	Village of Hamburg	Town of Holland	Kenmore School District
Gernatt Asphalt Products, Inc.	1 to 1	44.45	42.20	44.70	45.70	43.95	40.95	49.95	41.95	41.95	41.45	47.45
	1 to 2	36.95	34.70	37.20	38.20	36.45	33.45	42.45	34.45	34.45	33.95	39.95
	1 to 3	33.15	30.90	33.40	34.40	32.65	29.65	38.65	30.65	30.65	30.15	36.15
	1 to 4	30.65	28.70	31.20	32.20	30.45	27.45	36.45	28.45	28.45	27.95	33.95
	1 to 5	28.95	27.10	29.60	30.60	28.85	25.85	34.85	26.85	26.85	26.35	32.35

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Sand Salt Pre Mix		Village of Kenmore	City of Lackawanna	Town of Lancaster	Town of Marilla	Town of Newstead	Town of North Collins	Town of Orchard Park	Village of Orchard Park	Town of Sardinia	Village of Sloan	Village of Springville
Gernatt Asphalt Products, Inc.	1 to 1	47.45	44.70	45.95	44.95	49.45	41.45	42.20	42.20	38.95	45.70	37.45
	1 to 2	39.95	37.20	38.45	37.45	41.95	33.95	34.70	34.70	31.45	38.20	29.95
	1 to 3	36.15	33.40	34.65	33.65	38.15	30.15	30.90	30.90	27.65	34.40	26.15
	1 to 4	33.95	31.20	32.45	31.45	35.95	27.95	28.70	28.70	25.45	32.20	23.95
	t to 5	32.35	29.60	30.85	29.85	34.35	26.35	27.10	27.10	23.85	30.60	22.35

Sand Salt Pre Mix		City of Tonawanda	Town of Tonawanda	Town of Wales	Town of West Seneca	Village of Williamsville
Gernatt Asphalt Products, Inc.	1 to 1	46.45	46.45	43.95	44.45	46.70
	1 to 2	38.95	38.95	36.45	36.95	39.20
	1 to 3	35.15	35.15	32.65	33.15	35.40
	1 to 4	32.95	32.95	30.45	30.95	33.20
	1 to 5	31.35	31.35	28.85	29.35	31.60

12.M.1.b

Locations

BUFFALO, NEW YORK

View the Map

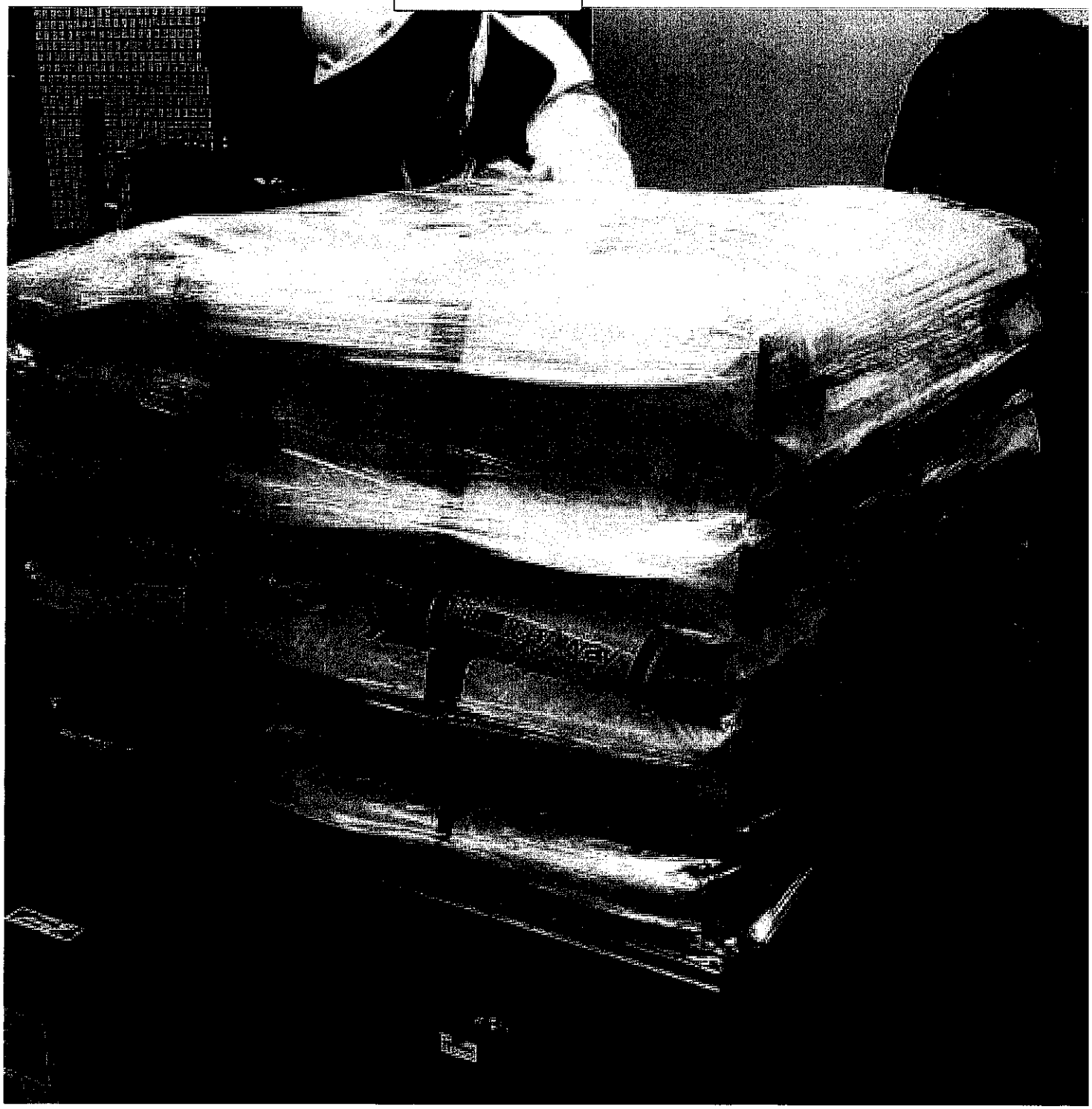
PACKAGING FACILITY

Built in 2015, the Buffalo plant is the newest Compass Minerals location.

Located alongside a deep water dock, the plant receives salt from the Goderich, Ontario, mine that is then screened and packaged for deicing use. The plant also produces specialty deicing blends.

1951 Hamburg Turnpike, Building 20
Lackawanna, New York 14218
716.239.4317

Attachment: COMPASS CONTRACT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)



Attachment: COMPASS CONTRACT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

STOCK QUOTE

PRICE:
66.39

EXCHANGE: NYSE

VOLUME: 80,683
PRICING DELAYED BY 20 MINUTES

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Attachment: COMPASS CONTRACT (RES-2021-789 : Authorize Supervisor to Sign Contract to Piggyback COMPASS MINERALS CRS #2854)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 24705 **RESOLUTION 2021-790** **ADOPTED**

Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860

NOW THEREFORE BE IT RESOLVED, that the Town of Amherst is approved to piggyback on the New York State - Office of General Services contract with AMERICAN ROCK SALT CO. for road salt on Group 01800; Award 23175; Contract # 68889 for the period 9/1/2018 to 8/31/2022 for 7,000 tons.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Amherst Town Board authorizes the Supervisor to sign this contract. This contract is subject to the Contract Routing System (CRS#2860) and the approval of the Town Attorney.

9/13/2021
Consent

FINANCIAL IMPACT:

D5142 : 4350

TBD

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

AGREEMENT

Let this document stand as an Agreement between AMERICAN ROCK SALT CO., LLC., 5520 ROUTE 63, PO BOX 190, MOUNT MORRIS, NY 14510 and the Town of Amherst permitting the Town of Amherst to participate in the purchase of :

NEW YORK STATE-OFFICE OF GENERAL SERVICES - ROAD SALT
GROUP 01800; AWARD 23175; PC #68889
9/1/2018 through 8/31/2022
ROAD SALT DELIVERED AT 7,000 TONS AT $58.33 PER TON PLUS/MINUS SURCHARGE.

from American Rock Salt Co., LLC. Under NYS - OGS ROAD SALT Specifications of: Group 01800; Award 23175; PC68889 for the period from 9/1/2018 TO 8/31/2022.

Agreed to and Accepted by:

AMERICAN ROCK SALT CO., LLC.

By: _____
Signature

Jamie A. McClain
Print Name

Marketing Manager
Title

Date: 8/25/2021

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian Kulpa
Supervisor

Date: _____

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Addendum to Contract VENDOR ON SITE Major

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. Umbrella coverage shall be in an amount of at least $5,000,000.00.

(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.

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: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

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.

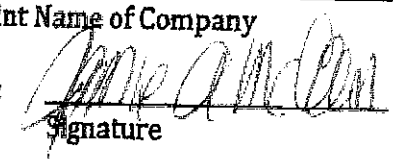
10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

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:

American Rock Salt Co LLC

Print Name of Company

By: 

Signature

Jamie A. McClain

Printed name

Date: 8/25/2021

Agreed to and Accepted by:

Town of Amherst

By: _____

Brian J. Kulpa, Supervisor

Date: _____

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

IRAN DIVESTMENT ACT CERTIFICATION

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New Yo provision was added to the State Finance Law (SFL), Section 165-a, effective April 12, 2012. Unde Act, the Commissioner of the Office of General Services (OGS) will develop a list (prohibited entities of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). list is posted on the OGS website.

By submitting a response to this solicitation, or by assuming the responsibility unde Contract/Lease awarded hereunder, Bidder/Contractor/Vendor (or any assignee) certifies that it will 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 seel to renew or extend a Contract/Lease (or assume responsibility of a Contract/Lease awarded must cer at the time the Contract/Lease is renewed, extended or assigned that it is not included on the prohib entities list.

During the term of the Contract/Lease, should the Town of Amherst (Town) receive informat that a person is in violation of the above-referenced certification, the Town will offer the person opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in investment which is in violation of the Act within 90 days after the determination of such violation, tl the Town shall take such action as appropriate including, but not limited to, imposing sanctions, seek 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 ent 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 t prohibited entities list after Contract/Lease award.

Company Name: American Rock Salt Co LLC

Signature: [signature]

Print Name: Jamie A. McClain

Title: Marketing Manager

Date: 8/25/2021

JEANETTE A. STARR
Notary Public, State of New York
Reg. No. 01ST6105067
Qualified in Livingston County
Commission Expires April 02, 2024

Sworn To Before Me This
25th Day of August, 2021
[signature]
Notary Public

Revised 4.201

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

State Contract Award Notices - Commodities

Road Salt, Treated Salt and Emergency Standby Road Salt (Statewide)	
Award Document {Updated / Revised}	**Contract Period:** September 1, 2019 – August 31, 2022
Contract Updates	**Group:** 01800 **Award:** 23175 (Replaces 22843)
Pricing	**Use of Contracts:** All State Agencies and Political Subdivisions
Price Adjustments	**Contact Person:** Brandy Alden **Telephone:** (518) 408-1140
Road & Treated Salt Specifications	Contract Issued: August 30, 2019 **Contract Updated: August 19, 2021**
Delivery Schedule	
FAQs	
Historical Details	
Customer Service	

Description:
Road Salt is used for snow and ice control. Treated Salt is granular sodium chloride (Rock Salt) treated with corrosion inhibited liquid magnesium chloride – Types 1 and 2. These are filed requirement contracts which require the Contract User to purchase 70% of their filed requirement or 50% of their filed requirement if an awarded county is for Solar Salt. Automatic price increases become effective once deliveries exceed 120% of the Contract User's filed requirement.

This Contract Award Notification contains MWBE goals of 5% MBE and 5% WBE.

Install Free Adobe Acrobat Reader for PDF Documents
The above PDF files are available in text by calling Customer Services at (518) 474-6717.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

NEW YORK STATE OF OPPORTUNITY. | Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification Update

Subject: Contracts Renewed through August 31, 2022

DATE: August 19, 2021 **AWARD #:** 23134, 23175 & 23212 **GROUP #:** 01800

AWARD DESCRIPTION: Road Salt, Treated Salt (Types 1 and 2) & Emergency Standby Road Salt (Statewide)

CONTRACT PERIOD: September 1, 2018 through August 31, 2022

CONTACT: Brandy Alden | 518-408-1140 | OGS.sm.SST_roadsalt@ogs.ny.gov

CONTRACT NO.: ALL **CONTRACTOR:** ALL

Please be advised that the following Contracts under OGS Awards 23134, 23175, & 23212 have been renewed through August 31, 2022:

PC68227, PC68889, PC69182 – American Rock Salt Co LLC
PC68228, PC68890, PC69183 – Apalachee LLC
PC68229, PC68891, PC69184 – Atlantic Salt Inc
PC68230, PC68892, PC69185 – Cargill, Incorporated – Salt, Road Safety
PC69187 – Compass Minerals America Inc
PC69188 – Morton Salt Inc

OGS intends to publish revised award documents on or around September 1st, 2021 that will detail the revised contract pricing for the 2021-22 contract term. **See award document *Pricing* for specific county and salt type pricing information.**

NOTE: Contracts for Putnam County (Road Salt) and Westchester County (Road Salt and Treated Salt Type 2), and Lot IV, Emergency Standby Road Salt were rebid by OGS under Invitation for Bids 23248 and are currently under evaluation. Authorized Users with **2021-22** filed requirements in these counties/salt types may experience a minor lapse in coverage pending the completion of OGS' review and necessary approvals for those contracts.

THE FOLLOWING REVISIONS HAVE BEEN MADE TO THE CONTRACT AS PART OF THE RENEWAL AGREEMENT:

A summary table (beginning on page 2) has been included for quick reference of revisions by County/Salt Type.

Authorized Users (AU's) with delivery locations for Counties/Salt Types shown in green below are required to purchase minimum requirement obligations as noted in the "Comments" field of the table.

Specific information regarding renewal terms per Contractor can be found starting on page 7 of this document in the section titled: MINIMUM/MAXIMUM OBLIGATIONS REVISION DETAILS.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Salt Type	Award #	Contract #	County	Awarded Contractor	Comments
Road Salt	23175	PC68890	**ALBANY**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68890	**ALBANY**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23134	PC68228	**ALBANY**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	**ALLEGANY**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**ALLEGANY**		
TYPE 2	NO AWARD		**ALLEGANY**		
Road/Solar Salt	23212	PC69184	**BRONX**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**BRONX**		
TYPE 2	NO AWARD		**BRONX**		
Road Salt	23134	PC68230	**BROOME**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	**BROOME**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23212	PC69182	**BROOME**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	**CATTARAUGUS**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**CATTARAUGUS**		
TYPE 2	NO AWARD		**CATTARAUGUS**		
Road Salt	23134	PC68230	**CAYUGA**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	**CAYUGA**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		**CAYUGA**		
Road Salt	23175	PC68889	**CHAUTAUQUA**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68889	**CHAUTAUQUA**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23175	PC68889	**CHAUTAUQUA**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	**CHEMUNG**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	NO AWARD		**CHEMUNG**		
TYPE 2	23212	PC69182	**CHEMUNG**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	**CHENANGO**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	**CHENANGO**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		**CHENANGO**		
Road Salt	23175	PC68890	**CLINTON**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**CLINTON**		
TYPE 2	23175	PC68890	**CLINTON**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23212	PC69185	**COLUMBIA**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23212	PC69183	**COLUMBIA**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	NO AWARD		**COLUMBIA**		

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Salt Type	Award #	Contract #	County	Awarded Contractor	Comments
Road Salt	23134	PC68230	**CORTLAND**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	**CORTLAND**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23134	PC68227	**CORTLAND**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	**DELAWARE**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	NO AWARD		**DELAWARE**		
TYPE 2	NO AWARD		**DELAWARE**		
Road Salt	23212	PC69183	**DUTCHESS**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68228	**DUTCHESS**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23212	PC69183	**DUTCHESS**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	**ERIE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68889	**ERIE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23175	PC68889	**ERIE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68228	**ESSEX**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68230	**ESSEX**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23212	PC69183	**ESSEX**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68890	**FRANKLIN**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69187	**FRANKLIN**	Compass Minerals America Inc	**AU's are required to purchase minimum filed requirement**
TYPE 2	23212	PC69183	**FRANKLIN**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68229	**FULTON**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68230	**FULTON**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23134	PC68228	**FULTON**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	**GENESEE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**GENESEE**		
TYPE 2	23175	PC68889	**GENESEE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23212	PC69182	**GREENE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68230	**GREENE**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23134	PC68228	**GREENE**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	**HAMILTON**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	**HAMILTON**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		**HAMILTON**		
Road Salt	23134	PC68230	**HERKIMER**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	**HERKIMER**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23134	PC68228	**HERKIMER**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Salt Type	Award #	Contract #	County	Awarded Contractor	Comments
Road Salt	23175	PC68889	JEFFERSON	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68892	JEFFERSON	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		JEFFERSON		
Road/Solar Salt	23212	PC69184	KINGS	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		KINGS		
TYPE 2	NO AWARD		KINGS		
Road Salt	23134	PC68230	LEWIS	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23212	PC69185	LEWIS	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23134	PC68227	LEWIS	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	LIVINGSTON	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68889	LIVINGSTON	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	NO AWARD		LIVINGSTON		
Road Salt	23134	PC68230	MADISON	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	MADISON	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		MADISON		
Road Salt	23175	PC68889	MONROE	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68889	MONROE	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23175	PC68889	MONROE	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68229	MONTGOMERY	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68230	MONTGOMERY	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		MONTGOMERY		
Road/Solar Salt	23212	PC69184	NASSAU	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69183	NASSAU	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23212	PC69188	NASSAU	Morton Salt Inc	AU's are relieved of obligation to purchase minimum filed requirement
Road/Solar Salt	23212	PC69184	NEW YORK	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		NEW YORK		
TYPE 2	NO AWARD		NEW YORK		
Road Salt	23175	PC68889	NIAGARA	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69182	NIAGARA	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23175	PC68889	NIAGARA	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	ONEIDA	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	ONEIDA	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23175	PC68889	ONEIDA	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68227	ONONDAGA	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68230	ONONDAGA	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		ONONDAGA		

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Salt Type	Award #	Contract #	County	Awarded Contractor	Comments
Road Salt	23175	PC68889	**ONTARIO**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68892	**ONTARIO**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23175	PC68889	**ONTARIO**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	**ORANGE**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	**ORANGE**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23134	PC68228	**ORANGE**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	**ORLEANS**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68227	**ORLEANS**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23175	PC68889	**ORLEANS**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68892	**OSWEGO**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	NO AWARD		**OSWEGO**		
TYPE 2	NO AWARD		**OSWEGO**		
Road Salt	23134	PC68230	**OTSEGO**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23212	PC69185	**OTSEGO**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		**OTSEGO**		
Road Salt	23212	PC69186	**PUTNAM**	Champion Salt LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**PUTNAM**		
TYPE 2	NO AWARD		**PUTNAM**		
Road/Solar Salt	23212	PC69184	**QUEENS**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68890	**QUEENS**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	NO AWARD		**QUEENS**		
Road Salt	23175	PC68890	**RENSSELAER**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68890	**RENSSELAER**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	NO AWARD		**RENSSELAER**		
Road/Solar Salt	23212	PC69184	**RICHMOND**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68228	**RICHMOND**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23134	PC68229	**RICHMOND**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
Road/Solar Salt	23212	PC69184	**ROCKLAND**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69183	**ROCKLAND**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23134	PC68229	**ROCKLAND**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23212	PC69182	**SARATOGA**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**SARATOGA**		
TYPE 2	NO AWARD		**SARATOGA**		
Road Salt	23175	PC68890	**SCHENECTADY**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23175	PC68889	**SCHENECTADY**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23212	PC69188	**SCHENECTADY**	Morton Salt Inc	AU's are relieved of obligation to purchase minimum filed requirement

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Salt Type	Award #	Contract #	County	Awarded Contractor	Comments
Road Salt	23134	PC68228	SCHOHARIE	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		SCHOHARIE		
TYPE 2	NO AWARD		SCHOHARIE		
Road Salt	23134	PC68230	SCHUYLER	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	NO AWARD		SCHUYLER		
TYPE 2	NO AWARD		SCHUYLER		
Road Salt	23134	PC68230	SENECA	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	SENECA	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23212	PC69182	SENECA	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	ST LAWRENCE	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69185	ST. LAWRENCE	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23175	PC68889	ST. LAWRENCE	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68227	STEUBEN	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69182	STEUBEN	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	NO AWARD		STEUBEN		
Road/Solar Salt	23212	PC69184	SUFFOLK	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69183	SUFFOLK	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23212	PC69183	SUFFOLK	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	SULLIVAN	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23212	PC69185	SULLIVAN	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		SULLIVAN		
Road Salt	23134	PC68230	TIOGA	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	NO AWARD		TIOGA		
TYPE 2	NO AWARD		TIOGA		
Road Salt	23134	PC68230	TOMPKINS	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23134	PC68230	TOMPKINS	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23212	PC69182	TOMPKINS	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23212	PC69182	ULSTER	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68228	ULSTER	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23134	PC68228	ULSTER	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68891	WARREN	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68230	WARREN	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	23212	PC69184	WARREN	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68891	WASHINGTON	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23134	PC68230	WASHINGTON	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		WASHINGTON		

23134p11/23175p10/23212p1

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Salt Type	Award #	Contract #	County	Awarded Contractor	Comments
Road Salt	23175	PC68889	**WAYNE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**WAYNE**		
TYPE 2	23175	PC68889	**WAYNE**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road/Solar Salt	23212	PC69184	**WESTCHESTER**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	23212	PC69183	**WESTCHESTER**	Apalachee, LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 2	23212	PC69184	**WESTCHESTER**	Atlantic Salt, Inc.	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23175	PC68889	**WYOMING**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
TYPE 1	NO AWARD		**WYOMING**		
TYPE 2	23134	PC68227	**WYOMING**	American Rock Salt Co., LLC	AU's are relieved of obligation to purchase minimum filed requirement
Road Salt	23134	PC68230	**YATES**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 1	23212	PC69185	**YATES**	Cargill, Inc.	**AU's are required to purchase minimum filed requirement**
TYPE 2	NO AWARD		**YATES**		

Revisions apply to obligations stipulated under Awards 23134 & 23175 contract term:
September 1, 2020 through August 31, 2021.

Revisions apply to obligations stipulated under Award 23212 contract term:
September 18, 2020 through August 31, 2021

MINIMUM/MAXIMUM OBLIGATIONS REVISION DETAILS

American Rock Salt Co LLC

Authorized Users are hereby relieved of their obligation to take 70% minimum (50% minimum for solar salt) of their 2020-21 filed requirements, however, the Contractor is obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt.

Apalachee LLC

Authorized Users are hereby relieved of their obligation to take 70% minimum (50% minimum for solar salt) of their 2020-21 filed requirements, however, the Contractor is obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt.

NOTE: This also applies to Authorized Users with delivery locations in Westchester County who filed requirements for Treated Salt Type 1.

Atlantic Salt Inc

Authorized Users are hereby relieved of their obligation to take 70% minimum (50% minimum for solar salt) of their 2020-21 filed requirements, however, the Contractor is obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Cargill, Incorporated – Salt, Road Safety

Authorized Users are obligated to take 70% minimum (50% minimum for solar salt) of their 2020-21 filed requirements and Contractor is obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt.

When the Authorized User is not able to take the minimum required amount, the Contractor will store salt for the Authorized User at no additional charge from September 1, 2021 through February 28, 2022.

Beginning March 1, 2022 for any Authorized User that has not yet purchased the minimum requirement, the Contractor will store salt for the Authorized User at the **per month/per ton storage fee rate** as indicated in the Contract Award Notification pertaining to that county/salt type.

Authorized Users with multiple delivery sites (e.g., NYSDOT, County Highways and NYS Thruway) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a Contractor.

Delivery of stored salt between 9/1/2021 and 5/31/2022 shall meet the delivery requirements in the Section titled, Delivery Schedule.

Champion Salt Inc

Authorized Users are hereby relieved of their obligation to take 70% minimum of their 2020-21 filed requirements, however, the Contractor is obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt.

Compass Minerals America Inc

Authorized Users are obligated to take 70% minimum of their 2020-21 filed requirements and Contractor is obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt.

When the Authorized User is not able to take the minimum required amount, the Contractor will store salt for the Authorized User at no additional charge.

Morton Salt Inc

Authorized Users are hereby relieved of their obligation to take 70% minimum (50% minimum for solar salt) of their 2020-21 filed requirements, however, the Contractor is obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

NYS Office of General Services
Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide)

Contact Information for NYS Contract Orders
Contract Term: September 18, 2020 - August 31, 2021

Contact Information for NYS Contract Orders

Contractor Name	Contact Name	Contact Information
American Rock Salt Co., LLC	Customer Service	Phone #: 888-762-7258 E-Mail: customerservice@americanrocksalt.com Hours: 8:00am to 4:30pm (M-F) EST
Apalachee, LLC	Peter Kowal	Toll Free #: 800-724-5037 Phone #: 585-442-4131 Cell #: 978-697-5278 E-Mail: sales@apalacheesalt.com Hours: 8:00am to 6:00pm (M-F) EST 9:00am to 3:00pm (Sa/Su)
Atlantic Salt, Inc.	Diana Banjany	Phone #: 718-816-7200 E-Mail: saltlady@atlanticsalt.com Hours: 7:00am to 4:00pm (M-F) EST
Cargill, Incorporated -Salt, Road Safety	Customer Service	Phone #: 800-600-7258 E-Mail: Salt_CustomerCareRoadSafety@cargill.com Hours: 7:00am to 5:00pm (M-F) EST
Champion Salt LLC	Jeremy Warren	Phone #: 617-389-7258 E-Mail: jeremy@championsalt.com Hours: 24/7
Compass Minerals America Inc	Anastasia Sharp	Toll Free Phone #: 800-323-1641 (Option 1) Phone #: 913-344-8272 E-Mail: highwaygroup@compassminerals.com Hours: 7:00am to 5:00pm (M-F) CST
Morton Salt Inc	Customer Service	Toll Free Phone #: 855-665-4540 E-Mail: buyroadsalt@mortonsalt.com Hours: 7:00am to 4:00pm (M-F) CST;

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Award #23134	
Contract #	Contractor Name
PC68227	American Rock Salt Co. LLC
PC68228	Apalachee LLC
PC68229	Atlantic Salt Inc.
PC68230	Cargill, Inc. d/b/a Cargill, Inc. - Salt, Road Safety

Award #23175	
Contract #	Contractor Name
PC68889	American Rock Salt Co. LLC
PC68890	Apalachee LLC
PC68891	Atlantic Salt Inc.
PC68892	Cargill, Inc. d/b/a Cargill, Inc. - Salt, Road Safety

Award #23212	
Contract #	Contractor Name
PC69182	American Rock Salt Co. LLC
PC69183	Apalachee LLC
PC69184	Atlantic Salt Inc.
PC69185	Cargill, Incorporated -Salt, Road Safety
PC69186	Champion Salt LLC
PC69187	Compass Minerals America Inc.
PC69188	Morton Salt Inc.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

NYS Office of General Services
Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide)

Road Salt Pricing
Contract Term: September 18, 2020 - August 31, 2021

AWARD	CONTRACT #	COUNTY	CONTRACTOR	PRICE PER TON	TYPE OF SALT
23175	PC68890	**ALBANY**	Apalachee, LLC	$56.54	Rock
23175	PC68889	**ALLEGANY**	American Rock Salt Co., LLC	$55.71	Rock
23212	PC69184	**BRONX**	Atlantic Salt, Inc.	$73.00	Rock & Solar
23134	PC68230	**BROOME**	Cargill, Inc.	$59.94	Rock
23175	PC68889	**CATTARAUGUS**	American Rock Salt Co., LLC	$62.77	Rock
23134	PC68230	**CAYUGA**	Cargill, Inc.	$54.47	Rock
23175	PC68889	**CHAUTAUQUA**	American Rock Salt Co., LLC	$71.55	Rock
23134	PC68230	**CHEMUNG**	Cargill, Inc.	$57.00	Rock
23134	PC68230	**CHENANGO**	Cargill, Inc.	$63.13	Rock
23175	PC68890	**CLINTON**	Apalachee, LLC	$84.75	Rock
23212	PC69185	**COLUMBIA**	Cargill, Inc.	$49.46	Rock
23134	PC68230	**CORTLAND**	Cargill, Inc.	$52.90	Rock
23134	PC68230	**DELAWARE**	Cargill, Inc.	$72.28	Rock
23212	PC69183	**DUTCHESS**	Apalachee, LLC	$57.94	Rock
23175	PC68889	**ERIE**	American Rock Salt Co., LLC	$58.33	Rock
23134	PC68228	**ESSEX**	Apalachee, LLC	$80.00	Rock
23175	PC68890	**FRANKLIN**	Apalachee, LLC	$85.75	Rock
23134	PC68229	**FULTON**	Atlantic Salt, Inc.	$62.98	Rock

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

NYS Office of General Services
Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide)

Road Salt Pricing
Contract Term: September 18, 2020 - August 31, 2021

AWARD	CONTRACT #	COUNTY	CONTRACTOR	PRICE PER TON	TYPE OF SALT
23175	PC68889	**GENESEE**	American Rock Salt Co., LLC	$55.42	Rock
23212	PC69182	**GREENE**	American Rock Salt Co., LLC	$51.59	Rock
23134	PC68230	**HAMILTON**	Cargill, Inc.	$73.49	Rock
23134	PC68230	**HERKIMER**	Cargill, Inc.	$66.70	Rock
23175	PC68889	**JEFFERSON**	American Rock Salt Co., LLC	$72.76	Rock
23212	PC69184	**KINGS**	Atlantic Salt, Inc.	$73.00	Rock & Solar
23134	PC68230	**LEWIS**	Cargill, Inc.	$68.19	Rock
23175	PC68889	**LIVINGSTON**	American Rock Salt Co., LLC	$52.98	Rock
23134	PC68230	**MADISON**	Cargill, Inc.	$63.04	Rock
23175	PC68889	**MONROE**	American Rock Salt Co., LLC	$54.52	Rock
23134	PC68229	**MONTGOMERY**	Atlantic Salt, Inc.	$62.98	Rock
23212	PC69184	**NASSAU**	Atlantic Salt, Inc.	$68.00	Rock & Solar
23212	PC69184	**NEW YORK**	Atlantic Salt, Inc.	$73.00	Rock & Solar
23175	PC68889	**NIAGARA**	American Rock Salt Co., LLC	$59.42	Rock
23134	PC68230	**ONEIDA**	Cargill, Inc.	$65.28	Rock
23134	PC68227	**ONONDAGA**	American Rock Salt Co., LLC	$64.76	Rock
23175	PC68889	**ONTARIO**	American Rock Salt Co., LLC	$55.42	Rock
23134	PC68230	**ORANGE**	Cargill, Inc.	$68.80	Rock

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

NYS Office of General Services
Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide)

Road Salt Pricing
Contract Term: September 18, 2020 - August 31, 2021

AWARD	CONTRACT #	COUNTY	CONTRACTOR	PRICE PER TON	TYPE OF SALT
23175	PC68889	**ORLEANS**	American Rock Salt Co., LLC	$55.42	Rock
23175	PC68892	**OSWEGO**	Cargill, Inc.	$53.44	Rock
23134	PC68230	**OTSEGO**	Cargill, Inc.	$65.18	Rock
23212	PC69186	**PUTNAM**	Champion Salt LLC	$58.13	Rock
23212	PC69184	**QUEENS**	Atlantic Salt, Inc.	$73.00	Rock & Solar
23175	PC68890	**RENSSELAER**	Apalachee, LLC	$56.54	Rock
23212	PC69184	**RICHMOND**	Atlantic Salt, Inc.	$73.00	Rock & Solar
23212	PC69184	**ROCKLAND**	Atlantic Salt, Inc.	$63.00	Rock & Solar
23175	PC68889	**ST LAWRENCE**	American Rock Salt Co., LLC	$92.35	Rock
23212	PC69182	**SARATOGA**	American Rock Salt Co., LLC	$48.15	Rock
23175	PC68890	**SCHENECTADY**	Apalachee, LLC	$56.54	Rock
23134	PC68228	**SCHOHARIE**	Apalachee, LLC	$61.70	Rock
23134	PC68230	**SCHUYLER**	Cargill, Inc.	$52.49	Rock
23134	PC68230	**SENECA**	Cargill, Inc.	$54.47	Rock
23134	PC68227	**STEUBEN**	American Rock Salt Co., LLC	$52.45	Rock
23212	PC69184	**SUFFOLK**	Atlantic Salt, Inc.	$75.00	Rock & Solar

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

NYS Office of General Services
Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide)

Road Salt Pricing
Contract Term: September 18, 2020 - August 31, 2021

AWARD	CONTRACT #	COUNTY	CONTRACTOR	PRICE PER TON	TYPE OF SALT
23134	PC68230	**SULLIVAN**	Cargill, Inc.	$72.83	Rock
23134	PC68230	**TIOGA**	Cargill, Inc.	$57.00	Rock
23134	PC68230	**TOMPKINS**	Cargill, Inc.	$52.90	Rock
23212	PC69182	**ULSTER**	American Rock Salt Co., LLC	$56.15	Rock
23175	PC68891	**WARREN**	Atlantic Salt, Inc.	$65.00	Rock
23175	PC68891	**WASHINGTON**	Atlantic Salt, Inc.	$62.40	Rock
23175	PC68889	**WAYNE**	American Rock Salt Co., LLC	$54.90	Rock
23212	PC69184	**WESTCHESTER**	Atlantic Salt, Inc.	$56.70	Rock & Solar
23175	PC68889	**WYOMING**	American Rock Salt Co., LLC	$52.98	Rock
23134	PC68230	**YATES**	Cargill, Inc.	$52.49	Rock

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Price Adjustments For Salt and Snow/Ice Control Agents

Information For Price Adjustments for Users and Suppliers

To view Contract Award Documents, select the button below:

Contract Award Documents for Group 01800 | Contract Award Documents for Group 32100

Award(s) using Fuel Base Price of $2.632

- Group 01800, Award 23212 - Road Salt, Treated Salt, and Emergency Standby Road Salt (Statewide)
  - (Expires August 31, 2021)
- Group 01800, Award 23175 - Road Salt, Treated Salt, and Emergency Standby Road Salt (Statewide)
  - (Expires August 31, 2021)
- Group 01800, Award 23134 - Road Salt, Treated Salt, and Emergency Standby Road Salt (Statewide)
  - (Expires August 31, 2021)

Award(s) using Fuel Base Price of $2.620

- Group 32100, Award 23214 - Snow, Ice Control Agents (Statewide)
  - (Expires September 30, 2022)

Award(s) using Fuel Base Price of $3.261.

- Group 32100, Award 23131 - Snow, Ice Control Agents (Statewide)
  - (Expires October 30, 2020)

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Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

NEW YORK STATE OF OPPORTUNITY. | Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification

Title	:	**Group 01800 – ROAD SALT, TREATED SALT, & EMERGENCY STANDBY ROAD SALT (STATEWIDE)** **Classification Code(s): 12**
Award Number	:	**23175 (Replaces Award 22843; Runs Concurrent with Awards 23134 & 23212)**
Contract Period	:	**September 1, 2019 – August 31, 2021**
Bid Opening Date	:	**August 8, 2019**
Date of Issue	:	**August 30, 2019 (Revised September 16, 2020)**
Specification Reference	:	**As Incorporated in the Invitation for Bids**
Contractor Information	:	**Appears on Page 4 of this Award**

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Brandy Alden Title : Contract Management Specialist 2 Phone : 518-408-1140 E-mail : OGS.sm.SST_roadsalt@ogs.ny.gov	**Procurement Services Customer Services** Phone : 518-474-6717 E-mail : customer.services@ogs.ny.gov

Procurement Services values your input.
Complete and return *Contract Performance Report* at end of document.

Description

Road Salt is used for snow and ice control. Treated Salt is granular sodium chloride (Rock Salt) treated with corrosion inhibited liquid magnesium chloride – Types 1 and 2. These are filed requirement contracts which require the Contract User to purchase 70% of their filed requirement or 50% of their filed requirement if an awarded county is for Solar Salt. Automatic price increases become effective once deliveries exceed 120% of the Contract User's filed requirement.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

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Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

SECTION 1: INTRODUCTION

1.1 Contractor Information

NOTE: See individual contract items to determine actual awardees.

Contract	Contractor & Address	Fed ID#/NYS Vendor ID#
PC68889	American Rock Salt Co., LLC PO Box 190 Mt. Morris, NY 14510	16-1516458 1000008297

Contact for New York State Contract Orders (during normal business hours):		Emergency Contact (after normal business hours; weekend/holidays):	
Phone #:	888-762-7258	Phone #:	585-519-5247
Contact:	Customer Services	Contact:	Jamie A. McClain
E-mail:	customerservice@americanrocksalt.com	E-mail:	jamie.mcclain@americanrocksalt.com
Website:	www.americanrocksalt.com		
Hours:	8:00AM - 4:30PM Monday-Friday		

Contract	Contractor & Address	Fed ID#/NYS Vendor ID#
PC68890 SB	Apalachee, LLC 1423 Highland Ave. Rochester, NY 14620	47-2089879 1100213604

Contact for New York State Contract Orders (during normal business hours):		Emergency Contact (after normal business hours; weekend/holidays):	
Toll-Free#	800-724-5037	Toll-Free#	800-724-5037
Phone #:	585-442-4131 / cell 978-697-5278	Phone #:	585-442-4131 / cell 585-410-2666
Contact:	Peter Kowal	Contact:	Jerome Kowal
E-mail:	sales@apalacheesalt.com	E-mail:	sales@apalacheesalt.com
Website:	www.apalacheesalt.com		
Hours:	8:00AM – 6:00PM Monday-Friday 9:00AM – 3:00PM Sat/Sun		

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

Contract	Contractor & Address	Fed ID#/NYS Vendor ID#
PC68891 SB	Atlantic Salt, Inc. 134 Middle St., Ste. 210 Lowell, MA 01852	13-2914699 1000026327

Contact for New York State Contract Orders (during normal business hours):		Emergency Contact (after normal business hours; weekend/holidays):	
Phone #:	718-816-7200	Phone #:	978-453-4911
Contact:	Diana Banjany	Contact:	Jason Archambault
E-mail:	saltlady@atlanticsalt.com	E-mail:	Jarchambault@easternsalt.com
Hours:	7:00AM – 4:00PM Monday-Friday		

Contract	Contractor & Address	Fed ID#/NYS Vendor ID#
PC68892	Cargill, Inc. DBA Cargill, Inc. – Salt, Road Safety 24950 Country Club Blvd., Ste. 450 North Olmsted, OH 44070	41-0177680 1000048669

Contact for New York State Contract Orders (during normal business hours):		Emergency Contact (after normal business hours; weekend/holidays):	
Phone #:	800-600-7258	Phone #:	800-600-7258
Contact:	Customer Service	Contact:	Customer Service
E-mail:	Salt_CustomerCareRoadSafety@Cargill.com	E-mail:	Salt_CustomerCareRoadSafety@Cargill.com
Website:	www.cargill.com		
Hours:	7:00AM – 5:00PM Monday-Friday		

Cash Discount, If Shown, should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.

(See *Invoicing and Payments* in this document.)

AGENCIES SHOULD NOTIFY NEW YORK STATE PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

1.2 Overview

This Contract Award Notification is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services for Road Salt, Treated Salt, and Emergency Standby Road Salt as specified herein for all Authorized Users eligible to purchase through this Contract.

This Contract Award Notification outlines the terms and conditions, and all applicable information related to Contractor and Authorized User participation. All parties involved are strongly urged to become familiar with their rights and responsibilities, as outlined in this document.

1.3 Scope

The contract(s) are to provide Road Salt (Rock) in bulk, Treated Salt (Types 1 & 2) in bulk, and Emergency Standby Road Salt (Rock & Solar) in bulk, to various locations throughout the State. State and eligible non-state agencies may participate.

Lot I	*Road Salt (Rock)*
Lot II	*Treated Salt – Type 1*
Lot III	*Treated Salt – Type 2*
Lot IV	*Emergency Standby Road Salt (Rock & Solar)*

1.4 Small, Minority and Women-Owned Businesses:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

1.5 Recycled, Remanufactured and Energy Efficient Products:

Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS, RP, RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

1.6 Note to Authorized Users

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

1.7 Estimated Quantities

The quantities listed for Road Salt and Treated Salt are based on the requirements filed for each using entity (please refer to Attachment 1 – *Pricing* for estimated quantities). Emergency Standby Road Salt has no filed requirements and there is no guarantee of usage against resultant contract. See Section 3.8 - *Minimum/Maximum Obligations* for percentage obligations for Authorized Users and Contractors. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Contract, based on historical purchases under previous awards, is approximately $98,000,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. See Appendix B, *Estimated/Specific Quantity Contracts* and *Participation in Centralized Contracts.*

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

SECTION 2: CONTRACT ADMINISTRATION

The Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

SECTION 3: TERMS & CONDITIONS

3.1 Appendix A

Appendix A, *Standard Clauses for New York State Contracts,* dated January 2014, attached hereto to Invitation for Bids 23175, is hereby expressly made a part of this Contract Award Notification as fully as if set forth at length herein.

3.2 Appendix B

Appendix B, *Office of General Services General Specifications*, dated April 2016, attached hereto to Invitation for Bids 23175, is hereby expressly made a part of this Contract Award Notification as fully as if set forth at length herein and shall govern any situations not covered by this document or Appendix A.

3.3 Specifications

For general and detailed specification of Road Salt (Rock & Solar) and Treated Salt (Type 1 & Type 2), and Lot structure, see Attachment 9 – *Road & Treated Salt Specifications* on the landing page for this Award.

3.4 Contract Term and Extensions

A. Base Term. The Contract shall be in effect for a term of one (1) year, from September 1, 2019 to August 31, 2020. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

B. Extensions: If mutually agreed between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to three (3) additional one (1) year extensions. The Contract extension may be exercised on a month to month basis such as an additional three-month, six-month, twelve-month, or twenty-four-month period.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

3.5 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

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3.6 Price

Price shall include all customs and duties and be net per ton, FOB destination designated on purchase order, including unloading of the bulk salt. Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- Price Escalation Based on Exceeding 120% & 130% of Filed Requirement
- Price Escalation Based on Exceeding 150% of Filed Requirements
- Fuel Price Adjustment
- Price Adjustment for Renewals

Furthermore, the stated prices may be adjusted periodically based on various provisions.

3.6.1 Price Escalation Based on Exceeding 120% & 130% of Filed Requirement

A price escalation will be permitted when delivery quantities exceed 120% of filed requirement per delivery location. Authorized Users with multiple delivery sites (e.g. NYS DOT, NYS Thruway and County Highways) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a supplier.

An automatic unit price increase of 10% will be allowed once quantities delivered are over 120% of a user's filed requirement. Once deliveries exceed 130% of a user's filed requirement the automatic price increase will change to 15%. Contractors will continue to deliver to all Authorized Users including up to 150%. Failure to deliver may result in a "Buy Against" or a delivery deduction to the Contractor.

Once the Contractor has requested and received a price increase, agencies are allowed to solicit prices from other Contractors who are a part of the award. If a lower price is secured, the Contractor for the specific location must be given an opportunity to match or better the offered price. If the Contractor will not or cannot match or better the offered price, agencies may obtain their needs from the lower priced State contract holder.

3.6.2 Price Escalation Based on Exceeding 150% of Filed Requirement

Contract purchases over 150% of filed requirements can be made upon mutual agreement of the authorized user and the Contractor with a price escalation not to exceed 35% of the contract price. Purchases over 150% of the filed requirements at pricing exceeding the 35% escalation will be considered non-contract purchases. No buy-against nor liquidated damages will be imposed for failure to comply with the delivery terms and conditions of this contract for quantities over 150% of the filed requirements.

3.6.3 Fuel Price Adjustment

A fuel price adjustment may be made to contract pricing in accordance with the following procedure:

- Fuel Price adjustments will be made for deliveries of road salt during the contract period. Deliveries made after August 31 to meet minimum filed requirement obligations will use the fuel price adjustment in effect for August 31.
- On a monthly basis an amount may be added or deducted from contract pricing based on prices posted in the "EIA Retail On-Highway Diesel Prices". The New England PADD 1A shall be the designated posting for the adjustments. (If this source becomes unavailable, unworkable, unsuitable, or not reflective of the market conditions, then another source may be selected by the Commissioner of General Services in his/her sole discretion.)
- The 2019/20 base rate for calculating adjustments are established as posted in the EIA Retail On-Highway Diesel Prices for New England PADD1A for the week beginning August 5, 2019. The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA Retail On-Highway Diesel Prices and determining an average for that month. The previous month's prices shall be used to determine the monthly average (i.e. – August's prices will be used to determine September's adjustment). All prices will be rounded to two decimal places.

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- The fuel price adjustment shall be applied for the date of delivery.

  Ex.: If a purchase order for salt is received on January 30, and the salt is delivered on February 2, the fuel price adjustment used will be that for the month of February.

  EXAMPLE FUEL PRICE ADJUSTMENT INCREASE:

Published rate on date of bid opening	$4.07
Monthly Average Price	$4.17

  Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment

  $4.17 - $4.07 = $0.10 = Additional amount allowed to be added to price per ton.

  EXAMPLE FUEL PRICE ADJUSTMENT DECREASE:

Published rate on date of bid opening	$4.07
Monthly Average Price	$3.97

  Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment

  $3.97 - $4.07 = - $0.10 = Amount allowed to be deducted from price per ton.

3.6.4 Fuel Price Adjustment for quantities exceeding 120% & 130%

The calculation for the fuel price adjustment for quantities ordered over the 120% and 130% thresholds with 10% or greater surcharges shall be as follows:

(Base price per ton * surcharge) + (fuel price adjustment) = adjusted price per ton

EXAMPLE OF FUEL PRICE ADJUSTMENT INCREASE FOR ORDER OVER 120% OF FILED REQUIREMENT:

Base price per ton in contract	**$60** (example only)
Published fuel rate on date of bid opening	**$4.07**
Monthly Average Price of fuel	**$4.17**
Fuel price adjustment (**$4.17 - $4.07 = $0.10**)	**$0.10**
Surcharge of 10%	**1.1**

($60 * 1.1) + ($0.10) = $66.10 per ton

3.6.5 Additional Notes on Fuel Price Adjustment

Should postings become unavailable, not reflective of market conditions, or differ from current description and/or format, a posting determined by the Commissioner of General Services in his/her sole discretion to be most reflective of market conditions will be used. Corrections to posted prices will be considered only when caused by a typographical or clerical error on the part of said posting.

The following shall apply to all additional price amounts under any contract awarded:

- Price adjustments are limited to changes in pre-selected posting as noted above. Increases in contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the contract period, except as indicated under the fuel price adjustment and price escalation clause herein.
- Should the price structure utilized by the parties become unworkable for the State, detrimental or injurious to the State, or result in prices which are not truly reflective of current market conditions and the price is deemed unreasonable or excessive by the Commissioner of General Services, and no adjustment in price is mutually agreeable, the Commissioner of General Services reserves the sole right upon 10 days written notice mailed to the Contractor to terminate any contract resulting from this bid opening. If the Contractor is unable or unwilling to meet contractual requirements in whole or in part, it shall immediately notify the State of that fact in order that the State may take appropriate action. Such notification shall be in writing and shall be directed to the OGS Procurement Services. Such notification shall not relieve the Contractor of its responsibilities under the contract.

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In the event of an extension, the base rate for calculating adjustments will be the rate shown in the referenced EIA on the date of the next bid year's bid opening and for subsequent years additional extensions would follow this format. If there is no bid opening date for the next year, the base rate for calculating adjustments will be the rate shown in the referenced EIA one year after the last bid opening date. If the date is not a business date when the posting occurs, the next business day will be the date used for the adjustment.

3.6.6 Price Adjustment for Renewals

Price Adjustments for extensions or renewals shall be negotiated and mutually agreed upon by OGS and each Contractor. OGS's review may include appropriate indices as determined by OGS, market conditions reflecting supply and demand, and other economic factors deemed appropriate by OGS. Each Contractor's review will be independent.

3.6.7 Price Reductions

Contractors shall be permitted to reduce their pricing any time during the contract term.

3.7 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

3.8 Minimum/Maximum Obligations

Authorized Users are obligated to take 70% minimum (50% minimum for solar salt) of their filed requirements during the contract period and Contractors are obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt. However, Authorized Users with multiple delivery sites (e.g., NYSDOT, County Highways and NYS Thruway) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a Contractor per lot.

When the Authorized User is not able to take the minimum required amount, the salt Contractor will store salt for the Authorized User until December 31 of that calendar year (i.e., user did not take minimum by 8/31/20 – Contractor will store through 12/31/20) at a per ton rate. If storage is necessary for an Authorized User beyond 12/31/20, the salt Contractor may offer storage at a per ton per month rate. Delivery of stored salt between 9/1/20 and 5/31/21 shall meet the delivery requirements in Section 3.9 - *Delivery Terms*.

CONTRACTOR STORAGE CHARGES:

Contractor Name	Price/Ton to Store from 9/1/2021 to 12/31/2021	Price/Ton/Month to Store after 12/31/2021
American Rock Salt Co LLC	$3.60/ton	$3.60/ton/month
Apalachee LLC	$3.00/ton	$1.00/ton/month
Atlantic Salt Inc	$3.50/ton	$3.50/ton/month
Cargill Inc d/b/a Cargill Inc -Salt, Road Safety	$3.60/ton	$11.00/ton/month

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3.9 Delivery Terms

Road salt and treated salt shall be shipped bulk delivery as outlined below.

3.9.1 Delivery Schedule

The *Delivery Schedule* for this Award is included as Attachment 12. It is provided as a guide to indicate proposed delivery points and estimated annual requirements. Contractors shall be obligated to add to the delivery schedule any State agency that submits filed requirement(s) on or before December 31. Any State agency that submits filed requirement(s) after December 31 shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's option only.

Any political subdivision or other non-state entity which has not filed a requirement with OGS Procurement Services as of the date of the bid opening shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's option only, and upon placement of valid purchase order to the Contractor's address as indicated in the award.

Contractors will be advised regarding political subdivisions or other non-State entities which have filed on a timely basis but do not appear on the delivery schedule.

3.9.2 Compliance with Delivery Schedule & Purchase Orders

Delivery shall be made in accordance with instructions on the Purchase Order from each agency and delivery instructions/conditions as shown in the referenced Delivery Schedule. Contractors should carefully review the delivery schedule and make note of these requirements. If there is a discrepancy between the purchase order and what is listed in the contract and/or within the delivery schedule, it is the Contractor's obligation to seek clarification from the ordering agency and, if applicable, from OGS Procurement Services.

3.9.3 Ordering timeliness

Orders must be placed before 2 p.m. Any orders placed after 2 p.m. shall be deemed as being placed the next business day.

3.9.4 Holidays/Weekends

If the scheduled delivery is to occur on a holiday or weekend, the next weekday will be the delivery date, unless the Contractor and the ordering agency mutually agree differently.

3.9.5 Prevention of Contamination

Delivery trucks shall be inspected (and cleaned if necessary) prior to loading to prevent contamination of salt loads by residual materials found in the truck bodies. Any loads found to be contaminated may be subject to rejection with all related cleanup and/or replacement costs to be borne by the supplier.

All shipments of salt shall be totally covered with a waterproof, non-porous tarpaulin or similar sheeting material. Torn, ripped or mesh coverings may be cause for rejection of shipment. Also, evidence of free-flowing water/brine in particular shipments may be cause for rejection.

Upon inspection of delivered salt, the material shall be uniform in appearance, free flowing and free from visual evidence of foreign matter including but not limited to dirt, stone, chips, trash or any other material that could reasonably be expected to interfere with the use, handling or storage of the salt. Salt shall be received in a free-flowing and usable condition.

3.9.6 Acceptance

The salt may be rejected if it fails to conform to any of the requirements of this Award or the specifications in Attachment 9 – *Road & Treated Salt Specifications*.

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3.9.7 Weight Tickets

All shipments of bulk salt shall be accompanied by a weight ticket of a licensed weigh master indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source. The certification must bear the weigh master's signature; weights shall be recorded from a scale equipped with a weight printing device. Handwritten weights are not acceptable.

3.9.8 Delivery Timetable

Completed delivery, at the latest, is required as follows (see Section 3.9.8.1 – *Delivery Time Table Example* for more information):

Orders Placed on	Single Order Schedule			
	First 600 Tons or Less Delivered by	601 - 800 Tons Delivered by	801 -1000 Tons Delivered by	Over 1000 Tons Delivered by
Monday	Thursday	Friday	Monday	200 Tons/Day/Location
Tuesday	Friday	Monday	Tuesday	200 Tons/Day/Location
Wednesday	Monday	Tuesday	Wednesday	200 Tons/Day/Location
Thursday	Tuesday	Wednesday	Thursday	200 Tons/Day/Location
Friday	Wednesday	Thursday	Friday	200 Tons/Day/Location

Contractor is required to deliver orders of 600 tons or less within three (3) Business Days. Contractor will be required to deliver a minimum of 200 tons per day after the initial 600-ton delivery. Authorized Users are advised not to place orders that exceed their maximum storage capacity. Multiple orders placed for the same delivery site that overlap will be viewed as a single order, still subject to the overall 200 tons per day minimum delivery.

3.9.8.1 Delivery Time Table Example

An order of 1,400 tons placed on Monday shall be delivered as follows (or sooner):

Order Placed on	Thursday Delivery	Friday Delivery	Monday Delivery	Tuesday Delivery	Wednesday Delivery
Monday	600 tons	200 tons	200 tons	200 tons	200 tons

Note: Authorized users are advised that their supply should be replenished on an ongoing basis, as it is depleted. It is not advised to run down the supply of product until it is dangerously low. This can cause undue stress to the delivery network during high levels of demand, which can be compounded by inclement weather conditions that adversely impact transit times for deliveries.

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3.9.9 Delivery Rate Guarantees/Exceptions

The guaranteed delivery in number of Business Day(s) required to make delivery after receipt of a Purchase Order shall be applicable in accordance with Section 3.9.8 - *Delivery Timetable*, and the Contractor is obligated to honor same from September 1 through May 31 of each year. However, from June 1 through August 31 of each year, delivery shall be at the discretion of the Contractor.

Contractor shall notify the Authorized User and OGS Procurement Services promptly regarding anticipated performance issues such as low supply, late delivery, lack of Product, and insufficient hauling capability. Failure by the Contractor to do so may result in liquidated damages and/or a buy against in accordance with Section 3.9.10 - *Liquidated Damages* and Section 3.9.11 - *Buy Against.*

Although Contractors are expected to make every effort to meet these delivery timeframes, some exceptions may be made for extreme road and/or weather conditions (e.g. roadways that are closed, obstructed, or impassable due to winter weather conditions). Allowances for exceptions must be approved by the Office of General Services, Procurement Services, whose decision shall be final. Delivery will be allowed during the weekend and on State holidays only if the Contractor and the ordering Authorized User mutually agree. No additional remuneration will be made for a Saturday, Sunday or holiday delivery.

3.9.10 Liquidated Damages

During the period September 1 through May 31, deliveries that do not meet the daily delivery tonnage requirements and/or the established order completions period specified, shall be considered cause for interruption of the proper implementation of the State's winter roadway safety. If it is determined that the interruption is caused by non-performance or negligence on the part of the Contractor, OGS Procurement Services and the Contractor presume that in the event of any such delay, the amount of damage that is sustained from a delay in daily delivery tonnage requirements and/or the established order completions period specified, is the greater of either:

1. $100.00 per Business Day per Purchase Order or individual orders against blanket Purchase Orders, as applicable; or
2. 1% of the value of the Purchase Order or individual orders against blanket Purchase Orders, as applicable, for each Business Day that the breach is not cured by the Contractor.

OGS Procurement Services and the Contractor agree that in the event of any such delay the awarded Contractor shall pay such amount as liquidated damages.
During times when an Authorized User must work with the Contractor to prioritize/coordinate deliveries due to delays, the Contractor is not absolved from meeting delivery timetable requirements at other locations. During times of extreme weather activity that impact deliveries system-wide, OGS may consider waiving liquidated damages

The following options may be used by Authorized Users for deducting amounts due to the Contractor because of liquidated damages:

1. Authorized User may deduct such amount from any money payable to the Contractor, or
2. Authorized User may bill the Contractor separately.

Costs incurred include, but are not limited to the following:

- Increased personnel costs due to demurrage;
- Increased costs incurred for treatment of salt on hand to extend usage;
- Costs for clean-up after required application of alternative snow and ice control materials (i.e. salt mixed with sand).

Liquidated damages may be placed on the Contractor by the Authorized User only after consultation with the Contractor and OGS Procurement Services. Claims for liquidated damages must be requested within thirty (30) days of the event. Damages must be memorialized by supporting documentation that must be provided to OGS Procurement Services for review and approval.

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3.9.11 Buy Against

Contractors must supply Product in accordance with the terms of the Contract and instructions on Purchase Orders. In the event of the Contractor's failure to deliver in accordance with Contract requirements, purchase of the undelivered quantity from the Emergency Standby Contract (Lot IV) or the open market at the Contractor's expense may be authorized by OGS. Such authorized purchases will result in chargeback of the cost above the Contract price to the Contractor who fails to comply with delivery terms. **The Authorized User must make OGS Procurement Services aware of the non-delivery and allow OGS Procurement Services to ascertain if immediate delivery can be made by the Contractor prior to obtaining authorization** from OGS Procurement Services to make an emergency standby purchase or a purchase on the open market.

If open market Treated Salt is not readily available, the Authorized User at their discretion may purchase Road Salt, in lieu of Treated Salt, for the undelivered quantity from the Emergency Standby Road Salt Contract (Lot IV), and if not available through the Emergency Standby Contract, from the open market. Any price difference above the Contract price of Treated Salt (Lot II and/or Lot III) will be deducted from future payments or billed to the Treated Salt Contractor. The Contractor of the Road Salt in this case may not be the non-performing Contractor of the Treated Salt (Lot II and/or Lot III). The Authorized User must obtain authorization to use this option also from OGS Procurement Services.

3.10 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure.*

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

3.11 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders.* Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

3.12 Minimum Order

The minimum order for this Contract is 22 tons.

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3.13 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: https://bsc.ogs.ny.gov/content/vendor-information.

3.14 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss*, *Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

3.15 Extension of Use

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

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3.16 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: https://nyspro.ogs.ny.gov/content/nys-emarketplace-1

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: http://www.sfs.ny.gov and http://www.osc.state.ny.us/agencies/guide/MyWebHelp/.

3.17 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

3.18 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the first day of each month. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the monthly report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBEs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

3.19 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

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B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over $25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and any subcontractor.

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3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

A. OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) during the term of this Contract in the following counties: **Albany, Allegany, Bronx, Chautauqua, Columbia, Dutchess, Erie, Genesee, Greene, Herkimer, Kings, Lewis, Monroe, Nassau, New York, Niagara, Onondaga, Orange, Orleans, Queens, Rensselaer, Richmond, Saratoga, Schenectady, Seneca/Cayuga, Suffolk, Sullivan, Ulster, Warren, Wayne, and Wyoming.** The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development [(518) 292-5250; (212) 803-2414; or (716) 846-8200] to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

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C. By entering into the Contract, Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.

D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.

E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

(a) If a Bidder fails to submit an MWBE Utilization Plan;
(b) If a Bidder fails to submit a written remedy to a notice of deficiency;
(c) If a Bidder fails to submit a request for waiver; or
(d) If OGS determines that the Bidder has failed to document good faith efforts.

G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

H. Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.

B. In accordance with 5 NYCRR § 142.7, a Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

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VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero-dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "Introduction to the System - Vendor training" and "Contract Compliance Reporting - Vendor Training" to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/events.asp

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on "Account Lookup" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "Change Info." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "Request New User." When identifying the person responsible, please add "-MWBE Contact" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: https://www.ogs.ny.gov/MWBE/Forms.asp

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

3.20 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: https://ogs.ny.gov/Veterans/default.asp

Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: https://ogs.ny.gov/Veterans/default.asp

3.21 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

3.22 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Award. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials.*

3.23 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at https://www.ogs.ny.gov/greenny/. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

3.24 Consumer Products Containing Mercury

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

3.25 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy-duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy-duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Contractor hereby certifies and warrants that all heavy-duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

3.26 Overlapping Contract Products

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

3.27 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

3.28 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

3.29 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

3.30 Samples

A. **Contract Supplied Samples -** The Commissioner reserves the right to request from the Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Contractor's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Contractor or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Contractor, at the Contractor's expense and risk. Where the Contractor has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

C. **Conformance with Samples** - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Award. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Award, the Commissioner may cancel the Contract at the expense of the Contractor.

D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Award, Contractor samples consumed or rendered useless by testing will not be returned to the Contractor. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

E. **Requests for Samples by Authorized Users** - Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

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SECTION 4: PRICING

Please refer to the price pages' link published at the webpage for this contract at the OGS – Procurement Services website:

http://www.ogs.ny.gov/purchase/spg/lists/gp_018.asp

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

State of New York
Office of General Services
PROCUREMENT SERVICES
Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.:_____ **Contractor.**_____

Describe Product* Provided (Include Item No., if available):_____

***Note**: "**Product**" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments:_____

_____

_____(over)

Agency:_____ Prepared by:_____

Address:_____ Title:_____

_____ Date:_____

_____ Phone:_____

_____ E-mail:_____

Please detach or photocopy this form & return via email to OGS.sm.SST roadsalt@ogs.ny.gov or mail to:

OGS PROCUREMENT SERVICES
Customer Services, 38th Floor
Attn: Brandy Alden
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
* * * * *

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

AGREEMENT

Let this document stand as an Agreement between AMERICAN ROCK SALT CO., LLC., 5520 ROUTE 63, PO BOX 190, MOUNT MORRIS, NY 14510 and the Town of Amherst permitting the Town of Amherst to participate in the purchase of :

NEW YORK STATE-OFFICE OF GENERAL SERVICES - ROAD SALT
GROUP 01800; AWARD 23175; PC #68889
9/1/2018 through 8/31/2022
ROAD SALT DELIVERED AT 7,000 TONS AT $58.33 PER TON PLUS/MINUS SURCHARGE.

from American Rock Salt Co., LLC. Under NYS - OGS ROAD SALT Specifications of: Group 01800; Award 23175; PC68889 for the period from 9/1/2018 TO 8/31/2022.

Agreed to and Accepted by:

AMERICAN ROCK SALT CO., LLC.

By: _____
Signature

_____
Print Name

_____
Title

Date: _____

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian Kulpa
Supervisor

Date: _____

Attachment: american rock salt (RES-2021-790 : Authorize Supervisor to Sign Contract to Piggyback American Rock Salt CRS #2860)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 24709 **RESOLUTION 2021-791** **ADOPTED**

Authorize Supervisor to Sign NOCO ENERGY CORP. - Diesel Fuel- CRS #2866

The Highway Department requests the Town Board give the Town Supervisor permission to sign a contract with NOCO ENERGY CORPORATION, 2440 Sheridan Drive, Tonawanda, NY 14150 and the Town of Amherst. Purchases are for diesel fuel, ultra-low sulfur and biodiesel based on NYS-OGS Group 05602, Award 23236, Contract PC# 69484 dated 08/27/2021 through 8/24/2023.

This contract is subject to the Contract Routing System (CRS#2866) and the approval of the Town Attorney.

9/13/2021
Consent

FINANCIAL IMPACT:

TOWN WIDE

VARIOUS TBD

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

AGREEMENT

Let this document stand as an Agreement between NOCO ENERGY CORP.
and the
Town of Amherst permitting the Town of Amherst to participate in the purchase of diesel fuel from:

NOCO ENERGY Corporation under the New York State OGS Contact Group 05602; Award number 23236; PC # 69484; dated 08/27/2021 through 08/24/2023.
for diesel fuel, ultra-low sulfur and biodiesel.

Agreed to and Accepted by:

NOCO ENERGY CORPORATION

By: _____
Signature

Joseph Gross
Print Name

V.P.
Title

Date: 8-30-21

Agreed to and Accepted by:

TOWN OF AMHERST

By: _____
Brian Kulpa
Supervisor

Date: _____

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

Addendum to Contract VENDOR ON SITE Major

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. Umbrella coverage shall be in an amount of at least $5,000,000.00.

(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: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

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: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

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:

NOCO Energy Corp.
Print Name of Company

By: _____
Signature

Joseph Gross
Printed name

Date: 8-30-21

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Packet Pg. 646

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

12.M.3.a

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: NOCO Energy Corp

Signature: [signature]

Print Name: Joseph Gross

Title: V.P.

Date: 8-30-21

Sworn To Before Me This

30 Day of August, 2021

Cheryl L. Cruse

Notary Public

CHERYL I. CRUSE
Notary Public - State of New York
NO. 01CR6228581
Qualified in Erie County
My Commission Expires 9/20/2022

Revised 4.2017

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 4/30/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLI BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORI 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 endor if SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statemen this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
The Graham Company
The Graham Building
1 Penn Square West
Philadelphia PA 19102-

CONTACT NAME: Joe Holden
PHONE (A/C, No, Ext): 215-567-6300 FAX (A/C, No): 215-933-3988
E-MAIL ADDRESS: HOLDEN_UNIT@grahamco.com

INSURER(S) AFFORDING COVERAGE	NAI
INSURER A : Ironshore Specialty Ins. Co.	254
INSURER B : Zurich-American Insurance Company	165
INSURER C : Lloyds of London	157
INSURER D : Ace American Insurance	226
INSURER E : AIG Speciality Insurance Co.	268
INSURER F :	

INSURED NOCOENE-01
NOCO Energy Corp.
2440 Sheridan Drive, Suite 301
Tonawanda, NY 14150

COVERAGES **CERTIFICATE NUMBER:** 810254656 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PER INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH T CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TER 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	
B	X COMMERCIAL GENERAL LIABILITY	Y		GLO369758413	5/1/2021	5/1/2022	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY PRO-JECT X LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
B	AUTOMOBILE LIABILITY			BAP369758313	5/1/2021	5/1/2022	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
							PHYS DAMAGE DEDUCT	$ SEE BELOW
C	UMBRELLA LIAB X OCCUR			21*RENMA2100055-300188*03	5/1/2021	5/1/2022	EACH OCCURRENCE	$ 5,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC369758213	5/1/2021	5/1/2022	X PER STATUTE / OTH-ER	
	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] N/A (Mandatory in NH)						E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
D	Property			EPRN18225591	5/1/2021	5/1/2022	Loss Limit:	$10,000,000
A	Pollution			003620200	5/31/2018	5/31/2021	$10,000,000/Occ.	$10,000,000/Ag
E	Storage Tank Pollution			ST3779518	5/1/2021	5/1/2022	$1,000,000 Ea.Incidnt	$2,000,000 Agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Auto Deductibles: $250 - Collision & Comprehensive (Private Passenger Vehicles); $500 - Collision & Comprehensive (Commercial Vehicles)
Garage Keeper's Liability Limit $1,000,000

Town of Amherst is added as an additional insured on a Primary/Non-Contributory basis on the above General Liability policy if required by written contract.

CERTIFICATE HOLDER

Town of Amherst
5583 Main Street
Williamsville NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFO THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
Kenneth L. Swell

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Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (use street address only)	1b. Business Telephone Number of Insured
NOCO Energy Corp. 2440 Sheridan Drive, Suite 301 Tonawanda, NY 14150	716-833-6206
Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)*	1c. NYS Unemployment Insurance Employer Registration Number of Insured 1d. Federal Employer Identification Number of Insured or Social Security Number 16-0727383
2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) The Town of Amherst Building Department 5583 Main Street Williamsville, NY 14221 Phone: 716-631-7080 Fax: 716-631-7192	3a. Name of Insurance Carrier Zurich American Insurance Company 3b. Policy Number of Entity Listed in Box "1a" WC 3697582-13 3c. Policy effective period 05/01/2021 to 05/01/2022 3d. The Proprietor, Partners or Executive Officers are ☒ included. (Only check box if all partners/officers included) all ☐ excluded or certain partners/officers excluded.

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3 on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancel 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: Susan B. Kendziora
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Susan B. Kendziora 03/26/2021
(Signature) (Date)

Title: Vice President-Enterprise Support Operations

Telephone Number of authorized representative or licensed agent of insurance carrier: 800-382-2150

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.g

INTERNAL USE ONLY

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only) NOCO Energy Corp. 2440 Sheridan Drive Tonawanda, NY 14150 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 (716) 614-1273 1c. Federal Employer Identification Number of Insured or Social Security Number 16-0727383
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst 5583 Main St Amherst, NY 14221	3a. Name of Insurance Carrier Lincoln Life & Annuity Company of New York 3b. Policy Number of Entity Listed in box "1a" 000010235719 3c. Policy effective period: 01/01/2018 to 01/01/2023

4. Policy provides the following benefits:
- ☒ A. Both disability and paid family leave benefits.
- ☐ B. Disability benefits only.
- ☐ C. Paid family leave benefits only.

5. Policy covers:
- ☒ A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- ☐ B. Only the following class or classes of the employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above ar that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 06/01/2021 By Paul Martin

(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number 800-423-2765 Name and Title Paul Martin VP, Group Claims

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 th carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by NYS Workers' Compensation Board (Only if box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____

(Signature of 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 I insurance agents of those insurance carriers are authorized to issue Form DB-120.1. **Insurance brokers are NOT authorized to iss form.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

State Contract Award Notices - Commodities

Award Description	
Award Document	**Contract Period:** August 27, 2021 - August 24, 2023
Contract Updates	**Group:** 05602 **Award:** 23236 (Replaces 23094 & 23216)
Pricing Information	**Use of Contracts:** All State Agencies and Political Subdivisions
Delivery Schedules {State & Non-State}	**Contact Person:** Megan Li **Telephone:** (518) 473-8859
Customer Service	**Contract Issued:** **August 25, 2021** Contract Updated: None

Description:

The purpose of this Contract is to provide State and Non-state agencies with a method to procure various types of Ultra-Low Sulfur (ULS) diesel and biodiesel fuel for on-road use only. The product shall be furnished, delivered and unloaded by the Contractor to Authorized Users' storage tanks, as specified herein. For current contract prices, please go to the Pricing Information link on the Award page.

There are 0% SDVOB participation goals on this contract.
There are overall MWBE participation goals of 10%-20% in 22 counties.

Install Free Adobe Acrobat Reader for PDF Documents

The above PDF files are available in text by calling Customer Services at (518) 474-6717.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

NEW YORK STATE OF OPPORTUNITY. | Office of General Services
Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | https://ogs.ny.gov/procurement | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification

Title	:	**Group 05602 – Ultra-Low Sulfur Diesel & Biodiesel Fuel (On-Road Use Only) (Statewide)** **Classification Code(s): 15**
Award Number	:	**23236** **(Replaces Awards 23094 & 23216)**
Contract Period	:	**August 27, 2021 – August 24, 2023**
Bid Opening Date	:	**July 7, 2021**
Date of Issue	:	**August 25, 2021**
Specification Reference	:	**As Incorporated Herein**
Contractor Information	:	**Appears on Pages 2 of this Award**

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Megan Li Title : Contract Management Specialist Phone : 518-473-8859 E-mail : Cheung.Li@ogs.ny.gov	**Procurement Services Customer Services** Phone : 518-474-6717 E-mail : customer.services@ogs.ny.gov

Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.

Description

The purpose of this Contract is to provide State and Non-state agencies with a method to procure various types of Ultra-Low Sulfur (ULS) diesel and biodiesel fuel for on-road use only. The product shall be furnished, delivered and unloaded by the Contractor to Authorized Users' storage tanks, as specified herein. For current contract prices, please go to the Pricing Information link on the Award page.

There are 0% SDVOB participation goals on this contract.
There are overall MWBE participation goals of 10%-20% in 22 counties.

PR # 23236

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

NOTE: See individual contract items to determine actual awardees.

Contract Number	Contractor & Address	Contact Information	FEIN / NYS Vendor ID
PC69479 SB	**Buell Fuel, LLC** 2676 State Route 12B Deansboro, NY 13328	Julia Brouillette Contracts Manager Phone: 315-841-3000 Email: Julia@buellfuel.com **Customer Service Contact for NYS Contract Orders during Normal Business Hours:** M – F 7:30am – 4:30pm, Sat 8am – 12pm Customer Service Representative Phone: 315-841-3000 Email: info@buellfuel.com **Person to Contact to Escalate Contract Orders:** AJ Buell Lead Dispatcher Phone: 315-841-3000 Email: AJ@buellfuel.com **Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency:** Garth Curtis Director of Bids & Supply Phone: 315-841-3000 Cell: 315-404-3899 Email: Garth@buellfuel.com **Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** Michael Buell Owner Phone: 315-841-3000 Cell: 315-941-9716 Email: MB@buellfuel.com	760826999 1000009690
PC69480	**Global Montello Group Corp.** 8000 South Street Waltham, MA 02454	Bid Department Bid Personnel Phone: 781-398-4003 Email: smartbuydispatch@globalp.com **Customer Service Contact for NYS Contract Orders during Normal Business Hours:** 24/7/365 Dispatch Department Dispatch Personnel Toll-Free: 800-826-5686 Email: smartbuydispatch@globalp.com **Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency:** Dispatch Department Toll-Free: 800-826-5686 Email: smartbuydispatch@globalp.com **Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** Mark Romaine Chief Operating Officer Phone: 781-398-4003 Email: MRomaine@globalp.com	043443028 1100005467

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

PC69481	**Goetz Energy Corp. dba** Kurk Fuel Company 1319 Military Road Buffalo, NY 14217	Mary Burke Fuels Account Manager Phone: 716-824-1298 Email: MBurke@kurkfuel.com **Customer Service Contact for NYS Contract Orders during Normal Business Hours:** M-F 8am-5pm Mary Burke Fuels Account Manager Phone: 716-824-1298 Email: MBurke@kurkfuel.com **Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency:** Mary Burke Fuels Account Manager Phone: 716-824-1298 Cell: 716-867-9547 Email: MBurke@kurkfuel.com **Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** Mike Asher Dispatch Phone: 716-876-4324 Cell: 716-480-3316 Email: customerservice@goetzenergy.com	160450990 1000007438
PC69482	**Main Brothers Oil Co. Inc dba** Main Care Energy 1 Booth Lane Albany, NY 12205 Accepts NYS Purchasing Card for orders up to and including $15,000	Greg Childs VP Phone: 800-542-5552 Email: GChilds@maincareenergy.com **Customer Service Contact for NYS Contract Orders during Normal Business Hours:** 24 Hours, 7 days a week Customer Service Phone: 800-542-5552 Email: customercare@maincareenergy.com **Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency:** Greg Childs VP Phone: 800-542-5552 Cell: 518-365-7105 Email: GChilds@maincareenergy.com **Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** David Borger EHS Director Phone: 800-542-5552 Cell: 518-376-1782 Email: DBorger@maincareenergy.com	146024844 1000007301
PC69483	**Mirabito Holdings, Inc. dba** **Mirabito Energy Products** The Metrocenter 49 Court Street, P.O. Box 5306 Binghamton, NY 13902	Joe D'Esti Pricing and Bid Administrator Phone: 607-352-2958 Toll-Free: 800-934-9480	150552668 1000007358

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

		Email: Joe.Desti@mirabito.com **Customer Service Contact for NYS Contract Orders during Normal Business Hours:** M – F 8:00am – 5:00pm Paul Gunther Customer Service Manager Phone: 607-352-2830 Toll-Free: 800-934-9480 Email: Paul.Gunther@mirabito.com **Person to Escalate Contract Orders:** Jason Mirabito V.P. Wholesale Fuels Phone: 607-352-2930 Cellphone: 607-651-5000 Email: Jason.Mirabito@mirabito.com **Emergency Contact After Normal Business Hours or Weekend/Holidays:** George Mister Transportation Manager Phone: 607-352-2811 Toll-Free: 800-934-9480 Email: George.Mister@mirabito.com **Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** Jason Mirabito V.P. Wholesale Fuels Phone: 607-352-2930 Cell: 607-651-5000 Email: Jason.Mirabito@mirabito.com **Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** Justin Fisher V.P. Fuel Supply Phone: 607-352-2845 Cell: 607-435-6074 Email: Justin.Fisher2@mirabito.com	
PC69484	**NOCO Energy Corp.** 2440 Sheridan Drive Tonawanda, NY 14150	Joe Gross Director of Sales Phone: 716-504-3308 Toll-Free: 716-435-7309 Email: JGross@noco.com **Customer Service Contact for NYS Contract Orders during Normal Business Hours:** Monday to Friday 7:30am to 5:00pm Customer Fuel Order Desk Toll-Free: 800-601-6626 fuelorder@noco.com **Person to Contact to Escalate Contract Orders:** Alicia Lineberger Customer Service Manager Phone: 716-614-1148 Cell: 716-341-9722	160727383 1000007468

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

		Email: ALineberger@noco.com **Emergency Contact for After Hours, Weekends, Holidays, and/or NYS Declared Emergencies:** Kevin Galas Transportation Director Phone: 716-435-7309 Email: KGalas@noco.com	
PC69485	**Sprague Operating Resources LLC** 185 International Drive Portsmouth, NH 03801	Barry Panicola Managing Director, Commercial Sales and Transportation Phone: 516-622-7091 Toll-Free: 877-689-1880 Email: contractmgmt@spragueenergy.com **Contact for After Hours or Weekend/Holidays, or NYS Declared Emergency:** 24/7/365 Customer Care Team Toll-Free: 800-880-6037 Email: Orders@spragueenergy.com **Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** Barry Panicola Managing Director, Commercial Sales and Transportation Phone: 516-622-7091 Cell: 516-250-8861 Email: dispatch@spragueenergy.com **Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency):** Anthony Guidece Manager, Fleet Operations Phone: 516-622-7007 Toll-Free: 800-250-0345	020415440 1000005203

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY NEW YORK STATE PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

RS, RP, RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

NOTE TO AUTHORIZED USERS

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

AWARDS BY COUNTY

The pricing included in this section is the original pricing bid by the contractors. For current pricing, please go to the Pricing Information link on the Award page.

County	Fuel Type	Price Per Gallon 2D	Price Per Gallon 1D	Volume Discount (5,500 gal or more)	Contractor
Albany	ULSD 2D Regular	$2.1510	$2.2470	$0.0000	Main Care Energy
Albany	ULSD 2D Premium	$2.1649	$2.2610	$0.0000	Main Care Energy
Albany	ULSD 2D Bio (B5)	$2.4154	$2.3130	$0.0000	Main Care Energy
Allegany	ULSD 2D Regular	$2.2665	$2.5365	$0.0000	Mirabito Energy Products
Allegany	ULSD 2D Premium	$2.4273	$2.5352	$0.0200	NOCO Energy
Allegany	ULSD 2D Bio (B5)	$2.5010	$2.7710	$0.0000	Mirabito Energy Products
Bronx	ULSD 2D Bio (B5)	$2.3536	$2.2108	$0.0000	Sprague Operating Resources
Broome	ULSD 2D Regular	$2.2861	$2.4961	$0.0000	Mirabito Energy Products
Broome	ULSD 2D Premium	$2.3161	$2.5261	$0.0000	Mirabito Energy Products
Broome	ULSD 2D Bio (B5)	$2.8598	$3.0698	$0.0000	Mirabito Energy Products
Cattaraugus	ULSD 2D Regular	$2.3180	$2.5305	$0.0800	NOCO Energy
Cattaraugus	ULSD 2D Premium	$2.3380	$2.5405	$0.0800	NOCO Energy
Cattaraugus	ULSD 2D Bio (B5)	$2.5649	$2.5755	$0.0200	NOCO Energy
Cayuga	ULSD 2D Regular	$2.3153	$2.4654	$0.0000	Buell Fuel

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

County	Fuel Type	Price Per Gallon 2D	Price Per Gallon 1D	Volume Discount (5,500 gal or more)	Contractor
Cayuga	ULSD 2D Bio (B5)	$2.8598	$3.0698	$0.0000	Mirabito Energy Products
Chautauqua	ULSD 2D Regular	$2.2980	$2.4405	$0.0800	NOCO Energy
Chautauqua	ULSD 2D Premium	$2.3330	$2.4655	$0.0400	NOCO Energy
Chautauqua	ULSD 2D Bio (B5)	$2.5399	$2.5480	$0.0100	NOCO Energy
Chautauqua	ULSD 2D Bio (B10)	N/A	N/A	N/A	N/A
Chemung	ULSD 2D Regular	$2.4537	$2.6637	$0.0000	Mirabito Energy Products
Chemung	ULSD 2D Premium	$2.4837	$2.6937	$0.0000	Mirabito Energy Products
Chemung	ULSD 2D Bio (B5)	$2.8598	$3.0698	$0.0000	Mirabito Energy Products
Chenango	ULSD 2D Regular	$2.1676	$2.4076	$0.0000	Mirabito Energy Products
Chenango	ULSD 2D Bio (B5)	$2.9108	$3.1508	$0.0000	Mirabito Energy Products
Clinton	ULSD 2D Regular	N/A	N/A	N/A	N/A
Clinton	ULSD 2D Premium	N/A	N/A	N/A	N/A
Clinton	ULSD 2D Bio (B5)	N/A	N/A	N/A	N/A
Columbia	ULSD 2D Regular	$2.1970	$2.3560	$0.0000	Main Care Energy
Columbia	ULSD 2D Bio (B5)	$2.5139	$2.4220	$0.0000	Main Care Energy
Cortland	ULSD 2D Regular	$2.3337	$2.4775	$0.0000	Buell Fuel
Cortland	ULSD 2D Bio (B5)	$2.8598	$3.0698	$0.0000	Mirabito Energy Products
Delaware	ULSD 2D Regular	$2.5075	$2.6950	$0.0000	Mirabito Energy Products
Delaware	ULSD 2D Bio (B5)	$2.9754	$3.1629	$0.0000	Mirabito Energy Products
Dutchess	ULSD 2D Regular	$2.2421	$2.0233	$0.0000	Global Montello Group
Dutchess	ULSD 2D Premium	$2.2456	$2.0233	$0.0000	Global Montello Group
Dutchess	ULSD 2D Bio (B5)	$2.5939	$2.8409	$0.0000	Mirabito Energy Products
Erie	ULSD 2D Regular	$2.1880	$2.3755	$0.1400	NOCO Energy
Erie	ULSD 2D Premium	$2.1980	$2.3755	$0.1500	NOCO Energy
Erie	ULSD 2D Bio (B5)	$2.3780	$2.6355	$0.0000	Kurk Fuel Company
Erie	ULSD 2D Bio (B10)	N/A	N/A	N/A	N/A
Erie	ULSD 2D Bio (B20)	N/A	N/A	N/A	N/A
Essex	ULSD 2D Regular	N/A	N/A	N/A	N/A
Essex	ULSD 2D Premium	N/A	N/A	N/A	N/A
Essex	ULSD 2D Bio (B5)	N/A	N/A	N/A	N/A
Franklin	ULSD 2D Regular	N/A	N/A	N/A	N/A
Franklin	ULSD 2D Premium	N/A	N/A	N/A	N/A
Franklin	ULSD 2D Bio (B5)	N/A	N/A	N/A	N/A
Fulton	ULSD 2D Regular	$2.2648	$2.4511	$0.0000	Buell Fuel
Fulton	ULSD 2D Bio (B5)	$2.6107	$2.5051	$0.0000	Main Care Energy
Genesee	ULSD 2D Regular	$2.1980	$2.3855	$0.0300	NOCO Energy
Genesee	ULSD 2D Bio (B5)	$2.2530	$2.6555	$0.0000	Kurk Fuel Company
Greene	ULSD 2D Regular	$2.1830	$2.3560	$0.0000	Main Care Energy
Greene	ULSD 2D Bio (B5)	$2.5139	$2.4220	$0.0000	Main Care Energy
Hamilton	ULSD 2D Regular	$2.8648	$2.9971	$0.0000	Buell Fuel

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

County	Fuel Type	Price Per Gallon 2D	Price Per Gallon 1D	Volume Discount (5,500 gal or more)	Contractor
Herkimer	ULSD 2D Regular	$2.1926	$2.1394	$0.0000	Buell Fuel
Herkimer	ULSD 2D Premium	$2.2069	$2.1394	$0.0000	Buell Fuel
Herkimer	ULSD 2D Bio (B5)	$3.0108	$3.2508	$0.0000	Mirabito Energy Products
Jefferson	ULSD 2D Regular	$2.2887	$2.5781	$0.0000	Buell Fuel
Jefferson	ULSD 2D Premium	$2.3607	$2.6730	$0.0000	Buell Fuel
Jefferson	ULSD 2D Bio (B5)	$2.8864	$3.1264	$0.0000	Mirabito Energy Products
Kings	ULSD 2D Regular	$2.3706	$2.3083	$0.0000	Global Montello Group
Lewis	ULSD 2D Regular	$2.1937	$2.3392	$0.0000	Buell Fuel
Lewis	ULSD 2D Premium	$2.2243	$2.3392	$0.0000	Buell Fuel
Lewis	ULSD 2D Bio (B5)	$3.0608	$3.3008	$0.0000	Mirabito Energy Products
Livingston	ULSD 2D Regular	$2.1980	$2.4905	$0.0000	NOCO Energy
Livingston	ULSD 2D Premium	$2.2580	$2.4455	$0.0300	NOCO Energy
Livingston	ULSD 2D Bio (B5)	$2.5010	$2.7710	$0.0000	Mirabito Energy Products
Livingston	ULSD 2D Bio (B10)	$2.6679	$2.9379	$0.0000	Mirabito Energy Products
Madison	ULSD 2D Regular	$2.2437	$2.2771	$0.0000	Buell Fuel
Madison	ULSD 2D Premium	$2.2768	$2.2981	$0.0000	Buell Fuel
Madison	ULSD 2D Bio (B5)	$3.0108	$3.2508	$0.0000	Mirabito Energy Products
Madison	ULSD 2D Bio (B10)	$3.2269	$3.4669	$0.0000	Mirabito Energy Products
Monroe	ULSD 2D Regular	$2.1930	$2.3555	$0.0350	NOCO Energy
Monroe	ULSD 2D Premium	$2.2030	$2.3555	$0.0100	NOCO Energy
Monroe	ULSD 2D Bio (B5)	$2.5139	$2.7839	$0.0000	Mirabito Energy Products
Montgomery	ULSD 2D Regular	$2.2187	$2.3475	$0.0000	Buell Fuel
Montgomery	ULSD 2D Bio (B5)	$2.6107	$2.5051	$0.0000	Main Care Energy
Nassau	ULSD 2D Regular	$2.2056	$1.8433	$0.0000	Global Montello Group
Nassau	ULSD 2D Premium	$2.2341	$1.8433	$0.0000	Global Montello Group
Nassau	ULSD 2D Bio (B5)	$2.3565	$2.1319	$0.0000	Sprague Operating Resources
Nassau	ULSD 2D Bio (B10)	$2.6452	$2.1874	$0.0000	Sprague Operating Resources
New York	ULSD 2D Bio (B5)	$2.3536	$2.2046	$0.0000	Sprague Operating Resources
Niagara	ULSD 2D Regular	$2.1880	$2.3755	$0.1400	NOCO Energy
Niagara	ULSD 2D Premium	$2.1980	$2.3755	$0.1500	NOCO Energy
Niagara	ULSD 2D Bio (B5)	$2.3780	$2.6355	$0.0000	Kurk Fuel Company
Oneida	ULSD 2D Regular	$2.1727	$2.1271	$0.0000	Buell Fuel
Oneida	ULSD 2D Premium	$2.2347	$2.1571	$0.0000	Buell Fuel
Oneida	ULSD 2D Bio (B5)	$3.0108	$3.2508	$0.0000	Mirabito Energy Products
Onondaga	ULSD 2D Regular	$2.2629	$2.2375	$0.0000	Buell Fuel
Onondaga	ULSD 2D Premium	$2.1848	$2.4248	$0.0000	Mirabito Energy Products
Onondaga	ULSD 2D Bio (B5)	$2.5103	$2.7503	$0.0000	Mirabito Energy Products
Onondaga	ULSD 2D Bio (B10)	$2.6764	$2.9164	$0.0000	Mirabito Energy Products
Ontario	ULSD 2D Regular	$2.2487	$2.2875	$0.0200	NOCO Energy
Ontario	ULSD 2D Premium	$2.2587	$2.2875	$0.0200	NOCO Energy

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

County	Fuel Type	Price Per Gallon 2D	Price Per Gallon 1D	Volume Discount (5,500 gal or more)	Contractor
Ontario	ULSD 2D Bio (B5)	$2.4990	$2.7690	$0.0000	Mirabito Energy Products
Orange	ULSD 2D Regular	$2.2346	$2.0758	$0.0000	Global Montello Group
Orange	ULSD 2D Premium	$2.2381	$2.0758	$0.0000	Global Montello Group
Orange	ULSD 2D Bio (B5)	$2.5939	$2.8409	$0.0000	Mirabito Energy Products
Orange	ULSD 2D Bio (B10)	$2.7609	$3.0079	$0.0000	Mirabito Energy Products
Orleans	ULSD 2D Regular	$2.1505	$2.4205	$0.0000	Mirabito Energy Products
Orleans	ULSD 2D Bio (B5)	$2.4080	$2.6655	$0.0000	Kurk Fuel Company
Oswego	ULSD 2D Regular	$2.2048	$2.1596	$0.0000	Buell Fuel
Oswego	ULSD 2D Premium	$2.2346	$2.2066	$0.0000	Buell Fuel
Oswego	ULSD 2D Bio (B5)	$2.5103	$2.7503	$0.0000	Mirabito Energy Products
Otsego	ULSD 2D Regular	$2.3488	$2.5063	$0.0000	Buell Fuel
Otsego	ULSD 2D Bio (B5)	$2.9754	$3.1629	$0.0000	Mirabito Energy Products
Putnam	ULSD 2D Regular	$2.2502	$2.1314	$0.0000	Global Montello Group
Putnam	ULSD 2D Premium	$2.2637	$2.1314	$0.0000	Global Montello Group
Putnam	ULSD 2D Bio (B5)	$2.7687	$3.0157	$0.0000	Mirabito Energy Products
Queens	ULSD 2D Regular	$2.1674	$2.1257	$0.0000	Sprague Operating Resources
Rensselaer	ULSD 2D Regular	$2.1510	$2.2470	$0.0000	Main Care Energy
Rensselaer	ULSD 2D Premium	$2.1649	$2.2610	$0.0000	Main Care Energy
Rensselaer	ULSD 2D Bio (B5)	$2.4204	$2.3130	$0.0000	Main Care Energy
Rensselaer	ULSD 2D Bio (B10)	$2.5883	$2.3130	$0.0000	Main Care Energy
Richmond	ULSD 2D Regular	$2.6706	$2.4083	$0.0000	Global Montello Group
Rockland	ULSD 2D Regular	$2.2228	$2.0641	$0.0000	Global Montello Group
Rockland	ULSD 2D Premium	$2.2263	$2.0641	$0.0000	Global Montello Group
Rockland	ULSD 2D Bio (B5)	N/A	N/A	N/A	N/A
Rockland	ULSD 2D Bio (B20)	N/A	N/A	N/A	N/A
Saratoga	ULSD 2D Regular	$2.2060	$2.2650	$0.0000	Main Care Energy
Saratoga	ULSD 2D Premium	$2.2725	$2.1373	$0.0000	Global Montello Group
Saratoga	ULSD 2D Bio (B5)	$2.4954	$2.3130	$0.0000	Main Care Energy
Schenectady	ULSD 2D Regular	$2.1291	$2.3166	$0.0000	Mirabito Energy Products
Schenectady	ULSD 2D Premium	$2.2551	$2.2782	$0.0000	Sprague Operating Resources
Schenectady	ULSD 2D Bio (B5)	$2.3630	$2.3782	$0.0000	Sprague Operating Resources
Schoharie	ULSD 2D Regular	$2.3194	$2.4769	$0.0000	Buell Fuel
Schoharie	ULSD 2D Bio (B5)	$2.8754	$3.0629	$0.0000	Mirabito Energy Products
Schoharie	ULSD 2D Bio (B20)	$3.4792	$3.6667	$0.0000	Mirabito Energy Products
Schuyler	ULSD 2D Regular	$2.3437	$2.3975	$0.0000	NOCO Energy
Schuyler	ULSD 2D Bio (B5)	$2.9471	$3.1571	$0.0000	Mirabito Energy Products
Seneca	ULSD 2D Regular	$2.3030	$2.4868	$0.0000	Buell Fuel
Seneca	ULSD 2D Premium	$2.4437	$2.4725	$0.0100	NOCO Energy
Seneca	ULSD 2D Bio (B5)	$3.0098	$3.2198	$0.0000	Mirabito Energy Products

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

County	Fuel Type	Price Per Gallon 2D	Price Per Gallon 1D	Volume Discount (5,500 gal or more)	Contractor
St. Lawrence	ULSD 2D Regular	$2.3575	$2.3150	$0.0000	Buell Fuel
St. Lawrence	ULSD 2D Bio (B5)	N/A	N/A	N/A	N/A
St. Lawrence	ULSD 2D Bio (B10)	N/A	N/A	N/A	N/A
Steuben	ULSD 2D Regular	$2.3637	$2.3675	$0.0700	NOCO Energy
Steuben	ULSD 2D Premium	$2.4037	$2.4175	$0.0700	NOCO Energy
Steuben	ULSD 2D Bio (B5)	$2.6091	$2.8191	$0.0000	Mirabito Energy Products
Suffolk	ULSD 2D Regular	$2.2256	$1.8433	$0.0000	Global Montello Group
Suffolk	ULSD 2D Premium	$2.2291	$1.8433	$0.0000	Global Montello Group
Suffolk	ULSD 2D Bio (B5)	$2.3046	$2.1787	$0.0000	Sprague Operating Resources
Sullivan	ULSD 2D Regular	$2.2557	$2.3469	$0.0000	Global Montello Group
Sullivan	ULSD 2D Premium	$2.2592	$2.3469	$0.0000	Global Montello Group
Sullivan	ULSD 2D Bio (B5)	$2.6939	$2.9409	$0.0000	Mirabito Energy Products
Sullivan	ULSD 2D Bio (B10)	$3.6448	$3.8918	$0.0000	Mirabito Energy Products
Tioga	ULSD 2D Regular	$2.3399	$2.5499	$0.0000	Mirabito Energy Products
Tioga	ULSD 2D Bio (B5)	$3.0098	$3.2198	$0.0000	Mirabito Energy Products
Tompkins	ULSD 2D Regular	$2.3568	$2.5075	$0.0000	Buell Fuel
Tompkins	ULSD 2D Premium	$2.3924	$2.5275	$0.0000	Buell Fuel
Tompkins	ULSD 2D Bio (B5)	$3.0598	$3.2698	$0.0000	Mirabito Energy Products
Ulster	ULSD 2D Regular	$2.2594	$2.2047	$0.0000	Global Montello Group
Ulster	ULSD 2D Premium	$2.2634	$2.2047	$0.0000	Global Montello Group
Ulster	ULSD 2D Bio (B5)	$2.6189	$2.4220	$0.0000	Main Care Energy
Ulster	ULSD 2D Bio (B10)	$2.9529	$2.4220	$0.0000	Main Care Energy
Warren	ULSD 2D Regular	$2.2635	$2.2650	$0.0000	Main Care Energy
Warren	ULSD 2D Premium	$2.2774	$2.2790	$0.0000	Main Care Energy
Warren	ULSD 2D Bio (B5)	$2.5404	$2.3130	$0.0000	Main Care Energy
Washington	ULSD 2D Regular	$2.2275	$2.2650	$0.0000	Main Care Energy
Washington	ULSD 2D Premium	$2.2425	$2.2790	$0.0000	Main Care Energy
Washington	ULSD 2D Bio (B5)	$2.5404	$2.3130	$0.0000	Main Care Energy
Wayne	ULSD 2D Regular	$2.2437	$2.2875	$0.0200	NOCO Energy
Wayne	ULSD 2D Premium	$2.2737	$2.2875	$0.0200	NOCO Energy
Wayne	ULSD 2D Bio (B5)	$2.5048	$2.7748	$0.0000	Mirabito Energy Products
Westchester	ULSD 2D Regular	$2.2095	$2.0416	$0.0000	Global Montello Group
Westchester	ULSD 2D Premium	$2.2227	$2.0217	$0.0000	Global Montello Group
Westchester	ULSD 2D Bio (B5)	$2.3761	$2.3878	$0.0000	Sprague Operating Resources
Westchester	ULSD 2D Bio (B10)	$2.5192	$2.4316	$0.0000	Sprague Operating Resources
Westchester	ULSD 2D Bio (B20)	$2.8699	$2.5382	$0.0000	Sprague Operating Resources
Wyoming	ULSD 2D Regular	$2.2530	$2.4255	$0.0400	NOCO Energy
Wyoming	ULSD 2D Bio (B5)	$2.4080	$2.6655	$0.0000	Kurk Fuel Company

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

County	Fuel Type	Price Per Gallon 2D	Price Per Gallon 1D	Volume Discount (5,500 gal or more)	Contractor
Yates	ULSD 2D Regular	$2.3837	$2.4175	$0.0000	NOCO Energy
Yates	ULSD 2D Premium	$2.4337	$2.5175	$0.0000	NOCO Energy
Yates	ULSD 2D Bio (B5)	N/A	N/A	N/A	N/A

NEW ACCOUNTS

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

Contractors must notify OGS Procurement Services of any new business created from Authorized Users' requests for delivery, so that OGS Procurement Services can make adjustments to the delivery schedules to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not originally identified on the Delivery Schedules, within thirty (30) days after the first delivery is made.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Participation in Centralized Contracts. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the Price clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (https://online.ogs.ny.gov/purchase/snt/othersuse.asp). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

EXTENSION OF USE

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in this Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

ESTIMATED QUANTITIES

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of this Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

PRICE

Prices quoted shall be billed net per gallon, F.O.B. agency storage tanks. Prices quoted shall include all applicable customs, taxes, including LUST, license and research fees (e.g. NORA), and surcharges.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

Contract prices must be expressed in U.S. currency and shall be submitted to four (4) decimal places (priced in dollars per gallon).

Pricing for Contract purchases shall be based on the pricing in effect at the time the Authorized User places the order (Prompt Will-call). Authorized Users that are on automatic delivery shall be priced on the day of delivery, unless the Authorized User requests a delivery. The price shall then reflect the day of the order.

Pricing shall reflect the day of delivery for orders placed by the Authorized User that go beyond the guaranteed delivery timeframe of 48 (forty-eight) hours. For example, the Authorized User orders 500 gallons of diesel fuel on Wednesday, and requests that the delivery be made on the following Tuesday.

For situations where an Authorized user wants to place an order for an unusually large volume of fuel (e.g., 40,000 gallons or more than a truck load, or delivering over a period of time), the Contractor and Authorized User should contact OGS Procurement Services. OGS's intent is for all parties to have the same expectations for delivery and price.

Truck delivery ticket volumes and Contract User's gauged volumes must agree within a tolerance of 0.5% of the total delivered volume for delivery volumes greater than 500 gallons and up to 1% for delivery volumes less than or equal to 500 gallons. If the volume difference exceeds the tolerance level, the Contract User's measured volume, if available, will be used for invoice payment. Contract Users reserve the right to reject "rogue" trucks which have been identified as having repeated meter inaccuracies. Trucks without sealed and calibrated meters will not be permissible for deliveries.

It shall be the Contractor's responsibility to satisfy Authorized User requirements by furnishing blended product when called for during the time period indicated in the Solicitation. Any special allowances were not included in the bid price as they could not be considered in evaluating bids. However, if the Contractor extends such allowances during the term of this Contract to Federal, State, Local Governments or to commercial users in the normal course of doing business, New York State requires that such allowances will also be available to the State in the maximum amount extended to others who contract to purchase fuel oil under similar contractual terms and conditions.

Contract prices shall be firm except that price revisions will be permitted in accordance with the Price Adjustments/Revisions clause set forth in this Contract and with respect to certain taxes and duties as follows:

The price shall include all applicable Federal, State, Local taxes and duties as stated in Appendix B, clause 8, Taxes.
NOTE: The State of New York and its political subdivisions are exempt from New York State and local sales taxes and federal excise taxes.

ORDERING

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, Purchase Orders. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.
All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

MINIMUM ORDER

Minimum delivery shall be 250 gallons at each delivery location (site) as determined by the delivery schedule. Deliveries under 250 gallons are at the Contractor's option, except for tank top-offs for testing.

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All deliveries requested by an Authorized User of less than the minimum order size, including tank top-offs for tank testing, shall qualify for contract pricing. In addition, the following surcharge may be utilized by the Contractor (except for automatic replenishment):

Quantity Delivered (in gallons)	Optional Surcharge
Under 250	$50.00

Upon written direction by OGS, an Authorized User shall have one (1) delivery per tank per contract year for tank top-off testing that is exempt from any minimum order surcharge.

Determination for total gross tank capacity shall include all manifold tanks. All locations granted a request from the Contractor for "automatic replenishment", per the Automatic Replenishment clause of this Contract, shall be exempt from minimum order requirements, including other factors out of the control of Authorized Users (e.g., short filling, mechanical issues, inadequate fuel supply). In no case shall a surcharge be applied to a location while on "automatic replenishment".

PURCHASING CARD ORDERS

Contractor shall indicate if it will accept the New York State Procurement Card. For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Purchasing Card), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

INVOICING AND PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, Contract Invoicing.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Customer Delivery Location ID Number as shown on Delivery Schedule (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service/Delivery (if applicable)

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: https://bsc.ogs.ny.gov/content/vendor-information.

In billing for winter mixes, invoices must include current Contract price for each grade, type of mixture furnished and computation of total price. Invoices should be formatted as per the example below:

EXAMPLE - Delivery of 4000 gallons of 2D/1D winter mix at a 1/1 ratio:

2,000 gals. × Adjusted 2D price = total cost of 2D product
\+ 2,000 gals. × Adjusted 1D price = total cost of 1D product
Invoice Total (Total cost for delivery)

NOTE: If additives rather than kerosene is used to provide winter protection, the Contractor is allowed to charge market price for the additive, and as with kerosene, list the price as a separate line item on the invoice.

PRODUCT DELIVERY

Delivery of all Contract Products shall be made in accordance with Appendix B, Product Delivery and Shipping/Receipt of Product. Delivery shall be made as specified and in accordance with instructions furnished with each order, unless otherwise directed in writing. Contractor must be prepared, at all times, to make prompt delivery. Every Contract states what the maximum time a delivery will take from the moment of order, but the time shall never exceed 24 hours. In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Should there be a State declared emergency, an after-hours or weekend emergency, or should an agency run out of fuel at any time creating an emergency situation, the Contractor shall be required to provide product within eight (8) to twelve (12) hours of a telephone call from the agency.

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS, Procurement Services. On occasion, to prevent fuel run outs during storms or other emergency situations, the Contractor must allow Authorized Users the flexibility to manually schedule deliveries to top-off tank inventories. Normal deliveries are considered to take place Monday through Friday (8:00 am - 5:00 pm). Saturday/Sunday deliveries are not standard and are to be made on an emergency basis (and not a regular basis) ONLY, or if a run out is imminent before the next normal delivery day. Delivery of fuel should give first priority to "human needs" customers.

Failure to make prompt delivery may result in an Authorized User's submission of a Contract Performance Report to OGS. Per Appendix B, Section 48(a), (d), and (e), the Authorized User shall have the right to purchase sufficient diesel fuel on the open market to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

Authorized Users shall be responsible for ensuring that tanks are accessible to the Contractor. Authorized Users should also make certain that receiving personnel are available at time of delivery. Failure of the Authorized User to make appropriate delivery arrangements, which prevents the delivery of product upon Contractor's arrival at delivery site, may result in a charge to the Authorized User for the Contractor's transportation costs. The Contractor must notify the Authorized User of the attempted delivery prior to charging for any future delivery attempts for the same circumstance. The Contractor must state the amount that would be charged for the direct cost of this subsequent delivery attempt, and provide supporting documentation that substantiates the direct cost for the failed delivery at the fault of the Authorized User. The Authorized User must agree in writing to any such costs for subsequent delivery attempts, prior to the Contractor making the subsequent delivery. At no time should a charge be applied to an Authorized User for an attempted delivery that failed at no fault of their own.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

AUTOMATIC REPLENISHMENT

Requests for automatic replenishment are preferred in WRITING from an Authorized User, but may be required by the Contractor. A Contractor shall provide written notification back to any Authorized User's request for automatic replenishment on any tank with a total gross capacity equal to or greater than 500 gallons. Automatic replenishment for tank capacities less than 500 gallons will be at the Contractor's option and may be subject to a minimum order charge (see Minimum Order clause of this Solicitation). Determination for total gross tank capacity shall include all manifolded tanks. The Contractor shall maintain a record of the estimated consumption of ULS diesel and biodiesel, and shall replenish the Authorized User's tank or tanks without further notice from the Authorized User, whenever necessary to insure an adequate supply at all times.

If the Contractor, after having accepted the request from the Authorized User, permits the level of the fuel to fall below the percentages of the total capacity of the Authorized User's tank or tanks indicated in the following table, and does not meet the requirement to deliver on an emergency basis within four (4) hours, the Authorized User shall have the right to purchase sufficient fuel on the open market from another vendor to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

MINIMUM LEVEL	TOTAL - TANK CAPACITY/GALS
10%	Under 5500
15%	5,500 and over

DELIVERY SCHEDULES

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL 212, are available as a guide to indicate proposed delivery points and estimated annual quantities. Any specific questions regarding the site conditions should be directed to the end-user via any communication available shown on the Delivery Schedule. The delivery schedules are attachments in this Contract, and any updates (if any) are available on the OGS website.

Contractor shall deliver under this Contract to any State agency which places a purchase order (or other ordering mechanism between the Contractor and ordering entity) under this Contract, whether or not such delivery location is identified in the delivery schedules. Any political subdivision or other non-State entity which did not file a requirement with OGS Procurement Services as of the date of the Solicitation's bid opening shall be eligible to receive deliveries at Contractor's option. This will be done upon placement of a valid purchase order (or other ordering mechanism between the Contractor and ordering entity) to the Contractor's address as indicated in the contract award notification. Contractors must notify OGS Procurement Services of any new business created from Authorized Users' requests for delivery, so that OGS Procurement Services can make adjustments to the delivery schedules, to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not originally identified on the Delivery Schedules, within thirty (30) days after the first delivery is made. See the New Accounts clause.
At any time during the contract, Contractors may be advised in writing by OGS regarding political subdivisions or other Non-State entities which have filed on a timely basis but do not appear, through no fault of their own, on the delivery schedule.

Filed requirements and delivery schedules may be updated by OGS for any mutually agreed upon extension.

NOTE: On occasion, entities may appear on the wrong delivery schedule as entities self-report. For example, a non- State entity may appear on the Agency schedule on occasion or vice versa. OGS does review and seek clarification of information on the delivery schedules, but does not catch all errors.

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FILL AND VENT REQUIREMENTS

Agencies must ensure that fill and vent equipment adequately meet NYS Standards. Contractors have the responsibility of reporting faulty equipment to the end users and the appropriate NYS regulatory agencies.

Agencies should also refer to CL-804, dated July 7, 2014, as they are responsible for the implementation of monitoring programs to ensure compliance by supplier with these specification requirements.

NOTE: Contractor's delivery trucks MUST BE EQUIPPED WITH METERS, with the exception of motor transports, to accurately measure quantities delivered. Metered deliveries must be accompanied by a delivery ticket showing brand or grade and number of gallons delivered.

GUARANTEED ANALYSIS

Contractor has provided a Guaranteed Analysis of ULS diesel and/or biodiesel fuel. If the Guarantee exceeds specifications, it will be considered the Contract standard.

PRODUCT RETURNS AND EXCHANGES

In addition to the provisions of Appendix B, Title and Risk of Loss, Product Substitution, and Rejected Product, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within guaranteed delivery times (regular or emergency as applicable) of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

ENGINEERING SERVICE

Contractor must be prepared at all times to furnish engineering service when so requested and/or to investigate a complaint and report to the Authorized User and OGS on any complaint that might arise in connection with the use of Contractor's fuel in State equipment. This engineering service will include but not be limited to the diagnosis of fuel related engine problems in the Authorized User's equipment utilizing the Contractor's fuel.

POOR PERFORMANCE

Authorized Users should notify Procurement Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

State of New York
Office of General Services
PROCUREMENT SERVICES
Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.:_____ **Contractor.**_____

Describe Product* Provided (Include Item No., if available):_____

***Note**: "**Product**" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments:_____

_____

_____

_____(over)

Agency:_____ Prepared by:_____

Address:_____ Title:_____

_____ Date:_____

_____ Phone:_____

_____ E-mail:_____

Please return via e-mail to OGS.sm.ps_CM_FleetFuelRoads@ogs.ny.gov or mail to:

NYS Office of General Services
Procurement Services
Attn: Fuels Team
38th Fl, Corning Tower, ESP
Albany, New York 12242

* * * * *

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

AGREEMENT FOR

ULTRA LOW SULFUR DIESEL AND

BIODIESEL FUEL (ON-ROAD USE ONLY) (STATEWIDE)

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND

_____

CONTRACT NUMBER PC_____

NEW YORK STATE OF OPPORTUNITY. | Office of General Services | Procurement Services

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Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PC_____
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
ULTRA LOW SULFUR DIESEL AND
BIODIESEL (ON-ROAD USE ONLY) (STATEWIDE)

THIS AGREEMENT (hereinafter the "Contract" or the "Agreement") is made this ____ day of _____, **2018**, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 41st Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") and _____, having its principal place of business at _____ (hereinafter referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

WHEREAS, OGS is statutorily authorized to enter into centralized contracts for commodities for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter "Authorized Users"); and

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Ultra Low Sulfur Diesel and Biodiesel (On-Road Use Only), as further described herein; and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Ultra Low Sulfur Diesel and Biodiesel (On-Road Use Only) at the lowest cost, referred to as Invitation For Bids #23094 (hereinafter the "IFB" or the "Solicitation"), which was advertised on April 3, 2018 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made to Contractors per Item(s) to the responsible bidder that submitted the lowest cost responsive proposal by Item, in accordance with the method of award set forth in the IFB; and

WHEREAS, the State has determined: that the Contractor submitted the lowest cost responsive proposal for the applicable Item(s) as described herein; that the Contractor is a responsible vendor; and that the Contractor is willing to provide the commodities set forth herein under the terms and conditions contained herein;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

1. INTRODUCTION

1.1. OVERVIEW AND SCOPE

The purpose of this Contract is to provide Authorized Users with a means of acquiring various types of ultra low sulfur (ULS) diesel and biodiesel fuel (on-road use only) by bulk delivery. The product shall be Contractor furnished, delivered and unloaded at Authorized Users' designated delivery locations.

This Contract is based on the ULS Diesel and Biodiesel fuel requirements submitted to OGS by Authorized Users in various counties, and includes five (5) diesel fuel types (Regular, Premium, B5 Biodiesel, B10 Biodiesel and B20 Biodiesel). The specific Authorized Users, counties and fuel grades are listed in the Delivery Schedules. See Attachments 2 and 3.

All products provided shall be homogenous diesel fuel, suitable for diesel engines, and they shall conform to the requirements of ASTM D975-17a, Table 1, or latest revision thereof, except as listed differently herein, and ASTM D7467-17 for Biodiesel Blends (B6 to B20), or latest revision thereof.

The scope of each fuel type is as follows:

1.1.1. Diesel Regular

The symbols 2D and/or 2-D shall be used as a grade designation for middle distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having frequently varying loads and speeds. Shall also be known as Regular.

1.1.2. Diesel Premium

The symbols 2PD and/or 2-PD shall be used as a grade designation for premium distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having frequently varying loads & speeds along with requirements for higher cetanes, special enhancers & inhibitors. Shall also be known as Premium.

1.1.3. B5 Biodiesel

The designation B5 Biodiesel shall refer to a fuel blend containing 5% Biodiesel fuel with 95% Ultra Low Sulfur Diesel Fuel. The intended use of the B5 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

1.1.4. B10 Biodiesel

The designation B10 Biodiesel shall refer to a fuel blend containing 10% Biodiesel fuel with 90% Ultra Low Sulfur Diesel Fuel. The intended use of the B10 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

1.1.5. B20 Biodiesel

The designation B20 Biodiesel shall refer to a fuel blend containing 20% Biodiesel fuel with 80% Ultra Low Sulfur Diesel Fuel. The intended use of the B20 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

NOTE: Prospective users of any of these biofuels are cautioned to carefully read and understand the section titled "Biodiesel Usage Considerations" before deciding to purchase and use these fuels.

1.2. ESTIMATED QUANTITIES

This Contract is an estimated quantity Contract. The estimated quantities are based on requirements submitted to OGS by Authorized Users to purchase from this Contract. These Authorized Users have agreed not to enter into any other contracts for the ULS Diesel and Biodiesel that they filed for during the Contract period, and will purchase all their ULS Diesel and Biodiesel requirement needs from awarded contracts. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of

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this Contract is indeterminate. OGS makes no guarantee as to how much fuel will actually be ordered and/or delivered. See Section 2.28, Delivery Schedules.

Numerous factors could cause the actual quantities of Products purchased under this Contract to vary substantially from the estimated quantities. Such factors include, but are not limited to, the following:

- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of this Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract term.
- The State reserves the right to terminate this Contract prior to the end of the term pursuant to the terms and conditions of the Contract. Appendix B, Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- In accordance with Section 2.28, Delivery Schedules, the Contractor shall accept orders from and deliver to any State Agency placing an order through this Contract even if the State Agency does not appear on the Delivery Schedule. The Contractor(s) may accept orders, at their discretion, for any non-State Agency or Political Subdivision not appearing on the Delivery Schedule.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimated quantities provided.

1.3. DEFINITIONS AND ACRONYMS

Capitalized terms used in this Contract shall be defined in accordance with Appendix B, Definitions, or as below.

1D (1-D): The symbols 1D and/or 1-D shall be used as a grade designation for light distillate diesel fuel oils used in vehicular diesel engines and in higher volatility applications than provided by grade 2-D fuel oils. Kerosene (1-K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/Contract.

2D (2-D): The symbols 2D and/or 2-D shall be used as a grade designation for middle distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having a frequently varying loads and speeds. Shall also be known as Regular.

2PD (2-PD): The symbols 2PD and/or 2-PD shall be used as a grade designation for premium distillate diesel fuel oils used in vehicular diesel engines & in non-vehicular applications having frequently varying loads & speeds along with requirements for higher cetanes, special enhancers & inhibitors. Shall also be known as Premium.

Agency or Agencies: The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

Authorized User(s): as defined in Appendix B.

ASTM: The acronym "ASTM" shall be used as a designation for the American Society for Testing and Materials.

B5: A blend of 5% Biodiesel and 95% petroleum-based diesel fuel.

B10: A blend of 10% Biodiesel and 90% petroleum-based diesel fuel.

B20: A blend of 20% Biodiesel and 80% petroleum-based diesel fuel.

Biodiesel (B100): A fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100 (100% Biodiesel fuel), as defined in ASTM D6751-15ce1 or latest version thereof. ASTM D6751-15ce1 covers low sulfur Biodiesel (B100) for use as a blend component with diesel oil fuels.

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"**Business Day**" shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

"CFPP" shall be used as a designation for the Cold Filter Plugging Point of the fuel.

"DEC" shall be used as a designation for Department of Environmental Conservation.

"Delivery" shall be the act of taking an ordered product to a person or place. Refer to the *Product Delivery* clause in this Contract.

"Human Needs Customer" shall refer to a high priority customer, such as residences, hospitals and nursing homes, for which failure to get fuel could be life threatening.

"IP" shall be used as a designation for the Institute of Petroleum.

"LUST" refers to Leaking Underground Storage Tank

"May" denotes the permissive in a Contract clause or specification. "May" does not mean "required." See also "Shall" and "Must."

"Must" denotes the imperative in a Contract clause or specification. "Must" is synonymous with "required." See also "Shall" and "May."

"**MWBE**" shall refer to a business certified with NYS Empire State Development ("ESD") as a Minority- and/or Women-owned Business Enterprise.

"**NYS Holidays**" refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Martin Luther King Day; Washington's Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas Day.

"**NYS Vendor ID**" shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

"Posted Day" and "Posted Price" shall refer to the actual day the prices are posted in OPIS publication.

"**Preferred Source Products**" shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

"**Preferred Source Program**" shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision ("Corcraft"); New York State Preferred Source Program for People Who Are Blind ("NYSPSP"); and the New York State Industries for the Disabled ("NYSID"). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

"**Procurement Services**" shall refer to a business unit of OGS, formerly known as New York State Procurement ("NYSPro") and Procurement Services Group ("PSG").

"**Prompt Delivery**" shall refer to any delivery that is completed within the Contractor's specified guaranteed delivery time.

"Prompt Will-call" shall refer to the time an Authorized User places an order.

"**SDVOB**" shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

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"Shall" denotes the imperative in a Contract clause or specification. "Shall" is synonymous with "required." See also "Must" and "May."

"Volume Discount" shall refer to the Cents Per Gallon discount for orders 5,500 gallons or greater as indicated in Attachment 1 – *Pricing*.

2. CONTRACT TERMS AND CONDITIONS

This section sets forth the terms and conditions of the Contract.

2.1. CONTRACT DOCUMENTS AND CONFLICT OF TERMS

This Contract is composed of the documents set forth below. In the case of any conflict(s) among these documents, conflicts shall be resolved in the following order of precedence:

1. Appendix A, *Standard Clauses for New York State Contracts (January 2014)*
2. This document
3. Appendix B, *General Specifications (April 2016)*
4. Attachment 4 – Insurance Requirements
5. Attachment 1 – Pricing
6. Attachment 2 – Delivery Schedule – State Agencies
7. Attachment 3 – Delivery Schedule – Political Subdivisions, Local Governments and Other Eligible Non-State Agencies
8. Attachment 6 – Guaranteed Analysis
9. Attachment 7 – MWBE Utilization Plan
10. Attachment 5 – Report of Contract Usage

2.2. CONTRACT TERM AND EXTENSIONS

The Contract will be in effect for a term of up to two (2) years. The Contract term shall commence after all necessary approvals or August 31, 2018 (the later of the two), and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

This Contract and all OGS Centralized Contracts resulting from the Solicitation award shall have a co-terminus end date, notwithstanding non-renewals or contract cancelations. At the State's option, this Contract may be extended for three (3) additional years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

2.3. SHORT TERM EXTENSION

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. Filed Requirements and Delivery Schedules may be updated by OGS for any mutually agreed upon extension. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

2.4. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

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Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (https://www.ogs.ny.gov/purchase/snt/othersuse.asp). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

2.5. NEW ACCOUNTS

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

Contractors must notify OGS Procurement Services of any new business created from Authorized Users' requests for delivery, so that OGS Procurement Services can make adjustments to the Delivery Schedules to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not originally on the Delivery Schedules, within thirty (30) days after the first delivery is made.

2.6. EXTENSION OF USE

This Contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

2.7. NEW YORK STATE VENDOR RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

2.8. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED M/WBE AND EEO FOR MINORITY GROUP MEMBERS AND WOMEN

I. Policy Statement

The New York State Office of General Services ("OGS"), as part of its responsibility, recognizes the need to promote the employment of minority group members and women and to ensure that certified minority- and women-owned business enterprises have opportunities for maximum feasible participation in the performance of OGS contracts.

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In 2006, the State of New York commissioned a disparity study to evaluate whether minority- and women-owned business enterprises had a full and fair opportunity to participate in State contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority- and Women-Owned Business Enterprises: Evidence from New York" (the "Disparity Study"). The Disparity Study found evidence of statistically significant disparities between the level of participation of minority- and women-owned business enterprises in State procurement contracting versus the number of minority- and women-owned business enterprises that were ready, willing and able to participate in State procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establish goals for maximum feasible participation of New York State certified minority- and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

II. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State Certified minority- and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.

C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section and/or enforcement proceedings as allowed by the Contract.

III. Equal Employment Opportunity (EEO)

A. Contractor shall comply with the provisions of Article 15-A set forth below. These provisions apply to all Contractors, and any subcontractors, awarded a subcontract over $25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.

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2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy.

B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and any subcontractor.

3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

A. OGS hereby establishes an overall goal of 10-20% for MWBE participation for the 22 counties referenced in the table below, 0-10% for Minority-Owned Business Enterprises ("MBE") participation and 0-10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

COUNTY	OVERALL GOAL	MBE	WBE
Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester	20%	10%	10%
Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schenectady, Schoharie, Wayne, Wyoming	10%	0%	10%
Orange, Putnam	10%	10%	0%

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B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses and Community Relations. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to a MWBE, and performance dates of each component of the Contract that the Bidder intends to be performed by a MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

C. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within twenty (20) days of receipt.

D. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

(a) If a Bidder fails to submit a MWBE Utilization Plan;
(b) If a Bidder fails to submit a written remedy to a notice of deficiency;
(c) If a Bidder fails to submit a request for waiver; or
(d) If OGS determines that the Bidder has failed to document good faith efforts.

F. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

G. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

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VI. Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Businesses and Community Relations for guidance.

B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers and copies of such solicitations and any responses thereto.

2. A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.

6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

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A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State agency or Authorized User following a purchase from an OGS Procurement Services contract, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "Introduction to the System for Vendors" and "Contract Compliance Reporting - Vendor Training" to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/events.asp

D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on "Account Lookup" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "Change Info." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "Request New User." When identifying the person responsible, please add "-MWBE Contact" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

A. In accordance with Executive Law Section 316-a and 5 NYCRR § 142.13, the Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to OGS for liquidated or other appropriate damages, as set forth herein.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

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1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If, after Contractor has been afforded due process to respond to the allegation that it willfully or intentionally failed to comply with the MWBE participation goals, OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by the OGS, Contractor shall pay such liquidated damages to the OGS within sixty (60) days after such determination unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law, in which event the liquidated damages shall be payable if the Director renders a decision in favor of the OGS.

ALL FORMS ARE AVAILABLE AT: https://www.ogs.ny.gov/MWBE/Forms.asp

2.9. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractor is strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: https://www.ogs.ny.gov/veterans/default.asp

Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: https://ogs.ny.gov/Veterans/default.asp

2.10. CONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall maintain in force at all times during the term of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

2.11. NEW YORK STATE STATEWIDE FINANCIAL SYSTEM

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: https://nyspro.ogs.ny.gov/content/nys-emarketplace-1

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There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: www.sfs.ny.gov and http://www.osc.state.ny.us/agencies/guide/MyWebHelp/

2.12. PRICE

Contract pricing is set forth in Attachment 1 – Pricing.

Prices quoted shall be billed net per gallon, F.O.B. agency storage tanks. Prices quoted shall include all applicable customs, taxes, including LUST, license and research fees (e.g. NORA), and surcharges.

Pricing for Contract purchases shall be based on the pricing in effect at the time the Authorized User places the order (Prompt Will-call). Authorized Users that are on automatic delivery shall be priced on the day of delivery, unless the Authorized User requests a delivery. The price shall then reflect the day of the order.

Pricing shall reflect the day of delivery for orders placed by the Authorized User that go beyond the guaranteed delivery timeframe of 24 (twenty-four) hours. For example, the Authorized User orders 500 gallons of diesel fuel on Wednesday, and requests that the delivery be made on the following Tuesday.

For situations where an Authorized user wants to place an order for an unusually large volume of fuel (e.g., 40,000 gallons or more than a truck load, or delivering over a period of time), the Contractor and Authorized User should contact OGS Procurement Services. OGS's intent is for all parties to have the same expectations for delivery and price.

Truck delivery ticket volumes and Contract User's gauged volumes must agree within a tolerance of 0.5% of the total delivered volume for delivery volumes greater than 500 gallons and up to 1% for delivery volumes less than or equal to 500 gallons. If the volume difference exceeds the tolerance level, the Contract User's measured volume, if available, will be used for invoice payment. Contract Users reserve the right to reject "rogue" trucks which have been identified as having repeated meter inaccuracies. Trucks without sealed and calibrated meters will not be permissible for deliveries.

It shall be the Contractor's responsibility to satisfy Authorized User requirements by furnishing blended product when called for during the time period indicated in this Contract.

If the Contractor extends allowances during the term of this Contract to Federal, State, Local Governments or to commercial users in the normal course of doing business, New York State requires that such allowances will also be available to the State in the maximum amount extended to others who contract to purchase fuel oil under similar contractual terms and conditions.

Prices shall be firm except that price revisions will be permitted in accordance with the *Price Adjustments/Revisions* clause set forth in this Contract and with respect to certain taxes and duties as follows:

"After-imposed tax" means any new or increased Federal, State and local excise tax or duty, except social security or other employment taxes, on fuel purchased under any contract to be awarded hereunder which the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the date of contract award.

"After-relieved tax" means any amount of Federal, State and local excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on fuel purchased under any contract to be awarded hereunder which the contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial or administrative action taking effect after the date of contract award.

The price shall include all applicable Federal, State, Local taxes and duties as stated in Appendix B, clause 8, *Taxes*.

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NOTE: The State of New York and its political subdivisions are exempt from New York State and local sales taxes and federal excise taxes.

The price for diesel fuel under this Contract shall be increased by the amount of any after-imposed tax, unless the legislative, judicial or administrative act says otherwise, if the Contractor states in writing that such Contract price does not include any contingency for such after-imposed tax. Such increase shall be prospective only and becomes effective upon such written notice and on the effective date of the next schedule price revision.

The Contract price shall be decreased by the amount of any after-relieved tax. Such decrease shall be effective when realized or by no later than the next scheduled price revision.

The Contractor shall promptly notify the Procurement Services Contract Management Specialist of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Contract price for fuel thirty days (30) prior to adding to invoices.

2.13. OPIS POSTING LOCATIONS

OPIS Posting Locations have been established for all counties for purposes of this Contract. Contractor's pricing will be based on the posted price in *Oil Price Daily* for ULS Diesel and Kerosene in the OPIS Posting Locations identified below:

Albany	Buffalo	Long Island*	Newburgh	Syracuse	Utica
Albany	Allegany	Bronx	Columbia	Broome	Chenango
Clinton	Cattaraugus	Kings	Dutchess	Cayuga	Fulton
Delaware	Chautauqua	Nassau	Greene	Chemung	Hamilton
Essex	Erie	New York	Orange	Cortland	Herkimer
Franklin	Genesee	Queens	Putnam	Schuyler	Jefferson
Otsego	Livingston	Richmond	Rockland	Seneca	Lewis
Rensselaer	Monroe	Suffolk	Sullivan	Steuben	Madison
St Lawrence	Niagara	Westchester	Ulster	Tioga	Montgomery
Saratoga	Ontario			Tompkins	Oneida
Schenectady	Orleans			Yates	Onondaga
Schoharie	Wayne				Oswego
Warren	Wyoming				
Washington					

*Newark, NJ posting location is utilized for the Kerosene low price for the Long Island posting location.

2.14. LOCATION CHANGE OR SUBSTITUTION

Should the designated posting location become unavailable or differ from the current description and/or format, a posting determined by the Commissioner in her/her sole discretion, to be most reflective of market conditions will be used.

2.15. CALCULATION CHANGE OR SUBSTITUTION

Should the product revision calculation become unavailable or differ from the current description and/or format, a calculation determined by the Commissioner in her/her sole discretion, to be most reflective of market conditions will be used.

2.16. PRODUCT CHANGE OR SUBSTITUTION

Should the product originally awarded become unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Saving/Force Majeure clause of Appendix B), the new product and price calculation determined by the Commissioner in his/her sole discretion, to be most reflective of market conditions will be used.

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2.17. PRICE ADJUSTMENTS/REVISIONS

Contract prices shall be firm except that price revisions will be permitted in accordance with the following procedure:

Price revisions (increases or decreases) to the original Contract price shall be based on prices in OPIS's *Oil Price Daily* for Kerosene and ULS Diesel, under the heading, "Daily Petroleum Prices", Rack prices only, which are designated for ultra low sulfur products. 1D and 2D Prices will fluctuate according to the "Ultra Low Sulfur Kerosene" and "Ultra Low Sulfur Diesel" postings selected. The terms "Posting Day" or "Posted Price" as used throughout this Contract refers to the actual day the prices are posted.

The low price shown in OPIS's *Oil Price Daily* postings will be used to compute price revisions during the Contract period. Procurement Services will compute any price revisions by determining the difference between the Posted Price on February 1, 2018 and the Posted Price on every Thursday during the contract period, beginning with the OPIS *Oil Price Daily* on the Thursday immediately preceding the Contract start date. The differential between these two (2) prices will be added or subtracted to the bid price per gallon, yielding the new weekly price. If the Contract award is made in a subsequent week after August 31, 2018, then the posted price on the last business day in the preceding week will be used.

The aforementioned mechanism for weekly price revisions would then be applied to the Contract prices throughout the Contract period. Price revisions will be calculated by truncating all figures (priced in dollars per gallon) to four (4) decimal places. Applicable price changes will be effective as of the start of business on the following Friday. If the prices are not posted by OPIS on Thursday, the previous business day on which the specified prices are posted will be utilized. The published prices on February1, 2018 for 1D (ultra low sulfur Kerosene) and 2D (ultra low sulfur Diesel) are shown in the table below, by posting location. Calculated base prices for B5, B10, and B20 Biodiesel are also shown below.

Posting Location	KEROSENE (1D)	ULS DIESEL (2D)	B5	B10	B20
Albany, NY	$2.5295	$2.1451	$2.1588	$2.1726	$2.2003
Buffalo, NY	$2.5806	$2.1888	$2.2003	$2.2120	$2.2353
Long Island, NY	N/A	$2.1334	$2.1477	$2.1621	$2.1910
Newark, NJ	$2.5500	N/A	N/A	N/A	N/A
Newburgh, NY	$2.5650	$2.1365	$2.1506	$2.1649	$2.1935
Syracuse, NY	$2.4959	$2.1769	$2.1890	$2.2013	$2.2258
Utica, NY	$2.5309	$2.1938	$2.2051	$2.2165	$2.2393

Should the weekly price revision cycle not provide adequate price adjustments, because of rapid changes in worldwide petroleum prices, the State reserves the right to increase the frequency of the price revisions to a daily basis. The daily basis will utilize postings Monday through Friday with applicable price changes to be effective as of the start of business on the following day. Weekend prices will be based on Friday's posting. The Friday posting will also stay in effect on Monday holidays. Prices in effect for mid-week or Friday holidays will be the same as for the preceding day. Also, refer to "NOTE" concerning "Posting Day" below.

Should postings differ from current description and/or format, a posting determined by the Commissioner, in his or her sole discretion, to be most reflective of market conditions will be used. The same applies if OGS were to utilize a weekly pricing schedule. Corrections to prices previously posted in the OPIS Oil Price Daily will be considered only when caused by a typographical or clerical error on the part of said service provider.

NOTE: In the event a specified Rack low price is not posted on a Thursday, then a price posted on a previous business day in which a posted price is available in OPIS's publication will be utilized. In the event Thursday (the day Oil Price Daily posted prices are used for price adjustments) falls as a Holiday, the State will utilize the previous business day's OPIS publication for posted prices for the weekly period.

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Price increases are limited to changes in the OPIS Posting Location as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the Contract period.

Price adjustments will continue using the same method if the Contract is extended.

2.18. PRICE ADJUSTMENTS/REVISIONS FOR BIODIESEL

The price revision procedure for 1D to be used for winter mixes with B5 Biodiesel, B10 Biodiesel and B20 Biodiesel shall be the same as described above in "Price Revisions" and "NOTE". The price revision procedure for B5, B10 and B20 Biodiesel will be as follows:

The B5 Biodiesel pricing shall be based on 95% of the low posted price for low sulfur diesel (as described above) plus 5% of the soybean oil price based on the price of soybean oil per pound as shown in The Wall Street Journal's "Cash Prices - Fats and Oils" for each **Thursday's Posted Prices**, which is Wednesday's cash price, using a multiplier of 7.6465 to convert to gallons.

The B10 Biodiesel pricing shall be based on 90% of the low posted price for low sulfur diesel (as described above) plus 10% of the soybean oil price based on the price of soybean oil per pound as shown in the Wall Street Journal's "Cash Prices –Fats and Oils" for each **Thursday's Posted Prices**, which is Wednesday's cash price, using a multiplier of 7.6465 to convert to gallons.

The B20 Biodiesel pricing shall be based on 80% of the low posted price for low sulfur diesel (as described above) plus 20% of the soybean oil price based on the price of soybean oil per pound as shown in The Wall Street Journal's "Cash Prices - Fats and Oils" for each **Thursday's Posted Prices**, which is Wednesday's cash price, using a multiplier of 7.6465 to convert to gallons.

Procurement Services will compute any price revisions by determining the difference between the combined posted prices on Thursday, February 1, 2018 and the combined posted prices on every Thursday during the Contract period, beginning with the OPIS *Oil Price Daily* on the Thursday immediately preceding the contract start date. Applicable price changes will be effective as of the start of business on the following Friday. If the prices are not posted on Thursday, the previous business day on which the specified prices are posted will be utilized.

The following is an example of B5, B10, and B20 Biodiesel Price Revisions utilizing pricing from the Albany OPIS Posting Location. All values will be truncated to four (4) decimal places (dollars per gallon) prior to every operation in calculating the final result. The final result will also be truncated, if necessary, to four (4) decimal places.

B5:
The posted price for Albany on Thursday, February 1, 2018 for soy bean oil is $.3167/lb. Using the multiplier of 7.6465, the adjusted price per gallon is $2.4216 for soybean oil. Five percent (5%) of that figure ($.1210) plus 95% of the 2D base of $2.1451 ($2.0378) yields a February 1, 2018 base price for B5 fuel of $2.1588 /gal. To arrive at the adjustment for B5 fuel for a future week, subtract the base price for Thursday, February 1, 2018 ($2.1588/gal) from the current week's price (for example $2.2185/gal.), which yields a price change of +$.0597/gal. for B5 Biodiesel.

B10:
The posted price for Albany on Thursday, February 1, 2018 for soy bean oil is $.3167/lb. Using the multiplier of 7.6465, the adjusted price per gallon is $2. 4216 for soybean oil. Ten percent (10%) of that figure ($.2421) plus 90% of the 2D base of $2.1451 ($1.9305) yields an February 1, 2018 base price for B10 fuel of $2.1726/gal. To arrive at the adjustment for B10 fuel for a future week, subtract the current base price for Thursday, February 1, 2018 ($2.1726/gal) from the current week's price (for example $2.2645 /gal.), which yields a price change of +$.0919/gal. for B10 Biodiesel.

B20:
The posted price for Albany on Thursday, February 1, 2018 for soy bean oil is $.3167/lb. Using the multiplier of 7.6465, the adjusted price per gallon is $2.4216 for soybean oil. Twenty percent (20%) of that figure ($.4843) plus 80% of the 2D base of $2.1451 ($1.7160) yields an February 1, 2018 base price for B20 fuel of $2.2003/gal.

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To arrive at the adjustment for B20 fuel for a future week, subtract the current base price for Thursday, February 1, 2018 ($2.2003/gal) from the current week's price (for example $2.3145/gal.), which yields a price change of +$.1142/gal. for B20 Biodiesel.

All other terms and conditions stated above in the *Price Adjustments/Revisions* clause and "NOTE" will also apply to the price revisions for Biodiesel.

2.19. BEST PRICING OFFER

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

2.20. PRICE STRUCTURE

If, during the Contract term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

Should the OPIS posting locations used for price adjustments/revisions become unavailable or unworkable, the Commissioner reserves the right to switch to the most appropriate index and/or location, and adjust the bid price accordingly. Please refer to the *OPIS Posting Location* clause for additional factors.

2.21. VOLUME DISCOUNTS

Contractor may provide a Volume Discount within a given County for all individual orders 5,500 gallons or greater in Attachment 1 – Pricing. The Volume Discount for a given County shall be applied to the invoice for each individual order placed by an Authorized User in such County which results in a single delivery of 5,500 gallons or greater.

2.22. ORDERING

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, Purchase Orders. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

2.23. MINIMUM ORDER

Minimum delivery shall be 250 gallons at each delivery location (site) as determined by the delivery schedule. Deliveries under 250 gallons are at the Contractor's option, except for tank top-offs for testing.

All deliveries requested by an Authorized User of less than the minimum order size, including tank top-offs for tank testing, shall qualify for contract pricing. In addition, the following tiered schedule of surcharges may be utilized by the Contractor (except for automatic replenishment):

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Tank Capacity (in gallons)	Quantity Delivered (in gallons)	Optional Surcharge
500 or more	Under 250 to 150	$50.00
	Under 150	$75.00
Less than 500	Under 250 to 150	$25.00
	Under 150	$50.00

Upon written direction by OGS, an Authorized User shall have one (1) delivery per tank per contract year for tank top-off testing that is exempt from any minimum order surcharge.

Determination for total gross tank capacity shall include all manifold tanks. All locations granted a request from the Contractor for "automatic replenishment", per the *Automatic Replenishment* clause of this Contract, shall be exempt from minimum order requirements, including other factors out of the control of Authorized Users (e.g., short filling, mechanical issues, inadequate fuel supply). In no case shall a surcharge be applied to a location while on "automatic replenishment".

2.24. PROCUREMENT CARD

Contractor may accept the New York State Procurement Card for Contract purchases. For all Contract purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

2.25. INVOICING AND PAYMENT

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*. The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Customer Delivery Location ID number as shown on Delivery Schedule (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service/Delivery (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: https://bsc.ogs.ny.gov/content/vendor-information.

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In billing for winter mixes, invoices must include current Contract price for each grade, type of mixture furnished and computation of total price. Invoices should be formatted as per the example below:

EXAMPLE - Delivery of 4000 gallons of 2D/1D winter mix at a 1/1 ratio:

2,000 gals. × Adjusted 2D price = total cost of 2D product
\+ 2,000 gals. × Adjusted 1D price = total cost of 1D product
Invoice Total (Total cost for delivery)

NOTE: If additives rather than kerosene is used to provide winter protection, the Contractor is allowed to charge market price for the additive, and as with kerosene, list the price as a separate line item on the invoice.

2.26. PRODUCT DELIVERY

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery* and *Shipping/Receipt of Product.* Delivery shall be made as specified and in accordance with instructions furnished with each order, unless otherwise directed in writing. Contractor must be prepared, at all times, to make prompt delivery. Every bid states what the maximum time a delivery will take from the moment of order, but the time shall never exceed 24 hours. In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Should there be a State declared emergency, an after-hours or weekend emergency, or should an agency run out of fuel at any time creating an emergency situation, the Contractor shall be required to provide product within eight (8) to twelve (12) hours of a telephone call from the agency.

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS, Procurement Services. On occasion, to prevent fuel run outs during storms or other emergency situations, the Contractor must allow Authorized Users the flexibility to manually schedule deliveries to top-off tank inventories. Normal deliveries are considered to take place Monday through Friday (8:00 am - 5:00 pm). Saturday/Sunday deliveries are not standard and are to be made on an emergency basis (and not a regular basis) ONLY, or if a run out is imminent before the next normal delivery day. Delivery of fuel should give first priority to "human needs" customers.

Failure to make prompt delivery may result in an Authorized User's submission of a Contract Performance Report to OGS. Per Appendix B, Section 48(a), (d), and (e), the Authorized User shall have the right to purchase sufficient diesel fuel on the open market to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

Authorized Users shall be responsible for insuring that tanks are accessible to the Contractor. Authorized Users should also make certain that receiving personnel are available at time of delivery. Failure of the Authorized User to make appropriate delivery arrangements, which prevents the delivery of product upon Contractor's arrival at delivery site, may result in a charge to the Authorized User for the Contractor's transportation costs. The Contractor must notify the Authorized User of the attempted delivery prior to charging for any future delivery attempts for the same circumstance. The Contractor must state the amount that would be charged for the direct cost of this subsequent delivery attempt, and provide supporting documentation that substantiates the direct cost for the failed delivery at the fault of the Authorized User. The Authorized User must agree in writing to any such costs for subsequent delivery attempts, prior to the Contractor making the subsequent delivery. At no time should a charge be applied to an Authorized User for an attempted delivery that failed at no fault of their own.

2.27. AUTOMATIC REPLENISHMENT

Requests for automatic replenishment are preferred in WRITING from an Authorized User, but may be required by the Contractor. A Contractor shall provide written notification back to any Authorized User's request for automatic replenishment on any tank with a total gross capacity equal to or greater than 500 gallons. Automatic replenishment for tank capacities less than 500 gallons will be at the Contractor's option and may be subject to a minimum order charge (see *Minimum Order* clause of this Contract). Determination for total gross tank capacity shall include all manifolded tanks. The Contractor shall maintain a record of the estimated consumption of ULS diesel and biodiesel, and shall replenish the Authorized User's tank or tanks without further notice from the Authorized User, whenever necessary to insure an adequate supply at all times.

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If the Contractor, after having accepted the request from the Authorized User, permits the level of the fuel to fall below the percentages of the total capacity of the Authorized User's tank or tanks indicated in the following table, and does not meet the requirement to deliver on an emergency basis within four (4) hours, the Authorized User shall have the right to purchase sufficient fuel on the open market from another vendor to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

MINIMUM LEVEL	TOTAL - TANK CAPACITY/GALS
10%	Under 5500
15%	5,500 and over

2.28. DELIVERY SCHEDULES

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL 206, are available as a guide to indicate proposed delivery points and estimated annual quantities. Delivery schedules may be revised or clarified as necessary. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available shown on the Delivery Schedule. The delivery schedules are attached hereto as Attachments 2 and 3, and any updates (if any) are available on the OGS website.

Contractors shall be obligated to deliver under the Contract to any State agency which places a purchase order (or other ordering mechanism between the Contractor and ordering entity) under the contract, whether or not such delivery location is identified in the delivery schedules. Any political subdivision or other non-State entity which has not filed a requirement with OGS Procurement Services as of the date of the bid opening shall be eligible to receive deliveries at Contractor's option. This will be done upon placement of a valid purchase order (or other ordering mechanism between the Contractor and ordering entity) to the Contractor's address as indicated in the contract award notification. Contractors must notify OGS Procurement Services of any new business created from Authorized Users' requests for delivery, so that OGS Procurement Services can make adjustments to the delivery schedules, to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not originally identified on the Delivery Schedules, within thirty (30) days after the first delivery is made. See the *New Accounts* clause.

At any time during the contract, Contractors may be advised in writing by OGS regarding political subdivisions or other Non-State entities which have filed on a timely basis but do not appear, through no fault of their own, on the delivery schedule.

Filed requirements and delivery schedules may be updated by OGS for any mutually agreed upon extension.

NOTE: On occasion, entities may appear on the wrong delivery schedule as entities self-report. For example, a non- State entity may appear on the Agency schedule on occasion or vice versa. OGS does review and seek clarification of information on the delivery schedules, but does not catch all errors.

2.29. PRODUCT RETURNS AND EXCHANGES

In addition to the provisions of Appendix B, *Title and Risk of Loss, Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within guaranteed delivery timeframes (regular or emergency or applicable) with written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

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2.30. UNANTICIPATED EXCESSIVE PURCHASE

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

2.31. CONTRACT ADMINISTRATION

Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

2.32. GUARANTEE

The Contractor guarantees to furnish adequate protection from damage to Authorized User's buildings, grounds and/or equipment occurring on account of or in connection with, or occasioned by, or resulting from the furnishing and delivering of fuel under the Contract and shall be liable for any damages for which he or his employees are responsible.

This liability includes but is not limited to oil spills occurring during delivery. The Contractor shall provide constant surveillance during delivery by having a person in attendance at all times at the point of transfer. Oil spills of any size shall be immediately reported to the agency Business Office to effect contact with a representative of the Department of Environmental Conservation. More information can be viewed at: http://www.dec.ny.gov/chemical/8428.html

A call can be placed twenty-four hours a day with the New York State Oil Spill Hotline at 1-800-457-7362.

2.33. ENGINEERING SERVICE

Contractor must be prepared at all times to furnish engineering service when so requested and/or to investigate a complaint and report to the Authorized User and OGS on any complaint that might arise in connection with the use of Contractor's Fuel in State equipment. This engineering service will include but not be limited to the diagnosis of fuel related engine problems in the Authorized User's equipment utilizing the Contractor's fuel.

2.34. SURPLUS/TAKE-BACK/RECYCLING

I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

III. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: http://www.dec.ny.gov/chemical/65583.html

IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the

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destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology ("NIST") Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

2.35. USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Contract. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials.*

2.36. DIESEL EMISSION REDUCTION ACT OF 2006

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Contractor hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

2.37. CONSUMER PRODUCTS CONTAINING MERCURY

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

2.38. TRAFFIC INFRACTIONS

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

2.39. REPORT OF CONTRACT USAGE

Contractor shall submit Attachment 5 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, semi-annually (twice per year – due January 15th for sales July 1st through December and due July 15th for sales January 1st through June 30th). If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the semi-annual report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBEs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

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The report in Attachment 5 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

2.40. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NUMBER 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at https://www.ogs.ny.gov/greenny/. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

2.41. CENTRALIZED CONTRACT MODIFICATIONS

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

2.42. NYS TAX LAW SECTION 5-a

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than $100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request. Failure to make either of these filings may render a

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Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at http://www.tax.ny.gov/ for additional information.

3. FUEL SPECIFICATIONS

3.1. PRODUCT REQUIREMENT

Contractor guarantees that the product(s) supplied will meet or exceed the minimum specifications listed in *Fuel Specifications*. All products provided shall be homogenous diesel fuel, suitable for diesel engines, and they shall conform to the requirements of ASTM D975-17a, Table 1, or latest version thereof, except as listed differently herein, and ASTM D7467-17, or latest version thereof, for Biodiesel Blends (B6 to B20).

3.2. GUARANTEED ANALYSIS

Contractor has provided a Guaranteed Analysis of ULS Diesel and/or Biodiesel fuel, attached hereto as Attachment 6 – *Guaranteed Analysis*. If the guaranteed analysis exceeds specifications, it will become the Contract standard.

3.3. FUEL SPECIFICATIONS

3.3.1. FILL AND VENT REQUIREMENTS

Agencies must ensure that fill and vent equipment adequately meet NYS Standards. Contractors have the responsibility of reporting faulty equipment to the end users and the appropriate NYS regulatory agencies.

Agencies should also refer to CL-804, dated July 7, 2014, as they are responsible for the implementation of monitoring programs to insure compliance by supplier with these specification requirements.

NOTE: Contractor's delivery trucks MUST BE EQUIPPED WITH METERS, with the exception of motor transports, to accurately measure quantities delivered. Metered deliveries must be accompanied by a delivery ticket showing brand or grade and number of gallons delivered.

3.3.2. TOPPING OFF TANKS

Agency requests to top-off tanks for testing purposes must be honored as described elsewhere herein. The requesting agency may be required to sign a waiver of liability and responsibility on behalf of the Contractor.

Contractor must maintain service facilities and have trained personnel qualified to service the product furnished at the using agency within 48 hours.

3.3.3. TRADE NAMES

For the convenience of ordering, delivering and servicing ULS diesel and biodiesel fuel under the contract, Contractor shall state the trade name for the diesel and biodiesel fuel offered under each item. Such trade name, however, shall not in any way set aside the requirement of compliance with specifications.

3.3.4. GRADE – TEMPERATURE SCHEDULE

The Contractor is responsible for delivery of straight 1D, straight 2D or straight Biodiesel, or any blend of 1D and 2D or Biodiesel as listed in the specifications. **Agencies and Authorized Users desiring a mix other than normally required under these specifications must notify the Office of General Services and the Contractor in writing of the specific mix desired, and Contractor shall reply in writing regarding its agreement to provide the mix requested.** Also, unless the agency specified otherwise when ordering, the Contractor will adhere to the following schedule:

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Grade/Mix	Temperatures	Costing Formula
#2D/Biodiesel	Spring/Summer/Early Fall* (above 20°F ambient). *Early Fall - used up to October	Current Contract Price
#1D	Winter (coldest areas) (subzero ambient to -40°F)	Current Contract Price
#2D/Biodiesel/1D	Winter Mix: See Low Temperature Operability/Performance Characteristics under Detailed Specifications section	Current Contract Price for respective gallon-age of each grade supplied

3.3.5. SAMPLING OF DIESEL FUEL OIL

Diesel fuel oil delivered shall be subject to sampling and testing at the discretion of the purchasing Agency and/or OGS Procurement Services. Normally, all samples collected for testing should be taken from delivery truck at the time of delivery.

The samples shall be collected in accordance with ASTM D4057-12 (IP #MPMS], or latest revision thereof. The usual method of sampling is a three-way bottle/container sampling taken at an upper, middle, and a lower sample point from the delivery vehicle. The sample container is a normally closed stopper type and operator opens it at each point to obtain a proportional amount of the sample.

Product samples taken at the Agency's dispensing pump shall be considered representative of a disputed diesel fuel oil delivery, when the Contractor has delivered one or more consecutive loads of fuel oil to the tank's content which is in dispute.

Additionally, when the purchasing Agency's documentation indicates that previously delivered diesel fuel oil is less than five percent of the tank's diesel fuel oil volume following any disputed delivery, and the previously delivered diesel fuel oil performed and/or tested satisfactorily, then a sample taken from the pump shall be considered representative of the diesel fuel oil delivered.

3.3.6. NON-COMPLYING PRODUCT – DELIVERY

Deliveries of diesel fuel oil may be sampled at the Contractor's loading point or at the point of delivery by a representative of the Office of General Services, Procurement Services and/or the purchasing Agency's personnel. The methods of sampling and testing will be as listed elsewhere herein.

When it is found that diesel fuel oil delivered does not comply with the specification requirements, the Contractor, at its own cost and expense, may be required to remove all such sub-standard diesel fuel oil from the purchaser's tank(s) and replace it with diesel fuel oil meeting the specifications, if such removal is so instructed by the Office of General Services, Procurement Services, within a maximum time period of twenty-four (24) hours.

When an inspection of the tank(s) after the removal of the sub-standard product indicates that the delivered product has rendered the tank(s) unsuitable for use, then the Contractor may be responsible for cleaning of the tank(s) so affected, if such cleaning is so instructed by the Office of General Services, Procurement Services.

The State may cancel the contract and may purchase the balance of the contract quantities in the open market at the Contractor's expense, if, in the opinion of the Commissioner of General Services, the fuel delivered fails to meet the specific requirements; or, if the fuel is found to contain objectionable dirt, water or excess sediment; and/or an excessively high cold filter plugging point.

3.3.7. NON-COMPLYING PRODUCT – DELIVERY – OPERABILITY/PRICE DEDUCTION

Deductions shown hereafter will be made from the invoice price, or subsequent agency invoices, for delivering diesel fuel oil that does not comply with the detailed specifications, whether or not the diesel fuel oil in question has been consumed by the purchasing Agency. These deductions shall be a flat rate per fill incident, adjusted for the number of non-complying delivery incidents at an individual tank.

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Equipment shall be operable (regardless of weather conditions) when fueled from a delivery made within the last (preceding) thirty days. A deduction shall be assessed for each tank fill incident which causes inoperability of equipment using that delivered fuel. This inoperability deduction shall be in addition to the "Price Deduction" assessed for not complying to one (or more) of the Non-Complying Product characteristics stated hereinafter.

3.3.8. NON-COMPLYING PRODUCT – FLASH POINT – PRICE DEDUCTION

When the delivered diesel fuel oil's flash point is found to be greater than four (4°F) degrees Fahrenheit lower than the specified requirement, a deduction from the contracted invoice price shall be taken as stated in the "Price Deduction Table" found elsewhere within this Contract.

3.3.9. NON-COMPLYING PRODUCT – WATER & SEDIMENT CONTENT – PRICE DEDUCTION

When the delivered diesel fuel oil's water and sediment content is found to be greater than five hundredths (0.05%) of a percent above the specified requirement, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this Contract.

3.3.10. NON-COMPLYING PRODUCT – VISCOSITY – PRICE DEDUCTION

When the delivered diesel fuel oil's viscosity is found to be greater than two (2) seconds above the specified maximum requirement, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this Contract.

3.3.11. NON-COMPLYING PRODUCT – SULFUR CONTENT – PRICE DEDUCTION

When the delivered diesel fuel oil's sulfur content is found to be greater than 0.0018%, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this Contract.

If any delivered product is found to contain incorrect dye, then all diesel fuel in the tank shall be removed and replaced with an equal quantity of (as applicable, clear or red dyed, tax exempt) complying product.

The deduction shall be assessed regardless of whether the non-complying diesel fuel oil delivery is removed or not removed.

3.3.12. NON-COMPLYING PRODUCT – CETANE INDEX – PRICE DEDUCTION

When the delivered diesel fuel oil's Cetane Index is found to be greater than two (2) cetane below the specified minimum requirement/s (i.e., 40 and/or 43.5), a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this Contract.

The deduction shall be applied to Calculated Cetane Index deficiencies and/or Engine Cetane Index deficiencies. The State may consider waiving these deductions (or adjusting them) if certified documentation of fuel quality is provided for fuel containing adequate additives. Certified documentation for fuel quality would be satisfied when the additive is certified in accordance with the regulations at 40 CFR 79 and is registered with the United States Environmental Protection Agency. The State reserves the right to require engine Cetane testing at the Contractor's expense when calculated Cetane is lower than the specified Cetane Index.

3.3.13. NON-COMPLYING PRODUCT – ASH CONTENT – PRICE DEDUCTION

When the delivered diesel fuel oil's ash content is greater than fifteen thousandths of a percent (0.015%), a deduction from the contracted invoiced price shall be taken as stated in the "PRICE DEDUCTION TABLE" found elsewhere within this Contract.

3.3.14. NON-COMPLYING PRODUCT – COLD FILTER PLUGGING POINT (CFPP) TEMPERATURE – PRICE DEDUCTION

When the delivered diesel fuel oil's Cold Filter Plugging Point (CFPP) temperature is found to be greater than one (1°C) degree Centigrade above the specified maximum requirement for the respective delivery area and delivery period, a deduction from the contracted invoiced price shall be taken as stated in the "PRICE DEDUCTION TABLE" found elsewhere within this Contract.

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The deduction shall be assessed regardless of whether the non-complying diesel fuel oil delivery is removed or not removed and regardless of equipment operability. If equipment is not operable because of failure of the supplier/Contractor to adjust fuel and additive mix to ensure proper operation in a respective temperature period/zone, then a deduction shall be charged in addition to the preceding CFPP deduction and/or regardless of whether or not the preceding CFPP deduction is assessed.

3.3.15. PRICE DEDUCTION TABLE

(NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS)

Description of Non-Complying Characteristic	Limiting Value	Respective Amount of Deduction	Equipment Operability	Respective Amount of Deduction
FLASH POINT Type: #1D #2PD/1D&2D/1D #2D & 2PD	LESS THAN 116°F 118°F 121°F	1st incident charged at $250.00 per tank fill*;	WHENEVER USE OF	1st incident charged at $250.00 per tank fill*;
WATER AND SEDIMENT	greater than 0.07%		DELIVERED	
VISCOSITY (max) SUS at 100°F: Type: #1D: #2D & 2PD	 greater than 35 S 40 S	2nd incident charged at $500.00 per tank fill*;	DIESEL FUEL	2nd incident charged at $500.00 per tank fill*;
SULFUR CONTENT (.0018%, Max)	greater than 0.0018%		CAUSES	
CETANE INDEX NO. Calculated: Engine:	less than 40 CCI 43.5 CI		EQUIPMENT ENGINE(S)	
ASH, % mass 0.01% (max):	greater than 0.015%		TO NOT	
COLD FILTER PLUGGING POINT For OCTOBER Use For NOVEMBER Use For DECEMBER Use For JANUARY Use For FEBRUARY Use For MARCH Use	greater than **North/South -12°C/-10°C -17°C/-14°C -30°C/-23°C -33°C/-25°C -33°C/-24°C -25°C/-18°C	Three or more incidences, charged at $750.00 per tank fill*.	OPERATE (SHUTDOWN), DEDUCT THE FOLLOWING:	Three or more incidences, charged at $750.00 per tank fill*.

* "Tank fill", as used in this Table, shall be an individual (drop) fuel delivery into a purchasing facility's fuel storage tank by the Contractor's authorized delivery vehicle.

**"North/South", as used in this Table, shall respectively designate the temperature limits for facilities which are located north of 42° latitude and others which are located south of 42° latitude.

3.3.16. DYE MARKER CONTENT

All product provided shall be free of visible evidence of the blue dye 1.4-diakylamino-anthraquinone. This requirement shall be in full compliance with Federal Clean Air Act, Part 80, Section 80.29 & State NYCRR, or latest revisions thereof.

EXCEPTION: Federally tax-exempt fuel may be dyed red using solvent red dye 164. RED-DYED FUEL **MUST** BE PROVIDED FOR CUSTOMERS REQUESTING IT, **AT CONTRACT PRICE!**

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3.3.17. FLASH POINT

The specified minimum Flash Point for Fuel Oils provided under this contract shall be: 120°F for 1D; 122°F for 2PD/1D and 2D/1D (50/50 blend); and 125°F for 2D and 2PD. Delivered product having a flash point below the respective requirement given above, shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a flash point greater than ten (10°F) degrees Fahrenheit below the specified minimum shall be removed from the purchasing agency's tank and replaced with product conforming to specifications. The Flash Point shall be determined using ASTM Test Method D93-16a (IP #34/85), or latest revision thereof, Flash Point by Pensky-Martens Closed Tester.

3.3.18. WATER AND SEDIMENT

The intended Water & Sediment (W & S) content for Fuel Oils provided under this contract shall be two hundredths (0.02% V/V) of a percent.

Delivered product having a water & sediment content greater than five hundredths (0.05% V/V) of a percent shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a water & sediment greater than five hundredths (0.05% V/V) of a percent shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance. The Water & Sediment content shall be determined using - ASTM Test Method D1796-11 e1 (IP #75/82), or latest revision thereof. Product with W & S over 0.02% V/V but not over 0.05% V/V shall have additives ensuring smooth engine combustion and may be considered for this Contract. A haze rating @ 25°C (77F) shall be a maximum of 2 using ASTM Method D4176-04 (2014) (Procedure 2) or latest revision thereof.

3.3.19. VISCOSITY

The specified maximum Viscosity for Fuel Oils provided under this contract shall be: thirty-three (33 SUS @100°F) Saybolt Universal Seconds at one hundred degrees Fahrenheit, maximum, for 1-D fuel oil; and thirty eight (38 SUS @100°F) Saybolt Universal Seconds at one hundred degrees Fahrenheit, maximum, for 2-D and 2-PD fuel oils. Delivered product having a viscosity greater than 33 SUS @ 100°F or 38 SUS @ 100°F, respectively, shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a viscosity greater than 35 SUS @ 100°F for 1-D; or 40 SUS @ 100°F for 2-D or 2-PD shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance. The viscosity shall be determined using ASTM Test Method D445-17a (IP #71/84), or latest revision thereof; and ASTM D2161-17, 1999e2, Conversion of Kinematic Viscosity to Saybolt Universal Seconds (Table 1), or latest revision thereof relative to the individual characteristics of the product being tested.

3.3.20. CLOUD POINT

The maximum cloud point temperature shall be equal to the tenth percentile minimum ambient temperature listed elsewhere herein under the heading LOW TEMPERATURE OPERABILITY PERFORMANCE. The maximum cloud point temperature for product, delivered from APRIL through the Summer use period, shall be thirty-one (31°F) degrees Fahrenheit [minus five tenths (-0.5°C) of a degree Centigrade]. The Cloud Point shall be determined using ASTM Test Method D2500-17a (IP #219/82), or latest revision thereof, in accordance with ASTM D975-17a procedures, or latest revision thereof.

3.3.21. COLD FILTER PLUGGING POINT (CFPP)

The specified maximum CFPP for low temperature operability/performance of fuel oils provided under this contract shall be twenty-seven (27°F) degrees Fahrenheit [fifteen (15°C) degrees Centigrade] below the specified cloud point. The CFPP shall be determined using Institute of Petroleum Test Method IP #309/83, or latest revision thereof relative to the individual characteristics of the product being tested. This method is technically equivalent to the British Standard BS6188 and European Standard EN116.

Delivered product having a CFPP temperature greater than one (1°C) degree Centigrade above the maximum but less than seven and one-half (7.5°C) degrees Centigrade above the maximum shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a CFPP temperature of seven and one-half (7.5°C) degrees Centigrade, or greater, above the maximum shall be removed from the site upon

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the State's request and the Contractor shall pay a price penalty as stated elsewhere herein regardless of whether the fuel oil delivery is removed or not removed. Respective CFPP temperatures shall be listed elsewhere herein.

3.3.22. SULFUR

The specified maximum Sulfur content for Fuel Oils provided under this contract shall be fifteen ten thousandths of a percent, per table which follows. Delivered product having sulfur content greater than fifteen ten thousandths of a percent (.0015%) shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a sulfur content greater than that allowed by NYCRR, Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Subpart 225-1.2.(d) Table 2 shall be removed from the purchasing agency's tank and replaced with product conforming to specifications. The Sulfur content shall be determined using ASTM D2622-16, or ASTM D4294-16e1; or latest revisions thereof relative to the individual characteristics of the product being tested.

SUMMARY OF SULFUR CONTENT (REQUIREMENTS):

Geographical Area of the State	Percent of Sulfur by Weight (Maximum)
Statewide Highway Vehicles:	0.0015% (fifteen ten thousandths of a percent).

3.3.23. TYPE OF USE REQUIREMENTS

Effective October 15, 2006, the maximum sulfur content shall be .0015% (fifteen ten thousandths of a percent) for all diesel fuel used in highway vehicle motors. This shall apply to all highway vehicles (diesel engine) Statewide. All off-highway equipment motors shall comply with the prior geographical area requirements for sulfur content, or engine manufacturer's recommendation whichever is stricter.

3.3.24. CETANE RATING

The specified minimum cetane value for Diesel Fuel Oils provided under this contract shall be a forty-two (42.0 CCI) Calculated Cetane Index. Delivered product having a calculated cetane index below forty-two (42.0) CCI shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a calculated cetane index below forty (40.0) CCI shall be removed from the purchasing agency's tank and replaced with product conforming to specifications. The Calculated Cetane Index value shall be determined using ASTM Test Method D976-06-2016 (IP #364/84), or latest revision thereof; or ASTM D4737-10 (2016), or latest revision thereof; relative to the individual characteristics of the product being tested.

When a given sample is determined to be in non-compliance of either or both (Calculated & Engine) Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Non-Complying Product - Cetane Content/Price Deduction" shall be waived.

3.3.25. ASH

The specified maximum ASH content for Fuel Oils provided under this contract shall be one hundredth (0.01%) of a percent, maximum by weight. Additionally, a product having excessive ash content shall be removed and/or adjusted in price as specified elsewhere herein. The Ash content shall be determined using ASTM Test Method D482-13 (IP #4/81), or latest revisions thereof - relative to the individual characteristics of the product being tested.

Delivered product having an ash content above the maximum by greater than two thousandths (0.002%) of a percent above the maximum but less than one tenth (0.10%) of a percent above the maximum shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having an ash content of one tenth (0.10%) of a percent by weight, or greater, above the maximum specified shall be removed from the site upon the State's request and the Contractor shall pay a price penalty as stated elsewhere herein regardless of whether the fuel oil delivery is removed or not removed. Respective ash contents shall be listed elsewhere herein.

3.3.26. DIESEL FUEL OIL REQUIREMENTS

The diesel fuel oil supplied under this contract shall meet the universal details listed previously, the seasonal and other listed requirements which follow:

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The diesel fuel oil supplied shall be visually free of undissolved water, sediment, suspended matter, and shall be clear & bright at the ambient temperature, or seventy (70°F) degrees Fahrenheit, whichever is higher. Diesel Fuel oil supplied shall NOT contain any alcohol.

The winter mix diesel fuel oil, regular, premium, and Biodiesel supplied shall meet their respective requirements as listed elsewhere herein. In addition, these grades of fuel oil shall conform to the "LOW TEMPERATURE OPERABILITY PERFORMANCE" requirements listed later herein.

3.3.27. GRADE 2D (2-D) DIESEL (REGULAR) FUEL OIL

Grade 2D fuel oil shall meet specifications listed previously herein & it shall be suitable for use in spring/summer/fall climate conditions.

3.3.28. GRADE 1D (1-D) DIESEL FUEL OIL

The Grade 1D fuel oil shall meet the specifications listed previously herein and it shall be suitable for use during winter (sub-zero) climate conditions. Kerosene (1- K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/Contract.

3.3.29. GRADE 2D/1D WINTER MIX (REGULAR DIESEL/KEROSENE) DIESEL FUEL OIL

The Grade 2D/1D Winter Mix Diesel Fuel Oil shall meet the specifications listed in section 3.3, *Fuel Specifications*, and it shall be suitable for use during winter (purchasing Agency's local ambient temperature) climate conditions.

It shall be proportioned to provide a cloud point equal to the tenth (10th) percentile minimum ambient temperature expected for the region and period of use.

3.3.30. GRADE 2PD/1D WINTER MIX (PREMIUM DIESEL/KEROSENE) DIESEL FUEL OIL

The Winter Mix Premium Grade Diesel Fuel Oil shall be a homogenous mixture of the base diesel fuel oils (1D & 2PD) and specific purpose additives formulated to improve overall product performance. The additives shall be comparable to those stated for 2PD in section 3.3.31 of this Contract.

3.3.31. GRADE 2PD (PREMIUM) DIESEL FUEL OIL

The Premium Grade Diesel Fuel Oil shall be a homogenous mixture of 2D base diesel fuel oil and specific purpose additives formulated to improve overall product performance. The additives are as follows:

Detergents - shall be included to remove gum and/or varnish build-up on fuel system components. They shall carry removed substances to the fuel filter where the substances are separated from the product. At the injectors they shall dissolve and remove combustion deposits from the orifice tip, maintaining required spray patterns for proper combustion. Detergents shall meet the parameters of CRC L-10 Superior Maximum Demerit Rating requirements (10 max.)

Corrosion/Rust Inhibitors - shall be included to prevent the rusting and/or corroding of the cleansed surfaces in the fuel system. The presence of the required corrosion inhibitors in the fuel oil shall be determined using NACE (National Association of Corrosion Engineers) standard test method number TM0172-01. This method is an "A" - spindle test having a grading range from "A" through "E"; "A" indicating no corrosion and "E" indicating extreme corrosion. The Premium Diesel Fuel Oil supplied shall have a rating of B5++0, or better, when tested by this method.

Stabilizer - shall inhibit oxidation of the fuel oil, reducing darkening & sludge formation in the fuel oil as it ages (during prolonged storage periods). The presence of the required stabilizer (degradation inhibitors) in the fuel oil shall be determined using Dupont's standard test method number F21-61. This method is a thermally accelerated degradation process which measures stability based on substance accumulation on a ten micron filter which is compared to a standardized chart. The Premium Diesel Fuel Oil supplied shall have a rating of seven (7), or lower, when tested by this method.

De-hazer - shall remove any traces of moisture that might be suspended in the fuel oil mixture and/or any ambient moisture which might condense in the product. it shall disperse/separate such moisture (water) from the fuel and result in fuel oil clarity.

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Visual Indicator - should be included in all premium diesel fuel oil. The indicator shall be a fluorescent dye which is clearly distinguishable from the standard base fuel oil's color with the use of a black light, etc. Red dye - visible (daylight) to the naked eye indicates Federal Tax Exempt.

Premium grade diesel fuel oil which does not conform to the stabilizer, corrosion ratings specified herein shall be removed or an adequate additive shall be provided. The NYS Chief Procurement Officer's decision to remove or accept corrective additive amounts (provided & intermixed at the Contractor's cost & expense) to the fuel oils in question shall be final.

3.3.32. PREMIUM CETANE RATING

The premium diesel (Grade 2PD & 2PD/1D [Winter Mix]) fuel oil shall contain the respective (specified) combination of the base fuel oil(s) (1D & 2D) and it shall meet all the specifications listed elsewhere herein for those base fuel oils.

In addition to its base fuel oil meeting the Calculated Cetane Index value specified previously herein for all the fuel oils. The premium fuel oil shall have a total (calculated plus cetane improvers) Cetane Index value of forty-five and one-half (45.5) Cetane. ASTM Test Method D976-06-2016 (IP #364/84), or latest revision thereof; or ASTM D4737-10 (2016), or latest revision thereof, shall be used for calculating whether the Cetane number is 45.5. However, the premium grade diesel fuel oil's Cetane Index value shall be determined using (the engine ignition method) ASTM Test Method D613-17ce1 (IP #41/81), or latest revision thereof, when the previously specified calculated method for cetane of the base fuel oil is less than a 45.5 cetane value.

The premium fuel oil shall conform to the specified Cetane Index listed herein, both Calculated Cetane Index and Engine Cetane Index (D613-10a). When a given sample is determined to be in non-compliance of either or both Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Inferior Cetane Content/Price Deduction" shall be waived.

3.3.33. CETANE IMPROVER

At the manufacturer's recommended full-strength dosage ratio, this additive shall include a 2-ethyl-hexyl-nitrate cetane improver which shall increase the cetane value of the fuel by a minimum of four (4) numbers (i.e., a 42.0 cetane fuel shall raise to a cetane of 46.0, or better). A minimum of thirty (30%) percent of the additive package shall be cetane improver.

3.3.34. COLD FILTER FLOW IMPROVER

At the manufacturer's recommended full-strength dosage ratio, this additive shall include a cold filter flow improver which shall provide a maximum fuel oil CFPP temperature which is eighteen (18°F) degrees Fahrenheit [ten (10°C) degrees Centigrade] below the respective Cloud Point temperatures listed elsewhere herein under the heading "LOW TEMPERATURE OPERABILITY/PERFORMANCE CHARACTERISTICS."

Winter Mix delivered for use during the months of November through March shall have a cold filter flow improver as specified herein.

3.3.35. DETERGENT

This additive shall possess detergent characteristics. It shall meet the parameters of CRC L-10 Superior Maximum Demerit Rating requirements (10 max.) and it shall pass a verifiable, objective dynamometer test which proves keep-clean or clean-up ability relative to untreated fuel oil. The Mercedes Benz OM-616 Coker Test, or comparable test, shall be acceptable for proof of performance.

3.3.36. CORROSION INHIBITORS

At the manufacturer's recommended full-strength dosage ratio, this additive shall possess corrosion inhibitors which shall ensure a B^{++}, or better, NACE rating (steel spindle test).

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3.3.37. WATER DISPERSAL

This additive shall provide water dispersant characteristics which neither: completely shed water, nor completely emulsify the water. It shall emulsify water in the fuel oil being treated at a controlled rate of one hundred (100 gal) gallons, maximum, per million gallons of fuel being treated.

3.3.38. DEICING CAPABILITY

At the manufacturer's recommended full-strength dosage ratio, this additive shall provide adequate deicing capability.

3.3.39. ADDITIVE REFERENCE (WINTER MIX, CFPP IMPROVER)

Any additive supplied under this contract shall be: AGA/Truck-Pro (Carter Chem.) product named "Artic Arnol", or NALCO Chemical Co. product code number "88BK108 Liquid", or comparable product; meeting the minimum requirements of this specification.

3.3.40. REQUIREMENTS SUMMARY

PARAMETER	TEST METHOD	1D FUEL OIL	2D FUEL OIL	2PD FUEL OIL
Flash Point, min.	D93-16a	120 °F	125 °F	125 °F
Water & Sed., max.	D1796-11(2016)	0.02% V/V	0.02% V/V	0.02% V/V
Water & Sed., Haze Rating, max.	D4176-04(2014)	2.0	2.0	2.0
Viscosity, max.	D445-17a/D2161-17	33SUS@100 °F	38SUS@100 °F	38SUS@100 °F
Ash, % mass, max.	D482-13	0.01	0.01	0.01
Sulfur, % mass, max.	D2622-16 or D4294-16e1	0.0015%	0.0015%	0.0015%
Cetane Index (calculated)	D976-06-2016 (IP 364/84) D4737-10(2016)	42.0 (min.)	42.0 (min.)	42.0 (min.)
Cetane Number (engine)	D613-17ce1	42.0 (min.)	42.0 (min.)	45.5 (min.)
Aromaticity, % vol., possible min.	D1319-15	------	27.0	27.0
Aromaticity, % vol., possible max.		35.0	35.0	35.0
Cloud Point, °C, max.	D3117-03 D2500-17a	Same as Ambient Temp, October through March		
Cloud Point, °C, min.	IP309/83	See Low Temperature Operability Table		
Carbon Residue (mass %), max., on 10% Ramsbottom	D524-15	0.15	0.35	0.35
Corrosion Inhibitors	TM0172, NACE	Mfr's std.	Mfr's std.	B5++0 or better
Stabilizer	F21-61, Dupont	Mfr's std.	Mfr's std.	"7" or less

3.3.41. BLENDING/DELIVERY REQUIREMENTS

All fuel oil delivered which contains combinations of 1D, 2D, or winterizing additives shall be blended at the bulk plant, or via a dual/multiple manifold on the truck which mixes them for a simultaneous delivery. Delivery/ies via a non-manifold type truck (i.e., product which is not premixed) should not be accepted.

Cetane and cold filter plugging point (CFPP) parameters shall be met regardless of product mix.

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3.3.42. LOW TEMPERATURE OPERABILITY/PERFORMANCE CHARACTERISTICS

The WINTER MIX (2D/1D) and premium diesel, 2PD/1D (WINTER MIX), fuel oil deliveries shall conform to the cloud point and cold filter plugging point temperatures within this section and shall ensure that the maximum percentage of 2D fuel is included in the mix relative to those maximum temperature points. The percentage of 1-D fuel oil used to ensure the proper CFPP temperature shall not exceed fifty (50%) percent of the base oils mix ratio. When necessary to ensure compliance with low temperature characteristics, the use of winterizing additives which meet the conditions stated elsewhere herein shall be required. Cummins states that their engines need a fuel with 60% (minimum) #2 diesel content for Winter Mix.

The fuel oils shall meet the following respective low temperature operability/performance characteristics when tested in accordance with ASTM D975-17a, or latest version thereof, and the test methods listed herein under the heading "UNIVERSAL DETAILS".

WINTER MIX PERFORMANCE PERIODS		AMBIENT TEMPERATURE and CLOUD POINT (maximum) 42°LAT/North - South 42°LAT	CFPP TEMPERATURE (maximum) 42°LAT/North - South 42°LAT
Deliveries	OCTOBER	+26°F(- 3°C) +31°F(-0.6°C)	+ 8°F(-13°C) +13°F(-11°C)
with Next	NOVEMBER	+17°F(- 8°C) +23°F(- 5°C)	- 1°F(-18°C) + 5°F(-15°C)
Scheduled	DECEMBER	- 2°F(-19°C) + 7°F(-14°C)	-24°F(-31°C) -11°F(-24°C)
Replenish-	JANUARY	-2°F(-19°C) + 3°F(-16°C)	-29°F(-34°C) -15°F(-26°C)
ment	FEBRUARY	-2°F(-19°C) + 5°F(-15°C)	-29°F(-34°C) -13°F(-25°C)
In	MARCH	+ 3°F(-16°C) +16°F(- 9°C)	-15°F(-26°C) - 2°F(-19°C)
Delivery In All Other Periods		– +26°F(- 3°C) +31°F(-0.6°C)	+ 13°F(-11°C) +13°F(-11°C)

WINTER MIXES: In regard to NYS DOT sites, the regional equipment manager (transportation motor equipment manager) has the discretion to mandate the winter mixes that will exceed the chart above for cloud point at individual sites.

NOTE: When the National Weather Service projects extended cold periods with ambient temperatures significantly lower than those listed above or a particular locale frequently/usually has lower ambient temperatures, then the oil supplied relative to those deliveries shall have the maximum cloud & cold filter plugging point temperatures lowered to meet actual low ambient operability requirements.

3.4. BIODIESEL FUEL SPECIFICATIONS

3.4.1. BIODIESEL USAGE CONSIDERATIONS

There are many positive benefits attributed to the use of B5, B10 and B20 Biodiesel fuel as compared to normal "petro diesel" fuel. The most mentioned are decreased emissions of various pollutants, increased engine life, reduced reliance on uncertain petro fuel sources, renewable fuel source and safety in handling. However, there are also a number of properties of Biodiesel fuel that potentially impact on equipment, storage and OEM warranty coverage. These considerations are detailed below.

Fuel Filters: Fuel filters on the vehicles and in the delivery system should be checked frequently upon initial Biodiesel use and changed as necessary. Biodiesel and Biodiesel blends have excellent solvent properties and may affect cellulosic filters due to solubility of resin and binders used in those filters. Glass fiber based filters manufactured without the use of binders are probably not affected.

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Sediment: Use of 2D Diesel fuel can leave a deposit in the bottom of fueling lines, tanks, and delivery systems over time. The use of Biodiesel can dissolve this sediment and result in the need to change filters more frequently when first using Biodiesel until the whole system has been cleaned of the deposits left by the petro diesel.

Solvent Properties: Biodiesel is an excellent solvent. Biodiesel can, if left on a painted surface long enough, dissolve certain types of paints. Therefore, it is recommended to wipe any Biodiesel or Biodiesel blend spills from painted surfaces immediately. In addition, Biodiesel blends can soften and degrade certain types of elastomers and natural rubbers over time. There materials may be used in fuel systems. OEM's of vehicles/engines should be contacted for specific information and concerns in this area.

Spontaneous Combustion: Biodiesel is made from vegetable oils and/or animal fats which can oxidize and degrade over time. The oxidizing process can produce heat. In certain environments a pile of oil-soaked rags can become hot enough to result in a spontaneous fire. Biodiesel soaked rags should be stored in a safety can or dried individually to avoid the potential for spontaneous combustion.

Storage: All fuels have a shelf life. This is also true with Biodiesel and Biodiesel blends. Available data indicates that B5, B10 and B20 Biodiesel fuel should be used within six months of manufacture. Fuels determined to have a Total Acid Number (by ASTM D664-17 or latest version thereof) of greater than 0.25KOH/g are not recommended for use.

OEM Considerations: The impact of Biodiesel use on warranty coverage varies by vehicle/engine manufacturer. Major engine manufacturers have all issued statements regarding the use of Biodiesel fuel as it pertains to their warranty coverage. BEFORE deciding to use B5, B10 and B20 fuel, prospective users should make sure they have checked with the manufacturers of their diesel equipment for considerations and concerns related to that usage. Copies of the major manufacturers' statements regarding warranty impact of using Biodiesel may be obtained from the National Biodiesel Board at (800) 841-5849.

3.4.2. DYE MARKER CONTENT

All products provided shall be free of visible evidence of the blue dye 1.4-diakylamino-anthraquinone. This requirement shall be in full compliance with Federal CCA*, Part 80, Section 80.29 & State NYCRR, or latest revisions thereof. EXCEPTION: Federally tax-exempt fuel may be dyed red using solvent red dye 164. RED-DYED FUEL **MUST** BE PROVIDED FOR CUSTOMERS REQUESTING IT, **AT CONTRACT PRICE**.

3.4.3. FINISHED FUEL REQUIREMENTS

MATERIAL: The finished B5, B10 and B20 Biodiesel fuel blends shall be prepared using the following feedstocks:

1D Light Distillate Diesel Fuel: As described above and meeting the requirements listed under the Diesel Fuel feedstock portion this spec and as listed in the Requirements Summary table.

2D Middle Distillate Diesel Fuel: As described above and meeting the requirements listed under the Diesel Fuel feedstock portion this spec and as listed in the Requirements Summary table.

Biodiesel (B100) Fuel: Biodiesel fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and meeting the requirements of ASTM D6751-15ce1, or latest version thereof, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels".

3.4.4. WORKMANSHIP

The finished B5, B10 or B20 Biodiesel fuel blend shall be visually free from undissolved water, sediment, and suspended matter. It shall be clear and bright when tested in accordance with ASTM D 4176-04(2014), or latest version thereof, procedure 1 or 2.

3.4.5. PHYSICAL AND CHEMICAL REQUIREMENTS (TABLE)

The Biodiesel portion of the finished B5, B10 or B20 Biodiesel fuel blends shall be 5%, 10% and 20% respectively by volume of B100 Biodiesel fuel with a tolerance of +/-1%. Remaining 95%, 90% or 80% of the final blend shall

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be composed of 1D and 2D Diesel fuel in proportions as necessary to produce an end product meeting the requirements listed in the Physical and Chemical Requirements Table below

PARAMETER	TEST METHOD	B5/B10/B20 BIODIESEL FUEL
Flash Point, min.:	D93-16a	125°F
Water & Sed., max.:	D2709-16	0.05% V/V
Water & Sed., Haze Rating, max.:	D4176-04 (2014)	2.0
Viscosity, max.:	D445-17a/D2161-17	38SUS@100°F
Ash, %mass, Max.	D482-13	0.01
Sulfur, % mass, max.:	D2622-16 or D4294-17	0.0015%
Cetane Index (Calculated)	D4737-10(2016)a	42.0 (min.)
Cetane Number (Engine)	D613-17ce1	42.0 (min.)
Aromaticity, % vol., Max.	D1319 – 15	28.0
Cloud Point, °C max.	D2500-17a	As shown in the "Low Temperature Operability" Table
CFPP Point, °C,	IP309	As shown in the "Low Temperature Operability" Table
Carbon Residue (mass %), max, on 10% Ramsbottom:	D524-15	0.35
Total Acid Number (TAN), mg KOH/g, maximum	D664-17	0.25
Corrosion Inhibitors	TM0172-2001, NACE	Mfr's std.
Stabilizer	F-21, Dupont Thermal Stability	Mfr's std.

3.4.6. FLASHPOINT

Delivered product having a flash point below the respective requirement given in Physical and Chemical Requirements Table shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a flash point greater than ten (10°F) degrees Fahrenheit below the specified minimum shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

3.4.7. WATER AND SEDIMENT

Delivered product having a water & sediment content greater than five hundredths (0.05% V/V) of a percent shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a water & sediment greater than seven hundredths (0.07% V/V) of a percent shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance.

3.4.8. VISCOSITY

The specified maximum Viscosity for Fuel Oils provided under this contract shall be thirty-eight (38 SUS @100°F) Saybolt Universal Seconds. Delivered product having a viscosity greater than 38 SUS @ 100°F, respectively, shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a viscosity greater than 40 SUS @ 100°F shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance.

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3.4.9. CLOUD POINT

Various delivery periods are shown in the LOW TEMPERATURE OPERABILITY TABLE. The cloud point temperature of the material supplied for these various delivery periods shall be no greater than the tenth percentile minimum ambient temperature as listed in the LOW TEMPERATURE OPERABILITY TABLE for the latitudes shown in that table.

3.4.10. COLD FILTER PLUGGING POINT (CFPP)

Various delivery periods are shown in the LOW TEMPERATURE OPERABILITY TABLE. The CFPP of the material supplied for these various delivery periods shall be no greater than the values listed in the LOW TEMPERATURE OPERABILITY TABLE for the latitudes shown in that table.

Delivered product having a CFPP temperature greater than one (1°C) degree Centigrade above the maximum but less than seven and one-half (7.5°C) degrees Centigrade above the maximum shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS. Delivered product having a CFPP temperature of seven and one-half (7.5°C) degrees Centigrade, or greater, above the maximum shall be removed from the site upon the State's request and the Contractor shall pay a price deduction as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS regardless of whether the fuel oil delivery is removed or not removed. Respective CFPP temperatures shall be listed elsewhere herein.

3.4.11. SULFUR

The specified maximum Sulfur content for Diesel Fuel Oils provided under this contract shall be fifteen ten thousandths of a percent. Delivered product having a sulfur content greater than fifteen ten thousandths of a percent (0.0015%) shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS. Delivered product having a sulfur content greater than that allowed by NYCRR, Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Subpart 225-1.2.(d) Table 2 shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

3.4.12. CETANE RATING

The specified minimum cetane value for Diesel Fuel Oils provided under this contract shall be a forty-two (42.0 CCI) Calculated Cetane Index. Delivered product having a calculated cetane index below forty two (42.0) CCI shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a calculated cetane index below forty (40.0) CCI shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

When a given sample is determined to be in non-compliance of either or both (Calculated & Engine) Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Non-Complying Product - Cetane Content/Price Deduction" shall be waived.

3.4.13. ASH

The specified maximum ASH content for Diesel Fuel Oils provided under this contract shall be one hundredth (0.01%) of a percent, maximum by weight. Delivered product having an ash content greater than two thousandths (0.002%) of a percent above the maximum but less than one tenth (0.010%) of a percent above the maximum shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS. Delivered product having an ash content of one tenth (0.010%) of a percent or greater above the maximum specified shall be removed from the site upon the State's request and the Contractor shall pay a price deduction as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

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3.4.14. LOW TEMPERATURE OPERABILITY TABLE

Shall be the same as listed elsewhere herein for Standard Petroleum Diesel Fuel.

NOTE: When the National Weather Service projects extended cold periods with ambient temperatures significantly lower than those listed in the "Low Temperature Operability Table" or a particular locale frequently/usually has lower ambient temperatures, then the oil supplied relative to those deliveries shall have the maximum cloud and cold filter plugging point temperatures lowered to meet actual low ambient operability requirements.

3.4.15. NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS

Shall be the same as indicated under "General Information" herein.

3.4.16. FEEDSTOCK DIESEL FUEL OIL REQUIREMENTS

The Diesel fuels used as feedstocks in the manufacture of B5, B10 or B20 Biodiesel fuel shall meet or exceed the requirements of ASTM D975 -17a, or latest version thereof, and the requirements listed below and in the Requirements Summary table below before being blended to produce the B5, B10 or B20 Biodiesel end product.

3.4.17. WORKMANSHIP

Fuel shall be visually free from undissolved water, sediment, and suspended matter. It shall be clear and bright when tested in accordance with ASTM D 4176-04 (2014), procedure 1 or 2, or latest version thereof. Fuel oil shall NOT contain any alcohol.

3.4.18. 2D DIESEL (REGULAR) FUEL OIL

Grade 2D fuel oil shall meet the specifications listed in the Requirements Summary table below.

3.4.19. 1D DIESEL (REGULAR) FUEL OIL

The Grade 1D fuel oil shall meet the specifications listed in the Requirements Summary table below. Kerosene (1- K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/Contract.

3.4.20. REQUIREMENTS SUMMARY (TABLE)

Except for Water & Sed., max., shall be same as listed under "Requirements Summary" elsewhere herein for "Standard Petroleum Diesel Fuel".

PARAMETER	TEST METHOD	1D Diesel Fuel	2D Diesel Fuel
Water & Sed., max.:	D2709-16	0.02% V/V	0.02% V/V

4. GENERAL PROVISIONS

4.1. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties may, from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to any Authorized User that is associated with the subject of the notice.

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Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

4.2. CAPTIONS

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

4.3. SEVERABILITY

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

4.4. COUNTERPARTS

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

4.5. ENTIRE AGREEMENT

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B, Section 26, *Modification of Contract Terms*, and Section 30, *Purchase Orders*, no alteration or modification shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms shall have any force and effect.

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CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties as set forth in Appendix B, Section 22, *Contract Creation/Execution*. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR		**THE PEOPLE OF THE STATE OF NEW YORK**	
Signature:	_____	Signature:	_____
Printed Name:	_____	Printed Name:	_____
Title:	_____	Title:	_____
Company Name:	_____		_____
Federal ID:	_____		
NYS Vendor ID:	_____	Date:	_____
Date:	_____		

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **ss.:**
COUNTY OF }

On the _____ day of _____in the year 20___, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of_____ _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

_____
Notary Public Signature

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

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any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,

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whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by

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State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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APPENDIX B

GENERAL SPECIFICATIONS

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To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

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GENERAL

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

2. DEFINITIONS Terms used herein shall have the following meanings:

a. AUTHORIZED USER Authorized User shall have the meaning set forth in State Finance Law Section 163(1)(k) and includes, but is not limited to, New York State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

b. BID A response to the Solicitation submitted by a Bidder to provide Products.

c. BIDDER Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

d. BID SPECIFICATIONS A written description drafted by OGS or an Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

e. COMMISSIONER The Commissioner of OGS or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

f. CONTRACT The writings that contain the agreement of the Commissioner and the Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

1. **Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.

2. **Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

3. **Back-Drop Contracts** Multiple-award Centralized Contracts where OGS provides a written description for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

4. **Piggyback Contract** A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

5. **Contract Award Letter** A letter to the successful Bidder indicating acceptance of its Bid in response to a Solicitation. Unless otherwise specified, the issuance of a letter of acceptance forms a Contract but is not an order for Product, and the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

g CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a Contract has been established.

h. CONTRACTOR Any successful Bidder to whom a Contract has been awarded by the Commissioner.

i. DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, that are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

j. ENTERPRISE The total business operations in the United States of an Authorized User without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of the Authorized User.

k. ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

***l.* ERROR CORRECTIONS** Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

m. GROUP A classification of a Product that is designated by OGS.

n. INVITATION FOR BIDS (IFB) A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

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o. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, programs, code or data conversion, or custom programming).

p. LICENSEE An Authorized User who acquires Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

q. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered master copy of a program, the License Effective Date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

r. LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

s. MINI-BID A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

t. OGS The New York State Office of General Services.

u. PATCH Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

v. PRODUCTS Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

w. PURCHASE ORDER The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Purchasing Card, electronic Purchase Order, or other authorized instrument).

x. REQUEST FOR PROPOSALS (RFP) A type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to one or more responsive and responsible Bidders.

y. REQUEST FOR QUOTATION (RFQ) A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

z. RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

aa. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

bb. SINGLE SOURCE A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

cc. SITE The location (street address) where Product will be delivered or executed.

dd. SOLE SOURCE A procurement where only one Bidder is capable of supplying the required Product.

ee. SOLICITATION Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

ff. SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine object code.

gg. STATE State of New York.

hh. STATE AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

ii. SUBCONTRACTOR Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

jj. TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

kk. THIRD-PARTY SOFTWARE Any software that is developed independently of Contractor and which may be governed by a separate license.

***ll.* VIRUS** Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

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BID SUBMISSION

3. **INTERNATIONAL BIDDING** All Bids, including all information and Product required by the Solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (US$). Any Bids submitted which do not meet the above criteria will be rejected.

4. **BID OPENING** Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

5. **LATE BIDS** Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

6. **CONFIDENTIAL/TRADE SECRET MATERIALS**

a. **BIDDER/CONTRACTOR** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder/Contractor. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder/Contractor. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The Commissioner's or Authorized User's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder/Contractor will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. **COMMISSIONER OR AUTHORIZED USER** Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

7. **PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS** If any portion of work being solicited is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. **PREVAILING WAGE RATE APPLICABLE TO BIDS** A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting www.labor.ny.gov and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rates for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

b. **WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM** The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

c. **ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS** In compliance with Article 8, Section 220 of the New York State Labor Law:

i. Posting The Contractor must publicly post on the work Site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over $25,000 where the Contractor maintains no regular place of business in the State, such records must be kept at the work Site. For building services contracts, such records must be kept at the work Site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Day's Labor No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or

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contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract Site or for the protection of the life and limb of the persons using the Contract Site.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

8. TAXES

a. Unless otherwise specified in the Solicitation, Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116(a)(1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

9. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized Users are not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

10. PRODUCT REFERENCES

a. "Or Equal" In all Solicitations or Bid Specifications, the words "or equal" are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

11. REMANUFACTURED, RECYCLED, RECYCLABLE, OR RECOVERED MATERIALS Upon the conditions specified in the Solicitation and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable, or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements, or in the Solicitation. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product unless such use is precluded due to health, welfare, safety requirements, or by the Solicitation. Where such use is not practical, suitable, or permitted by the Solicitation, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Items with recycled, recyclable, recovered, refurbished, or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

12. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products that are manufactured or produced in public institutions will be rejected.

13. PRICING

a. Unit Pricing If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places, for each item unless otherwise specified in the Solicitation. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. Net Pricing Unless otherwise required by the Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated in the Solicitation or Purchase Order.

c. "No Charge" Bid When Bids are requested on a number of Products as a Group or lot, a Bidder desiring to Bid "no charge" on a Product in the Group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. Third Party Financing If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a

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"Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.

f. **Specific price decreases:**

(i) GSA Changes: Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) Commercial Price List Reductions: Where net pricing under the Contract is based on a discount from Contractor's list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or

(iii) Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) Special Offers/Promotions to Authorized Users: Contractor may offer Authorized Users, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

g. **Cost Proposal Revisions** A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law Section 163(9)(c). A cost proposal revision must be a lower price than the initial price.

14. SITE INSPECTION Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

15. PURCHASING CARD The State's Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

BID EVALUATION

16. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his or her sole discretion, may accept or reject illegible, incomplete or vague Bids, and the Commissioner's decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

17. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two o more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

18. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

19. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

20. DEBRIEFINGS Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

21. CONTRACT PUBLICITY Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

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TERMS & CONDITIONS

22. CONTRACT CREATION/EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidders upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

23. CONTRACT TERM - EXTENSION In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

24. OFFICIAL USE ONLY/NO PERSONAL USE The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

25. PARTICIPATION IN CENTRALIZED CONTRACTS

a. State Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law.

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to hold the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

26. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer any Authorized User more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against an Authorized User unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

27. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts, also referred to as indefinite delivery/indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the Contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

29. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article

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2-B of the Executive Law, or the Commissioner determines pursuant to his or her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract, as the Commissioner in his or her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

30. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

All Purchase Orders issued pursuant to a Contract let by the Commissioner must be identified with the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

31. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

32. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Contract or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

33. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

b. Shipping Charges Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the bill of lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

34. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner. Title, risk of loss, and acceptance for technology Products shall be governed by the Product Acceptance clause.

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35. PRODUCT SUBSTITUTION In the event a specified Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for termination of Contract.

36. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

37. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the Site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or Site. Work shall be performed to cause the least inconvenience to the Authorized User and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

38. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

39. EMPLOYEES, SUBCONTRACTORS AND AGENTS All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract or the Purchase Order, and must comply with all security and administrative requirements of the Authorized User that are communicated to the Contractor. The Commissioner and the Authorized User reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personne for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract or the Purchase Order. The Commissioner and the Authorized User reserve the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor

40. ASSIGNMENT In accordance with Section 138 of the State Finance Law, the Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

41. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

42. SUSPENSION OF WORK The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon

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issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

43. TERMINATION

a. For Cause For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor an Authorized User shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

c. For Violation of Sections 139-j and 139-k of the State Finance Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner at the Contractor's expense where the Contractor is determined by the Commissioner to be non-responsible. In such event, the Commissioner may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

f. Upon Conviction of Certain Crimes The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

44. SAVINGS/FORCE MAJEURE A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

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Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his or her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

45. CONTRACT INVOICING

a. Invoicing Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at **www.osc.state.ny.us**, by e-mail at **HelpDesk@sfs.ny.gov**, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

46. DEFAULT – AUTHORIZED USER

a. Breach by Authorized User An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 30 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. Notice of Breach Notwithstanding the foregoing, the Contractor shall, at least 10 business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. Insufficient basis If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

47. PROMPT PAYMENTS

a. By State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State agency Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a non-State agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

48. REMEDIES FOR BREACH Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User,

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the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

a. Cover/Substitute Performance In the event of Contractor's material, uncured breach, the Commissioner or Authorized User may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Commissioner or Authorized User is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner or Authorized User may acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

49. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

50. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Safety Data Sheet must be provided to and approved by the Authorized User.

51. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

52. SECURITY Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

53. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

54. WARRANTIES

a. Product Performance Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be substantially free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished

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individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer's standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer's Product.

Where Contractor, Third-Party Software vendor, or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through the standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable, or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Virus Warranty The Contractor represents and warrants that any Product acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at an Authorized User's Site.

e. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product Documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: (i) consulting, integration, code or data conversion, (ii) maintenance or support services, (iii) data entry or processing, or (iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

f. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Authorized User must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

g. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

h. Prompt Notice of Breach The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

i. Additional Warranties Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

j. No Limitation of Rights The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

55. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any extensions thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

56. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold the Authorized Users harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation;

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provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

57. INDEMNIFICATION RELATING TO INFRINGEMENT

The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters. This constitutes the Authorized User's sole and exclusive remedy for infringement of a patent, copyright, trademark, trade secret, or other proprietary right.

58. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Authorized User's claim or (ii) five hundred thousand dollars ($500,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

59. DISPUTE RESOLUTION PROCEDURES

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to

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administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at the OGS website. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.

60. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the license term shall be extended by the time period for testing, acceptance or trial.

c. Product Documentation Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone

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or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Licensee does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

e. **Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated Site not originally specified in the license, including transfers within Agencies, between Agencies, and pursuant to governmental restructuring or reorganization ("permitted license transfers"). Licensees do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 days prior written notice to Contractor of such moves and certify in writing that the Product is not in use at the prior Site. There shall be no additional license or other transfer fees due Contractor, provided that: (i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred Site (e.g., named users, seats, or MIPS); or (ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred Site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. **Restricted Use By Third Parties** Third parties retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement, which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and (iii) such third party maintains a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

g. **Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

h. **Confidentiality Restrictions** If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

i. **Restricted Use by Licensee** Except as expressly authorized by the Terms of License, Licensee shall not: (i) copy the Product; (ii) cause or permit reverse compilation or reverse assembly of all or any portion of the Product; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

61. **PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have 30 days from the date of delivery to accept hardware Products and 60 days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, testing and acceptance.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data to be specified by Authorized User. Where using its own data or tests, Authorized User must have the tests or data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, which shall be made part of the Contractor's standard documentation and shall be covered by the Product warranty. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional 30 day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

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Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, if the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have 30 days to correct the deficiency, and the Authorized User shall have an additional 60 days to evaluate the Product as provided herein.

If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

62. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any Site where a copy of the Product resides. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee's security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee's normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract at time of audit, or if none, then at the Contractor's U.S. commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

63. NO HARDSTOP OR PASSIVE LICENSE MONITORING
Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall not contain any computer code that would disable the Product or upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Licensee shall be entitled.

64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

a. Definitions

(i) For purposes of this clause, "Products" means deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on electronic media c) Third-Party Software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, Source Code, object code).

(ii) For purposes of this clause, "Existing Products" means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.

(iii) For purposes of this clause, "Custom Products" means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for Authorized User under the Contract.

b. Title to Project Deliverables Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing hardware Products shall pass to Authorized User upon acceptance.

2. Software - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor's standard license

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agreement; provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the Licensee where the Authorized User is a State Agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the Third-Party Software vendor's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Products, whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purposes as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third-Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchases under the Contract may be the obtaining of acceptable third-party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third-party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third-party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Products, the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to Third–Party Software Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

65. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

66. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product manufacturer/developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdrawn support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customer ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor sha

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be required to: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: (a) the best terms offered by Contractor to any other similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

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ATTACHMENT 1 – PRICING

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ATTACHMENT 2 – Delivery Schedule – State Agencies

Delivery schedule included as a separate document

ATTACHMENT 3 – Delivery Schedule – Political Subdivisions, Local Governments and Other Eligible Non-State Agencies

Delivery schedule included as a separate document

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Attachment 4
Contractor's Insurance Requirements

The Contractor shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

The Contractor shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance shall be provided at the time of Bid submission;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.
Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Contract shall comply with the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B Insurance Requirements below.

2. **Policy Forms.** Except as may be otherwise specifically provided herein, or agreed to in writing by OGS, all policies of insurance required by this Attachment shall be written on an occurrence basis.

3. **Certificates of Insurance/Notices**. Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name The New York State Office of General Services, Procurement Services, 38th Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Refer to this Solicitation and any Contract resulting from this Solicitation by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and

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- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. **Primary Coverage.** All liability insurance policies shall provide that the required coverage be primary and non-contributory to any other insurance that may be available to People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees.

5. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles/self-insured retentions above $100,000 are subject to approval from OGS. Such approval shall not be unreasonably, withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

8. **Waiver of Subrogation**. For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement

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evidencing such coverage is also acceptable.

9. **Additional Insured**. The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as additional insureds: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. **Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. **Notice of Cancelation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

12. **Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

13. **Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the OGS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

    - For certificates of insurance: 5 business days from request or renewal, whichever is later;
    - For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
    - For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
    - For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
    - For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from receipt.

    Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days

B. **Insurance Requirements.** The Contractor shall obtain and maintain in full force and effect, throughout the term of this Contract, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

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Insurance Type		Proof of Coverage is Due
Commercial General Liability	Not less than $1,000,000 each occurrence	At time of Bid submission and updated in accordance with Contract
General Aggregate	$2,000,000	
Products – Completed Operations Aggregate	$2,000,000	
Personal and Advertising Injury	$1,000,000	
Medical Expenses Limit	$5,000	
Business Automobile Liability Insurance	Not less than $2,000,000 each occurrence	
Contractor Pollution Liability Insurance*	Not less than $10,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		

1. **Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed in a contract (including the tort liability of another assumed in a contract):

   Policy shall include bodily injury, property damage and broad form contractual liability coverage.
   - General Aggregate
   - Products – Completed Operations Aggregate
   - Personal and Advertising Injury
   - Each Occurrence

   Coverage shall include, but not be limited to, the following:
   - Premises liability;
   - Independent contractors;
   - Blanket contractual liability, including tort liability of another assumed in a contract;
   - Defense and/or indemnification obligations, including obligations assumed under this Contract;
   - Cross liability for additional insureds; and
   - Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Contract.

2. **Comprehensive Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

   In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

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In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

3. ***Contractor Pollution Liability.**** *If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous material or substance including asbestos, lead, fungus and those as defined by applicable state and federal laws and regulations, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the Contract, and for two years after completion hereof providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the State, OGS or any authorized user arising from the Contractor's work. The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds and the coverage shall be primary. This requirement applies to mold as well, if excluded in the Commercial General Liability policy.*

If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48 03 06 or CA 00 12 03 06) as well as proof of MCS 90.

4. **Workers' Compensation Insurance and Disability Benefits Requirements**

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of Bid submission, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, http://www.wcb.ny.gov. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

ATTACHMENT 5 – Report of Contract Usage

This Spreadsheet is included as a separate document.

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

ATTACHMENT 6 – Guaranteed Analysis

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

ATTACHMENT 7 – Approved MWBE Utilization Plan

Attachment: NOCO CONTRACT (RES-2021-791 : Authorize Supervisor to Sign NOCO ENERGY CORP. CONTRACT -DIESEL FUEL- CRS#2866)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Highway
Initiated by: **Stephen Bryan**
Co-Sponsored by:

DOC ID: 24726 **RESOLUTION 2021-792** **ADOPTED**

Approval of Agreement - State University of New York at Buffalo CRS #2887

The Highway Department requests authorization to allow the Supervisor to sign the agreement between the Town of Amherst Highway Department and the State University of New York at Buffalo.

This agreement is for the 2021 - 2022 winter season (9/01/2021 through 8/31/2022) for snow removal and ice control.

The State University of New York at Buffalo agrees to reimburse the Town of Amherst the sum of $54,985.18.

NOW THEREFORE BE IT FURTHER RESOLVED, that the Town Board authorizes the Supervisor to sign this agreement subject to the Contract Routing System (CRS #2887) and the approval of the Town Attorney.

9/13/2021
Consent

FINANCIAL IMPACT:

D5142 : 02300 Revenue

$54,985.18

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

Attachment: DOC090721-090720211133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

TOWN OF AMHERST 2021-2022
SNOW REMOVAL AND ICE CONTROL AGREEMENT WITH
STATE UNIVERSITY OF NEW YORK AT BUFFALO

In consideration of the mutual covenants, agreements, and considerations contained herein, the State University of New York at Buffalo and the Town of Amherst agree as follows:

1. **RECITALS:** The foregoing recitals are incorporated into the terms of this Agreement.
2. **DEFINITIONS:** Capitalized terms used but not defined herein shall have the meanings ascribed to them in this paragraph 2.
   a. **Snow Season** shall be defined as beginning September 1st and ending August 31st of the following calendar year.
   b. **Lane Mile** shall mean a portion of any State University of New York at Buffalo road that is one mile long and of sufficient width for safe passage of a vehicle. Shoulders, median strips, and short widened sections designed for intersection turning lanes shall not be considered in the calculation of the number of Lane Miles to be maintained under this Agreement. All State University of New York at Buffalo roads shall be considered to be at least two lanes wide for such purposes.
   c. **Remove** shall mean that which is moved and re-deposited alongside the road, and shall include, if necessary, push back and shelving.
   d. **Push Back** After a storm is over, plowed snow should be plowed back as far as possible to provide snow storage in anticipation of the next storm.
   e. **Shelving/Benching** Additional snow storage can be provided by plowing high level snow banks with the wing elevated. The wing should be at least three feet off the pavement to avoid hitting the guide rail.
   f. **Extra Work** For removal of snow from areas requiring loading equipment and hauling vehicles, front end loaders, snow blowers, or heavy dump trucks are usually used for such purpose.
   g. **State University of New York at Buffalo Executive** shall mean the Senior Buyer/Contract specialist
3. **TERM:** The term of this Agreement shall be for a one year period beginning September 1st, 2021, and expiring August 31st, 2022, defined as one snow season. The Agreement shall be reviewed annually in accordance with paragraph 9 of this Agreement. This Agreement can be extended at the request of the State University of New York at Buffalo with the approval of the Town of Amherst. The Parties agree that they will commence discussion or negotiations pertaining to the extensions of renewal of this agreement, whether in whole or part, beginning in March 2020.
4. **SERVICES:** This Agreement shall include all activities necessary to control snow and ice on State University of New York at Buffalo roads, together with all necessary labor, equipment, and materials. The Town of Amherst agrees to remove snow and

to control ice and snow on State University of Buffalo roads, hereinafter listed on **Exhibit A.** The Town of Amherst will be required to maintain sufficient level of manpower, equipment, and materials to enable it to meet the goal of providing safe and passable roads. The Town of Amherst shall clear State University of New York at Buffalo roads of snow and ice as designated by that institution, to the extent the State University of New York at Buffalo may deem necessary to provide reasonable passage and movement of vehicles over such roads, all in accordance with terms, rules, and regulations as may be deemed by the State University of New York at Buffalo to be in the best interest of the public. At all times, the State University of New York at Buffalo reserves the right to call out the Town of Amherst to Remove and/or clear snow and ice, and the Town of Amherst hereby agrees to respond within a reasonable period of time. Both Parties shall designate a 24-hour contract person, whom the State University of New York at Buffalo or the Town of Amherst will contact in the event that either Party determines it is necessary to call out the other. The Town of Amherst will notify the State University of New York at Buffalo in writing when a higher level of snow removal is potentially required. The State University of New York at Buffalo will provide written response to the Town of Amherst within twenty-four (24) hours of such notification as to whether or not the State University of New York at Buffalo will do the work themselves or have the Town of Amherst perform the higher level of snow removal. If the State University of New York at Buffalo Executive requests the higher level work, then the Town of Amherst will be compensated by the State University of New York at Buffalo per the following rates. Labor shall be billed at the applicable Town of Amherst rate and equipment will be billed at the present FEMA rates for equipment. In the event the Town of Amherst does not perform as described in Section 2 of this Agreement, the State University of New York at Buffalo and the Town of Amherst will be required to meet as soon as possible, within ten (10) business days, to settle the dispute.

5. **LANE MILES:** The schedule for State University of New York at Buffalo roads that are subject to this Agreement is attached hereto and marked **Exhibit A: Lane Mile Confirmation.** Shoulders, median strips, and short widened sections designed for intersection turning lanes shall not be considered in the calculation of the number of Lane Miles to be maintained under this Agreement. All State University of New York at Buffalo roads shall be considered to be at least 2 lanes wide for such purpose. The number of Lane Miles for which compensation shall be paid hereunder is as set forth in **Exhibit A.**
6. **PAYMENT:** The State University of New York at Buffalo agrees to reimburse the Town of Amherst for services subject to the terms and conditions enumerated herein in the form of one payment as follows:

September 1st, 2021, through August 31st, 2022 - $54,985.18

Payments shall be made on an invoice submitted by the Town of Amherst to the State University of New York at Buffalo. The invoice shall be signed by the Supervisor of the Town of Amherst, and shall be submitted to the State University of New York at Buffalo by April 15, 2022 and due within thirty (30) days thereafter.

7. **INDEMNIFICATION:** To the fullest extent permitted by law, the Town of Amherst agrees that it will, at its own expense, indemnify and hold harmless the State University of New York at Buffalo, its officers, employees, and agents, from and

Attachment: DOC090721-090720211133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees, or loss arising directly or indirectly out of performance or failure to perform hereunder by the Town of Amherst or third parties under the direction or control of the Town of Amherst; and to provide defense for and defend, at its sole expense, any and all claims, demands, or causes of action directly or indirectly arising out of this Agreement, and to bear all other costs and expenses related thereto. The State University of New York at Buffalo agrees that it shall provide timely notice to the Town of Amherst of any claim or action of proceeding that may be filed or commence against the State University of New York at Buffalo by reason of the performance of such work.

8. **INSURANCE:** As a part of its obligation to indemnify, defend, and hold harmless the State University of New York at Buffalo, its officers, agents and employees, as set forth above, the Town of Amherst agrees to obtain and maintain in full force and effect, for the term of this Agreement, insurance coverage, naming the State University of New York at Buffalo as an additional insured, as described in **Exhibit B.** In lieu of the foregoing, the Town of Amherst may furnish satisfactory evidence of a self-insurance plan acceptable to the State University of New York at Buffalo.
9. **AMENDMENT/TERMINATION:** Any modifications made to the terms of this Agreement that are mutually agreed upon by both Parties, in writing, shall become effective immediately, or as otherwise agreed. Prior to the commencement of each Snow Season, the State University of New York at Buffalo will annually notify the Town of Amherst, in writing, of any proposed modifications to this Agreement by September 1st. It is understood and agreed by both Parties that notice of any modification to this Agreement shall be deemed to be accepted by the Town of Amherst and made part hereof, except in the event the Town of Amherst does not concur with the modification, then the Supervisor of the Town of Amherst may submit a letter of dispute to the State University of New York at Buffalo within ten (10) business days after receipt of the notice, setting forth the reason for the non-concurrence. The Town of Amherst and the State University of New York at Buffalo shall attempt to resolve the matter. If a resolution if unsuccessful, either Party may choose to terminate this Agreement upon thirty (30) days written notice to the other Party; however a request to terminate must be made no later than October 1st of each year. In the event a request to terminate is made after October 1st, said termination shall not be effective until the end of the current Snow Season, unless mutually agreed to, in writing, by both Parties.
10. **EXECUTORY:** It is understood by the Parties that this agreement shall be executor only to the extent of the monies available to the State University of New York at Buffalo and appropriated therefore, and no liability shall be incurred by the State University of New York at Buffalo beyond the monies available and appropriated for these purposes.
11. **SUCCESSORS:** This Agreement shall bind the successors, assigns and representatives of both Parties hereto.
12. **ASSIGMENT:** This Agreement shall not be assigned without written permission from the State University of New York at Buffalo.

Attachment: DOC090721-090720211133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

13. **WAIVER:** Failure of either Party to assert any right or declare any default hereunder shall not preclude such assertion or declaration at a later date or upon recurrence of violation of such rights or event of default.
14. **GOVERNING LAW:** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York.
15. **ENTIRE AGREEMENT:** This Agreement and its attachments constitute the entire Agreement between the Parties with respect to the subject matter hereof, and shall supersede all previous negotiations, commitments, and writings. In the event of any conflict between the terms of this Agreement and the terms of any schedule or attachment hereto, it is understood that the terms of this Agreement shall be controlling with respect to any interpretation of the meaning and intent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized officers on the day and year first written above.

State University of New York at Buffalo

By: _____

Craig R. Hooftallen, MBA
Senior Buyer/Contract Specialist

Town of Amherst

By: _____

Brian Kulpa
Town of Amherst Supervisor

FOR THE MUNICIPALITY:

State University of New York at Buffalo

On this 2nd day of September, 2021, before me, the undersigned, personally appeared Craig R. Hooftallen, to me personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name 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 entity or individual upon behalf of which the individual acted, executed the instrument by authority of said municipality.

_____
Notary Public

Jennifer R. Russo
Notary Public-State of New York
No. 01RU6352555
Qualified in Erie County
My Commission Expires December 27, 2024

Attachment: DOC090721-090720211332218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

2020-2021 STATE UNIVERSITY OF NEW YORK AT BUFFALO SNOW REMOVAL EXHIBIT A: LANE MILE CONFIRMATION

Town of Amherst
5583 Main Street
Williamsville, New York 14221

LOCATION	LANES	MILEAGE	TOTAL MILES
A) Audubon from Ellicott Creek Bridge to Hamilton (s.bound)	2	0.5	1.0
B) Audubon from Hamilton Rd to Flint Entrance (s.bound)	3	1.1	3.3
C) Audubon from Flint Entrance to Hamilton Rd (n.bound)	3	1.1	3.3
D) Audubon from Hamilton Rd to Ellicott Creek Bridge (n.bound)	2	0.5	1.0
E) Ramp to South	2	0.2	0.4
F) Bridge from South	2	0.5	1.0
G) Ramp from North	1	0.3	0.3
H) Bridge from North	1	0.3	0.3
I) Flint Entrance - Maple to Audubon	4	0.3	1.2
J) Rensch Entrance - Sweet Home to Audubon	5	0.1	0.5
Total Lane Miles			12.3

Attachment: DOC090721-09072021133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY

CLERK'S OFFICE

BUFFALO, N.Y., July 25, 2019

TO WHOM IT MAY CONCERN:

I HEREBY CERTIFY, *That at the **16th** Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo, on the **25th** day of **July, 2019 A.D.**, a Resolution was adopted, of which the following is a true copy:*

WHEREAS, the County has contracted with local towns in Erie County for many years to provide ice and snow control on County owned roads and facilities during the snow season; and

WHEREAS, the said agreements will expire on August 31, 2019; and

WHEREAS, the County of Erie negotiated and entered into three (3) year agreements with local municipalities for the control of snow and ice on County roads by towns and incorporated villages for snow seasons 2019-2022; and

WHEREAS, it would be in the best interests of Erie County to execute an agreement at a lane mile reimbursement rate increasing three and half (3.5%) percent each year for the first two years and three percent (3%) the third year, ending August 31, 2022, and representatives of the affected municipalities have agreed to terms with the County.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature hereby authorizes the County Executive to sign and execute the new Snow and Ice Control Agreements, as modified and updated, at a lane mile reimbursement rate increasing three and a half percent (3.5%) each year for the first two years and three percent (3%) the third year, to expire August 31, 2022, payable from the adopted Division of Highways, Operating Budget, Fund 210, Funds Center 1231010, G/L 520060 Town and Village Snow Contracts, as set forth below:

September 1, 2019 through August 31, 2020	$4,193.37 per lane mile
September 1, 2020 through August 31, 2021	$4,340.14 per lane mile
September 1, 2021 through August 31, 2022	$4,470.34 per lane mile

and be it further

RESOLVED, that the County Executive is hereby authorized and directed on behalf of Erie County to execute agreements with participating municipalities; and be it further

RESOLVED, that the Clerk of this Legislature is hereby directed to transmit four (4) certified copies of the foregoing resolution to the Commissioner of Public Works, one (1) certified copy each to the Office of the County Executive, the Division of Budget and Management, the County Attorney and the Office of the Comptroller.

REFERENCE: **COMM. 16E-12 (2019)**

ATTEST

ROBERT M. GRABER

Clerk of the Legislature of Erie County

Attachment: DOC090721-090720211332l8 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

TOWN OF AMHERST

ERIE COUNTY, NEW YORK

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
(716) 631-7030
FAX (716) 631-7101
www.amherst.ny.us

Stanley J. Sliwa
Town Attorney

Nicole M. Burroughs
Paralegal

Joanne A. Schultz
Sr. Deputy Town Attorney

Jeffrey E. Marion
Sr. Deputy Town Attorney

November 19, 2019

Erie County Department of Public Works
95 Franklin Street, Room 1400
Buffalo, New York 14202

Re: Town of Amherst Self-Insured Status
Snow and Ice Control Agreement (2019-2022)

To Whom It May Concern:

The Town of Amherst is insured for liability purposes through its own insurance reserve fund established pursuant to the provisions of §6-n of the New York General Municipal Law. Approved or appropriate claims are paid for from funds established under the terms of the program established by the Town Board pursuant to the authority of §6-n. Furthermore, on September 29, 1986, the Town Board adopted a resolution agreeing to "hold harmless" any other municipality, corporation, partnership, association, or individual that provides facilities, real property or other assets to the Town for purposes of carrying out its functions and programs. A copy of that resolution is enclosed.

Very truly yours,

Stanley Sliwa

Stanley J. Sliwa, Esq.
Town Attorney

SJS:nmb
Enclosure

Attachment: DOC090721-09072021133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

NEW YORK STATE OF OPPORTUNITY. | Workers' Compensation Board

ANDREW M. CUOMO
GOVERNOR

CLARISSA M. RODRIGUEZ
CHAIR

Office of the Secretary
Compliance With Workers' Compensation Law

I, Kim McCarroll, Secretary for the Workers' Compensation Board, DO HEREBY Certify that:

Name: Amherst, Town of

WCB #: W802169

Tax ID #: 16-6002157

Qual Date: 7/3/1993

has secured compensation to its employees as a self-insurer in the following manner:

Pursuant to Section 50, subdivisions 3 and 4 of the Workers' Compensation Law. (County, city, village, town, school district, fire district or other political subdivision)

The status of the self-insurer was effective as noted above and remains in full force.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Workers' Compensation Board this 8th day of November 2019.

Kim McCarroll

KIM MCCARROLL
SECRETARY

Status Confirmed By
Nkia Vroman- Dan
11/8/2019

SI-12
8/1/2012

328 State Street, Schenectady, NY 12305 | (518) 402-0247 | www.WCB.NY.gov

Attachment: DOC090721-09072021133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

SEPTEMBER 29, 1986

A special meeting of the Amherst Town Board, 5583 Main Street, Williamsville. New York 14221 on Monday , September 29, 1986 at 3:30 P.M.,
Roll call: John R. Sharpe, Supervisor; Richard C. Barton, Councilman; Charles W. Moses, Councilman; Harold J. Collier, Councilman; William L Kindel, Councilman; Lynn Millane, Councilman; Lawrence Southwick. Councilman
Also present: Dolores B. Shearer. Deputy Town Clerk; James M. Nesper, Town Attorney
A motion was made by Councilman Southwick, seconded by Supervisor Sharpe to approve the following resolution:
WHEREAS, the Hartford Insurance Co. has proposed a renewal of the Town's insurance policies at an annual premium of from $1.2 million to $1.8 million and,
WHEREAS, the expected cost of a self insurance program for the Town is substantially less than the price charged by Hartford and
WHEREAS, certain insurance coverages formerly available to the Town are no longer available at any price and,
WHEREAS, the limits on coverage have been reduced and,
WHEREAS, the Town Board wishes to save the taxpayers' money and believes that the risks are acceptable in accord with the September 13 memorandum from Councilman Southwick,
NOW, THEREFORE, BE IT RESOLVED that the basic liability insurance coverages from the Hartford be canceled as of the earliest feasible date and,
BE IT FURTHER RESOLVED that the umbrella policies be canceled as of October 3, 1986 and,
BE IT FURTHER RESOLVED that the workers' compensation policies be transfered to the State Insurance Fund as soon as is feasible and,
BE IT FURTHER RESOLVED that the Supervisor be authorized to sign a contract with the Gallagher-Bassett organization, or with another firm should the Gallagher-Bassett price be too high, for claims handling and
BE IT FURTHER RESOLVED that the Town retain, where feasible, insurance coverage for buildings and contents, boilers, crime, electronic data processing equipment, papers and public officials' liability and
BE IT FURTHER RESOLVED that a fund for claims be set up in the maximum allowable amount and,
BE IT FURTHER RESOLVED that the Town Attorney be authorized to engage outside counsel to defend against actions brought against the Town where such actions would have formerly been defended by the insurance company and,
BE IT FURTHER RESOLVED that the Supervisor be authorized to seek a consulting firm specializing in loss control and prevention services to be contracted for such services.
Roll call: Southwick, aye; Sharpe, aye; Kindel, no; Millane, aye; Collier, aye; Moses, no; Barton, no. Ayes, 4 Noes, 3.
Approved.
A motion was made by Supervisor Sharpe, seconded by Councilman Kindel to approve the following reso lution:
WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town of Amherst to purchase Automobile and General liability insurance coverage, and
WHEREAS, AS OF THE 3rd day of October 1986 the Town of Amherst will no longer be insured and thus be uninsured for Automobile liability and General liability, and
WHEREAS, there are numerous individuals, agencies, associations, partnerships and corporations servicing the

Attachment: DOC090721-09072021133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

Town of Amherst, and/or its Special Improvement District as volunteers, and
WHEREAS, it is desirable and necessary in order to maintain the present level of services to the residents of the Town to continue to utilize the services of said volunteers,
NOW, THEREFORE, BE IT RESOLVED, that the Town of Amherst hereby holds harmless any and all individuals, associations, partnerships and corporations from any claim, action or proceeding arising out of said volunteers' services to the Town of Amherst and/or its Special Improvement District, and
BE IT FURTHER RESOLVED that the Town Attorney be authorized and directed to defend any and all said actions and proceedings as may be commenced by a third party against said volunteers, and
BE IT FURTHER RESOLVED, that the officers of the Town of Amherst be authorized and directed to take all steps necessary to carry out the intent and purpose of this resolution.

Roll call: Sharpe, aye; Kindel, aye; Moses, aye; Barton, aye; Millane, aye; Southwick, aye; Collier, aye. Ayes, 7; Noes, 0. Approved.

A motion was made by Councilman Southwick, unanimously seconded to approve the following resolution:
WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town to purchase Automobile and General liability insurance coverage, and
WHEREAS, the Town of Amherst has utilized from time to time facilities, real property and assets of other municipalities, corporations partnerships, associations, and individuals in order to carry out various Town of Amherst functions and programs and
WHEREAS, it is necessary to continue to utilize said real and personal property of said entities so as to maintain the present level of services to the residents of the Town of Amherst, and
WHEREAS, as part of the consideration for the use of said real and/or personal property it has been necessary to provide a certificate of insurance naming said entities as a party insured
NOW, THEREFORE, BE IT RESOLVED, that the Supervisor with the assistance of the Town Attorney be authorized and directed to enter into "save harmless" agreements with said municipalities, corporations Partnerships, associations and individuals for the purpose of continuing to utilize said entities real or personal property for various functions and programs sponsored and administered by the Town of Amherst and/or its Special Improvement Districts. and
BE IT FURTHER RESOLVED, that the Supervisor and Town Attorney take all other necessary steps to carry out the intent and purpose of this Resolution.

Roll call: Southwick, aye; Sharpe. aye, Moses, aye; Barton, aye; Collier. aye, Millane, aye; Kindel, aye. Ayes, 7; Noes, 0. Approved.

Adjourn: 4:30 P.M.

Dolores B. Schearer
Deputy Town Clerk
Town of Amherst,
Erie County New York

Attachment: DOC090721-09072021133218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

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

Jeffery C Zeplowitz
Town Clerk

Kathleen Cooper
Deputy Town Clerk

Timothy Koller
Asst. Deputy Town Clerk

CERTIFICATE OF TOWN CLERK

I, Jeffery C. Zeplowitz, Town Clerk of the Town of Amherst, in the County of Erie, State of New York, HEREBY CERTIFY, as follows:

That the attached Resolution 2019-1231, "2019-2022 Snow and Ice Control Agreement with County of Erie" is a true and exact copy of the Resolution enacted by the Town Board at its meeting on November 12, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Town of Amherst this 19th day of November, 2019.

Jeffery C. Zeplowitz
Town Clerk
Town of Amherst, Erie County, NY

Sworn to before me
This 19th day of November, 2019

Notary Public

KATHLEEN M. COOPER
No. 01CO6003585
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 30, 2023

Attachment: DOC090721-0907202113321B (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

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

Jeffery C. Zeplowitz
Town Clerk

Meeting: 11/12/19 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 21170 **RESOLUTION 2019-1231** **ADOPTED**

2019-2022 Snow and Ice Control Agreement with County of Erie

AGENDA ITEM - NOVEMBER 12TH, 2019

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **November 6, 2019**

RE: **2019-2022 Snow and Ice Control Agreement (CRS #1713) Between Town of Amherst and County of Erie**

Kindly adopt a resolution authorizing the Supervisor to execute the attached agreement and annexed exhibits (CRS #1713) requiring municipal approval pending successful completion of the Contract Routing System.

Thank you.

SJS:nmb:hs
Attachment
c: Kathy Cooper, Deputy Town Clerk
(*w/attachment,* **Agenda Item - November 12th, 2019**)
Patrick G. Lucey, Highway Superintendent (*w/attachment)*

11/12/2019
Consent

FINANCIAL IMPACT:

Total amounts to be expended from D0001.02300.

2019-2020 (9/1/19-8/31/20) - $2,096.68 x # of lane miles in Exhibit A by 12/15/19; $2,096.67 x # of lane miles x # of lane miles in Exhibit A by 4/15/20

2020-2021 (9/1/20-8/31/21) - $2,170.07 x # of lane miles in Exhibit A by 12/15/20; $2,170.07 x # of lane miles in Exhibit A by 4/15/21

2021-2022 (9/1/21-8/31/22) - $2,235.17 x # of lane miles in Exhibit A by 12/15/21; $2,235.17 x # of lane miles in Exhibit A by 4/15/22

Attachment: DOC090721-090720211332l8 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

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

Attachment: DOC090721-090720211332218 (RES-2021-792 : Approval of Agreement - State University of New York at Buffalo CRS # 2887)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 24714 **RESOLUTION 2021-793** **ADOPTED**

School Crossing Guard-PT/Police

School Crossing Guard - PT/Police Department, Effective September 14, 2021, Temporary, $12.50 ph, Step 1 for Michael J. Donnelly.

Replacing an employee who resigned.

9/13/2021
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Human Resources
Initiated by: **Robert McCarthy**
Co-Sponsored by:

DOC ID: 24738 **RESOLUTION 2021-794** **ADOPTED**

Information Technology Engineer/Engineering

Please appoint an Information Technology Engineer to the Engineering Department. Permanent, from list, pending satisfactory completion of a probationary term as set forth in the Civil Service Rule XIII. Effective September 14, 2021 at an annual salary of $66,252, Grade 15, Step F for Gregory Struzik.

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

9/13/2021
Consent

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

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Information Technology
Initiated by: **David J. Willer**
Co-Sponsored by:

DOC ID: 24712 **RESOLUTION 2021-795** **ADOPTED**

ACP Technologies State of Work - CRS #2852

Please authorize the Supervisor to sign an agreement with ACP Technologies for the period of October 1, 2021 through September 30, 2024. This agreement is for specialized technical support on an as needed basis.

9/13/2021
Consent

FINANCIAL IMPACT:

To be determined (on an as needed basis)

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

MASTER AGREEMENT

Terms and Conditions

Client:	Town of Amherst	ACP Technologies Inc.
Address:	5583 Main Street	1090-A Union Road Suite 200
City/State/Zip	Williamsville NY, 14221	West Seneca, NY 14224
Telephone:	716-631-7005	Telephone:(716) 674-8880
		Fax:(716) 674-8217
Attn:	Sue Koeppel	

This Agreement is entered into on 10/1/2021, by **ACP Technologies, Inc,** and **Town of Amherst**.and will expire on 9/30/2024. This Agreement consists of, and as used herein the term **"Agreement"** means this cover page, the General Terms and Conditions set forth on the reverse side, the following marked exhibits (individually an **"Exhibit"** and collectively the **"Exhibits"**) and any attachments or schedules to such Exhibits.

Exhibits and Amendments included only if marked with an "X":		**Value:**
☐ Exhibit A:	ACP Watch - Server	$
☐ Exhibit B:	ACP Watch - PC	$
☐ Exhibit C:	ACP Care – Server	$
☐ Exhibit D:	ACP Care – PC	$
☐ Exhibit E:	ACP Total Care – Server	$
☐ Exhibit F:	ACP Total Care – PC	$
	Anti – Spam Service	$
	Off Site Backup Service – GB	$
	Remote Support Hourly Rate	$ 80.00
	Onsite Support Rate	$ 135.00
	Consulting Hourly Rate	$ 175.00
	Total Agreement Value:	

ACP Technologies and Client have signed this Agreement below to evidence their agreement to the terms stated herein.

Client: Town of Amherst

(Signed)

(Printed Name)

(Title)

(Date)

ACP Technologies

(Signed)

Benjamin Pearce
(Printed Name)

President / CEO
(Title)

8/2/2021
(Date)

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

TERMS AND CONDITIONS

Article I - Scope of Services. On the terms and subject to the conditions stated herein, Advanced Cyber Promotions will provide to Client, and Client will purchase from Advanced Cyber Promotions, the services set forth in each Exhibit marked on the cover page hereof, for the fees indicated in such Exhibit(s). The rights and obligations of the parties with respect to any Exhibit and the services described in such Exhibit will be subject to and governed by these General Terms and Conditions and such marked Exhibit. Advanced Cyber Promotions and the Client will each perform their respective obligations set forth in this Agreement.

Article II – Term The Term of this Agreement begins on the Effective Date and will automatically renew each year on the anniversary of the Effective Date unless either party provides written notification to cancel the agreement in accordance with Article VI of this agreement.

Article III - Prices and Payment

A. Fees. Client will pay Advanced Cyber Promotions for services provided by Advanced Cyber Promotions pursuant toall marked Exhibit(s) and all the fees and charges stated in such Exhibit(s). Subject to Client's termination right stated in Article VI (B), Advanced Cyber Promotions can increase or decrease the amount of any fees payable under one or all Exhibit(s) by written notice delivered to Client not less than thirty (30) days prior to any anniversary of the Effective Date. In addition, all fees and charges are subject to increase or decrease by Advanced Cyber Promotions upon any change in the specifications for any services to be provided herein. Services outside the scope of this Agreement, which Client requests and Advanced Cyber Promotions agrees to perform will be performed for fees and charges mutually agreed upon in writing by Advanced Cyber Promotions and Client.

B. Travel Expenses. The fees and charges stated in each Exhibit for any services rendered under such Exhibit on-site at one or more locations of Client will include the travel expenses. Advanced Cyber Promotions may, upon prior written authorization from Client, require Client to reimburse Advanced Cyber Promotions for the following (subject to Advanced Cyber Promotions providing Client with valid receipts or other appropriate documentation): (1) travel time at the standard hourly rates for such service representatives (portal-to-portal for hourly service representatives), (2) reasonable hotel or lodging expenses and applicable taxes, not to exceed $150.00 per night per service representative, (3) meals charges not to exceed $35.00 per day (including gratuities) per service representative, (4) air fare at available coach or economy rates, and (5) reasonable expenses for auto rental (including charges for fuel), tolls, parking, taxis or other ground transportation.

C. Other Reimbursable Expenses. Client will also pay, or reimburse Advanced Cyber Promotions for, all reasonable out-of-pocket expenses incurred by Advanced Cyber Promotions, and previously authorized by Client in writing, in connection with(1) any Client-requested document reproduction, (2) any required shipping, couriering, faxing or telexing of tangible items to Client, or from Client to Advanced Cyber Promotions, (3) special Client-requested courier deliveries, and (4) other reimbursable expenses specified in any Exhibit.

D. Taxes. In addition to the fees, charges and reimbursable expenses hereunder, Client will pay all federal, state, local, excise, sales, use and other taxes or levies (**"Taxes"**) now or hereafter levied or imposed on the services or parts provided hereunder or on this Agreement, except for Taxes on Advanced Cyber Promotions' income, assets or net worth. In lieu thereof, Client may provide to Advanced Cyber Promotions a tax exemption certificate acceptable to Advanced Cyber Promotions and the taxing authority. Client will reimburse Advanced Cyber Promotions for all such Taxes paid by Advanced Cyber Promotions for which Client is responsible hereunder.

E. Payment of Invoices. Except for fees and charges due on the Effective Date, Advanced Cyber Promotions will invoice the Client for the fees, charges and reimbursable expenses under any Exhibit at a minimum of every two weeks for the prior period services were rendered. Client will pay all such invoices in full within thirty (30) days from date of each invoice. Client will reimburse Advanced Cyber Promotions for all reasonable collection expenses, including reasonable attorneys' fees and court costs, for delinquent amounts.

Article IV - Confidentiality

Each party agrees that all trade secrets, pricing information and any document marked confidential or proprietary, communicated to it by the other whether before or after the Effective Date, or included in the other party's network system (collectively, **"Confidential Information"**), were and will be received in strict confidence, will be used only for purposes of this Agreement or as otherwise contemplated by this Agreement, and will not be disclosed by the recipient party, its agents or employees to any third party without the prior written consent of the other party, except as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the recipient party.

Article V - Excluded Services and Limitations of Liability

A. Force Majeure. No party will be liable for any default or delay in the performance of its obligations under this Agreement if, and to the extent, such default or delay is caused, directly or indirectly, by any circumstance beyond such party's reasonable control, including without limitation any **(1)** fire, flood or water damage, elements of nature or other acts of God, including without limitation any of the foregoing that are harmful to electronic circuitry, **(2)** outbreak or escalation of hostilities, war, riots or civil disorders in any country, **(3)** act or omission of the other party or any governmental authority, **(4)** labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), **(5)** nonperformance by a third party (including any voice or data telecommunications common carrier), or **(6)** failures or fluctuations in telephone or other telecommunications equipment or lines or other equipment. In any such event, the non-performing party will be excused from any further performance or observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

B. Exclusion of Warranties. Advanced Cyber Promotions agrees to take all necessary steps to provide, to the extent permitted by third party vendors, any and all license rights and/or manufacturers' warranties related to the hardware and/or software purchased by the Client as set forth in this agreement and such warranties shall be exclusive.

Advanced Cyber Promotions warrants that the services provided herein, exclusive of manufacturer hardware/software warranties, will be performed substantially in accordance with the applicable work statements set forth in this Agreement. Advanced Cyber Promotions' sole obligation for failure to perform any service substantially in accordance with the applicable service description will be refund of any charges paid by the Client to Advanced Cyber Promotions for services which were not performed as warranted and for the Client to terminate the affected service. Should either party wish to terminate any part or all of this agreement for these reasons, 60 days written notice is requested. In the event that the client requests a refund pursuant to these terms, but does not wish to terminate the agreement, 30 days notice is requested. Any such refund will take place within 30 days from the receipt of request.

NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, APPLY HEREUNDER.

C. Limitation of Liability - The Client agrees that Advanced Cyber Promotions' total Liability hereunder, including but not limited to any negligence of Advanced Cyber Promotions, shall not exceed the amount paid for covered maintenance by the Client to Advanced Cyber Promotions for the three (3) months immediately preceding the occurrence giving rise to any claim by the Client. In no event will Advanced Cyber Promotionsbe liable for any incidental or consequential damages including without limitation, loss of use, loss of data, loss of profit, loss of moneys deposited or removed from equipment or any affiliated components, liability to third parties, however caused, whether by negligence of Advanced Cyber Promotions or otherwise.

Article VI- Termination

A. Termination for Convenience. Notwithstanding anything in this Agreement or any Exhibit to the contrary, either party may terminate this Agreement and any Exhibit without cause by providing sixty (60) days' advance written notice

B. Rights Upon Termination. Upon the end of the Term, Client will pay all fees, expenses, taxes and other charges incurred through the effective date of such expiration or termination and payable by Client pursuant to Article III of these General Terms and Conditions or any other provision hereof. The provisions of Articles IV, V, and VI will survive the expiration or termination of this Agreement for any reason.

Article VII- General

A. Relationship of Parties. Advanced Cyber Promotions is acting only as an independent contractor hereunder. This Agreement does not create a joint employer, shared employee, or leased employee relationship with respect to any employees of either party. Except as otherwise expressly provided herein, Advanced Cyber Promotions has the sole right to supervise, manage (including management of Advanced Cyber Promotions' agents, employees and contractors), contract, direct, procure, provide or cause to be provided, all services to be provided pursuant hereto.

B. Employment Solicitation. Neither party nor its personnel are or shall be deemed to be employees of the other party. Each party will be solely responsible for the payment of its employees' compensation and benefits, including employment taxes, workers' compensation, unemployment insurance and any similar taxes or assessments arising out of or associated with their employment. Advanced Cyber Promotions agrees to maintain full and sole responsibility for the payment of Advanced Cyber Promotions personnel salaries (including withholding of income and social security taxes), workers' compensation insurance, disability insurance and benefits, health insurance and benefits, sick time, vacation time, personal time off, time off for religious observance and any and all other responsibilities, obligations and liabilities employers have toward their employees.

This Agreement shall not create any partnership or joint venture between the parties. Nothing contained in this Agreement shall constitute either party as the agent or legal representative of the other for any purpose. No provision of this Agreement grants either party any express or implied right of authority to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever.

C. Rules of Conduct. While on the Client's premises in connection with the performance of this Agreement Advanced Cyber Promotions personnel will comply with the same rules of conduct as apply to the Client's own personnel at that location of which Advanced Cyber Promotions is given notice. On notice from the Client, Advanced Cyber Promotions will remove immediately any of its personnel assigned to perform work under this Agreement for the Client who do not meet this condition. The Client agrees to provide safe working environment for Advanced Cyber Promotions personnel under the work requested by the Client hereunder and to make commercially reasonable adjustments if such workplace conditions change and the Client has been made aware of such changes. The Client agrees to provide to Advanced Cyber Promotions such office facilities, equipment, modems, telephone access, internet access and other resources necessary and appropriate to perform the work described in this agreement.

D. Use of Contractors. Advanced Cyber Promotions reserves its rights to utilize contracted employees or subcontractors to meet its requirements under the terms, conditions, and obligations stated in this Agreement and all related Exhibits only with the prior consent of Client.

E. Severability. If any provision of this Agreement or the application thereof to any person or circumstance, is declared judicially to be invalid, unenforceable or void, such decision will not invalidate or void the remainder of this Agreement. Instead, this Agreement will be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent.

F. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the parties with respect to the subject matter hereof. There are no representations; understandings or agreements relating to the subject matter hereof that are not fully expressed herein. All Exhibits (and Attachments and Schedules thereto) attached hereto are a part of, and incorporated by reference into, this Agreement. Except as otherwise provided herein, only a written instrument duly executed by both parties may amend this Agreement. No waiver of a party's rights hereunder will be enforceable against such party unless in writing and signed by such party.

G. Governing Law. This Agreement will be construed in accordance with and the substantive laws of the State of New York will govern the rights of the parties.

Article VIII – Insurance and Indemnification.

A. Indemnification. Advanced Cyber Promotions shall defend, indemnify and hold the Client harmless from and against any and all costs (including lawyers' fees) incurred and damages finally awarded or made in settlement or compromise in a workers compensation proceeding or in any other suit or proceeding by third parties against the Client which the Client incurs on account of personal injuries and/or damage to or loss of tangible personal property directly caused by negligent or willful acts or omissions of Advanced Cyber Promotions' employees, agents, contractors or prospective Clients while on the Clients' premises (except that the Client shall be defended, indemnified and held harmless from any claim by an employee of Advanced Cyber Promotions even if no such negligent or willful acts or omissions caused the claim), provided that Advanced Cyber Promotions is notified promptly in writing and given authority, information and assistance to defend and/or settle or compromise such suit or proceeding. Advanced Cyber Promotions however, shall not be responsible for any compromise or settlement of any such suit or proceeding made without the consent ofAdvanced Cyber Promotions. The amount of indemnification provided by this paragraph (a) shall not be limited by the Limitation of Liability.

Advanced Cyber Promotions does agree to notify the Client of any proceeding, notification or other legal communication related to any work executed under this agreement for the Client.

B. Insurance. Advanced Cyber Promotions agrees to maintain, at its own expense, during the term of this agreement, the necessary levels of insurance coverage as required by the Client. Advanced Cyber Promotions agrees to provide the Client with thirty days (30) prior written notice of any impending cancellations, non-renewal, expirations or reduction in the coverage of insurance set forth in the Certificateof Insurance.

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

TERMS AND CONDITIONS

Article I - Scope of Services On the terms and subject to the conditions stated herein, Advanced Cyber Promotions will provide to Client, and Client will purchase from Advanced Cyber Promotions, the services set forth in each Exhibit marked on the cover page hereof, for the fees indicated in such Exhibit(s). The rights and obligations of the parties with respect to any Exhibit and the services described in such Exhibit will be subject to and governed by these General Terms and Conditions and such marked Exhibit. Advanced Cyber Promotions and the Client will each perform their respective obligations set forth in this Agreement.

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B. Travel Expenses. The fees and charges stated in each Exhibit for any services rendered under such Exhibit on-site at one or more locations of Client will include the travel expenses. Advanced Cyber Promotions may, upon prior written authorization from Client, require Client to reimburse Advanced Cyber Promotions for the following (subject to Advanced Cyber Promotions providing Client with valid receipts or other appropriate documentation): (1) travel time at the standard hourly rates for such service representatives (portal-to-portal for hourly service representatives), (2) reasonable hotel or lodging expenses and applicable taxes, not to exceed $150.00 per night per service representative, (3) meals charges not to exceed $35.00 per day (including gratuities) per service representative, (4) air fare at available coach or economy rates, and (5) reasonable expenses for auto rental (including charges for fuel), tolls, parking, taxis or other ground transportation.

C. Other Reimbursable Expenses. Client will also pay, or reimburse Advanced Cyber Promotions for, all reasonable out-of-pocket expenses incurred by Advanced Cyber Promotions, and previously authorized by Client in writing, in connection with(1) any Client-requested document reproduction, (2) any required shipping, couriering, faxing or telexing of tangible items to Client, or from Client to Advanced Cyber Promotions, (3) special Client-requested courier deliveries, and (4) other reimbursable expenses specified in any Exhibit.

D. Taxes. In addition to the fees, charges and reimbursable expenses hereunder, Client will pay all federal, state, local, excise, sales, use and other taxes or levies (**"Taxes"**) now or hereafter levied or imposed on the services or parts provided hereunder or on this Agreement, except for Taxes on Advanced Cyber Promotions' income, assets or net worth. In lieu thereof, Client may provide to Advanced Cyber Promotions a tax exemption certificate acceptable to Advanced Cyber Promotions and the taxing authority. Client will reimburse Advanced Cyber Promotions for all such Taxes paid by Advanced Cyber Promotions for which Client is responsible hereunder.

E. Payment of Invoices. Except for fees and charges due on the Effective Date, Advanced Cyber Promotions will invoice the Client for the fees, charges and reimbursable expenses under any Exhibit at a minimum of every two weeks for the prior period services were rendered. Client will pay all such invoices in full within thirty (30) days from date of each invoice. Client will reimburse Advanced Cyber Promotions for all reasonable collection expenses, including reasonable attorneys' fees and court costs, for delinquent amounts.

Article IV - Confidentiality

Each party agrees that all trade secrets, pricing information and any document marked confidential or proprietary, communicated to it by the other whether before or after the Effective Date, or included in the other party's network system (collectively, **"Confidential Information"**), were and will be received in strict confidence, will be used only for purposes of this Agreement or as otherwise contemplated by this Agreement, and will not be disclosed by the recipient party, its agents or employees to any third party without the prior written consent of the other party, except as may be necessary by reason of legal, accounting or regulatory requirements beyond the reasonable control of the recipient party.

Article V - Excluded Services and Limitations of Liability

A. Force Majeure. No party will be liable for any default or delay in the performance of its obligations under this Agreement if, and to the extent, such default or delay is caused, directly or indirectly, by any circumstance beyond such party's reasonable control, including without limitation any **(1)** fire, flood or water damage, elements of nature or other acts of God, including without limitation any of the foregoing that are harmful to electronic circuitry, **(2)** outbreak or escalation of hostilities, war, riots or civil disorders in any country, **(3)** act or omission of the other party or any governmental authority, **(4)** labor disputes (whether or not the employees' demands are reasonable or within the party's power to satisfy), **(5)** nonperformance by a third party (including any voice or data telecommunications common carrier), or **(6)** failures or fluctuations in telephone or other telecommunications equipment or lines or other equipment. In any such event, the non-performing party will be excused from any further performance or observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

B. Exclusion of Warranties. Advanced Cyber Promotions agrees to take all necessary steps to provide, to the extent permitted by third party vendors, any and all license rights and/or manufacturers' warranties related to the hardware and/or software purchased by the Client as set forth in this agreement and such warranties shall be exclusive.

Advanced Cyber Promotions warrants that the services provided herein, exclusive of manufacturer hardware/software warranties, will be performed substantially in accordance with the applicable work statements set forth in this Agreement. Advanced Cyber Promotions' sole obligation for failure to perform any service substantially in accordance with the applicable service description will be refund of any charges paid by the Client to Advanced Cyber Promotions for services which were not performed as warranted and for the Client to terminate the affected service. Should either party wish to terminate any part or all of this agreement for these reasons, 60 days written notice is requested. In the event that the client requests a refund pursuant to these terms, but does not wish to terminate the agreement, 30 days notice is requested. Any such refund will take place within 30 days from the receipt of request.

NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, APPLY HEREUNDER.

C. Limitation of Liability - The Client agrees that Advanced Cyber Promotions' total Liability hereunder, including but not limited to any negligence of Advanced Cyber Promotions, shall not exceed the amount paid for covered maintenance by the Client to Advanced Cyber Promotions for the three (3) months immediately preceding the occurrence giving rise to any claim by the Client. In no event will Advanced Cyber Promotionsbe liable for any incidental or consequential damages including without limitation, loss of use, loss of data, loss of profit, loss of moneys deposited or removed from equipment or any affiliated components, liability to third parties, however caused, whether by negligence of Advanced Cyber Promotions or otherwise.

Article VI- Termination

A. Termination for Convenience. Notwithstanding anything in this Agreement or any Exhibit to the contrary, either party may terminate this Agreement and any Exhibit without cause by providing sixty (60) days' advance written notice.

B. Rights Upon Termination. Upon the end of the Term, Client will pay all fees, expenses, taxes and other charges incurred through the effective date of such expiration or termination and payable by Client pursuant to Article III of these General Terms and Conditions or any other provision hereof. The provisions of Articles IV, V, and VI will survive the expiration or termination of this Agreement for any reason.

Article VII- General

A. Relationship of Parties. Advanced Cyber Promotions is acting only as an independent contractor hereunder. This Agreement does not create a joint employer, shared employee, or leased employee relationship with respect to any employees of either party. Except as otherwise expressly provided herein, Advanced Cyber Promotions has the sole right to supervise, manage (including management of Advanced Cyber Promotions' agents, employees and contractors), contract, direct, procure, provide or cause to be provided, all services to be provided pursuant hereto.

B. Employment Solicitation. Neither party nor its personnel are or shall be deemed to be employees of the other party. Each party will be solely responsible for the payment of its employees' compensation and benefits, including employment taxes, workers' compensation, unemployment insurance and any similar taxes or assessments arising out of or associated with their employment. Advanced Cyber Promotions agrees to maintain full and sole responsibility for the payment of Advanced Cyber Promotions personnel salaries (including withholding of income and social security taxes), workers' compensation insurance, disability insurance and benefits, health insurance and benefits, sick time, vacation time, personal time off, time off for religious observance and any and all other responsibilities, obligations and liabilities employers have toward their employees.

This Agreement shall not create any partnership or joint venture between the parties. Nothing contained in this Agreement shall constitute either party as the agent or legal representative of the other for any purpose. No provision of this Agreement grants either party any express or implied right of authority to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever.

C. Rules of Conduct. While on the Client's premises in connection with the performance of this Agreement Advanced Cyber Promotions personnel will comply with the same rules of conduct as apply to the Client's own personnel at that location of which Advanced Cyber Promotions is given notice. On notice from the Client, Advanced Cyber Promotions will remove immediately any of its personnel assigned to perform work under this Agreement for the Client who do not meet this condition. The Client agrees to provide safe working environment for Advanced Cyber Promotions personnel under the work requested by the Client hereunder and to make commercially reasonable adjustments if such workplace conditions change and the Client has been made aware of such changes. The Client agrees to provide to Advanced Cyber Promotions such office facilities, equipment, modems, telephone access, internet access and other resources necessary and appropriate to perform the work described in this agreement.

D. Use of Contractors. Advanced Cyber Promotions reserves its rights to utilize contracted employees or subcontractors to meet its requirements under the terms, conditions, and obligations stated in this Agreement and all related Exhibits only with the prior consent of Client.

E. Severability. If any provision of this Agreement or the application thereof to any person or circumstance, is declared judicially to be invalid, unenforceable or void, such decision will not invalidate or void the remainder of this Agreement. Instead, this Agreement will be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent.

F. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the parties with respect to the subject matter hereof. There are no representations, understandings or agreements relating to the subject matter hereof that are not fully expressed herein. All Exhibits (and Attachments and Schedules thereto) attached hereto are a part of, and incorporated by reference into, this Agreement. Except as otherwise provided herein, only a written instrument duly executed by both parties may amend this Agreement. No waiver of a party's rights hereunder will be enforceable against such party unless in writing and signed by such party.

G. Governing Law. This Agreement will be construed in accordance with and the substantive laws of the State of New York will govern the rights of the parties.

Article VIII – Insurance and Indemnification.

A. Indemnification. Advanced Cyber Promotions shall defend, indemnify and hold the Client harmless from and against any and all costs (including lawyers' fees) incurred and damages finally awarded or made in settlement or compromise in a workers compensation proceeding or in any other suit or proceeding by third parties against the Client which the Client incurs on account of personal injuries and/or damage to or loss of tangible personal property directly caused by negligent or willful acts or omissions of Advanced Cyber Promotions' employees, agents, contractors or prospective Clients while on the Clients' premises (except that the Client shall be defended, indemnified and held harmless from any claim by an employee of Advanced Cyber Promotions even if no such negligent or willful acts or omissions caused the claim), provided that Advanced Cyber Promotions is notified promptly in writing and given authority, information and assistance to defend and/or settle or compromise such suit or proceeding. Advanced Cyber Promotions however, shall not be responsible for any compromise or settlement of any such suit or proceeding made without the consent ofAdvanced Cyber Promotions. The amount of indemnification provided by this paragraph (a) shall not be limited by the Limitation of Liability.

Advanced Cyber Promotions does agree to notify the Client of any proceeding, notification or other legal communication related to any work executed under this agreement for the Client.

B. Insurance Advanced Cyber Promotions agrees to maintain, at its own expense, during the term of this agreement, the necessary levels of insurance coverage as required by the Client. Advanced Cyber Promotions agrees to provide the Client with thirty days (30) prior written notice of any impending cancellations, non-renewal, expirations or reduction in the coverage of insurance set forth in the Certificateof Insurance.

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active or passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant shall name the Town as an additional insured on a primary and non-contributory basis.

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

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:

ACP TECHNOLOGIES
Print Name of Company

By: _____
Signature

BENJAMIN LEHMAN
Printed name

Date: 8/2/2021

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

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: ACP TECHNOLOGIES

Signature: [signature]

Print Name: BENJAMIN PEARCE

Title: PRESIDENT

Date: 8/2/2021

Sworn To Before Me This

2ND Day of AUGUST, 2021

[signature]

Notary Public

GAIL L. OLIVIERI
NOTARY PUBLIC
STATE OF NEW YORK
COMMISSION #01OL4785805
MY COMMISSION EXPIRES 8/31/2025

Revised 4.2017

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE 11/20/2020

12.O.1.a

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 United Insurance Agency, Inc. 90 Bryant Woods South Amherst, NY 14228 Thomas A. Benevento 716-632-6118	CONTACT NAME: Christine Robinson PHONE (A/C, No, Ext): 716-632-6118 FAX (A/C, No): 716-631-5045 E-MAIL ADDRESS: crobinson@uiai.com
INSURED Advanced Cyber Promotions Inc 1090A Union Road Suite200 West Seneca, NY 14224	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Travelers Cas Ins Co of Am INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 2,000,(
	CLAIMS-MADE X OCCUR	Y		6807H3620332042	12/01/2020	12/01/2021	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,(
							MED EXP (Any one person)	$ 5,(
							PERSONAL & ADV INJURY	$ 2,000,(
	GEN'L AGGREGATE LIMIT APPLIES PER						GENERAL AGGREGATE	$ 4,000,(
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 4,000,(
	OTHER							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Town of Amherst is additional insured under the General Liability policy to the extent of the written contract, not to exceed the limits shown above.

CERTIFICATE HOLDER

TOWNA10

Town of Amherst
Attn: Building Department
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

Edward C. Kelly Jr.

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Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (use street address only) Advanced Cyber Promotion 1090A Union Road Suite 200 West Seneca, NY 14224	1b. Business Telephone Number of Insured 716 674 8880 1c. NYS Unemployment Insurance Employer Registration Number of Insured
Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)*	1d. Federal Employer Identification Number of Insured or Social Security Number 16 15486555
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) Town of Amherst 5583 Main St Williamsville, NY 14221	3a. Name of Insurance Carrier The Charter Oak Fire Ins Co 3b. Policy Number of entity listed in box "1a" UB-3J185077-21-42G 3c. Policy effective period 07/14/2021 to 07/14/2022 3d. The Proprietor, Partners or Executive Officers are ☒ included. (Only check box if all partners/officers included) ☐ all excluded or certain partners/officers excluded.

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) **Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

Please Note: Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: Edward C Gelia Jr
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: Edward C Gelia Jr 6/10/2021
(Signature) (Date)

Title: Executive Vice President

Telephone Number of authorized representative or licensed agent of insurance carrier: 716 632 6118

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

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: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name and Address of Insured (Use street address only)
ADVANCED CYBER PROMOTIONS INC. DBA ACP T
1090A UNION ROAD
SUITE 200
WEST SENECA, NY 14224

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
716-674-8880

1c. Federal Employer Identification Number of Insured or Social Security Number
16 1548655

2. Name and Address of the 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
The Guardian Life Insurance Company of America

3b. Policy Number of entity listed in box "1a"
00995005-0000

3c. Policy effective period:
01/01/2020 to 01/01/2022

4. Policy provides the following benefits:
- ☒ A. Both disability and paid family leave benefits.
- ☐ B. Disability benefits only.
- ☐ C. Paid family leave benefits only.

5. Policy covers:
- ☒ A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- ☐ B. Only the following class or classes or employer's employees:

_____

_____

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed: 10/05/2020

By: Raymond J Marra Raymond J. Marra
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number: 1-888-278-4542

Title: Senior Vice President, Group and Worksite Markets

IMPORTANT: Licensed **If Boxes "4a" and 5a are checked, and this form is signed by the insurance carrier's authorized representative or NYS Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder. If Box "4b, 4c or 5b " is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, DB Plans Acceptance Unit, PO Box 5200, Birmingham, NY 13902-5200.**

PART 2. To be completed by NYS Workers' Compensation Board (Only if box "4c or 5b" of Part 1 has been checked)

DB120.1 (10/17)

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

State Of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed: By: _____
(Signature of 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.***

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in box "3" on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in box 2.

The insurance carrier must notify the certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to non-payment 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 the by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220.Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and not withstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, they 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..

DB120.1 (10/17)

Attachment: ACP Master Agmt (RES-2021-795 : ACP Technologies State of Work - CRS #2852)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24717 **RESOLUTION 2021-796** **ADOPTED**

To Authorize the Supervisor to Sign an Agreement with Belmont Housing Resources for WNY, Inc. for Housing Counseling Services CRS #2870

WHEREAS, the Town has budgeted Community Development Block Grant funds for housing counseling services; and

WHEREAS, Belmont Housing Resources for WNY, Inc. has proven to be an excellent provider of comprehensive housing counseling services; including pre-purchase workshops and counseling, post-purchase workshops and counseling, mortgage default counseling, and rental assistance counseling; and

WHEREAS, Community Development staff recommends that the Town contract with Belmont Housing Resources for WNY, Inc. for the provision of said housing counseling services for the period of April 1, 2021 through March 31, 2022; now therefore, be it

RESOLVED, the Town Board of the Town of Amherst authorizes the Town Supervisor, subject to the satisfactory completion of the contract routing process, to enter into a contract with Belmont Housing Resources for WNY, Inc. attached hereto, and for an amount not to exceed $16,500.00 for the period of April 1, 2021 through March 31, 2022.

9/13/2021
Consent

FINANCIAL IMPACT:

The funds necessary to enter into a contract with Belmont Housing Resources for WNY, Inc. have been budgeted in the FY 2021 (N21-35 4000) CDBG budget. The resolution will, therefore, have no impact on the Town's current budget or tax rate.

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

Amherst

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

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

September 1, 2021

Agenda of September 13, 2021

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

Subject: Contract with Belmont Housing Resources for WNY, Inc. for housing counseling services

Honorable Board Members:

The Town has budgeted FY 2021 Community Development Block Grant (CDBG) funds for housing counseling services, including pre-purchase, mortgage default and renter counseling. These services are especially vital to the Town's first-time homebuyer program. Community Development staff recommends that the Town contract with Belmont Housing Resources (Belmont) for these services for 2021-2022 be approved. Belmont has performed admirably in providing these services to Town residents under the past contracts.

Attached for your consideration is a resolution authorizing the Town Supervisor to enter into a contract with Belmont Housing Resources for the period April 1, 2021 through March 31, 2022. Adequate funds are available in the CDBG budget to cover the maximum $16,500.00 cost of the proposed contract.

Very truly yours,

Daniel J. Ulatowski, AICP
Assistant Planning Director

Attachment: tb letter-belmont (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

AGREEMENT

THIS AGREEMENT, entered into this ____ day of _____, 2021 between the TOWN OI AMHERST, a municipal corporation of the State of New York, with principal offices located at 5583 Main Street Williamsville, New York 14221 (herein after referred to as the "Town"), and BELMONT HOUSINC RESOURCES FOR WNY, INC. (formerly Belmont Shelter Corp.), a private, not-for-profit corporatio incorporated under the laws of New York State, with its principal office for the transaction of business at 239 Main Street, Buffalo, New York 14214 (hereinafter referred to as Belmont.).

WITNESSETH:

WHEREAS, the Town has received federal funding under the Housing and Community Developmen Act of 1974, as amended and one the purposes of said Act is to expand and improve the quality and quantity o community services, principally for persons of low and moderate income, which are essential for soun community development and for the development of viable urban communities; and

WHEREAS, the provision of comprehensive housing counseling services, especially mortgage defaul counseling, pre-purchase counseling, and information to low and moderate income residents of the Town o Amherst would constitute an expansion and improvement of the quantity and quality of community services an technical assistance consistent with the purposes of the Housing and Community Development Act of 1974 a amended; and

WHEREAS, Belmont has successfully provided a program of comprehensive housing counselin services for Erie County residents.

NOW, THEREFORE, it is mutually agreed by and between the parties hereto, as follows:

1. (a) "Town" shall mean the Town of Amherst.
   (b) "Belmont" shall mean the Belmont Housing Resources for WNY, Inc.

2. The following exhibits are attached to this Agreement and made a part hereof:
   (a) Exhibit "A" -- Scope of Services and Reporting Requirements.
   (b) Exhibit "B" -- 2021 Income Guidelines and Stats Chart.

3. Belmont, for consideration herein provided, shall perform the services as described in Exhibit "A attached hereto and made a part hereof.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

4. Belmont shall prior to execution of this Agreement provide to the Town certificates of insurance evidencing compliance with the provisions of the Addendum to Contract attached hereto and incorporated herein. Belmont agrees to defend, indemnify and hold-harmless the Town from and against all claims, liability and damages resulting from or arising out of performance by Belmont of the terms and conditions of this Agreement.

5. The Town agrees to pay Belmont not more than sixteen-thousand five hundred dollars **($16,500.00)** during the one-year period from April 1, 2021 through March 31, 2022 for the services it provides to Town residents.

6. Belmont shall submit to the Town quarterly payment vouchers and report forms, as described in Exhibit A. Said forms will be in a format acceptable to the Town with the first two requests for payment for the period covering April 1, 2021 through December 31, 2021 to be submitted no later than January 10, 2022 to be consistent with the Town's fiscal year. Upon review and approval of the aforementioned vouchers and report forms by the Town, the Town shall process and subsequently issue funds totaling the approved amount. The sum of all vouchers submitted to the Town by Belmont shall not exceed $16,500.00.

7. Belmont 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 Belmont'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 Town and Belmont 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.

8. Belmont 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. This Agreement shall be valid only to the extent of the funds made available to the Town pursuant to its program year application under Title I of the Housing Community Development Act of 1974 as Amended, for the purposes of the terms of this Agreement. Any and all payments due under this agreement shall be contingent upon the receipt by the Town of funds from the United States

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

Department of Housing and Urban Development in the amount stipulated in the 2021 Annual Action Plan as approved by the Amherst Town Board on February 1, 2021.

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 Town.

11. This Agreement shall be in effect from April 1, 2021 through March 31, 2022. The Town may agree to extend this Agreement for an additional twelve month period.

12. Belmont 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 Belmont's status as an independent contractor, the Town shall not be responsible for workers compensation benefits, social security coverage or unemployment insurance benefits with respect to Belmont or its employees.

14. **Termination**

(1) The Town reserves the right to terminate this Agreement at its pleasure at any time prior to completion of the Program by giving two (2) weeks written notice of termination to Belmont either personally or by certified mail. The Town further reserves the right to terminate this Agreement for cause in the event that Belmont 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) Belmont 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 Town either personally or by certified mail. Belmont further reserves the right to terminate this Agreement for cause in the event that the Town 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 Belmont upon such termination shall be based upon the value of the services performed by Belmont up to the effective date of termination.

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15. Changes in the Project Description and Cost specified in Exhibit "A" may be requested by Belmont in writing, addressed to the Town's Planning Director for subsequent action.

16. Belmont 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**

Belmont 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 o Title I of the Housing and Community Development Act as amended of 1974, Section 505 of th 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 Readjustmen Assistance Act (39 U.S.C. Chapter 42) and all regulations promulgated with respect theret including the regulations under 24 CFR Part 1. No person in the United States shall on the groun of race, age, color, creed, religion, national origin, sex, disability, or because he or she is a disable veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program, activity, or service provided pursuant to thi Agreement.

18. **Equal Employment Opportunity**

In carrying out this Agreement, Belmont shall not discriminate against any employee or applican for employment because of age, race, color, religion, sex, national origin, disability or because h or she is a disabled veteran or veteran of the Vietnam era. Belmont shall take affirmative actio to insure that applicants for employment are employed, and that employees are treated durin employment, without regard to their race, color, religion, sex, national origin, disability or becaus he or she is a disabled veteran or veteran of the Vietnam era. Such action shall include, but not b limited to the following: employment upgrading, demotion, or transfer; recruitment or recruitmen advertising; layoff or termination; rates of pay or other forms of compensation; and selection fo training, including apprenticeship. Belmont shall post in conspicuous places, available t employees and applicants for employment, notices to be provided by the Government setting fort the provision of this nondiscrimination clause. Belmont shall state that all qualified applicants wi receive consideration for employment, notices to be provided by the Government setting forth th provisions of this nondiscrimination clause. Belmont shall state that all qualified applicants wi receive consideration for employment without regard to race, color, religion, sex, national origi age, disability or because he or she is a disabled veteran or veteran of the Vietnam era. Belmor shall incorporate the foregoing requirements of this paragraph in all of its contracts for work under

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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. **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.**

(a) The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(b) Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

20. **Obligations of Grantee with Respect to Certain Third Party Relationships.**

Belmont 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. Belmont 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 Town of Amherst necessary to insure that activities pursuant to this Agreement are carried out in accordance with the Town of Amherst's assurances and certifications pursuant to the Community Development Block Grant Program, including those with respect to the assumption of environmental responsibilities of the Town of Amherst under section 104(h) of the Housing and Community Development Act of 1974.

21. **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.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

22. **Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body, or Other Public Officials.**

No member, officer, or employee of Belmont or its designees or agents, no member of th governing body of the Town of Amherst and no other public official of the Town of Amherst wh exercises any functions or responsibilities with respect to the program during his tenure or for on year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or th proceeds thereof, for work to be performed in connection with the program assisted under th Agreement. Belmont shall incorporate, or cause to be incorporated, in all such contracts o subcontracts a provision prohibiting such interest pursuant to the purposes of this section.

23. **Prohibition Against Payments of Bonus or Commission.**

The assistance provided under this Agreement shall not be used in the payment of any bonus o 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 concurrenc of H.U.D. required under this Agreement, Title I of the Housing and Community Developmen Act of 1974, as amended, or H.U.D. regulations with respect thereto; provided, however, tha reasonable fees or bona fide technical, consultant, managerial or other such services, other tha actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

24. **Nondiscrimination in Housing.**

Belmont shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968 and the H.U.D. regulations with respect thereto, and Executive Order 11063. Title VIII prohibit discrimination in the sale or rental of dwellings (as defined), discrimination in the financing o housing, block busting, and discriminatory advertising and makes it unlawful to deny any perso access to, or membership and participation in, any multiple-listing service or real estate broker organization for discriminatory purposes.

25. **Hatch Act**

Belmont agrees that no funds provided, nor personnel employed under this Agreement, shall in an way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Titl V of the U.S.C.

26. **Conflict of Interest**

Belmont agrees to abide by the provisions of 24 CFR Part 84.42 and Part 570.611 in regards t conflicts of interest in conducting activities related to this Agreement.

27. **Funding Source Recognition**

Belmont shall insure recognition of the role of the Community Development Block Grant fundin source in providing services through this agreement. All activities, publications and items create pursuant to this Agreement shall be labeled as to funding source.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

28. **Lobbying & Religious Activities**

By signing this Agreement, Belmont 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 t influence an officer or employee of any state, local or federal agency or elected office. In addition Belmont agrees that funds provided under this agreement will not be utilized for inherently religiou activities prohibited by 24 CFR Part 570.200(j), such as worship, religious instruction o proselytization.

29. **Compliance**

The obligation of Belmont to comply with the provisions of paragraph 17 through 28 of thi Agreement shall inure to the benefits of the United States, H.U.D. and the Town of Amherst, an of which shall be entitled to invoke any remedies available by law to redress any breach thereof o to complete compliance therewith by Belmont.

Belmont shall, by contractual requirement, covenant, or other binding commitment assure th compliance with the above provision of the provisions of paragraph 17 through 28 of thi Agreement on the part of any contractor, subcontractor, transferee, successor in interest or othe participant in any activities pursuant to this Agreement.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

BELMONT HOUSING RESOURCES, INC. 2021 CONTRACT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the da and year first above written.

TOWN OF AMHERST

By: _____
Brian J. Kulpa, Supervisor

BELMONT HOUSING RESOURCES FOR WNY, INC.

By: Joyelle Tedeshi, MSW
Joyelle Tedeshi, VP Housing Programs

PRIVATE CORPORATION ACKNOWLEDGMENT

STATE OF NEW YORK)
TOWN OF AMHERST) ss:
COUNTY OF ERIE)

On the 16th day of August, in the year Two Thousand Twenty-One, before me, the undersigned personally appeared Joyelle Tedeshi, personally known to me or proved to me on the basis of satisfactory evidence to b the individual (s) whose name (s) is subscribed to the within instrument and acknowledged to me that she executed the sam in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individua acted, executed the instrument.

Judith L. Scott
01SC4799731
Notary Public, State of New York
Qualified in Chautauqua County
My Comm. Expires Sept. 30, 2021

Judith L. Scott
NOTARY PUBLIC

MUNICIPAL CORPORATION ACKNOWLEDGMENT

STATE OF NEW YORK)
TOWN OF AMHERST) ss:
COUNTY OF ERIE)

On the_____day of_____, in the year Two Thousand Twenty-One, 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 th individual (s) whose name (s) is subscribed to the within instrument and acknowledged to me that he executed the same i his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individua acted, executed the instrument.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

NOTARY PUBLIC

EXHIBIT "A"

SCOPE OF SERVICES AND REPORTING REQUIREMENTS

SCOPE OF SERVICES:

Belmont shall perform the following professional services:

RENTER ASSISTANCE COUNSELING will be provided to low and moderate income residents of the Town t help them find decent affordable housing, to provide assistance in resolving landlord-tenant disputes, to provid information on the rights and responsibilities of tenants and landlords, and to provide, when appropriate, referral to and follow-up contacts with agencies or organizations able to assist in the resolution of client problems.

DELINQUENCY AND DEFAULT COUNSELING will be offered to assist homeowners facing default on home secured loans or mortgages by seeking to develop feasible repayment schedules acceptable to the bank or b developing other alternatives.

PREPURCHASE COUNSELING will be offered, upon referral by HUD, to residents whose FHA mortgag insurance has been rejected. Other referrals will be made by banks and the many social service organization which cooperate with Belmont. A Belmont counselor will advise the client on home ownership responsibilities budgeting of funds and the use of credit, according to the client's needs.

HOUSING REHABILITATION COUNSELING will be available to Town residents upon referral by the Town' Community Development staff. Belmont counselor will do a thorough income analysis, reviewing the client' monthly financial outlays and income in order to determine ability to afford the additional monthly payment of rehabilitation loan. Belmont will provide Town staff with a copy of its income analysis and assessment of th client's ability to afford an additional monthly payment.

Belmont staff will be available in the Town Hall upon request. Counseling will take place on an individual basi and in the form of workshops requested by the Town. Additional counseling hours may be provided at eithe Town Hall or Harlem Road Community Center or Belmont Housing Resources for WNY, Inc. office or one o the satellite offices Belmont has provided under other counseling contracts. All services will be provided betwee April 1, 2021 and March 31, 2022.

All Individual counseling on any of the topics outlined in this section includes any individual at the Town wh does not attend one of the Town's scheduled Workshops. It is based on an average of 4 hours per client and at rate of $25.00 for housing counselor's salary/benefits, plus an additional $10.00 for materials (handbooks, etc.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

EXHIBIT "A" CONTINUED

SCOPE OF SERVICES AND REPORTING REQUIREMENTS

This cost includes:

Staff time of Marketing Manager: developing and distributing marketing material and press releases.
Cost of supplies, workbooks, materials, and copies for the workshop using an average of 15 clients per worksho
@ $10.00 per client.

Staff time of counselors: Coordinating guest speakers, developing, gathering, and copying presentation materia
and hand-outs, drive time, as well as the presentation hours of the workshop.

Mileage reimbursement to staff.

Advertisements:

If the Town wishes to place ads in the local Amherst Bee or other newspaper for any workshop, the Town wil
reimburse Belmont for the cost, which will be included in the quarterly invoice. The cost of advertisement
currently in the *Amherst Bee* are as follows:

2 column x 3 inch: $183.12
2 columns x 4 inch: $244.16
2 columns x 6 inch: $366.24

The Town may also require quarterly advertisements be placed which advertise the Town's Housing Counselin
Services and referral service. The Town will reimburse Belmont for the cost of the advertisements in the quarterl
invoices.

REPORT AND VERIFICATION SYSTEM:

1. Belmont will provide the following information to the Town on a quarterly basis:

   Belmont quarterly statistical report showing levels of counseling assistance provided to Amhers
   residents/potential residents by sex, race, ethnicity, (e.g., Hispanic) and household income % AMI an
   type of assistance requested, (e.g., mortgage default) for the quarter. Belmont will provide a simple coun
   for units of renter assistance during the period.

   Belmont will not be required to submit any other information than that described in this Section 1 in orde
   to verify delivery of the services described above in this Exhibit "A".

2. The Town may designate a Town Monitor to review Belmont's case files of Town residents on an annua
   basis. The person acting as monitor for the Town shall be associated with the Town's Communit
   Development Program, namely, one of the following:

   a. Associate Planner
   b. Community Development Assistant

3. The reviews of case files by the Town Monitor will take place at the main office of Belmont, 2393, Mai
   Street, Buffalo, New York 14214. No case file information or copies of case file information will b
   removed from that office.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

EXHIBIT "A" CONTINUED
PROGRAM BUDGET

4. The Town Monitor described in Section 2 above shall be responsible for the confidentiality of any clien information obtained by review of Belmont's files.

5. The person(s) to whom the Town Monitor reports shall likewise be responsible for the confidentiality of any client information obtained by the Town Monitor's review of the Belmont files.

Housing Counselor: 20 hours/month In Town, Belmont Housing Resources for WNY Office or other determined location **$**

Individual counseling includes but is not limited to pre-purchase, reverse mortgage, predatory lending, foreclosure prevention, rental, post purchase/home maintenance, and financial management including credit, debt and budget counseling.

Estimated people counseled: 60 @ $110.00

Workshops (20): Includes preparation, travel, class time and materials **$**

Group presentations on topics such as:
2 Part or Stand Alone

- ☐ Financial Literacy:
  Budgeting, Debt and Credit, Saving, Banking, Predatory Lending etc. $400
- ☐ Pre-Purchase; preparing people to buy their first home $400
- ☐ Post-Purchase; teaching new homeowners, in particular, how to maintain their home, budget/save for future repairs/improvement, etc.
- ☐ Rental; "Get the Edge – The Renters' Edge"
- ☐ Predatory Lending / Foreclosure Prevention Strategies $400

Outreach and Publicity: not to exceed **$**
Develop and distribute posters, press releases, advertisements, mailings, flyers.

Total **$16,500**

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

EXHIBIT "B"

Annual Household Income – FY 2021

(Effective June 1, 2021)

Household Size	Median Income	80% AMI	50% AMI	30% AMI
1	$ 55,250	**$ 44,200**	$ 27,650	$16,600
2	$ 63,125	**$ 50,500**	$ 31,600	$18,950
3	$ 71,000	**$ 56,800**	$ 35,550	$21,300
4	$ 78,875	**$ 63,100**	$ 39,450	$23,650
5	$ 85,188	**$ 68,150**	$ 42,650	$25,550
6	$ 91,500	**$ 73,200**	$ 45,800	$27,450
7	$ 97,810	**$ 78,250**	$ 48,950	$29,350
8	$ 104,125	**$ 83,300**	$ 52,100	$31,250

HOUSEHOLD CHARACTERISTICS: Complete one line for each household assisted. One code only in each block.

# MEMBERS ASSISTED IN HOUSEHOLD	% HOUSEHOLD INCOME	RACE OF HEAD OF HOUSEHOLD *	HISPANIC **Y/N**	FEMALE HEAD OF HOUSEHOLD **Y/N**

***Race of Household**
11-Caucasian
12-African American
13-Asian
14-American Indian or Alaskan Native
15-Native Hawaiian or other Pacific Islander
16-American Indian/Alaska Native & White
17-Asian & Caucasian
18-African American & Caucasian
19-American Indian or Alaskan Native & African American
20-Other Multi-Racial

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Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling Should any other provision of the Agreement conflict with the clauses in this Addendum then th provisions of this Addendum are to be enforceable and any conflicting provision shall be considered nul and void.

2. No rules, requirements or customs of any society or association of professional Consultants or an similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards o judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of th Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active o passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insuranc specified below, produced satisfactory proof of the same and such insurance has been approved by th Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life c this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to b assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance Consultant shall take out and maintain during the life of this Agreement, such general liability an property damage insurance as shall protect it and the Town of Amherst from claims for damage for personal injury, including accidental death, as well as from claims for property damage, whic may arise from operations under this Agreement. The amounts of such insurance shall be as follow in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damag including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to th Town and shall also assure that any policy procured by it shall name the Town as an additiona insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurance and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant sha name the Town as an additional insured on a primary and non-contributory basis.

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not late than twenty-four (24) hours from the time of such accident. A detailed written report must be submitte to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date c such accident.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, th Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwis disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute thi 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 b inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is nc inserted through mistake or otherwise, then upon the application of either party this Agreement shall b physically amended forthwith to make such insertion. In particular, the Consultant shall, among othe things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.

(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.

(c) Affirmative action as required by the Labor Law.

(d) Prevention of dust hazard required by Labor Law Section 222-a.

(e) Preference in employment of persons required by Labor Law Section 222.

(f) Eight-hour workday as required by Labor Law Section 220(2).

(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.

(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agree that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, a officer or employee of the Town by reason hereof, make any claim, demand or application to or for an right or privilege applicable to an officer or employee of the Town, including, but not limited to: worker compensation coverage, unemployment insurance benefits, Social Security coverage, or retiremer membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless i writing and signed by the party waiving said breach. No such waiver shall in any way affect any othe term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any othe 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 Ne York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances fc any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any count other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for an municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances fc New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all leg action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or i the United States District Court for the Western District of New York, Buffalo Division.

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

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 pursuan to a Resolution adopted by the Town Board of the Town, at a meeting thereof held o _____. Brian J. Kulpa, the Supervisor, whose signature appear hereafter, is duly authorized and empowered to execute this instrument and enter into such a Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed i triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of th Town Clerk of Town.

Agreed to and Accepted by:	Agreed to and Accepted by:
Belmont Housing Resources for WNY, Inc Print Name of Company	Town of Amherst
By: Joyelle Tedeschi, VP Signature	By: _____ Brian J. Kulpa, Supervisor
Joyelle Tedeschi, Vice President Housing Programs Printed name	Brian J. Kulpa, Supervisor Printed name
Date: 8/16/21	Date: _____

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

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: Belmont Housing Resources of WNY

Signature: Joyelle Tedeschi

Print Name: Joyelle Tedeschi

Title: Vice President - Housing Programs

Date: 8/16/21

Judith L. Scott
01SC4799731
Notary Public, State of New York
Qualified in Chautauqua County
My Comm. Expires Sept. 30, 2021

Sworn To Before Me This
16th Day of August, 2021
Judith L Scott
Notary Public

Revised 4.2017

Attachment: Signed_Contract_2021 (RES-2021-796 : Contract with Belmont Housing Resources for WNY, Inc.)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24718 **RESOLUTION 2021-797** **ADOPTED**

To Authorize the Supervisor to Execute an Agreement with the Boys and Girls Club of Buffalo, Inc. to Fund Staffing During the After-School Program Located at the Eggertsville Community Center in the Town of Amherst CRS #2878

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) funds agrees to offer support to at risk youth and low-income families, and

WHEREAS, the Boys and Girls Club of Buffalo, Inc. has provided a safe environment for children to go to the Eggertsville Community Center, and

WHEREAS, the Boys and Girls Club has submitted a satisfactory project budget and scope of services which provides for maximum assistance of $40,000 for staff members at the Community Center, now therefore, be it

RESOLVED, that the Town Board of the Town of Amherst authorizes the Supervisor, subject to the satisfactory completion of the contract routing process, to enter into an agreement with the Boys and Girls Club of Buffalo, Inc. for the period of April 1, 2021 through March 31, 2022.

9/13/2021
Consent

FINANCIAL IMPACT:

The funds necessary to enter into a contract with the Boys and Girls Club of Buffalo, Inc. have been budgeted in the FY 2021 CDBG budget. The resolution will, therefore, have no impact on the Town's current budget or tax rate.

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

Amherst

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

Brian J. Kulpa, Supe r
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D or

September 1, 2021

Agenda of September 13, 2021

Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Subject: Contract with Boys and Girls Club of Buffalo, Inc. for after-school care at the Eggertsville Community Center.

Honorable Board Members:

The FY 2021 CDBG budget adopted by the Town Board allocates funding for assistance to low income at risk families in the Town of Amherst. The Boys and Girls Club of Buffalo, Inc. has a program located at the Eggertsville Community Center in the Town of Amherst to offer care in a safe and secure environment. The proposed contract provides CDBG funds for a maximum of $40,000.00 which supports staff members.

Attached for your consideration is a resolution authorizing the Town Supervisor to enter into a contract with the Boys and Girls Club to provide CDBG funds for staffing for the period April 1, 2021 through March 31, 2022.

Very truly yours,

Daniel J. Ulatowski, AICP
Assistant Planning Director

X:\Community Development\New Structure\CONTRACTS and SUBRECIPIENTS\Boys and Girls Club\FY2021\TB_Letter_2021.docx

Attachment: tb letter-boys (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

AGREEMENT

THIS AGREEMENT, made this 13th day of August, 2021, by and between the Town of Amherst, a municipal corporation of the State of New York, with principal offices located at 5583 Main Street, Williamsville, NY 14221, (hereinafter referred to as the "Town") and the BOYS & GIRLS CLUB OF BUFFALO, INC. (hereinafter referred to as the "BOYS & GIRLS CLUB"), a not-for-profit corporation organized under the laws of the State of New York, with principal offices located at 282 Babcock Street, Buffalo, NY 14210.

WITNESSETH

WHEREAS, the BOYS & GIRLS CLUB has provided a safe haven and social and educational programming for young people in Erie County for the past 89 years; and

WHEREAS, it is an eligible activity under the Community Development Block Grant awarded to the Town, under the Housing and Community Development Act of 1974, as amended, to provide assistance to families who are low income;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. (a) "Town" shall mean the Town of Amherst
   (b) The "Boys & Girls Club" shall mean the Boys & Girls Club of Buffalo, Inc.

2. The following exhibits are attached to this Agreement and made a part hereof:
   (a) Exhibit "A" -Scope of Services
   (b) Exhibit "B" -2021 Income Guidelines and Stats Chart

3. The BOYS & GIRLS CLUB for consideration herein provided, shall perform the services as described in Exhibit "A" attached hereto and made a part hereof.

4. The Boys & Girls Club shall, prior to execution of this Agreement, provide to the Town certificates of insurance evidencing compliance with the provisions of the Addendum to Contract attached hereto and incorporated herein. The Boys & Girls Club agrees to defend, indemnify and hold-harmless the Town from and against all claims, liability and damages resulting from or arising out of performance by the Boys & Girls Club of the terms and conditions of this Agreement.

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5. The Town agrees to pay the Boys & Girls Club not more than forty thousand, and 00/100 dollars ($40,000.00) during the one-year period from April 1, 2021 through March 31, 2022 for the services it provides to Town residents.

6. The Boys & Girls Club shall submit to the Town quarterly payment vouchers and report forms, as described in Exhibit A. Said forms will be in a format acceptable to the Town with the first two requests for payment for the period covering April 1, 2021 through December 31, 2021 to be submitted no later than January 10, 2022 to be consistent with the Town's fiscal year. Upon review and approval of the aforementioned vouchers and report forms by the Town, the Town shall process and subsequently issue funds totaling the approved amount. The sum of all vouchers submitted to the Town by the Boys & Girls Club shall not exceed $40,000.00.

7. The Boys & Girls Club agrees that it shall keep and maintain accounts and records concerning all costs incurred in the performance of this Agreement, and that it shall have available for audit and inspection by the Town or by authorized representatives of the federal government, all the Boys & Girls Club facilities, books and other financial and statistical data as they relate to this Agreement. The Town and the Boys & Girls Club agree to comply with the regulations, policies, and guidelines and requirements of the federal Office of Management and Budget, as they relate to the application, acceptance and use of federal funds for this federally assisted program.

8. The Boys & Girls Club 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. This Agreement shall be valid only to the extent of federal funds made available to the Town for the Community Development program year under Title I of the Housing and Community Development Act of 1974, as amended. Any and all payments due under this agreement shall be contingent upon the receipt by the Town of funds from the United States

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Department of Housing and Urban Development in the amount stipulated in the 2021 Annual Action Plan as approved by the Amherst Town Board on February 1, 2021.

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 Town.

11. This Agreement shall be considered in effect from April 1, 2021 through March 31, 2022. The Town may agree to extend this Agreement for an additional twelve month period.

12. The Boys & Girls Club 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 the Boys & Girls Club status as an independent contractor, the Town shall not be responsible for workers compensation benefits, social security coverage or unemployment insurance benefits with respect to the Boys & Girls Club or its employees.

14. **Termination**

(1) The Town reserves the right to terminate this Agreement at its pleasure at any time prior to completion of the Program by giving two (2) weeks written notice of termination to the Boys & Girls Club, either personally or by certified mail. The Town further reserves the right to terminate this Agreement for cause in the event that the Boys & Girls Club 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) The Boys & Girls Club 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 Town, either personally or by certified mail. The Boys & Girls Club further reserves the right to terminate this Agreement for cause in the event that the Town 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.

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(3) The fee to be paid to the Boys & Girls Club upon such termination shall be based upon the value of the services performed by the Boys & Girls Club up to the effective date of termination.

15. Changes in the Project Description and Cost specified in Exhibit "A" may be requested by the Boys & Girls Club in writing, addressed to the Town's Planning Director for subsequent action.

16. The Boys & Girls Club 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**

The Boys & Girls Club 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 Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 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. 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, 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, the Boys & Girls Club 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. The Boys & Girls Club 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. The Boys & Girls Club 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. The Boys & Girls Club shall state that all qualified applicants will receive consideration

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for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The Boys & Girls Club 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. The Boys & Girls Club 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. **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.**

(a) The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(b) Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135 (e).

20. **Obligations of Grantee with Respect to Certain Third Party Relationships.**

The Boys & Girls Club 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. The Boys & Girls Club 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 Town of Amherst necessary to insure that activities pursuant to this Agreement are carried out in accordance with the Town of Amherst's assurances and certifications pursuant to the Community Development Block Grant Program, including those with respect to the assumption of environmental responsibilities of the Town of Amherst under section 104(h) of the Housing and Community Development Act of 1974.

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21. **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.

22. **Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body, or Other Public Officials.**

No member, officer, or employee of the Boys & Girls Club or its designees or agents, no member of the governing body of the Town of Amherst and no other public official of the Town of Amherst 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. The Boys & Girls Club 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.

23. **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.

24. **Nondiscrimination in Housing.**

The BOYS & GIRLS CLUB shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and the H.U.D. regulations with respect thereto, and Executive Order 11063. Title VIII prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in the financing of housing, block busting, and discriminatory advertising and makes it unlawful to deny any person access to, or membership and participation in, any multiple-listing service or real estate brokers' organization for discriminatory purposes.

25. **Hatch Act**

The BOYS & GIRLS CLUB 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.

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26. **Conflict of Interest**

The BOYS & GIRLS CLUB 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.

27. **Funding Source Recognition**

The BOYS & GIRLS CLUB 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.

28. **Lobbying & Religious Activities**

By signing this Agreement, the BOYS & GIRLS CLUB 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, the BOYS & GIRLS CLUB 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.

29. **Compliance.**

The obligation of the BOYS & GIRLS CLUB to comply with the provisions of paragraph 17 through paragraph 28 of this Agreement shall inure to the benefits of the United States, H.U.D. and the Town of Amherst, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to complete compliance therewith by the BOYS & GIRLS CLUB.

The BOYS & GIRLS CLUB shall, by contractual requirement, covenant, or other binding commitment assure the compliance with the above provision of the provisions of paragraph 17 through paragraph 28 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: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

THE BOYS & GIRLS CLUB 2021 CONTRACT

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed on the day and year just above written.

TOWN OF AMHERST

By: _____
Brian J. Kulpa, Supervisor

THE BOYS & GIRLS CLUB OF BUFFALO, INC.

By: Shari McDonagh
Shari McDonagh - CEO

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____day of_____, in the year 2021, 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

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 13th day of August in the year 2021, before me, the undersigned, personally appeared Shari McDonagh 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.

SHARON SLEY
Notary Public, State of New York
No. 01SL6038303
Qualified in Erie County
Commission Expires March 6, 2022

Sharon Sley
NOTARY PUBLIC

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EXHIBIT "A"
SCOPE OF SERVICES AND REPORTING REQUIREMENTS

1. Project Description

The goals of the BOYS & GIRLS CLUB Program are:

a) To provide a safe haven, at no cost, to 40 youth, where they can learn & grow developing their assets in: constructive use of time, support and empowerment.

b) To become proficient in basic education disciplines and technology and apply learning to everyday situations. Assets to be developed: Support, boundaries & expectations, constructive use of time, positive values, reading for pleasure, achievement & motivation.

c) To become empowered to support and influence their Club, school and community and to sustain meaningful relationships with others, develop a positive self-image, participate in the democratic process and respect their own and other's cultural identities. Assets to be developed: support, empowerment, positive values & social competencies.

d) To engage in positive behaviors that nurture their well-being, set personal goals and develop competencies to live successfully as self-sufficient adults. Assets to be developed: support, commitment to learning, empowerment, positive values, positive identity.

e) To develop fitness, positive use of leisure time, skills for stress management, appreciations for the environment and social and interpersonal skills. Assets to be developed: support, boundaries & expectations, positive values, social competencies, positive identity, restraint, peaceful conflict, social skills.

f) To develop creativity and cultural awareness through knowledge and appreciation of visual and tactile arts and crafts, performing arts, and creative writing. Assets to be developed: empowerment and social competencies.

2. Activities to be performed

EDUCATION & CAREER DEVELOPMENT

- Kidz Lit & Math Lit small group interactive programs that reinforce what students are learning during the day in reading and math through the use of fun games and interactive activities.

- Goals for Graduation designed to work with students to help them to set and attain their current and future academic goals. Club staff, teachers and parents work to support each member and help them to establish a manageable plan for achieving their goals up to and through high school graduation and higher education.

- NetSmartz – students will learn the dangers of computer viruses, chat rooms, on line fraud etc. and the ways in which they can safely navigate the Internet

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- Power Hour – Includes one-on-one tutoring homework help from staff and college student volunteers. We also provide opportunities to play educational board games (Scrabble, Trivial Pursuit, Brain Teaser), and discuss current events from reading newspapers (USA Experience Today).

- Comprehensive Reading Assessment (CRA) – This curriculum, developed by Options Publishing, is the test preparation curriculum for the NYS Learning Standards English Language Arts assessment. This program combines step-by-step instruction and practice, ongoing assessment and test taking practice skills.

- Comprehensive Math Assessment (CMA) – This curriculum, developed by Options Publishing, combines math instruction based on New York State Learning Standards with practice and ongoing assessment. The CMA includes diagnostic, step-by-step guided instruction and practice.

- Project Ask – This program promotes inquiry-based teaching and learning from direct experience through hands on science projects.

CHARACTER & LEADERSHIP DEVELOPMENT

- Torch Club - justice and tolerance are the principles inherent in the Torch Club program and the basic ingredients of citizenship in a democracy. Each Torch Club member will develop a sense of responsibility and appreciation for citizenship and leadership.

- Youth for Unity- focuses on exposing students to different biases many people in our world have. Programming will assist students in focusing in on these biases and changing their attitudes towards certain races, cultures, gender, etc.

- Keystone Club - The "Big Brother" of the Torch Club, this program focuses on youth (ages 14-18) becoming true leaders in the community and Club. Members elect officers, plan service projects, organize social events, and attend Keystone Conferences.

- Healthy Habits - Program is designed to incorporate healthy living and active learning in every part of the Club experience. From the gym to the learning center to the arts and crafts room, the central themes of good nutrition, regular physical activity and improving overall well-being are emphasized.

HEALTH & LIFE SKILLS

- SMART Moves - this prevention/education program addresses the related problems of drug and alcohol use, premature sexual activity and HIV/AIDS prevention. Based on proven prevention techniques it uses a team approach involving Club staff, parents and community representation.

- Street SMART- designed to counteract the negative lure of gangs, violence and "street" influences for young adolescents. It will help students develop a greater awareness of conflict and its resolution.
- SMART Girls- focuses on helping girls develop healthy attitudes and lifestyles. In part of

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accomplishing these goals, the program addresses health and social issues that are specific to young women. By offering young women skills in nutrition, developing healthy habits, communication skills and appreciation of themselves, this program will assure youth development.

- Passport to Manhood - is a program that focuses on promoting positive values and responsible behavior for boys ages 11-14. The program addresses peer pressure, sexual relations and developing caring and responsible relationships.

THE ARTS

- Fine Arts Exhibit Program - encourages artistic expression among students through drawing, painting, print, making sculpture and collage. This artwork is displayed at local and regional exhibits and winning artwork is sent for inclusion in the National Fine Arts Exhibit at the Boys & Girls Clubs of America's National Conference.

- Digital Arts - consists of the following components: Web Tech, Design Tech, Photo Tech and Movie Tech. Each program includes interactive simulations, step-by-step lessons and project ideas for every skill level. The courseware teaches technical aspects of digital arts so staff members can focus their efforts on helping students unleash their creativity and determine content for their projects, providing guidance and support for members' work.

SPORTS, FITNESS AND RECREATION

- Inner-Club Sports/Activities - depending on the season, you can expect to see all our Club sites going head-to-head to see who the best in Buffalo is. All Inner-Club sports programs are age-appropriate and include: baseball, softball, volleyball, flag football, basketball and floor hockey.

- Wanna Play - allow co-ed youth to increase their overall fitness through physical activity and improved nutrition education while learning the fundamental skills of baseball and softball through fun and enriching activities.

- Triple Play - to improve Club members' knowledge of healthy habits, good nutrition and physical fitness: increase the numbers of hours per day they participate in physical activities; and strengthen their ability to interact positively with others and engage in healthy relationships.

- Field Trips & Recreational Events – we will create a diverse atmosphere for students by taking field trips to picnics, local colleges, businesses, professional sporting events, performing arts shows, and concerts.

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3. Units of Activity

Progress in meeting the goals of this project will be measured as follows:

a) The measurable primary objective is of the 40 youth who will participate in educational programs, 30 will reach a minimum of grade level in math and reading. The expected changes, benefits, or improvements our target population will have accomplished by the end of the funding period are:

- 75% will have maintained or increased the reading grade level
- 70% will have maintained or increased the math grade level
- 70% will have improved attitudes for attending school
- 75% will decreased negative behavior at the Clubhouse
- 80% will have increased Clubhouse Average Daily Attendance rates

4. Staffing

Activities will be supervised by the Clubhouse Director, Education Specialist and Youth Development Assistants. A nominal fee shall be assessed for administrative and support staff.

5. Recipient Eligibility

The Program shall be administered in keeping with HUD regulations and federal and state laws using the following guidelines in "Exhibit B". All project activities shall be limited to households who are at or below 80% of the median income determined in accordance with criteria established by the U.S. Department of Housing and Urban Development and at risk youth and families residing in TOA assisted with CDBG.

6. Record Keeping

All records will be kept as required by HUD and will fully disclose the amount and disposition of funds, the total costs of operating the project and all records necessary for an effective audit and performance evaluation.

The BOYS & GIRLS CLUB's administrative and fiscal procedures mandate accurate record keeping of the actual time worked by all employees. Personnel records documenting the qualifications, salaries and work schedules of all project employees will be maintained on file by the Not for Profit's Personnel Unit.

Fiscal record keeping for the project will be the responsibility of The BOYS & GIRLS CLUB's Fiscal Unit, whose staff has the expertise and time to assist in implementing the entry accrual accounting system, which is audited by an independent accounting firm.

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7. Reporting

The BOYS & GIRLS CLUB will provide quarterly statistical reports to the Town's Planning Department documenting the number of households receiving assistance. The identity of the callers will be confidential and not disclosed to the Town. All report documents shall be submitted to the Amherst Planning Department, attention: Community Development Program. The report should include:

- Address of the property;
- Alternate identifier of assisted households;
- The income category (i.e., extremely low-income (0% to 30% of MFI), low income (31% to 50% of MFI) or moderate income (51% to 80% of MFI) or above 80%;
- The head of the household's racial/ethnic group identification.

All funds paid by the Town shall be used by The BOYS & GIRLS CLUB in a manner consistent with the budget described in Exhibit "A" attached hereto and incorporated herein.

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EXHIBIT "A" CONTINUED

BUDGET

Personnel: $40,000.00
Includes:
Club Director @ 50%
Education Director @ 50%
Tutors (2) @ 50%
Youth Development Professionals @ 50%
Data Entry @ 50%

Fringes: $
Includes:
FICA @ 7.65%
Workers' Comp @ 1.10%
State Disability @ 0.20%
Unemployment @2.20%
Health @ 10.14%
Dental @ 0.78%
Pension 403b @ 4.00%
Life & Lon-term Disability @ 0.67%

Maintenance & Operations: $
Includes:
Computer supplies
Office supplies
Janitorial supplies
Program supplies
Insurance
Field trips
Vehicle gas
Vehicle insurance
Vehicle repairs

Total: $40,000.00

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EXHIBIT B
FY 2021 INCOME GUIDELINES & STATS CHART

Verification of household income must be supplied. To qualify, you must be under 80% of the FY 2021 median income guidelines below:

Annual Household Income – FY 2021
(Effective June 1, 2021)

Household Size	Median Income	80% AMI	50% AMI	30% AMI
1	$ 55,250	**$ 44,200**	$ 27,650	$16,600
2	$ 63,125	**$ 50,500**	$ 31,600	$18,950
3	$ 71,000	**$ 56,800**	$ 35,550	$21,300
4	$ 78,875	**$ 63,100**	$ 39,450	$23,650
5	$ 85,188	**$ 68,150**	$ 42,650	$25,550
6	$ 91,500	**$ 73,200**	$ 45,800	$27,450
7	$ 97,810	**$ 78,250**	$ 48,950	$29,350
8	$ 104,125	**$ 83,300**	$ 52,100	$31,250

HOUSEHOLD CHARACTERISTICS: Complete one line for each household assisted. One code only in each block.

# MEMBERS ASSISTED IN HOUSEHOLD	% HOUSEHOLD INCOME	RACE OF HEAD OF HOUSEHOLD *	HISPANIC **Y/N**	FEMALE HEAD OF HOUSEHOLD **Y/N**

***Race of Household**
11-Caucasian
12-African American
13-Asian
14-American Indian or Alaskan Native
15-Native Hawaiian or other Pacific Islander
16-American Indian/Alaska Native & White
17-Asian & Caucasian
18-African American & Caucasian
19-American Indian or Alaskan Native & African American
20-Other Multi-Racial

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Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active or passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant shall name the Town as an additional insured on a primary and non-contributory basis.

Attachment: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Consultant shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws,

Attachment: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

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:

Boys & Girls Club of Buffalo, Inc.

By: Shari McDonough

Shari McDonough - CEO
Printed name & title

Date: 8/13/21

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Brian J. Kulpa, Supervisor
Printed name & title

Date: _____

X:\Community Development\New Structure\CONTRACTS and SUBRECIPIENTS\Boys and Girls Club\FY2021\Boys_Girls_Club_Contract_2021.docx

Attachment: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

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: Boys + Girls Clubs of Buffalo inc

Signature: Shari McDonough

Print Name: Shari McDonough

Title: CEO

Date: 8/13/21

Sworn To Before Me This

13 Day of August, 2021

Sharon Sley

Notary Public

SHARON SLEY
Notary Public, State of New York
No. 01SL6038303
Qualified in Erie County
Commission Expires March 6, 2022

Revised 4.2017

Attachment: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
BOYS CLUBS OF BUFFALO INC

282 BABCOCK STREET
BUFFALO, NY 14210

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy)*

1b. Business Telephone Number of Insured

1c. Federal Employer Identification Number of Insured or Social Security Number
160849516

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"
DBL574360

3c. Policy effective period
01/01/2020 to 12/31/2021

4. Policy provides the following benefits:
- [X] A. Both disability and paid family leave benefits.
- [ ] B. Disability benefits only.
- [ ] C. Paid family leave benefits only.

5. Policy covers:
- [X] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- [ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 10/20/2020 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 mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

DB-120.1 (10-17)

Attachment: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

NYSIF
New York State Insurance Fund

225 OAK STREET, BUFFALO, NEW YORK 14203-1685
| nysif.com

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE (RENEWED)

^^^^^^ 160849516
USI INSURANCE SERVICES LLC
726 EXCHANGE ST SUITE 618
BUFFALO NY 14210

SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER	CERTIFICATE HOLDER
BOYS & GIRLS CLUBS OF BUFFALO INC 282 BABCOCK ST BUFFALO NY 14210	TOWN OF AMHERST 5583 MAIN STREET WILLIAMSVILLE NY 14221

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
B1012 913-8	713219	11/01/2020 TO 11/01/2021	10/30/2020

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 1012 913-8, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP. THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR,INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 111333332

U-26.3

Attachment: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

Client#: 1684676 BOYSGIR47

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER USI Insurance Services, LLC 726 Exchange St. Ste 618 Buffalo, NY 14210 716 314-2000	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Boys & Girls Clubs of Buffalo, Inc. 282 Babcock Street Buffalo, NY 14210	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : The Cincinnati Insurance Company — 10677 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:	X	X	ETD0409339	11/01/2020	11/01/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$1,000,000 $1,000,000 $10,000 $1,000,000 $2,000,000 $2,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY HIRED AUTOS ONLY SCHEDULED AUTOS NON-OWNED AUTOS ONLY	X		ETA0509343	11/01/2020	11/01/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$1,000,000 $ $ $ $
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $10000	X		ETD0409339	11/01/2020	11/01/2021	EACH OCCURRENCE AGGREGATE $	$3,000,000 $3,000,000 $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
A	Professional Liability			ETD0409339	11/01/2020	11/01/2021	Ea. Incident $1,000,000 Aggregate $2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Named Insureds:
Boys and Girls Clubs of Erie County Inc
Boys & Girls Clubs of Buffalo, Inc.
Boys & Girls Club of East Aurora, Inc.
Boys & Girls Club of Eden Inc DBA BGC Lakeshore
(See Attached Descriptions)

CERTIFICATE HOLDER

Town of Amherst
Attn: Mary-Diana Pouli
5583 Main Street
Williamsville, NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Attachment: Signed_contract_2021 (RES-2021-797 : Contract with the Boys & Girls Club of Buffalo, Inc.)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24719 **RESOLUTION 2021-798** **ADOPTED**

To Authorize the Town Supervisor to Enter into a Contract for Fair Housing Counseling Services with Housing Opportunities Made Equal (HOME) CRS #2872

WHEREAS, as a recipient of Community Development Block Grant and HOME Investment Partnership funds the Town certifies that it will affirmatively further fair housing; and

WHEREAS, the Town has programmed Community Development Block Grant funds for fair housing counseling services; now, therefore be it

RESOLVED, that the Town Board authorizes the Supervisor, subject to the satisfactory completion of the contract routing process, to sign a contract with Housing Opportunities Made Equal for an amount not to exceed $10,000 for services to Town residents during the period April 1, 2021 through March 31, 2022.

9/13/2021
Consent

FINANCIAL IMPACT:

The funds necessary to contract for services with HOME have been budgeted in the FY 2021 (N21-34 4000) CDBG budget. The resolution will, therefore, have no impact on the town's current budget or tax rate.

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

Amherst

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

Brian J. Kulpa, Sup ır
Daniel C. Howard, Planning Direct
Daniel J. Ulatowski Assistant Planning I P ɔr

September 1, 2021

Agenda of September 13, 2021

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

Subject: Contract with Housing Opportunities Made Equal (HOME)

Honorable Members:

The 2021 Community Development budget includes an allocation for fair housing counseling services. Advocacy services are provided free of charge to residents who feel they have been the victims of housing discrimination.

A contract is proposed that provides for quarterly payments to H.O.M.E. to a maximum of $10,000.00 during the contract year with Community Development funds. The agency has performed satisfactorily under past contracts.

Attached for your consideration is a resolution authorizing the Town Supervisor to enter into a contract with HOME for the period April 1, 2021 through March 31, 2022. Adequate funds are available in the CDBG budget to cover the maximum $10,000.00 cost of the proposed contract.

Thank you.

Very truly yours,

Daniel J. Ulatowski, AICP
Assistant Planning Director

X:\Community Development\New Structure\CONTRACTS and SUBRECIPIENTS\HOME\FY2021\HOME_TBletter_2021.docxx

Attachment: tb letter-home (RES-2021-798 : Contract with Housing Opportunities Made Equal)

AGREEMENT

THIS AGREEMENT, entered into this _____day of_____, 2021, between the TOWN OF AMHERST, a municipal corporation of the State of New York, with principal offices located at 5583 Main Street, Williamsville, New York, 14221, (hereinafter referred to as the "Town") and HOUSING OPPORTUNITIES MADE EQUAL, INC., hereinafter referred to as HOME, a private not-for-profit corporation incorporated under the laws of New York State, with its principal office for the transaction of business located at 1542 Main Street, Buffalo, New York 14209, (hereinafter referred to as "HOME").

WITNESSETH

WHEREAS, the Town, as a recipient of federal funding under the Housing and Community Development Act of 1974, as amended, (hereinafter referred to as the "Act"), certifies that it will affirmatively further fair housing; and;

WHEREAS, HOME has provided comprehensive fair housing services in the Buffalo metropolitan area since 1963;

NOW, THEREFORE, it is mutually agreed by and between the parties hereto, as follows:

1. (a) "Town" shall mean the Town of Amherst
   (b) "HOME" shall mean the Housing Opportunities Made Equal, Inc.

2. The following exhibits are attached to this Agreement and made a part hereof:
   (a) Exhibit "A" -Scope of Services & Budget

3. HOME, for consideration herein provided, shall perform the services as described in Exhibit "A" attached hereto and made a part hereof.

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

4. HOME shall, prior to execution of this Agreement, provide to the Town, certificates of insurance evidencing compliance with the provisions of the "Addendum to Contract" attached hereto and incorporated herein. HOME agrees to defend, indemnify and hold-harmless the Town from and against all claims, liability and damages resulting from or arising out of performance by HOME of the terms and conditions of this Agreement.

5. The Town agrees to pay HOME not more than ten thousand dollars ($10,000.00) during the one year period from April 1, 2021 through March 31, 2022 for the services it provides to Town residents.

6. HOME shall submit to the Town quarterly payment vouchers and report forms, as described in Exhibit A. Said forms will be in a format acceptable to the Town with the first two requests for payment for the period covering April 1, 2021 through December 31, 2021 to be submitted no later than January 10, 2022 to be consistent with the Town's fiscal year. Upon review and approval of the aforementioned vouchers and report forms by the Town, the Town shall process and subsequently issue funds totaling the approved amount. The sum of all vouchers submitted to the Town by HOME shall not exceed $10,000.00.

7. HOME agrees that it shall keep and maintain separate books of accounts and records concerning all costs incurred in the performance of this Agreement, and that it shall have available for audit and inspection by the Town or by authorized representatives of the federal government, all HOME facilities, books and other financial and statistical data as they relate to this Agreement. The Town and HOME agree to comply with the regulations, policies, and guidelines and requirements of the federal Office of Management and Budget, as they relate to the application, acceptance and use of federal funds for this federally assisted program.

8. HOME 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

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

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. This Agreement shall be valid only to the extent of federal funds made available to the Town for the 2018 Community Development program year under Title I of the Housing and Community Development Act of 1974, as amended. Any and all payments due under this agreement shall be contingent upon the receipt by the Town of funds from the United States Department of Housing and Urban Development in the amount stipulated in the 2021 Annual Action Plan as approved by the Amherst Town Board on February 1, 2021.

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 Town.

11. This Agreement shall be considered in effect from April 1, 2021 through March 31, 2022. The Town may agree to extend this Agreement for an additional twelve month period.

12. HOME 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 HOME's status as an independent contractor, the Town shall not be responsible for workers compensation benefits, social security coverage or unemployment insurance benefits with respect to HOME or its employees.

14. **Termination**

(1) The Town reserves the right to terminate this Agreement at its pleasure at any time prior to completion of the Program by giving two (2) weeks written notice of termination to HOME either personally or by certified mail. The Town further reserves the right to terminate this Agreement for cause in the event that HOME shall

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

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) HOME 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 Town, either personally or by certified mail. HOME further reserves the right to terminate this Agreement for cause in the event that the Town 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 HOME upon such termination shall be based upon the value of the services performed by HOME up to the effective date of termination.

15. Changes in the Project Description and Cost specified in Exhibit "A" may be requested by HOME in writing, addressed to the Town's Planning Director for subsequent action.

16. HOME 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.**

HOME 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 Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 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, be denied the benefits of, or be subjected to discrimination under any program, activity, or service provided pursuant to this Agreement.

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

18. **Equal Employment Opportunity.**

In carrying out this Agreement, HOME 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. HOME 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. HOME 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. HOME 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. HOME 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. HOME 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. **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.**

(a) The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(b) Compliance with the provisions of section 3, the regulations set forth in 24 CDR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or

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contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

20. **Obligations of Grantee with Respect to Certain Third Party Relationships.**

HOME 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. HOME 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 Town of Amherst necessary to insure that activities pursuant to this Agreement are carried out in accordance with the Town of Amherst's assurances and certifications pursuant to the Community Development Block Grant Program, including those with respect to the assumption of environmental responsibilities of the Town of Amherst under section 104(h) of the Housing and Community Development Act of 1974.

21. **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.

22. **Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body, or Other Public Officials.**

No member, officer, or employee of HOME or its designees or agents, no member of the governing body of the Town of Amherst and no other public official of the Town of Amherst 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. HOME 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.

23. **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

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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.

24. **Nondiscrimination in Housing.**

HOME shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and the H.U.D. regulations with respect thereto, and Executive Order 11063. Title VIII prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in the financing of housing, block busting, and discriminatory advertising and makes it unlawful to deny any person access to, or membership and participation in, any multiple-listing service or real estate brokers' organization for discriminatory purposes.

25. **Hatch Act**

HOME 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.

26. **Conflict of Interest**

HOME 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.

27. **Funding Source Recognition**

HOME 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.

28. **Lobbying & Religious Activities**

By signing this Agreement, HOME 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, HOME 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.

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29. **Compliance**

The obligation of HOME to comply with the provisions of paragraph 17 through paragraph 28 of this Agreement shall inure to the benefits of the United States, H.U.D. and the Town of Amherst, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to complete compliance therewith by HOME.

HOME shall, by contractual requirement, covenant, or other binding commitment assure the compliance with the above provision of the provisions of paragraph 17 through paragraph 28 of this Agreement on the part of any contractor, subcontractor, transferee, successor in interest or other participant in any activities pursuant to this Agreement.

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EXHIBIT "A"

SCOPE OF SERVICES
4/1/2021-3/31/2022

(1) Provide comprehensive services for victims of housing discrimination within the Town of Amherst as well as for residents who may encounter discrimination while seeking housing elsewhere. Those services will include: recording and investigation of reported incidents of discrimination; paralegal counseling for victims; client advocacy to conciliate validated complaints; preparation of case for legal action; emotional support and referrals to resource agencies and possible housing listings for those at-risk of becoming homeless.

(2) Provide paralegal counseling for landlords and tenants to facilitate resolution of landlord-tenant disputes; thereby minimizing the potential to become homeless

(3) Provide information on fair housing law for landlords, tenants, home seekers (including those at-risk) and real estate agents.

(4) Provide residents with housing and human service information and referral.

(5) Accept client referrals from the Town, and keep the officials apprised of the status of cases referred.

(6) Provide copies of two fair housing brochures (targeted to potential bias victims and to landlords respectively) for distribution at public buildings within the Town.

(7) Provide copies of a quarterly newsletter dealing with developments in fair housing for Town officials.

(8) Upon request, provide technical assistance of limited scope to the Town on matters related to fair housing

(9) Conduct one presentation on fair housing within the Town.

(10) Provide quarterly statistical reports and invoices on services provided to the Planning Department; and a fair housing database documenting the frequency, basis and location of reported incidents of discrimination.

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

EXHIBIT "A" CONTINUED

HOME PROJECT BUDGET

Item	*Requested*	*In-Kind*	*Total*
Salaries ▪ Executive Director (1 hpw plus 2 hpw in-kind) ▪ Operations Coordinator (1 hpw plus 1 hpw in-kind) ▪ Development Officer (2 hpw plus 2 hpw in-kind) ▪ Bookkeeper (1 hpw plus 1 hpw in-kind) ▪ Office Administrator (2 hpw plus 1 hpw in-kind) ▪ Education Specialist (1 hpw in-kind)	$7,403.00	$9,437.00	$16,840.00
Employee Benefits	$1,866.00	$1,759.00	$3,625.00
OTPS -	$731.00	$3,074.00	$3,805.00
	$10,000.00	$14,270.00	$24,270.00

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

HOUSING OPPORTUNITIES MADE EQUAL, INC. 2021 CONTRACT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers all as of the date and year first above written.

HOUSING OPPORTUNITIES MADE EQUAL

By: DeAnna Eason

DeAnna Eason, Executive Director

8/11/2021

Date

TOWN OF AMHERST

By: _____

Brian J. Kulpa, Supervisor

_____

Date

HOUSING OPPORTUNITIES MADE EQUAL ACKNOWLEDGEMENT

S TATE OF NEW YORK)
COUNTY OF ERIE) ss.

On the 11th day of August, in the year Two Thousand Twenty-One, before me, the undersigned, personally appeared DeAnna Eason, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Daniel J. Corbitt
Notary Public

Daniel J. Corbitt
No. 02CO6327160
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 29, 20 23

MUNICIPAL CORPORATION ACKNOWLEDGEMENT

S TATE OF NEW YORK)
COUNTY OF ERIE) ss.

On the _____ day of _____, in the year Two Thousand Twenty-One, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

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Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered nul and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active or passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additiona insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant shal name the Town as an additional insured on a primary and non-contributory basis.

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement to any other person or corporation without the previous consent in writing of the Town.

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Consultant shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

10. It is hereby acknowledged that performance of this Contract will be undertaken in accordance with the specifications and pricing on which the bid was submitted.

Authority for execution on behalf of Town: The Supervisor has executed this Agreement pursuant to a Resolution adopted by the Town Board of the Town, at a meeting thereof held on _____. Brian J. Kulpa, the Supervisor, whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an Agreement on behalf of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least one (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

Agreed to and Accepted by:

Housing Opportunities Made Equal (H.O.M.E.)
Print Name of Company

By: DeAnna Eason
DeAnna Eason, Executive Director

DeAnna Eason, Executive Director
Printed name

Date: 8/11/2021

Agreed to and Accepted by:

Town of Amherst
Printed Name of Municipality

By: _____
Brian J. Kulpa, Supervisor

Brian J. Kulpa, Supervisor
Printed Name

Date: _____

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

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: Housing Opportunities Made Equal, Inc.

Signature: M. DeAnna Eason

Print Name: M. DeAnna Eason

Title: Executive Director

Date: 8/11/2021

Sworn To Before Me This

11th Day of August, 2021

Daniel J. Corbitt

Notary Public

Daniel J. Corbitt
No. 02CO6327160
Notary Public, State of New York
Qualified in Erie County
My Commission Expires June 29, 20 23

Revised 4.2017

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NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
HOUSING OPPORTUNITES MADE EQUAL INC
1542 MAIN ST
BUFFALO, NY 14209-1500

1b. Business Telephone Number of Insured
(716) 854-1400

Work Location of Insured *(Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)*

1c. Federal Employer Identification Number of Insured or Social Security Number
166061434

2. Name and Address of Entity Requesting Proof of Coverage
(Entity Being Listed as the Certificate Holder)
TOWN OF AMHERST-COMMUNITY DEVELOPMENT
5583 MAIN STREET
WILLIAMSVILLE, NY 14221

3a. Name of Insurance Carrier
New York State Insurance Fund (NYSIF)

3b. Policy Number of Entity Listed in Box "1a"
DBL 2928 34 - 0

3c. Policy effective period
07/01/2020 to 07/01/2022

4. Policy provides the following benefits:
- ☒ A. Both disability and paid family leave benefits
- ☐ B. Disability benefits only
- ☐ C. Paid family leave benefits only

5. Policy covers:
- ☒ A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law
- ☐ B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 6/30/2021 By Melissa Jensen
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (866) 697-4332 Name and Title **Melissa Jensen, Director of Disability Insurance Unit**

IMPORTANT: If Box 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier,this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, DB Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

Certificate Number 650221

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in box "3" on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Worker's Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and 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.

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ACORD

BELMHOU-01

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/4/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. TH CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICI BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), 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 this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
Sentz Carlson Agency, Inc. 84 Sweeney Street North Tonawanda, NY 14120	PHONE (A/C, No, Ext): (716) 695-2400	FAX (A/C, No): (716) 695-3969
	E-MAIL ADDRESS:	

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC
Belmont Housing Resources for WNY Inc 2393 Main Street Buffalo, NY 14214	INSURER A : Philadelphia Insurance Company	
	INSURER B : Hartford Fire Insurance Company	19682
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERI INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH TH CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERM EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,00
	CLAIMS-MADE X OCCUR	X		PHPK2266728	5/15/2021	5/15/2022	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 10
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$ 1,00
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,00
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,00
	OTHER:						PROF LIABILITY	$ 2,00
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,00
	X ANY AUTO			PHPK2266728	5/15/2021	5/15/2022	BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	X UMBRELLA LIAB / OCCUR			PHUB765402	5/15/2021	5/15/2022	EACH OCCURRENCE	$ 5,00
	EXCESS LIAB / CLAIMS-MADE						AGGREGATE	$ 5,00
	DED X RETENTION $ 10,000							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
B	Crime			01FA0294917-21	3/7/2021	3/7/2022		1,12

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The Town of Amherst is included as additional insured.

CERTIFICATE HOLDER	CANCELLATION
Town of Amherst 5583 Main St Williamsville, NY 14221	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFC THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

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NYSIF
New York State Insurance Fund

225 OAK STREET, BUFFALO, NEW YORK 14203-1685
| nysif.com

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

^^^^^^ 166061434
HOUSING OPPORTUNITIES MADE
EQUAL INC TA HOME
1542 MAIN ST
BUFFALO NY 14209

SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER	CERTIFICATE HOLDER
HOUSING OPPORTUNITIES MADE EQUAL INC TA HOME 1542 MAIN ST BUFFALO NY 14209	TOWN OF AMHERST 5583 MAIN STREET WILLIAMSVILLE NY 14221

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
B2175 005-4	953056	01/01/2021 TO 01/01/2022	1/4/2021

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2175 005-4, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW, AND, WITH RESPECT TO OPERATIONS OUTSIDE OF NEW YORK, TO THE POLICYHOLDER'S REGULAR NEW YORK STATE EMPLOYEES ONLY.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP. THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

BY CAUSING THIS CERTIFICATE TO BE ISSUED TO THE CERTIFICATE HOLDER, THE POLICYHOLDER UNDERTAKES TO PROVIDE THE CERTIFICATE HOLDER 30 CALENDAR DAYS' NOTICE OF ANY CANCELLATION OF THE POLICY.

Attachment: signed_contract_2021 (RES-2021-798 : Contract with Housing Opportunities Made Equal)

NEW YORK STATE INSURANCE FU

DIRECTOR,INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 107591810

U-26.3

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24720 **RESOLUTION 2021-799** **ADOPTED**

To Authorize the Supervisor to Execute an Agreement for the Provision of Weatherization Services CRS #2873

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) funds agrees to affirmatively promote affordable housing, and

WHEREAS, the Town has budgeted FY 2021 CDBG funds for the provision of weatherization services, and

WHEREAS, Supportive Services Corporation is the sole recipient of weatherization funds from U.S. Department of Energy for use in Erie County outside the City of Buffalo, and

WHEREAS, the Planning Department recommends that the Town renew its contract with Supportive Services Corporation based on that agency's excellent provision of services, and

WHEREAS, Supportive Services Corporation has submitted a satisfactory project budget and scope of services which provides for a maximum fee of $12,000.00, now therefore be it

RESOLVED, that the Town Board authorizes the Supervisor, subject to the completion of the routine contract routing process, to execute an agreement with Supportive Services Corporation for the provision of weatherization services for the period April 1, 2021 through March 31, 2022.

9/13/2021
Consent

FINANCIAL IMPACT:

The funds necessary to contract for services with Erie County Supportive Services have been budgeted in the FY 2021 (N21-29 4000) CDBG budget. The resolution will, therefore, have no impact on the town's current budget or tax rate.

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

AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2021 between the TOWN OI AMHERST, a municipal corporation of the State of New York, with principal offices located at 5583 Main Street Williamsville, New York 14221 (herein after referred to as the "Town"), and SUPPORTIVE SERVICES CORPORATION, a not-for-profit corporation organized under the laws of the State of New York, with principa offices located at 245 Elmwood Avenue, Buffalo, New York, 14222, (hereinafter referred to as "Supportiv Services").

WITNESSETH:

WHEREAS, the Town has received federal funding under the Housing and Community Developmen Act of 1974, as amended and one the purposes of said Act is to expand and improve the quality and quantity o community services, principally for persons of low and moderate income, which are essential for soun community development and for the development of viable urban communities; and

WHEREAS, Supportive Services has been awarded a grant by the New York State Department of State for the operation of an energy conservation program to weatherize homes of eligible residents found to be energ deficient; and consistent with the purposes of the Housing and Community Development Act of 1974 as amended and

WHEREAS, Supportive Services Corporation has successfully provided a program of comprehensiv weatherization services for Erie County residents.

NOW, THEREFORE, it is mutually agreed by and between the parties hereto, as follows:

1. (a) "Town" shall mean the Town of Amherst.
   (b) "Supportive Services" shall mean the Supportive Services Corporation.

2. The following exhibits are attached to this Agreement and made a part hereof:
   (a) Exhibit "A" -- Scope of Services and Reporting Requirements.
   (b) Exhibit "B" -- 2021 Income Guidelines and Stats Chart.

3. Supportive Services, for consideration herein provided, shall perform the services as described i Exhibit "A attached hereto and made a part hereof.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

4. Supportive Services shall prior to execution of this Agreement provide to the Town certificates o insurance evidencing compliance with the provisions of the Addendum to Contract attached hereto and incorporated herein. Supportive Services agrees to defend, indemnify and hold-harmless the Town from and against all claims, liability and damages resulting from or arising out o performance by Supportive Services of the terms and conditions of this Agreement.

5. The Town agrees to pay Supportive Services not more than fourteen thousand dollars **($12,000.00** during the one-year period from April 1, 2021 through March 31, 2022 for the services it provides to Town residents.

6. Supportive Services shall submit to the Town quarterly payment vouchers and report forms, as described in Exhibit A. Said forms will be in a format acceptable to the Town with the first two requests for payment for the period covering April 1, 2021 through December 31, 2021 to be submitted no later than January 10, 2022 to be consistent with the Town's fiscal year. Upon review and approval of the aforementioned vouchers and report forms by the Town, the Town shall process and subsequently issue funds totaling the approved amount. The sum of all vouchers submitted to the Town by Supportive Services shall not exceed $12,000.00.

7. Supportive Services 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 Supportive Services 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 Town and Supportive Services 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.

8. Supportive Services agrees to comply with the general compliance requirements of 24 CFR Par 570 (the U.S. Housing and Urban Development regulations concerning Community Developmen Block Grants (CDBG)) including subpart K of these regulations, except for responsibilities tha fall under 24 CFR Part 570.604 and 24 CFR Part 52. The terms and conditions of this Agreemen are to be carried out in a manner consistent with all other federal, state and local laws.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

9. This Agreement shall be valid only to the extent of the funds made available to the Town pursuan to its program year application under Title I of the Housing Community Development Act of 1974 as Amended, for the purposes of the terms of this Agreement. Any and all payments due under thi agreement shall be contingent upon the receipt by the Town of funds from the United State Department of Housing and Urban Development in the amount stipulated in the 2021 Annua Action Plan as approved by the Amherst Town Board on February 1, 2021.

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 Town.

11. This Agreement shall be in effect from April 1, 2021 through March 31, 2022. The Town may agree to extend this Agreement for an additional twelve month period.

12. Supportive Services shall be fully accountable for its performance under this contract and agree 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 Supportive Services status as an independent contractor, the Town shall not be responsible for workers compensation benefits, social security coverage or unemployment insurance benefits with respect to Supportive Services or its employees.

14. **Termination**

(1) The Town reserves the right to terminate this Agreement at its pleasure at any time prior to completion of the Program by giving two (2) weeks written notice of termination to Belmont either personally or by certified mail. The Town further reserves the right to terminate this Agreement for cause in the event that Supportive Services 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) Supportive Services 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 Town, either personally or by certified mail. Supportive Services further reserves the right to

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

terminate this Agreement for cause in the event that the Town 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 ir the hands of a receiver.

(3) The fee to be paid to Supportive Services upon such termination shall be based upon the value of the services performed by Supportive Services up to the effective date of termination.

15. Changes in the Project Description and Cost specified in Exhibit "A" may be requested by Supportive Services in writing, addressed to the Town's Planning Director for subsequent action.

16. Supportive Services 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**

Supportive Services shall comply with all requirements imposed by Title VI of the Civil Right 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, Sectio 505 of the Rehabilitation Act of 1973 (29 U.S.C. Section 974), the Americans with Disabilitie Act of 1990, the Age Discrimination Act of 1975, Section 402 of the Vietnam Era Veteran Readjustment Assistance Act (39 U.S.C. Chapter 42) and all regulations promulgated with respec thereto including the regulations under 24 CFR Part 1. No person in the United States shall on th 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, be denied th benefits of, or be subjected to discrimination under any program, activity, or service provide pursuant to this Agreement.

18. **Equal Employment Opportunity**

In carrying out this Agreement, Supportive Services shall not discriminate against any employe or applicant for employment because of age, race, color, religion, sex, national origin, disability o because he or she is a disabled veteran or veteran of the Vietnam era. Supportive Services shal

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

take affirmative action to insure that applicants for employment are employed, and that employee 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 actio 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 o compensation; and selection for training, including apprenticeship. Supportive Services shall pos in conspicuous places, available to employees and applicants for employment, notices to b provided by the Government setting forth the provision of this nondiscrimination clause Supportive Services shall state that all qualified applicants will receive consideration fo employment, notices to be provided by the Government setting forth the provisions of thi nondiscrimination clause. Supportive Services shall state that all qualified applicants will receiv 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. Supportiv Services shall incorporate the foregoing requirements of this paragraph in all of its contracts fo work under this Agreement, except contracts for construction work or modification thereof, an will require all of its contractors for such work to incorporate such requirements in all subcontract for work under this Agreement.

19. **"Section 3" Compliance in the Provision of Training, Employment and Busines Opportunities.**

(a) The work to be performed under this contract is on a project assisted under a program providin direct federal financial assistance from the Department of Housing and Urban Development an is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, a amended, and as implemented by the regulations set forth in 24 CFR Part 135. Section 3 require that to the greatest extent feasible opportunities for training and employment be given lowe income residents of the project area and contracts for work in connection with the project b awarded to business concerns which are located in, or owned in substantial part by persons residin in the area of the project.

(b) Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, an all applicable rules and orders of the Department issued there under prior to the execution of th contract, shall be a condition of the federal financial assistance provided to the project, bindin upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns t

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

those sanctions specified by the grant or loan agreement or contract through which federa assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

20. **Obligations of Grantee with Respect to Certain Third Party Relationships.**

Supportive Services shall remain fully obligated under the provisions of the Agreemen notwithstanding its designation of any third party or parties for the undertaking of all or any pa of this Agreement. Supportive Services shall, by contractual requirement, covenant, or othe binding commitment assure the compliance on the part of any contractor, subcontract, transfere successor in interest or other participant in the activities pursuant to this Agreement, with th lawful requirements of the Town of Amherst necessary to insure that activities pursuant to thi Agreement are carried out in accordance with the Town of Amherst's assurances and certification pursuant to the Community Development Block Grant Program, including those with respect t the assumption of environmental responsibilities of the Town of Amherst under section 104(h) o the Housing and Community Development Act of 1974.

21. **Interest of Certain Federal Officials.**

No member of or delegate to the Congress of the United States, and no Resident Commissione shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

22. **Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body or Other Public Officials.**

No member, officer, or employee of Supportive Services or its designees or agents, no member o the governing body of the Town of Amherst and no other public official of the Town of Amhers who exercises any functions or responsibilities with respect to the program during his tenure or fo one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or th proceeds thereof, for work to be performed in connection with the program assisted under th Agreement. Supportive Services shall incorporate, or cause to be incorporated, in all suc contracts or subcontracts a provision prohibiting such interest pursuant to the purposes of thi section.

23. **Prohibition Against Payments of Bonus or Commission.**

The assistance provided under this Agreement shall not be used in the payment of any bonus o 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 concurrenc of H.U.D. required under this Agreement, Title I of the Housing and Community Developmer

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

Act of 1974, as amended, or H.U.D. regulations with respect thereto; provided, however, tha reasonable fees or bona fide technical, consultant, managerial or other such services, other tha actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

24. **Nondiscrimination in Housing.**

Supportive Services shall comply with all requirements imposed by Title VIII of the Civil Right Act of 1968, and the H.U.D. regulations with respect thereto, and Executive Order 11063. Titl VIII prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in th financing of housing, block busting, and discriminatory advertising and makes it unlawful to den any person access to, or membership and participation in, any multiple-listing service or real estat brokers' organization for discriminatory purposes.

25. **Hatch Act**

Supportive Services agrees that no funds provided, nor personnel employed under this Agreemen shall in any way or to any extent engaged in the conduct of political activities in violation of Chapte 15 of Title V of the U.S.C.

26. **Conflict of Interest**

Supportive Services agrees to abide by the provisions of 24 CFR Part 84.42 and Part 570.611 i regards to conflicts of interest in conducting activities related to this Agreement.

27. **Funding Source Recognition**

Supportive Services shall insure recognition of the role of the Community Development Bloc Grant funding source in providing services through this agreement. All activities, publications an items created pursuant to this Agreement shall be labeled as to funding source.

28. **Lobbying & Religious Activities**

By signing this Agreement, Supportive Services certifies that no federal funds have been paid o will be paid, by or on behalf of it, to any person for lobbying activities including influencing c attempting to influence an officer or employee of any state, local or federal agency or elected office In addition, Supportive Services agrees that funds provided under this agreement will not be utilize for inherently religious activities prohibited by 24 CFR Part 570.200(j), such as worship, religiou instruction or proselytization.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

29. **Compliance**

The obligation of Supportive Services to comply with the provisions of paragraph 17 through 2 of this Agreement shall inure to the benefits of the United States, H.U.D. and the Town of Amherst any of which shall be entitled to invoke any remedies available by law to redress any breach thereo or to complete compliance therewith by Supportive Services.

Supportive Services shall, by contractual requirement, covenant, or other binding commitmen assure the compliance with the above provision of the provisions of paragraph 17 through 28 o this Agreement on the part of any contractor, subcontractor, transferee, successor in interest o other participant in any activities pursuant to this Agreement.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

SUPPORTIVE SERVICES, INC. 2021 CONTRACT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

TOWN OF AMHERST

By: _____
Brian J. Kulpa, Supervisor

SUPPORTIVE SERVICES CORPORATION

By: _____
Dennis D. Kozuch, Executive Director

PRIVATE CORPORATION ACKNOWLEDGMENT

STATE OF NEW YORK)
TOWN OF AMHERST) ss:
COUNTY OF ERIE)

On the 5th day of August, in the year Two Thousand Twenty-One, before me, the undersigned personally appeared Dennis D. Kozuch, 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.

ANITA J. WOLNIEWICZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires: 2/28/23
Reg# 01W04770

_____
NOTARY PUBLIC

MUNICIPAL CORPORATION ACKNOWLEDGMENT

STATE OF NEW YORK)
TOWN OF AMHERST) ss:
COUNTY OF ERIE)

On the_____day of_____, in the year Two Thousand Twenty-One, 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: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

EXHIBIT "A"

SCOPE OF SERVICES AND REPORTING REQUIREMENTS

1. Project Description

The goals of Supportive Services Corporation's Energy Conservation Program are:

a) To analyze the energy efficiency of low-income and elderly households in Erie County.

b) To determine the most efficient energy saving improvements for these households on their energy audit results.

c) To install home energy conservation materials in low-income family and elderly households in Erie County.

2. Activities to be performed (Administrative cost per unit serviced)

a) Targeted Investment Protocol System (TIPS) Audit

The TIPS Audit is a method by which energy conservation funds are directed to techniques which provide the greatest savings to investment ratio.

b) Home Weatherization

Home weatherization activities will include such things as caulking and weather stripping of doors and windows, insulating houses, and installation of storm windows.

3. Units of Activity

Progress in meeting the goals of this project will be measured as follows:

a) Number of home energy audits conducted
b) Number of job write-ups completed
c) Number of recipients certified eligible for energy conservation assistance
d) Number of households insulated

4. Staffing

Administrative, fiscal and report duties will be performed by the executive director, the fiscal manager and office manager. A project director with expertise training in construction will be responsible for supervision and managing the entire project.

All home weatherization will be completed by professional insulation subcontractors and/or in-house crews.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

5. Recipient Eligibility

The Program shall be administered in keeping with HUD, State Department of Energy (SDOE) regulations and federal and state laws using the following guidelines:

All project activities shall be limited to households of individuals who are at or below 150% of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget and who live in Erie County, outside the city of Buffalo.

Low-Income household will be defined by the following NYS Homes & Community Renewal guidelines in effect as of October 2020:

a)

Number in Household	Income Guidelines
1	$31,318
2	$40,954
3	$50,590
4	$60,226
5	$69,862
6	$79,498

b) Or, a household which contains a member who has received cash assistance payments under Title IV or XVI of the social Security Act or applicable state or local law during the 12-month period preceding the determination of eligibility for home energy conservation assistance.

6. Record Keeping

All records will be kept as required by New York State and will fully disclose the amount and disposition of funds, the total costs of operating the project and all records necessary for an effective audit and performance evaluation.

Supportive Services administrative and fiscal procedures mandate accurate record keeping of the actual time worked by all employees. Personnel records documenting the qualifications, salaries and work schedules of all project employees will be maintained on file by the Corporation's Personnel Unit.

Fiscal record keeping for the project will be the responsibility of the Corporation's Fiscal Unit, whose staff as the expertise and time to assist in implementing the entry accrual accounting system, which is audited by an independent accounting firm.

BUDGET

Two hundred ($200.00) administrative fee per single family residence in the Town of Amherst and eligible material cost and labor for each single family home.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

EXHIBIT "B"
FY 2021 INCOME GUIDELINES & STATS CHART

Verification of household income must be supplied. To qualify, you must be under 80% of the FY 2021 median income guidelines below:

Annual Household Income – FY 2021
(Effective June 1, 2021)

Household Size	Median Income	80% AMI	50% AMI	30% AMI
1	$ 55,250	**$ 44,200**	$ 27,650	$16,600
2	$ 63,125	**$ 50,500**	$ 31,600	$18,950
3	$ 71,000	**$ 56,800**	$ 35,550	$21,300
4	$ 78,875	**$ 63,100**	$ 39,450	$23,650
5	$ 85,188	**$ 68,150**	$ 42,650	$25,550
6	$ 91,500	**$ 73,200**	$ 45,800	$27,450
7	$ 97,810	**$ 78,250**	$ 48,950	$29,350
8	$ 104,125	**$ 83,300**	$ 52,100	$31,250

HOUSEHOLD CHARACTERISTICS: Complete one line for each household assisted. One code only in each block.

# MEMBERS ASSISTED IN HOUSEHOLD	% HOUSEHOLD INCOME	RACE OF HEAD OF HOUSEHOLD *	HISPANIC **Y/N**	FEMALE HEAD OF HOUSEHOLD **Y/N**

***Race of Household**
11-Caucasian
12-African American
13-Asian
14-American Indian or Alaskan Native
15-Native Hawaiian or other Pacific Islander
16-American Indian/Alaska Native & White
17-Asian & Caucasian
18-African American & Caucasian
19-American Indian or Alaskan Native & African American
20-Other Multi-Racial

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered nul and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active or passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life o this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additiona insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurance and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant shal name the Town as an additional insured on a primary and non-contributory basis.

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not late than twenty-four (24) hours from the time of such accident. A detailed written report must be submitte to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date o such accident.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Consultant shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.

(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.

(c) Affirmative action as required by the Labor Law.

(d) Prevention of dust hazard required by Labor Law Section 222-a.

(e) Preference in employment of persons required by Labor Law Section 222.

(f) Eight-hour workday as required by Labor Law Section 220(2).

(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.

(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of Amherst shall apply as applicable. Any and all legal action necessary to enforce the Agreement will be venued in Supreme Court, Erie County, New York or in the United States District Court for the Western District of New York, Buffalo Division.

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

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 pursuan to a Resolution adopted by the Town Board of the Town, at a meeting thereof held o _____. Brian J. Kulpa, the Supervisor, whose signature appears hereafter, i duly authorized and empowered to execute this instrument and enter into such an Agreement on behal of the Town as a result of that Resolution. This instrument shall be executed in triplicate. At least on (1) copy shall be permanently filed, after execution thereof, in the office of the Town Clerk of Town.

Agreed to and Accepted by:

Supportive Services Corporation
Print Name of Company

By: _____
Dennis D. Kozuch, Executive Director

Date: 8/5/21

Agreed to and Accepted by:

Town of Amherst
Print Name of Company

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

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: Supportive Services Corp.

Signature: Dennis D. Kozuch

Print Name: Dennis D. Kozuch

Title: Executive Director

Date: 8/5/21

Sworn To Before Me This

5th Day of August, 2021

Notary Public

ANITA J. WOLNIEWICZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires: 2/28/23

Req# 01WO4717018

Revised 1/2017

Attachment: Signed_contract (RES-2021-799 : Contract with Supportive Services Corporation)

Amherst
Town of Amherst Planning Department
Erie County, New York
Brian J. Kulpa, Su or
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D or

September 1, 2021

Agenda of September 13, 2021

Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Subject: Contract with Supportive Services Corporation for weatherization services

Honorable Board Members:

Supportive Services Corporation is the primary provider of weatherization services in Erie County outside the City of Buffalo. They provide insulation, weather stripping, energy efficient appliances and windows. These services are provided free of charge to eligible Amherst residents.

The proposed contract provides for payments to Supportive Services Corporation for a maximum of $12,000.00 utilizing 2021 Community Development funds.

Attached for your consideration is a resolution authorizing the Town Supervisor to enter into a new contract with Supportive Services Corporation for the provision of weatherization services for the period April 1, 2021 through March 31, 2022.

Very truly yours,

Daniel J. Ulatowski, AICP
Assistant Planning Director

X:\Community Development\New Structure\CONTRACTS and SUBRECIPIENTS\Supportive Services\FY2021\SuppServ_TBletter_2021.docx

Attachment: tb letter-support (RES-2021-799 : Contract with Supportive Services Corporation)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24721 **RESOLUTION 2021-800** **ADOPTED**

To Authorize the Supervisor to Execute an Agreement with the YWCA of Western New York, Inc. (YWCA) to Assist with Case Management in Transitional Housing Located in the Town of Amherst CRS #2874

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) and (CDBG) COVID-19 funds agrees to offer support to the families escaping domestic violence or facing homelessness, and

WHEREAS, the YWCA has provided four safe housing units in Amherst to families escaping domestic violence, and

WHEREAS, the YWCA has submitted a satisfactory project budget and scope of services which provides for a maximum assistance of $25,000 for case management in the transitional housing; now therefore, be it

RESOLVED, that the Town Board authorizes the Town Supervisor subject to the satisfactory completion of the contract routing process, to enter into an agreement with the YWCA for the case management services through the period April 1, 2021 through March 31, 2022.

9/13/2021
Consent

FINANCIAL IMPACT:

The funds necessary to enter into a contract with the YWCA have been budgeted in the FY 2021 (N21-30 4000) CDBG budget. The resolution will, therefore, have no impact on the Town's current budget or tax rate.

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

Amherst

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

Brian J. Kulpa, Sup r
Daniel. C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D r

September 1, 2021

Agenda of September 13, 2021

Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Subject: Contract with YWCA, Inc.

Honorable Board Members:

The FY 2021 CDBG budget adopted by the Town Board provides funding for assistance to families escaping domestic violence or facing homelessness. The YWCA of Western New York, Inc. has transitional housing units located in the Town of Amherst that offer temporary housing to the victims of domestic violence as they attempt to regain a safe and secure environment for their families. The proposed contract provides CDBG funds for a maximum of $25,000.00 allocated for one-half of a case manager's annual salary.

Attached for your consideration is a resolution authorizing the Town Supervisor to enter into a contract with the YWCA to provide CDBG funds for case management for the period April 1, 2021 through March 31, 2022.

Very truly yours,

Daniel C. Ulatowski, AICP
Assistant Planning Director

X:\Community Development\New Structure\CONTRACTS and SUBRECIPIENTS\YWCA\FY2021\TB_letter_2021.docx

Attachment: tb letter-ywca (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2021, by and between the Town of Amherst, a municipal corporation of the State of New York, with principal offices located at 5583 Main Street, Williamsville, NY 14221, (hereinafter referred to as the "Town") and the YWCA of Western New York, Inc. (hereinafter referred to as the "YWCA"), a not-for-profit corporation organized under the laws of the State of New York, with principal offices located at 1005 Grant Street, Buffalo, NY 14207.

WITNESSETH

WHEREAS, the YWCA has provided transitional housing and supportive service programming for homeless women since 1989;

WHEREAS, it is an eligible activity under the Community Development Block Grant awarded to the Town, under the Housing and Community Development Act of 1974, as amended, to provide assistance to families who are low income;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. (a) "Town" shall mean the Town of Amherst
   (b) "YWCA" shall mean the YWCA of Western New York, Inc.

2. The following exhibits are attached to this Agreement and made a part hereof:
   (a) Exhibit "A" -Scope of Services & Budget
   (b) Exhibit "B"– Income Guidelines & Stats Chart

3. The YWCA, for consideration herein provided, shall perform the services as described in Exhibit "A" attached hereto and made a part hereof. Prior to reimbursing the YWCA clients for cleaning supplies they will need to provide receipts.

4. The YWCA shall, prior to execution of this Agreement, provide to the Town, certificates of insurance evidencing compliance with the provisions of the "Addendum to Contract" attached hereto and incorporated herein. The YWCA agrees to defend, indemnify and hold-harmless the Town from and against all claims, liability and damages resulting from or arising out of performance by the YWCA of the terms and conditions of this Agreement.

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

5. The Town agrees to pay the YWCA not more than twenty-five thousand dollars ($25,000.00) during the one year period from April 1, 2021 through March 31, 2022 for the services it provides to Town residents.

6. The YWCA shall submit to the Town quarterly payment vouchers and report forms, as described in Exhibit A. Said forms will be in a format acceptable to the Town with the first two requests for payment for the period covering April 1, 2021 through December 31, 2021 to be submitted no later than January 10, 2021 to be consistent with the Town's fiscal year. Upon review and approval of the aforementioned vouchers and report forms by the Town, the Town shall process and subsequently issue funds totaling the approved amount. The sum of all vouchers submitted to the Town by YWCA shall not exceed $25,000.00.

7. The YWCA agrees that it shall keep and maintain separate books of accounts and records concerning all costs incurred in the performance of this Agreement, and that it shall have available for audit and inspection by the Town or by authorized representatives of the federal government, all YWCA facilities, books and other financial and statistical data as they relate to this Agreement. The Town and YWCA agree to comply with the regulations, policies, and guidelines and requirements of the federal Office of Management and Budget, as they relate to the application, acceptance and use of federal funds for this federally assisted program.

8. The YWCA 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. This Agreement shall be valid only to the extent of federal funds made available to the Town for the Community Development program year under Title I of the Housing and Community Development Act of 1974, as amended. Any and all payments due under this agreement shall be contingent upon the receipt by the Town of funds from the United States Department of Housing

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

and Urban Development in the amount stipulated in the 2021 Annual Action Plan as approved by the Amherst Town Board on February 1, 2021.

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 Town.

11. This Agreement shall be considered in effect from April 1, 2021 through March 31, 2022. The Town may agree to extend this Agreement for an additional twelve month period.

12. The YWCA 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 the YWCA's status as an independent contractor, the Town shall not be responsible for workers compensation benefits, social security coverage or unemployment insurance benefits with respect to the YWCA or its employees.

14. **Termination**

(1) The Town reserves the right to terminate this Agreement at its pleasure at any time prior to completion of the Program by giving two (2) weeks written notice of termination to the YWCA, either personally or by certified mail. The Town further reserves the right to terminate this Agreement for cause in the event that the YWCA 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) The YWCA 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 Town, either personally or by certified mail. The YWCA further reserves the right to terminate this Agreement for cause in the event that the Town shall be in default of this

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

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 the YWCA upon such termination shall be based upon the value of the services performed by the YWCA up to the effective date of termination.

15. Changes in the Project Description and Cost specified in Exhibit "A" may be requested by the YWCA in writing, addressed to the Town's Planning Director for subsequent action.

16. The YWCA 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.**

The YWCA 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 Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 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, 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, the YWCA 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. The YWCA 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;

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The YWCA 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. The YWCA 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. The YWCA 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. The YWCA 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. **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.**

(a) The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

(b) Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

20. **Obligations of Grantee with Respect to Certain Third Party Relationships.**

The YWCA 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. The YWCA 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

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

requirements of the Town of Amherst necessary to insure that activities pursuant to this Agreement are carried out in accordance with the Town of Amherst's assurances and certifications pursuant to the Community Development Block Grant Program, including those with respect to the assumption of environmental responsibilities of the Town of Amherst under section 104(h) of the Housing and Community Development Act of 1974.

21. **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.

22. **Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body, or Other Public Officials.**

No member, officer, or employee of the YWCA or its designees or agents, no member of the governing body of the Town of Amherst and no other public official of the Town of Amherst 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. The YWCA 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.

23. **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.

24. **Nondiscrimination in Housing.**

The YWCA shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and the H.U.D. regulations with respect thereto, and Executive Order 11063. Title VIII prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in the financing of housing, block busting, and discriminatory advertising and makes it unlawful to deny

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

any person access to, or membership and participation in, any multiple-listing service or real estate brokers' organization for discriminatory purposes.

25. **Hatch Act**

The YWCA 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.

26. **Conflict of Interest**

The YWCA 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.

27. **Funding Source Recognition**

The YWCA 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.

28. **Lobbying & Religious Activities**

By signing this Agreement, the YWCA 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, YWCA 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.

29. **Compliance.**

The obligation of the YWCA to comply with the provisions of paragraph 17 through paragraph 28 of this Agreement shall inure to the benefits of the United States, H.U.D. and the Town of Amherst, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to complete compliance therewith by YWCA.

The YWCA of WNY, Inc. shall, by contractual requirement, covenant, or other binding commitment assure the compliance with the above provision of the provisions of paragraph 17 through paragraph 28 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: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

EXHIBIT "A"
SCOPE OF SERVICES AND REPORTING REQUIREMENTS

1. Project Description

The goals of the YWCA Transitional Housing Program are:
a) To provide safe transitional housing for families escaping domestic violence;
b) To provide a safe environment for study and training to enable housing residents to reach self-sufficiency goals;
c) To offer employment and life skills guidance to residents to help them achieve permanent housing through self-sufficiency.

2. Staffing

One case manager will oversee the housing units and coordinate services (e.g. workforce development and life skills) for resident households. The Executive Director will supervise the case manager and oversee recordkeeping, administration of program and compliance with HUD regulations.

3. Recipient Eligibility

The Program shall be administered in keeping with HUD regulations and federal and state laws using the following guidelines: All project activities shall be limited to households who are at or below 80% of the median income determined in accordance with criteria established by the U.S. Department of Housing and Urban Development and at risk women and families residing in the Town of Amherst assisted with CDBG funds. See Exhibit "B" for income guidelines effective June 28, 2019.

4. Record Keeping

All records will be kept as required by HUD and will fully disclose the amount and disposition of funds, the total costs of operating the project and all records necessary for an effective audit and performance evaluation.

The YWCA administrative and fiscal procedures mandate accurate record keeping of the actual time worked by all employees. Personnel records documenting the qualifications, salaries and work schedules of all project employees will be maintained on file by the Not for Profit's Personnel Unit.

Fiscal record keeping for the project will be the responsibility of The YWCA Fiscal Unit, whose staff has the expertise and time to assist in implementing the entry accrual accounting system, which is audited by an independent accounting firm.

5. Invoices

The YWCA shall submit invoices quarterly for payment of services rendered together with the names and addresses (or for confidentiality purposes, an alternate identifier) of clients assisted by the YWCA (see Exhibit "C"). The YWCA shall include all of the following information in its project records:

- Address of the property;
- Alternate identifier of assisted households;
- The type of assistance provided
- The income category (i.e., extremely low-income (0 to 30% of MFI), low income (31 to 50% of MFI), moderate income (51 to 80% of MFI) or above 80% and the head of the household's racial/ethnic group identification.

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

EXHIBIT "A" CONTINUED

BUDGET

eliminating racism
empowering women
ywca
Western New York

CELEBRATING 150 YEARS OF SERVICE 1870 - 2020

2021-2022 Town of Amherst
Community Development Block Grant Budget

Supportive Service Expense	Quantity and Description Detail	Funding Request
Case Management	.50FTE Case Manager	$ 18,720
Fringe	Including health insurance, paid time off, employer portion of mandated taxes (workers comp, short-term disability, etc.).	$ 2,000
Program Expenses	Cell phone, mileage, G/L insurance, supplies, etc.	$ 1,500
NFTA Bus Passes	$75/month as needed for three clients	$ 1,000
Direct Program Expense SubTotal		$ 23,220
Administration & Oversight		$ 1,780
TOTAL CDBG Funding Request		$ 25,000

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

EXHIBIT "B"
FY 2021 INCOME GUIDELINES & STATS CHART

Verification of household income must be supplied. To qualify, you must be under 80% of the FY 2021 median income guidelines below:

Annual Household Income – FY 2021
(Effective June 1, 2021)

Household Size	Median Income	80% AMI	50% AMI	30% AMI
1	$ 55,250	**$ 44,200**	$ 27,650	$16,600
2	$ 63,125	**$ 50,500**	$ 31,600	$18,950
3	$ 71,000	**$ 56,800**	$ 35,550	$21,300
4	$ 78,875	**$ 63,100**	$ 39,450	$23,650
5	$ 85,188	**$ 68,150**	$ 42,650	$25,550
6	$ 91,500	**$ 73,200**	$ 45,800	$27,450
7	$ 97,810	**$ 78,250**	$ 48,950	$29,350
8	$ 104,125	**$ 83,300**	$ 52,100	$31,250

HOUSEHOLD CHARACTERISTICS: Complete one line for each household assisted. One code only in each block.

# MEMBERS ASSISTED IN HOUSEHOLD	% HOUSEHOLD INCOME	RACE OF HEAD OF HOUSEHOLD *	HISPANIC **Y/N**	FEMALE HEAD OF HOUSEHOLD **Y/N**
12 Sundridge - 5	30%	12	N	Y
24 Sundridge - 6	30%	12	N	Y
36 Sundridge – 2	30%	12	N	Y
48 Sundridge - 3	30%	12	N	Y

***Race of Household**
11-Caucasian
12-African American
13-Asian
14-American Indian or Alaskan Native
15-Native Hawaiian or other Pacific Islander
16-American Indian/Alaska Native & White
17-Asian & Caucasian
18-African American & Caucasian
19-American Indian or Alaskan Native & African American
20-Other Multi-Racial

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

YWCA OF WNY, INC. 2020 CONTRACT

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed on the day and year just above written.

TOWN OF AMHERST

By:_____
Brian J. Kulpa, Supervisor

THE YWCA OF WNY, INC.

By:_____
Jill Ann Robbins-Jabine, CEO

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the 6th day of August, in the year 2021, before me, the undersigned, personally appeared Jill Ann Robbins-Jabine, 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.

LISA A. BAUER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
REGISTRATION # 20BA6329953
MY COMMISSION EXPIRES 9/8/2023

_____
NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the _____day of _____, in the year 2021, 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: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active or passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant shall name the Town as an additional insured on a primary and non-contributory basis.

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Consultant shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or ordinances for any county other than Erie County, New York or to the laws, statutes, rules, regulations or ordinances for any municipality other than the Town of Amherst, then the laws, statutes, rules, regulations or ordinances for New York State, Erie county and/or the Town of

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

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:	Agreed to and Accepted by:
YWCA OF WNY, Inc.	Town of Amherst
By: _____	By: _____
Jill Ann Robbins-Jabine, CEO	Brian J. Kulpa, Supervisor
Printed name & title	Printed name & title
Date: 8.6.21	Date: _____

X:\Community Development\New Structure\CONTRACTS and SUBRECIPIENTS\YWCA\FY2021\YWCA_Contract_2021.docx

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

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: YWCA Western New York

Signature: [signature]

Print Name: Jill Ann Robbins-Jabine

Title: CEO

Date: 08.06.21

LISA A. BAUER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
REGISTRATION # 20BA6329953
MY COMMISSION EXPIRES 9/8/2023

Sworn To Before Me This
6th Day of August, 2021

[signature]
Notary Public

Revised 4.2017

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

YWCAOFW-01 JSOMMER

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 3/2/2021

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 Walsh Duffield Companies, Inc. 801 Main St. Buffalo, NY 14203	CONTACT NAME: Jonathan Sommer, CPCU, CEBS PHONE (A/C, No, Ext): (716) 362-7338 FAX (A/C, No): E-MAIL ADDRESS: jsommer@walshduffield.com
	INSURER(S) AFFORDING COVERAGE — NAIC #
INSURED The YWCA of Western New York, Inc. 1005 Grant Street Buffalo, NY 14207	INSURER A : Philadelphia Indemnity Ins Co — 18058 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	X		PHPK2243633	3/1/2021	3/1/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,0 $ 100,0 $ 5,0 $ 1,000,0 $ 3,000,0 $ 3,000,0
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS X HIRED AUTOS ONLY X NON-OWNED AUTOS ONLY			PHPK2243633	3/1/2021	3/1/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,0
A	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000			PHUB758335	3/1/2021	3/1/2022	EACH OCCURRENCE AGGREGATE	$ 1,000,0 $ 1,000,0
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	
A	Crime			PHSD1611853	3/1/2021	3/1/2022	Ded $5,000	100,0
A	Professional Liab.			PHPK2243633	3/1/2021	3/1/2022	Aggr $3,000,000	1,000,0

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
To the extent covered by endorsement form (s):

General Liability:
PI-GL-HS NY (10/11) General Liability Deluxe Endorsement: Human Services

Automobile:
CA2048 (02/99) Designated Insured
SEE ATTACHED ACORD 101

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
Edward F Walsh Jr.

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Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

AGENCY CUSTOMER ID: YWCAOFW-01 JSOMMER
LOC #: 0

ADDITIONAL REMARKS SCHEDULE

AGENCY Walsh Duffield Companies, Inc.	NAMED INSURED The YWCA of Western New York, Inc. 1005 Grant Street Buffalo, NY 14207
POLICY NUMBER SEE PAGE 1	
CARRIER SEE PAGE 1	NAIC CODE SEE P 1
	EFFECTIVE DATE: SEE PAGE 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:
Umbrella:
PI-CXL-001 (03/14) Commercial Umbrella Liability Insurance Policy
PI-CXL-003 (05/16) Professional Liability follow Form Endorsement
PI-CXL-009 (01/19) Automobile Liability follow Form Endorsement

Town of Amherst is an Additional Insured under the General Liability policy to the extent covered by endorsement # PI-GLD-HS-NY (10/11) as per a signed written contract. Umbrella Liabiltiy is follow form. See attached Acord 101
Re: 12 Sundridge Dr., Amherst, NY; 24 Sundridge Dr., Amherst, NY; 36 Sundridge Dr., Amherst, NY and 48 Sundridge Dr., Amherst, NY.

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

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NEW YORK STATE Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)

YWCA of Western New York
1005 Grant Street
Buffalo, New York 14207

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) 852-6120

1c. Federal Employer Identification Number of Insured or Social Security Number
16-0743243

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)

Town of Amherst
5583 Main Street
Williamsville, New York 14221

3a. Name of Insurance Carrier
Equitable Financial Life Insurance Company

3b. Policy Number of Entity Listed in Box "1a"
002035

3c. Policy effective period
01/01/2021 to **12/31/2021**

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.

12/17/2020 — John Sugar

Date Signed — By (Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (800) 999-3309 Name and Title John Sugar, Chief Operating 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 mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

DB-120.1 (10-17)

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices my be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and not withstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

NYSIF
New York State Insurance Fund

225 OAK STREET, BUFFALO, NEW YORK 14203-1685
| nysif.com

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE (RENEWED)

^ ^ ^ ^ ^ ^ 160743243
WALSH DUFFIELD COMPANIES INC
801 MAIN ST
BUFFALO NY 14203

SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER	CERTIFICATE HOLDER
YWCA OF WESTERN NEW YORK INC 1005 GRANT STREET BUFFALO NY 14207	TOWN OF AMHERST 5583 MAIN STREET WILLIAMSVILLE NY 14221

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
B1483 655-5	587192	07/01/2021 TO 07/01/2022	6/1/2021

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 1483 655-5, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP. THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

Attachment: signed_contract_8.13.21 (RES-2021-800 : Contract with the YWCA of Western New York, Inc.)

NEW YORK STATE INSURANCE FUNI

DIRECTOR,INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 547036084

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24733 **RESOLUTION 2021-801** **ADOPTED**

BCD Generic Environmental Impact Statement Establishment of Trust Accounts for Mitigation Cost Funds

WHEREAS, the Town of Amherst Town Board (the "Board") recognizes the opportunity for redevelopment and revitalization in the area identified as the Boulevard Central District (the "BCD"); and

WHEREAS, the Board has amended its Comprehensive Plan and adopted new Commercial/Mixed-Use Zoning Districts to provide guidance and regulatory provisions for redeveloping this area; and

WHEREAS, the Board wished to identify and evaluate the cumulative environmental impacts of redevelopment and implementation of these new policies, guidance, and zoning provisions in the BCD in order to plan for future infrastructure needs and community services; and

WHEREAS, the Board prepared a Generic Environmental Impact Statement for the BCD and, following public review, adopted a Statement of Findings pursuant to 6NYCRR Part 617.11 of SEQR on January 6, 2020; and

WHEREAS, a mitigation cost schedule was approved as part of the GEIS which identifies funds to be collected from developers for specific infrastructure improvements including repayment for the GEIS preparation along with capital sewer, capital water and transportation projects;

NOW, THEREFORE BE IT RESOLVED, that the Board directs the Comptroller to create separate Trust Accounts for the different mitigation cost funds as shown below, and;

- T4031 - BCD GEIS Preparation Fees
- T4032 - BCD GEIS Transportation Fees
- T4033 - BCD GEIS Sewer Fees
- T4034 - BCD GEIS Water Fees

BE IT FURTHER RESOLVED, that the Board approves the following as possible projects or improvements, shown by type, that could be funded using the mitigation cost funds collected by the Town:

- GEIS Preparation - future updates to the GEIS and mitigation cost schedule, and payment to the region's Metropolitan Planning Organization (GBNRTC) or other traffic consultants for traffic analyses.

- Transportation - construction of new public roadways, widening/addition of drive or turning lanes along highway corridors, construction of additional turn lanes at intersections, construction of roundabouts, parking lanes, modifying/replacing traffic signals or other traffic control devices , installation of smart signal equipment, right-

of-way acquisition, roadway changes to accommodate other modes of transportation (transit, micro mobility), and upgrades to pedestrian amenities such as crosswalks, sidewalks, bike lanes, ADA accessibility, and detection and traffic control equipment.

- Sewer - construction of new lines, replacement of existing lines, upsizing, relining, repair and maintenance of existing lines, and related improvements at the Town's Wastewater Treatment Facility.

- Water - construction of new lines, replacement of existing lines, and upsizing, relining, repair and maintenance of existing lines.

9/13/2021
Consent

FINANCIAL IMPACT:

None.

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

Amherst

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

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

MEMORANDUM September 7, 2021

To: Town Board

From: Daniel C. Howard, Planning Director

Re: Boulevard Central District Generic Environmental Impact Statement (GEIS)
Background Information & Establishment of Trust Accounts for Mitigation Cost Funds

The Town Board approved and issued Findings for a Generic Environmental Impact Statement GEIS) for (re)development within the Boulevard Central District (BCD). As development, projects occur within the BCD, mitigation cost funds will be collected. These funds must be placed into Trust Accounts whose purpose and use is established by the Town Board. The following provides background to the GEIS and BCD, and specifies the accounts and intend uses of mitigation cost funds.

BACKGROUND

The Town has one federally designated Opportunity Zone also known as the Boulevard Central District (BCD). This triangular area is bounded by Niagara Falls Boulevard on the west, Sheridan Drive on the south, and the Interstate (I-290) on the north and east. This largely commercial area of the Town has seen a great deal of development and investment over the past few decades, but as changing market trends and new technologies have emerged, it has begun to decline. The area contains many large "big box" stores and strip plazas that are aging and in some cases underutilized, along with the Boulevard Mall which is experiencing a decline in value. This decline has impacted the Town's tax base.

The Opportunity Zone designation provides the Town with a chance to reimagine and redevelop one of its largest commercial areas in a comprehensive manner. Goals include encouraging mixed-use development and increased density, maximizing economic investment and tax revenue, improving mobility and pedestrian access via public transit, bicycling, and walkability, investing in aged infrastructure, and protecting and enhancing surrounding residential neighborhoods.

Before future development occurs and in order to identify infrastructure needs, a Generic Environmental Impact Statement (GEIS) was prepared for the entire BCD. The GEIS is an environmental analysis prepared under the SEQR process that identifies environmental impacts and corresponding mitigation measures. This essentially completes the environmental review for properties in this area, making it more efficient for new development to occur.

Attachment: TB Memo on GEIS 9.13.21 TB mtg (RES-2021-801 : BCD Generic Environmental Impact Statement)

To establish the GEIS, assumptions were made regarding future land uses and corresponding mixed-use zoning districts. Development projections of the type and density of land uses were developed with the assistance of Clough Harbour Associates (CHA) and formed a future development alternative. This alternative was analyzed to identify cumulative and long-term impacts to community services, infrastructure, and the environment. Based on the analysis, procedures and policies to guide future development within the BCD were incorporated as amendments to the Comprehensive Plan. The Town Board adopted the GEIS in January 2020, making it available as a comprehensive environmental review for future redevelopment projects in the BCD.

MANAGEMENT AND USE OF MITIGATION COST FUNDS

A major component of the GEIS is the requirement that developers of new projects contribute to a proportionate share of the cost of infrastructure improvements necessary to mitigate the impacts of that development – these are called "mitigation costs." A mitigation cost schedule was established to classify and calculate the funds to be collected from developers for specific infrastructure improvements, this includes repayment for the GEIS preparation along with capital sewer, capital water and transportation projects. Developers complete a Mitigation Cost Worksheet (see attached) as part of their site plan application.

The funds for each mitigation category are allocated into separate Trust Accounts established for specific improvement types, and held in custodial accounts by the Town Comptroller. The accounts and types are shown below (also see attached Chart of Accounts):

- T4031 – BCD GEIS Preparation Fees
- T4032 – BCD GEIS Transportation Fees
- T4033 – BCD GEIS Sewer Fees
- T4034 – BCD GEIS Water Fees

Mitigation projects have been identified within the GEIS and/or will be listed within the Capital Improvement Program (CIP) based on the anticipated impacts or future Town needs to support additional development within the BCD. Below is a list of possible projects or improvements, shown by type that could be funded using the mitigation cost funds collected by the Town.

- GEIS Preparation Costs – future updates to the GEIS and mitigation fee schedule, and payment to the region's Metropolitan Planning Organization (GBNRTC) or other traffic consultants for traffic analyses.

- Transportation Costs – construction of new public roadways, widening/addition of drive or turning lanes along highway corridors, construction of additional turn lanes at intersections, construction of roundabouts, parking lanes, modifying/replacing traffic signals or other traffic control devices and related equipment, installation of smart signal equipment, right-of-way acquisition, roadway changes to accommodate other modes of transportation (transit, , micro mobility), and upgrades to pedestrian amenities such as crosswalks, sidewalks, bike lanes, ADA accessibility, and detection and traffic control equipment.

Attachment: TB Memo on GEIS 9.13.21 TB mtg (RES-2021-801 : BCD Generic Environmental Impact Statement)

- Sewer Costs – construction of new lines, replacement of existing lines, upsizing, relining, repair and maintenance of existing lines, and related improvements at the Town's Wastewater Treatment Facility.

- Water Costs – construction of new lines, replacement of existing lines, and upsizing, relining, repair and maintenance of existing lines.

As redevelopment occurs (all of which contributes to the above Trust Accounts) and the funds for specific mitigation projects are collected/secured/identified, the funds can be allocated for necessary improvements within the BCD. Other sources such as Federal and State funds or other grants may also be used to supplement collected mitigation funds to help fund improvements. The Town will need to work with outside agencies and the Town of Tonawanda in order to accomplish some of the needed mitigation measures.

A DRAFT resolution to establish trust accounts for receipt of BCD Mitigation Cost funds is attached for the Town Board's consideration. All related GEIS documents can be accessed on the Town's website using keyword: *GEIS.*

Please contact me or Dan Ulatowski if you have any questions.

DH/KA
X:\Special_Projects\Opportunity Zone\GEIS with CHA\TB Resolutions\September 13 2021\Draft TB Memo on GEIS Background_091321.doc
cc: Daniel Howard, Planning Director
Daniel Ulatowski, Assistant Planning Director
Kimberly Amplement, Planner
Daryl Bramer, Comptroller
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Highway Superintendent
Stanley Sliwa, Town Attorney

Attachment: TB Memo on GEIS 9.13.21 TB mtg (RES-2021-801 : BCD Generic Environmental Impact Statement)

BOULEVARD CENTRAL DISTICT MITIGATION COST WORKSHEET

COMBINED - RESIDENTIAL USE & COMMERCIAL USE
FOR TYPE 1 or UNLISTED ACTIONS
(2019 DOLLARS)

Project Name _____ **Date** _____

Town Assigned Application # _____

Project Address(es) _____

SBL #(s) _____ **TAZ #** _____

IMPROVEMENT	UNIT MEASURE	COST PER UNIT ($)	UNITS	TOTALS
1. GEIS Preparation (Residential)	Dwelling Unit	25.00		
2. GEIS Preparation (Retail or Office)	Sq. Ft.	0.042		
3. Transportation	Trip (weekday PM peak hour adjacent street traffic)	1,024.00		
4. Capital Sewer	Peak Gallon Per Day (GPD)	2.74		
5. Capital Water	Peak Gallon Per Day (GPD)	0.97		

Total: _____

(*OFFICIAL USE ONLY*)

Improvement	Account # / Trust Fund	Amount Paid	Date Paid
1. GEIS Preparation (Residential)			
2. GEIS Preparation (Retail or Office)			
3. Transportation			
4. Capital Sewer			
5. Capital Water			

The applicant agrees that they are utilizing the Town's Generic Environmental Impact Statement (GEIS) prepared for the Boulevard Central District for their NYS SEQR requirements and agrees to pay 100 percent of their share of mitigation fees listed above, inclusive of all phases, before final site plans / plats are stamped approved and before any building permits may be obtained. The applicant also agrees to pay the separate I/I fees as required by the Engineering Department.

Applicant Signature: _____

Attachment: 2 Att F_Mitigation Cost Worksheet new_4-16-21 (RES-2021-801 : BCD Generic Environmental Impact Statement)

ORG ACCOUNT	ACCOUNT DESCRIPTION	STAT	TYPE	FA	BDGTRY	ENCUMB BUD	REFERENCE ACCOUNT
T4031 BCD GEIS PREPARATION FEES							
T -T4031 -02770	OTHER UNCLASSIFIED REVENU	A	R	N	N	N	
T -T4031 -4002	HOME AND COMMUNITY SERVICES	A	E	N	N	N	
T4032 BCD GEIS TRANSPORTATION FEES							
T -T4032 -02770	OTHER UNCLASSIFIED REVENU	A	R	N	N	N	
T -T4032 -4002	HOME AND COMMUNITY SERVICES	A	E	N	N	N	
T4033 BCD GEIS SEWER FEES							
T -T4033 -02770	OTHER UNCLASSIFIED REVENU	A	R	N	N	N	
T -T4033 -4002	HOME AND COMMUNITY SERVICES	A	E	N	N	N	
T4034 BCD GEIS WATER FEES							
T -T4034 -02770	OTHER UNCLASSIFIED REVENU	A	R	N	N	N	
T -T4034 -4002	HOME AND COMMUNITY SERVICES	A	E	N	N	N	

8 Accounts printed

** END OF REPORT - Generated by Daryl Bramer **

Attachment: Mitigation Trust Account #s (RES-2021-801 : BCD Generic Environmental Impact Statement)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24734 **RESOLUTION 2021-802** **ADOPTED**

To Set a Date for the First of Two Public Hearings Required by the U.S. Department of Housing and Urban Development for the Town's FY 2022 Community Development Annual Action Plan

WHEREAS, the Town is required to hold at least two public hearings for the Annual Action Plan, encompassing both the Community Development Block Grant (CDBG) and HOME Investment Partnership Program (HOME) applications; and

WHEREAS, at least one public hearing must be held prior to the assembly of the draft Action Plan; now therefore, be it

RESOLVED, the Town Board of the Town of Amherst sets October 18, 2021 for the first public hearing for the 2022 Annual Action Plan to solicit input on housing and community development needs and to review the current use of CDBG and HOME grant funds.

9/13/2021
Consent

FINANCIAL IMPACT:

Adoption of the proposed resolution involves no monetary consideration and will have no impact on the Town Budget or tax rate.

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

Amherst

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

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

September 1, 2021

Agenda of September 13, 2021

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

Subject: Set 1st Public Hearing for FY 2022 Action Plan (Community Development Program)

Honorable Board Members:

The FY 2022 program year for the Town's Community Development Programming will begin on April 1, 2022. This funding cycle includes both the Community Development Block Grant (CDBG) and the HOME Investment Partnership Grant applications to the U.S. Department of Housing & Urban Development (HUD). The Annual Action Plan is a listing of projects to be funded in the 2022 applications.

As part of the process of developing the Action Plan, the Town is required to hold a public hearing prior to the assembly of a draft budget to advise residents of the availability of funds, outline how funds are currently being used and obtain suggestions for programming. Staff requests that this hearing be held at the Town Board meeting of October 18, 2021. A second public hearing must be held in January 2022, after draft documents have been prepared. The final documents must be submitted to HUD by February 15, 2022. A proposed schedule for the application process is attached for your reference.

Please set a public hearing date of October 18, 2021 for soliciting input on housing and community development needs in the Town. Thank you for your assistance with this matter.

Very truly yours,

Daniel J. Ulatowski, AICP
Assistant Planning Director

Att.

Attachment: TB Letter-Public_Hearing (RES-2021-802 : Set 1St Public Hearing for FY 2022 Action Plan (Community Development Program))

TOWN OF AMHERST
COMMUNITY DEVELOPMENT PROGRAM
2022 ANNUAL ACTION PLAN

Deadline September 8th

September 13, 2021 — Request Town Board through resolution to set 1st public hearing date of October 18th.

Deadline October 1st

October 6th Edition — **Display Ad and Legal Notice** in Amherst BEE announcing October 18th public hearing and beginning of period for citizen input on Community Development, Housing and Homeless needs. (At least 10 days prior to PH)

October 18th
7:00 PM — 1st Public Hearing to provide information on amount of CDBG, and HOME funds available (including program income) and eligible activities; obtain views of citizens on housing and community development needs. Town of Amherst Council Chambers (no resolution required from Board meeting)

October 19th — Send out department/organization requests for funding packages-30 day deadline for response

November 19th — Last date to accept citizen comments and Department Head requests regarding community development, housing and homeless needs.

Deadline December 15th

December 20th — Request Town Board to set 2nd public hearing date on the second January Town Board meeting (17 or 18th, 2022). *Provide TB with a summary of budget before the Draft Plan is in the libraries.*

Deadline December 10th

December 15th — **Display Ad** in Amherst Bee; "Draft Action Plan & Consolidated Plan" published; request citizen comments.

December 15th — "Draft Action Plan" available in libraries, selected locations and the Town of Amherst website. 30 Day Comment Period – (12/15/21 - 1/17/22.) Town/Village Boards receive Consortium's "Draft Annual Action Plan & Consolidated Plan" for review.

Deadline December 28th, 2021

January 5, 2022 — **Display Ad** and **Legal Notice** published in Amherst Bee announcing Second January Town Board Meeting - Public Hearing; request citizen comment on "Draft Action Plan & Consolidated Plan"

January 18th — **End of comment period**

Prep PPT and send to Clerk's office ahead of time

January 18th — 2nd Public Hearing to review and accept comments on "Draft Annual Action Plan & Consolidated Plan". Town of Amherst Council Chambers, 7:00 p.m.

Attachment: 2022 Annual Plan Development_Full Schedule (RES-2021-802 : Set 1St Public Hearing for FY 2022 Action Plan (Community

Prep resolution and submit for consideration by Jan 28

February 7th	Town Board adopts resolution authorizing Supervisor to submit "Final Action Plan & Consolidated Plan" to HUD and act as official representative.

Deadline

To be announced	This year, we are supposed to wait until the Final Allocations are announced to submit the Consortium Annual Action Plan to HUD as per NOTICE CPD-16-18. (Submit within 60 days after announcement but no later than August 16, 2022)
To be announced	**Display Ad published** in Amherst Bee announcing "Final Annual Action Plan & Consolidated Plan" available for review at Town/Village Clerk's offices, Office of Community Development, the Town of Amherst website and at various organizations.

January 12*	Environmental review for Public Improvements Begins (as applicable).
March 30*	Environmental Review for Public Improvements completed
April 15*	Release of funds received from HUD
April 20*	Grant agreement with HUD executed.
April 30*	Notice of letter of credit received from HUD.

*** Approximate dates**

X:\Community Development\New Structure\ANNUAL PLAN\Data 2022\2022 Annual Plan development full schedule.doc

Attachment: 2022 Annual Plan Development_Full Schedule (RES-2021-802 : Set 1St Public Hearing for FY 2022 Action Plan (Community

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24735 **RESOLUTION 2021-803** **ADOPTED**

Willow Ridge/Parkview Action Plan Project Charter

WHEREAS, Niagara Falls Boulevard acts as a shared boundary between the Towns of Amherst and Tonawanda; and

WHEREAS, the Towns worked together in 2016 and 2017 to conduct a Phase 1 Study of Niagara Falls Boulevard to inventory existing conditions, issues, and opportunities; and

WHEREAS, the Town of Amherst also recently completed an Action Plan for the Boulevard Central District to the south of the Willow Ridge neighborhood; and

WHEREAS, the Towns of Amherst and Tonawanda want to continue planning initiatives along the Niagara Falls Boulevard corridor; and

WHEREAS, the Towns aim to create an Action Plan for the Willow Ridge and Parkview neighborhoods to address various problems and opportunities to improve connectivity, recreation, building maintenance and pedestrian safety; and

WHEREAS, the proposed Action Plan will serve as a guiding document to portray residents' future vision of the area, update Town Comprehensive Plan policies, create new goals and objectives, and utilize implementation strategies to create a more vibrant, connected and safe inter-municipal community; and

WHEREAS, the Town has prepared a Project Charter entitled "Willow Ridge/Parkview Action Plan" which includes the goals, process, stakeholders and general schedule that outlines the steps forward and the necessary components to initiate a planning process; now

THEREFORE BE IT RESOLVED, that the Town Board endorses the "Willow Ridge/Parkview Action Plan" Project Charter, which is attached and made part of this Resolution; and

BE IT FURTHER RESOLVED, that the Board supports the Town moving forward to carry out the planning process stated in the Project Charter.

9/13/2021
Consent

FINANCIAL IMPACT:

None.

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



Towns of Amherst & Tonawanda

Willow Ridge/Parkview Action Plan

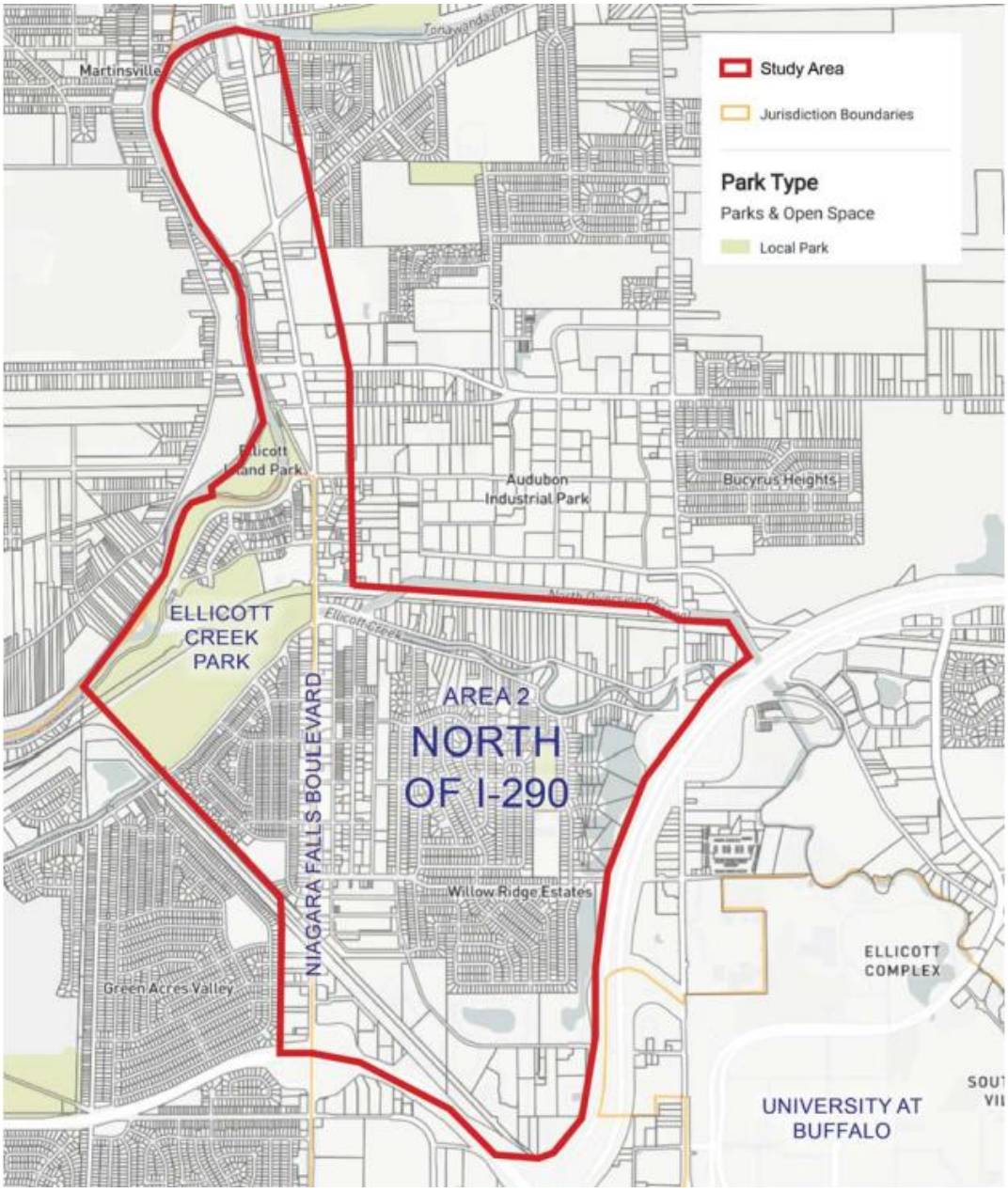
Project Charter

Attachment: Project Charter_Willow Ridge_9.7.21 (RES-2021-803 : Willow Ridge/Parkview Action Plan Project Charter)

1. Project Sponsor
The Town of Amherst Town Board

Project Managers
Town of Amherst and Town of Tonawanda municipal staff

The Towns of Amherst and Tonawanda desire to create an Action Plan for the Willow Ridge and Parkview neighborhoods to inform and update their Comprehensive Plans and address community concerns and opportunities. This will be achieved by formulating goals and objectives, policies, implementation strategies and creation of a specific Focal Area Plan for this area, all of which will result from the Action Plan.



Attachment: Project Charter_Willow Ridge_9.7.21 (RES-2021-803 : Willow Ridge/Parkview Action Plan Project Charter)

2. Problems and Concerns

There are various problems and concerns in the project area, not only raised by residents and stakeholders, but also from the standpoint of both Towns. These include but are not limited to:

- Niagara Falls Boulevard acts as a border between the two municipalities, however there is little to no land use planning or coordination between Amherst and Tonawanda
- Niagara Falls Boulevard experiences high traffic volumes and higher operating speeds during many times of the day due to 1) large commercial activities and various regional destinations; 2) serving as a connector between Niagara Falls and the City of Buffalo; 3) access to I-290; and 4) current physical right-of-way design of a four to six lane high speed roadway
- Noise disturbance for adjacent residents due to high traffic volumes
- Lack of adequate and safe pedestrian circulation and amenities along Niagara Falls Boulevard and limited connections from Niagara Falls Boulevard to adjacent neighborhoods
- An aged and somewhat poorly maintained commercial building stock
- Many small and shallow commercial parcels making them more difficult to redevelop due to modern parking requirements, right-of-way conditions, and direct adjacency to established residential areas
- Student housing occupying single-family homes in established neighborhoods with absentee landlords and property maintenance issues
- Drainage, storm water, and sanitary sewer management issues due to aging infrastructure, a lack of parcel redevelopment, inadequate landscaping, and large areas of impervious surfaces
- Presence of several recreational and park facilities but lack of coordinated connectivity and access for residents and other stakeholders

3. Goals and Opportunities

Engaging residents and stakeholders in a community planning project that encourages active participation and constructs an enduring civic infrastructure to guide and sustain community redevelopment for years to come is key. Based on this premise and the problems and concerns regarding the planning area as listed above, the goals of an Action Plan will address several key topics. Major opportunities are also identified based on these goals.

<u>Action Plan Goals</u>

- *Land Use and Zoning Goals* – improve collaboration between Amherst and Tonawanda to create a joint land use vision and complementary zoning and design provisions to provide guidance for future land use. Determine the future vision for scales and designs of buildings.
- *Economic Revitalization and Redevelopment Goals* – exploration of different forms of redevelopment for vacant commercial building stock to enable the area to become a more inviting and interesting destination and to reduce building maintenance issues.

Attachment: Project Charter_Willow Ridge_9.7.21 (RES-2021-803 : Willow Ridge/Parkview Action Plan Project Charter)

Identification of key opportunity sites to be upgraded or redeveloped. Consider and apply local and national economic trends to determine land use obstacles and the depth of market for housing, retail/ commercial space, employment, etc. that affect different types of development.

- *Traffic and Transportation Goals* – formation a vision for this segment of the Niagara Falls Boulevard corridor through creation of a unified street identity with enhanced streetscape and improved pedestrian safety such as connected sidewalk networks, pedestrian amenities (benches, trash cans, bus shelters, etc.), bike lanes, bulb-outs, green infrastructure and additional street landscaping, and improved street lighting. Employing the use of new transportation technologies (customizable and on-demand mobility services, smartly enhanced multi-modal arterials (SEMAs), and traffic monitoring and management software) along with inclusion of alternative modes of public transportation to produces less emissions and traffic congestion. Formulation of a land-use and access management plan for the corridor through techniques such as curb-cut consolidation and parking lot connections to help with interior flow of vehicles between businesses and less vehicular and pedestrian conflicts.
- *Community Amenities and Services Goals* – creating and enhancing safe and convenient connections for residents to commercial and recreational activities and amenities. Improve existing park and recreational facilities.

<u>Major Opportunities</u>

- Create a plan for the Willow Ridge & Parkview neighborhoods to shape and convey a future vision
- Make related Comprehensive Plan amendments to inform Town officials and developers of the area's vision
- Update the LWRP as necessary
- Reconfiguration of Niagara Falls Boulevard through streetscape improvements to increase walkability and safety
- Encourage redevelopment by implementing new mixed-use zoning
- Attract new, desired businesses by improving building maintenance and upkeep
- Implement Various park and facility improvements at Willow Ridge Park
- Extend the bike path within Ellicott Creek Park into Amherst along Ellicott Creek
- Install a kayak launch in Ellicott Creek in Amherst
- Extend the bike path along Skinnersville Rd to the University at Buffalo
- Make streetscape improvements along Old Niagara Falls Boulevard to extend a green space from the White Chapel Memorial Park Cemetery south to Ellicott Island Park

4. Mission Statement

The Towns of Amherst and Tonawanda, along with other stakeholders, aim to create an Action Plan for the Willow Ridge and Parkview neighborhoods to address various problems and opportunities to improve connectivity, recreation, building maintenance and pedestrian safety. The Plan will serve as a guiding document to portray residents' future vision of the

Attachment: Project Charter_Willow Ridge_9.7.21 (RES-2021-803 : Willow Ridge/Parkview Action Plan Project Charter)

area. The Towns will employ the Action Plan to update Comprehensive Plan policies, create new goals and objectives, and utilize implementation strategies to create a more vibrant, connected and safe inter-municipal community.

5. Resources & Stakeholders

The following is a list of various Town departments and boards, local and regional agencies, and other stakeholders that will be consulted and invited to actively participate in this project:

- *Town of Amherst*
    1. Supervisor & Town Councilmembers
    2. Planning Department
    3. Youth & Recreation Department
    4. Highway Department
    5. Building Department
    6. Engineering Department
    7. Economic Development Department
    8. Police Department
    9. Traffic Safety Board
    10. Amherst Chamber of Commerce
    11. Amherst Industrial Development Agency (AIDA)
- *Town of Tonawanda*
    1. Supervisor & Town Councilmembers
    2. Planning & Development Department
    3. Youth, Parks & Recreation Department
    4. Highway Department
    5. Building Department
    6. Engineering Department
    7. Police Department
    8. Town of Tonawanda Complete Streets Committee
    9. Ken-Ton Chamber of Commerce
- *External Stakeholders*
    1. New York State Department of Transportation (NYSDOT)
    2. Erie County Department of Environment and Planning (ECDEP)
    3. Erie County Department of Public Works (ECDPW)
    4. Niagara Frontier Transportation Authority (NFTA)
    5. Greater Buffalo Niagara Regional Transportation Council (GBNRTC)
    6. Willow Ridge Civic Association
    7. Parkview Triangle Community Club
    8. Sweet Home, and Kenmore-Tonawanda School Districts
    9. Ellicott Creek Volunteer Fire Company & Brighton Volunteer Fire Company
    10. Developers
    11. Key Property Owners
    12. Business Owners

Attachment: Project Charter_Willow Ridge_9.7.21 (RES-2021-803 : Willow Ridge/Parkview Action Plan Project Charter)

6. Action Plan Committees

As part of the Action Plan, a Public Participation Plan will be formed. A significant component of the Plan will be formation of a Technical Review Committee and a Project Review Committee proposed to inform the planning process and review materials. These committees will include representation from various perspectives including Town board members and key staff, community group representatives, business representatives, and other relevant stakeholders from various organizations.

Technical Review Committee

Members on the Technical Review Committee shall include one person designated from each of the following:

- Town of Amherst Planning Department member
- Town of Amherst Youth & Recreation Department member
- Town of Amherst Building Department member
- Town of Tonawanda Planning & Development member
- Town of Tonawanda Youth & Recreation Department member
- Town of Tonawanda Building Department member
- Greater Buffalo Niagara Regional Transportation Council (GBNRTC) member
- Erie County Department of Environment and Planning (ECDEP) member
- New York State Department of Transportation (NYSOT) member

Project Review Committee

Members on the Project Review Committee shall include one or more persons designated from each of the following:

- Town of Amherst Town Board member
- Town of Tonawanda Town Board member
- Town of Amherst Planning Board member
- Town of Tonawanda Planning Board member
- Town of Amherst community organization member
- Town of Tonawanda community organization member
- 2 private developers (from both Amherst & Tonawanda)
- 2 small business owners (from both Amherst & Tonawanda)

7. Public Participation

There will be extensive public outreach and community engagement to inform the Action Plan. It is anticipated that there will be a mix of in-person and virtual events to maximize participation opportunities. The Towns and their consultant will hold a Public Charrette with a series of public meetings, a walking tour, design sessions, interviews, technical/focus group meetings, and presentations to engage the community and form the framework for the Action Plan. It is anticipated that this initiative will have its own separate webpage, linked to both of the Town's websites, for people to access information and materials. It is also anticipated that various social media sites could be utilized to share information and to

Attachment: Project Charter_Willow Ridge_9.7.21 (RES-2021-803 : Willow Ridge/Parkview Action Plan Project Charter)

interact with the public. Amherst and Tonawanda will work together on dissemination of information and will have materials readily available within their own Town facilities as necessary. Project Review Committee meetings will be open to the public for interaction between various stakeholders.

8. Project Schedule

The following depicts a general timeline for the project. The project is expected to take roughly 7 months to complete. It is anticipated to be in its final stages in March 2022. Various components include a project kick off in September 2021, inventory and analysis, a six day public charrette with various meetings and design sessions, and various stakeholder meetings throughout the project.

Action/Item	Sept 2021	Oct	Nov	Dec	Jan 2022	Feb	Mar
Consultant Site Visit / Inventory & Analysis							
Public Engagement / 6 Day Public Charrette							
Refinement of Information & Designs/Concepts							
Creation of Draft Action Plan							
Public Outreach for Plan							
Revisions & Final Plan Completed							

9. Potential Consultants

- Planning and Zoning – carrying out public engagement activities, creation of concepts and designs/illustrations, writing of overall action plan
- Transportation Planners – study and creation of traffic, mobility and streetscape improvements
- Economic/Financial Analyst– research on current market trends and market feasibility analysis of urban design/redevelopment concepts

Attachment: Project Charter_Willow Ridge_9.7.21 (RES-2021-803 : Willow Ridge/Parkview Action Plan Project Charter)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24736 **RESOLUTION 2021-804** **ADOPTED**

To Authorize a Minor Amendment to the FY 2020 Annual Action Plan for Community Development.

WHEREAS, the Town has adopted the FY 2020 Annual Action Plan on behalf of the Towns of Amherst, Cheektowaga and Tonawanda (ACT) HOME Consortium which dictate the expenditure of funds for the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) Funding; and

WHEREAS, the Town is seeking to amend the FY 2020 Action Plan to reallocate $125,000 in Supplemental COVID (award #2) funds awarded by the CARES Act according to the following program/budget lines:

Decrease/Remove:
Senior Services Mental Health Asst. $ 125,000

Create/Increase:
Senior Services Congregate Dining Mobile Food Truck $ 125,000

WHEREAS, the new Program meets the criteria for use of the Supplemental CDBG-COVID funds awarded by the CARES Act to "prevent, prepare for, and respond to COVID" by enabling social distancing, reducing delivery burdens for Meals on Wheels, and expanding service options for vulnerable seniors;

NOW THEREFORE BE IT RESOLVED, the Town of Amherst Town Board hereby authorizes the above minor amendment to the FY 2020 Annual Action Plan.

9/13/2021
Consent

FINANCIAL IMPACT:

Adoption of the proposed resolution involves no local monetary consideration and will have no impact on the Town Budget or tax rate.

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

Amherst

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

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

September 7, 2021

Agenda of September 13, 2021

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

Subject: To Authorize a Minor Amendment to the FY 2020 Annual Action Plans for Community Development.

Honorable Board Members:

Amherst Community Development is proposing a Minor Amendment to FY 2020 Annual Action Plans for Amherst's Community Development Block Grant (CDBG) Program to support new Senior Programming as part of the Town's CDBG-COVID funding.

The amendment seeks to reallocate $125,000 originally intended for "Senior Services - Mental Health Assistance" to a new "Senior Services Congregate Dining Mobile Food Truck" Program in order to better serve Amherst Seniors with Congregate Dining Programs provided in local parks and hosted at various senior housing facilities in Town.

Taking the Congregate Dining Program "on-the-move" will allow the town to serve more seniors; provide for better social distancing practices by seniors dependent on the program; and, lessen the burden on Meals on Wheels delivery needs to larger senior housing complexes.

A proposed resolution for adopting the minor amendment to the Annual Action Plan is attached for your consideration. Thank you for your assistance with this matter.

Very truly yours,

Daniel J. Ulatowski, AICP
Assistant Planning Director

Enc.
X:\Community Development\New Structure\ANNUAL PLAN\Data 2020\3rd Amendments\TB_ltr_Minor Amendment - Senior Food Truck 9.7.21.docx

Attachment: tb amend-09082021093947 (RES-2021-804 : To Authorize a Minor Amendment to the FY 2020 Action Plan)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24737 **RESOLUTION 2021-805** **ADOPTED**

To Authorize the Supervisor to Execute an Agreement with the Buffalo Urban League for the Provision of Predatory Lending Counseling Services CRS #2884

WHEREAS, the Town, as a recipient of Community Development Block Grant (CDBG) funds, agrees to affirmatively promote fair housing, and

WHEREAS, the Community Development program's required analysis of impediments to fair housing has identified predatory lending practices by sub-prime lenders as a major impediment to fair housing, and

WHEREAS, in the current economy, mortgage default and imminent threat of foreclosure has many low income residents in danger of losing their homes, and;

WHEREAS, the Town has budgeted FY 2021 CDBG funds for the provision of predatory lending and foreclosure prevention counseling and legal services, and

WHEREAS, the Buffalo Urban League has provided comprehensive predatory lending counseling and legal services in the Town in prior years, and

WHEREAS, the Community Development staff recommends that the Town renew its contract with the Buffalo Urban League based on the Buffalo Urban League's excellent provision of services, and

WHEREAS, the Buffalo Urban League has submitted a satisfactory project budget and scope of services which provides for a total fee of $6,000; now therefore, be it

RESOLVED, that the Town Board hereby authorizes the Town Supervisor, subject to the satisfactory completion of the contract routing process, to enter into an agreement with the Buffalo Urban League for the provision of predatory lending, housing counseling, and foreclosure prevention services for the period April 1, 2021 through March 31, 2022 at a contracted amount not to exceed $6,000.

9/13/2021
Consent

FINANCIAL IMPACT:

The funds necessary to contract for services with Buffalo Urban League have been budgeted in the FY 2021 (N21-36 4000) CDBG budget. The resolution will, therefore, have no impact on the Town's current budget or tax rate.

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

Amherst

Town of Amherst Planning Department

Erie County, New York

Brian J. Kulpa, Sup or
Daniel C. Howard,
Planning Direct
Daniel J. Ulatowski,
Assistant Planning D or

September 3, 2021

Agenda of September 13, 2021

Honorable Town Board
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Subject: Contract with Buffalo Urban League

Honorable Board Members:

The Town has budgeted FY 2021 Community Development Block Grant (CDBG) funds for funding for predatory lending housing counseling and legal services to further fair housing. The Buffalo Urban League, through its Foreclosure Prevention program, has been the primary provider of such services in Erie County. These services are provided free of charge to income eligible residents of Amherst.

A contract is proposed that provides for quarterly payments to the Buffalo Urban League for a maximum of $6,000 during the contract year to be paid with Community Development funds. The agency has performed satisfactorily under past contracts.

Attached for your consideration is a resolution authorizing the Town Supervisor to enter into a new contract with the Buffalo Urban League for the provision of counseling and legal advice to town residents of questionable lending practices for the period April 1, 2021 through March 31, 2022.

Very truly yours,

Daniel J. Ulatowski, AICP
Assistant Planning Director

X:\Community Development\New Structure\CONTRACTS and SUBRECIPIENTS\Buffalo Urban League\FY2021\BUL_TB_letter_2021.docx

Attachment: tb letter (RES-2021-805 : Contract with the Buffalo Urban League)

AGREEMENT

THIS AGREEMENT, effective the _____ day of _____, 2021 between the TOWN OF AMHERST, a municipal corporation of the State of New York, with principal offices located at 5583 Main Street, Williamsville, New York, 14221, (hereinafter referred to as the "Town") and the BUFFALO URBAN LEAGUE, INC., hereinafter referred to as B.U.L., a private not-for-profit corporation incorporated under the laws of New York State, with its principal office for the transaction of business located at 15 Genesee, Buffalo, New York 14203.

WHEREAS, the Town, as a recipient of federal funding under the Housing and Community Development Act of 1974, as amended, (hereinafter referred to as the "Act"), certifies that it will affirmatively assist low income, at-risk homeowners avoid predatory lending practices; and

WHEREAS, B.U.L. provides comprehensive foreclosure prevention services and manages a multi-faceted anti-predatory lending project;

NOW, THEREFORE, it is mutually agreed by and between the parties hereto, as follows:

1. (a) "Town" shall mean the Town of Amherst
   (b) "B.U.L." shall mean the Buffalo Urban League, Inc.

2. The following exhibits are attached to this Agreement and made a part hereof:
   (a) Exhibit "A" -Scope of Services
   (b) Exhibit "B" - 2021 Income Guidelines and Stats Chart

3. B.U.L., for consideration herein provided, shall perform the services as described in Exhibit "A" attached hereto and made a part hereof.

Attachment: signed contract_9.2.21 (RES-2021-805 : Contract with the Buffalo Urban League)

4. B.U.L. shall, prior to execution of this Agreement, provide to the Town certificates of insurance evidencing compliance with the provisions of Exhibit "B" attached hereto and incorporated herein. B.U.L. agrees to defend, indemnify and hold-harmless the Town from and against all claims, liability and damages resulting from or arising out of performance by B.U.L. of the terms and conditions of this Agreement.

5. The Town agrees to pay B.U.L. not more than six thousand dollars ($6,000.00) during the one-year period from April 1, 2021 through March 31, 2022 for the services it provides to Town residents.

6. B.U.L. shall submit to the Town quarterly payment vouchers and report forms, as described in Exhibit A. Said forms will be in a format acceptable to the Town with the first two requests for payment for the period covering April 1, 2021 through December 31, 2021 to be submitted no later than January 10, 2022 to be consistent with the Town's fiscal year. Upon review and approval of the aforementioned vouchers and report forms by the Town, the Town shall process and subsequently issue funds totaling the approved amount. The sum of all vouchers submitted to the Town by B.U.L. shall not exceed $6,000.00.

7. B.U.L. agrees that it shall keep and maintain accounts and records concerning all costs incurred in the performance of this Agreement, and that it shall have available for audit and inspection by the Town or by authorized representatives of the federal government, all B.U.L. facilities, books and other financial and statistical data as they relate to this Agreement. The Town and B.U.L. agree to comply with the regulations, policies, and guidelines and requirements of the federal Office of Management and Budget, as they relate to the application, acceptance and use of federal funds for this federally assisted program.

8. B.U.L. 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

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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. This Agreement shall be valid only to the extent of federal funds made available to the Town for the Community Development program year under Title I of the Housing and Community Development Act of 1974, as amended. Any and all payments due under this agreement shall be contingent upon the receipt by the Town of funds from the United States Department of Housing and Urban Development in the amount stipulated in the 2021 Annual Action Plan as approved by the Amherst Town Board on February 1, 2021.

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 Town.

11. This Agreement shall be considered in effect from April 1, 2021 through March 31, 2022. The Town may agree to extend this Agreement for an additional twelve month period.

12. B.U.L. 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 B.U.L.'s status as an independent contractor, the Town shall not be responsible for workers compensation benefits, social security coverage or unemployment insurance benefits with respect to B.U.L. or its employees.

14. **Termination**

(1) The Town reserves the right to terminate this Agreement at its pleasure at any time prior to completion of the Program by giving two (2) weeks written notice of termination to B.U.L., either personally or by certified mail. The Town further reserves the right to terminate this Agreement for cause in the event that B.U.L. 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

Attachment: signed contract_9.2.21 (RES-2021-805 : Contract with the Buffalo Urban League)

insolvency statute or debtor or creditor law; or if its property or affairs be put in the hands of a receiver.

(2) The B.U.L. 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 Town, either personally or by certified mail. The B.U.L. further reserves the right to terminate this Agreement for cause in the event that the Town 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 B.U.L. upon such termination shall be based upon the value of the services performed by B.U.L up to the effective date of termination.

15. Changes in the Project Description and Cost specified in Exhibit "A" may be requested by B.U.L. in writing, addressed to the Town's Planning Director for subsequent action.

16. B.U.L. agrees to comply with all applicable federal requirements and standards as pertains to audits of subrecipients of federal funds under the federal Community Development Block Grant Program.

17. **Nondiscrimination.**

B.U.L. 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 Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 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, be denied the benefits of, or be subjected to discrimination under any program, activity, or service provided pursuant to this Agreement.

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18. **Equal Employment Opportunity.**

In carrying out this Agreement, B.U.L. 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. B.U.L. 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. B.U.L. 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. B.U.L. 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. B.U.L. 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. B.U.L. 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. "**Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.**

(a) The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR Part 135. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

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(b) Compliance with the provisions of section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135 (e).

20. **Obligations of Grantee with Respect to Certain Third Party Relationships.**

B.U.L. 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. B.U.L. 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 Town of Amherst necessary to insure that activities pursuant to this Agreement are carried out in accordance with the Town of Amherst's assurances and certifications pursuant to the Community Development Block Grant Program, including those with respect to the assumption of environmental responsibilities of the Town of Amherst under section 104(h) of the Housing and Community Development Act of 1974.

21. **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.

22. **Interest of Members, Officers, or Employees of Grantee, Members of Local Governing Body, or Other Public Officials.**

No member, officer, or employee of the B.U.L. or its designees or agents, no member of the governing body of the Town of Amherst and no other public official of the Town of Amherst 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. The B.U.L. 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.

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23. **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.

24. **Nondiscrimination in Housing.**

The B.U.L. shall comply with all requirements imposed by Title VIII of the Civil Rights Act of 1968, and the H.U.D. regulations with respect thereto, and Executive Order 11063. Title VIII prohibits discrimination in the sale or rental of dwellings (as defined), discrimination in the financing of housing, block busting, and discriminatory advertising and makes it unlawful to deny any person access to, or membership and participation in, any multiple-listing service or real estate brokers' organization for discriminatory purposes.

25. **Hatch Act**

The B.U.L. 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.

26. **Conflict of Interest**

The B.U.L. 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.

27. **Funding Source Recognition**

The B.U.L. 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.

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28. **Lobbying & Religious Activities**

By signing this Agreement, the B.U.L. 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, the B.U.L. 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.

29. **Compliance.**

The obligation of the B.U.L. to comply with the provisions of paragraph 17 through paragraph 28 of this Agreement shall inure to the benefits of the United States, H.U.D. and the Town of Amherst, any of which shall be entitled to invoke any remedies available by law to redress any breach thereof or to complete compliance therewith by the B.U.L.

The B.U.L. shall, by contractual requirement, covenant, or other binding commitment assure the compliance with the above provision of the provisions of paragraph 17 through paragraph 28 of this Agreement on the part of any contractor, subcontractor, transferee, successor in interest or other participant in any activities pursuant to this Agreement.

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THE BUFFALO URBAN LEAGUE, INC. 2021 CONTRACT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers all as of the date and year first above written.

BUFFALO URBAN LEAGUE, INC.

By:_____
Thomas Beauford, Jr, President/C.E.O.

Thomas Beauford, Jr. , President/C.E.O.
Printed name & title

_____
Date

TOWN OF AMHERST

By:_____
Brian J. Kulpa, Supervisor

Brian J. Kulpa, Supervisor
Printed name & title

_____
Date

S TATE OF NEW YORK)
COUNTY OF ERIE) ss.

On the_____day of _____, in the year Two Thousand Twenty-One, 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 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

STATE OF NEW YORK)
COUNTY OF ERIE) ss.

On the 2 day of September, in the year Two Thousand Twenty-One, before me, the undersigned, personally appeared Thomas Beauford, Jr., 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~~ he executed the same in ~~her~~ his capacity, and that by ~~her~~ his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument

Beverly R Moore
Notary Public

BEVERLY R. MOORE
Notary Public, State of New York
Registration No. 4732819
Qualified in Erie County
My commission expires 8-14-23

Revised 12.30.19 SJS

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EXHIBIT "A"
SCOPE OF SERVICES & REPORTING REQUIREMENTS

The B.U.L. will provide comprehensive services for victims of predatory lending, mortgage scams or imminent foreclosure living within the Town of Amherst as well as others who may encounter predatory lending while seeking housing in the Town. These services will include:

1) Foreclosure prevention housing counseling services which will include:
   - One-on-one counseling session(s) with any homeowner in danger of losing his or her home to a foreclosure because of predatory lending activity;
   - Contacting a homeowner's lender to arrange for a forbearance plan, deed-in-lieu of foreclosure, reverse mortgage, re-negotiation of the loan terms, or other means to prevent foreclosure; and
   - Budget counseling.

2) Foreclosure prevention legal assistance services, through the B.U.L. partner legal agencies, which will include:
   - Legally defending a foreclosure action that is the result of predatory lending activities;
   - Where appropriate, initiating litigation when there is evidence of illegal predatory lending terms or activities;
   - Negotiating loan terms with lenders to make unaffordable "predatory" or high-cost loans affordable to borrowers.

3) The B.U.L. will conduct up to three presentations, at the Town's request, on avoiding predatory lending to any Town groups.

4) The B.U.L. will provide foreclosure prevention and anti-predatory lending informational brochures and posters to the Town for distribution.

5) The B.U.L. may, upon request, provide one training session for appropriate Town personnel in anti-predatory lending housing laws.

6) The Town will be mentioned as a sponsor of the B.U.L. anti-predatory lending / foreclosure project on all project brochures, posters, and educational documents and recognized by the B.U.L. as a sponsor in any other way the Town wishes.

7) The B.U.L. will provide quarterly statistical reports to the Town's Planning Department documenting the number of calls to the B.U.L. for assistance from Town of Amherst residents. The identity of the callers will be confidential and not disclosed to the Town. All report documents shall be submitted to the Amherst Planning Department, attention: Susan Fitzpatrick, Community Development Program. The report should include:
   - Address of the property;
   - Alternate identifier of assisted households;

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- The income category (i.e., extremely low-income (0% to 30% of MFI), low income (31% to 50% of MFI), moderate income (51% to 80% of MFI) or above 80%;
- The head of the household's racial/ethnic group identification.

All funds paid by the Town shall be used by the B.U.L. in a manner consistent with the budget described in Exhibit "A" attached hereto and incorporated herein.

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EXHIBIT "B"
FY 2021 INCOME GUIDELINES & STATS CHART

Verification of household income must be supplied. To qualify, you must be under 80% of the FY2021 median income guidelines below:

Annual Household Income – FY 2021
(Effective June 1, 2021)

Household Size	Median Income	80% AMI	50% AMI	30% AMI
1	$ 55,250	**$ 44,200**	$ 27,650	$16,600
2	$ 63,125	**$ 50,500**	$ 31,600	$18,950
3	$ 71,000	**$ 56,800**	$ 35,550	$21,300
4	$ 78,875	**$ 63,100**	$ 39,450	$23,650
5	$ 85,188	**$ 68,150**	$ 42,650	$25,550
6	$ 91,500	**$ 73,200**	$ 45,800	$27,450
7	$ 97,810	**$ 78,250**	$ 48,950	$29,350
8	$ 104,125	**$ 83,300**	$ 52,100	$31,250

HOUSEHOLD CHARACTERISTICS: Complete one line for each household assisted. One code only in each block.

# MEMBERS ASSISTED IN HOUSEHOLD	% HOUSEHOLD INCOME	RACE OF HEAD OF HOUSEHOLD *	HISPANIC **Y/N**	FEMALE HEAD OF HOUSEHOLD **Y/N**

***Race of Household**
11-Caucasian
12-African American
13-Asian
14-American Indian or Alaskan Native
15-Native Hawaiian or other Pacific Islander
16-American Indian/Alaska Native & White
17-Asian & Caucasian
18-African American & Caucasian
19-American Indian or Alaskan Native & African American
20-Other Multi-Racial

Revised 12.30.19 SJS

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Consultant Minor Exposure Addendum to Contract

1. Notwithstanding any other provision in this Agreement, the following clauses shall be controlling. Should any other provision of the Agreement conflict with the clauses in this Addendum then the provisions of this Addendum are to be enforceable and any conflicting provision shall be considered null and void.

2. No rules, requirements or customs of any society or association of professional Consultants or any similar association shall affect this Agreement in any way whatsoever or be binding upon the Town.

3. To the fullest extent permitted by law, Consultant shall indemnify and hold the Town, its officers, agents, and employees, harmless from any and all liability, demands, claims, or expenses, awards or judgments imposed upon the Town, its officers, agents, and/or employees, arising out of the work of the Consultant its officers, agents, sub-Consultants, and/or employees as well as the negligence, active or passive, of the Consultant, its officers, agents, sub-Consultants, and/or employees.

4. Consultant shall not commence work under this Agreement until it has obtained all insurance specified below, produced satisfactory proof of the same and such insurance has been approved by the Town.

(a) Workers' Compensation Insurance: Consultant shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance (both Part A and Part B) for its employees to be assigned to the work hereto under.

(b) General Liability, Professional (if applicable) Liability and Property Damage Insurance: Consultant shall take out and maintain during the life of this Agreement, such general liability and property damage insurance as shall protect it and the Town of Amherst from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement. The amounts of such insurance shall be as follows in an amount not less than $1,000,000.00 per occurrence for bodily injury and property damage including wrongful death, and $2,000,000.00 aggregate.

(c) Consultant shall furnish the above insurances, including sub-Consultants' insurances, to the Town and shall also assure that any policy procured by it shall name the Town as an additional insured on a primary and non-contributory basis.

(d) Consultant shall ensure all its sub-Consultants, if any, have obtained all the above insurances and shall also assure that any policy procured by any sub-Consultant or sub-sub Consultant shall name the Town as an additional insured on a primary and non-contributory basis.

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5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of Section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Consultant shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Consultant, in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

9. This Agreement shall be governed by, and interpreted according to the laws of the State of New York. If the contract between the parties refers to the laws, statutes, rules, regulations or ordinances for any state other than New York State, to the laws, statutes, rules, regulations or

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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:

Buffalo Urban League, Inc.
Print Name of Company

By: _____
Thomas Beauford, Jr., President/CEO

Thomas Beauford, Jr., President/CEO
Printed name

Date: 9/2/2021

Agreed to and Accepted by:

Town of Amherst
Print Name of Company

By: _____
Brian J. Kulpa, Supervisor

Brian J. Kulpa, Supervisor
Printed name

Date: _____

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Attachment: signed contract_9.2.21 (RES-2021-805 : Contract with the Buffalo Urban League)

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: Buffalo Urban League

Signature: _____

Print Name: Thomas Beauford, Jr.

Title: President/CEO

Date: 9-2-21

Sworn To Before Me This

2 Day of September, 2021

_____

Notary Public

BEVERLY R. MOORE
Notary Public, State of New York
Registration No. 4732819
Qualified in Erie County
My commission expires 8-14-23

Revised 4.2017

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	A	B
1	**BUFFALO URBAN LEAGUE, INC.**	
2	**TOWN OF AMHERST**	
3	**BUDGET**	
4	**4/1/21 - 3/31/22**	
5		**BUDGET**
6		
7	**REVENUE**	$ 6,000.00
8		
9	**SALARY**	
10	Project Manager/Housing Counselor	$ 2,875.00
11		
12	**FRINGE BENEFITS**	
13	FICA Expense	219.94
14	NYS Unemployment	89.13
15	Life Ins/ADD, LT Disb, ST Disb	44.00
16	Medical/Vision/Dental Insurance	1,091.25
17	P&A Administrative Fees	-
18	Workers Compensation	43.13
19	Retirement	138.00
20	**TOTAL FRINGE BENEFITS**	$ 1,625.44
21		
22	**TOTAL PERSONNEL**	$ 4,500.44
23		
24	**OTP's**	
25	Payroll Processing Fees	25.00
26	Supplies - Office and Training Materials	187.00
27	Supplies-Computer	25.00
28	Postage	175.00
29	Printing	25.00
30	Equipment Lease	137.56
31	Outreach/Public Relations	325.00
32	Budgeted Administrative O/H @10%	600.00
33	**TOTAL OTHER COSTS**	$ 1,499.56
34		
35	**TOTAL PROJECT COST**	$ 6,000.00

Attachment: signed contract_9.2.21 (RES-2021-805 : Contract with the Buffalo Urban League)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
Initiated by: **Dan Howard**
Co-Sponsored by:

DOC ID: 24743 **RESOLUTION 2021-806** **WITHDRAWN**

Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic Preservation (OPRHP) CRS #2199

WHEREAS, the Town of Amherst has requested a grant from the New York State Office of Parks, Recreation & Historic Preservation to fund the Amherst Historic Preservation Commission (HPC) in support of a "Preservation Day" Event coordinated amongst the HPC, Preservation Buffalo Niagara and the Buffalo Niagara Heritage Village, and

WHEREAS, the New York State Office of Parks, Recreation & Historic Preservation has approved a grant in the amount of $10,000 to the Town of Amherst HPC to support a "Preservation Day" Event, now therefore be it

RESOLVED, that the Amherst Town Board authorizes the Town Supervisor to execute the agreement with the OPRHP attached hereto, subject to satisfactory completion of the contract routing process.

9/13/2021
Withdrawn

FINANCIAL IMPACT:

Adoption of this resolution will not have any fiscal impact. This is a reimbursable grant. The Town can expend up to $10,000 for preservation expenses and be fully reimbursed for that amount.

RESULT:	**WITHDRAWN**

Amherst

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

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

Town Board Agenda September 13, 2021

MEMORANDUM September 8, 2021

To: Town Board

From: Daniel C. Howard, Planning Director

Re: Request for approval of a NYS OPRHP Grant Contract for Historic Preservation Commission Activities

The New York State Office of Parks Recreation & Historic Preservation (OPRHP) has awarded a grant as reflected in the attached contract to support the Historic Preservation Commission (HPC) and an event known as "Preservation Day." Preservation Day is coordinated by the Commission with Preservation Buffalo Niagara, and the Buffalo Niagara Heritage Village. The New York State OPRHP grant is for $10,000, funds will be used to procure materials to support "Preservation Day" preparations and activities.

Please consider the attached grant contract and resolution authorizing the Supervisor to execute the contract at your meeting of September 13, 2021. Please contact James Quinn or me with any questions you may have. Thank you for your assistance with this matter.

DH/JQ/ac
Att.
X:\Special_Projects\Historic Preservation\NYS OPRHP Grant Contract - Memo.docx

Attachment: NYS OPRHP Grant Contract - Memo (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address):

Office of Parks Recreation & Historic Preservation

625 Broadway
Albany, NY 12207

BUSINESS UNIT/DEPT. ID: PRK01

CONTRACT NUMBER: PRK01-T62002GG-1290000

CONTRACT TYPE:

- [ ] Multi-Year Agreement
- [ ] Simplified Renewal Agreement
- [X] Fixed Term Agreement

CONTRACTOR SFS PAYEE NAME:

AMHERST TOWN OF

TRANSACTION TYPE:

- [X] New
- [ ] Renewal
- [ ] Amendment

CONTRACTOR DOS INCORPORATED NAME:

Amherst, Town of

PROJECT NAME:

Preservation Day

CONTRACTOR IDENTIFICATION NUMBERS:

NYS Vendor ID Number: 1000003949

Federal Tax ID Number: 166002157

DUNS Number (if applicable): 030212336

AGENCY IDENTIFIER:

CFDA NUMBER (Federally Funded Grants Only):

15.904

CONTRACTOR PRIMARY MAILING ADDRESS:

5583 MAIN ST
WILLIAMSVILLE, NY 14221

CONTRACTOR PAYMENT ADDRESS:

- [X] Check if same as primary mailing address

CONTRACT MAILING ADDRESS:

- [X] Check if same as primary mailing address

CONTRACTOR STATUS:

- [ ] For Profit
- [X] Municipality, Code:
- [ ] Tribal Nation
- [ ] Individual
- [ ] Not-for-Profit

Charities Registration Number:

Exemption State/Code:

- [ ] Sectarian Entity

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

CURRENT CONTRACT TERM:

From: 10/01/2019 To: 09/30/2021

CURRENT CONTRACT PERIOD:

From: 10/01/2019 To: 09/30/2021

AMENDED TERM:

From: To:

AMENDED PERIOD:

From: To:

CONTRACT FUNDING AMOUNT

(Multi-year - enter total projected amount of the contract; Fixed Term/Simplified Renewal - enter current period amount):

CURRENT: $10,000.00

AMENDED:

FUNDING SOURCE(S)

- ☐ State
- ☒ Federal
- ☐ Other

FOR MULTI-YEAR AGREEMENTS ONLY - CONTRACT AND FUNDING AMOUNT:

(Out years represents projected funding amounts)

#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT
1				
2				
3				
4				
5				

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

ATTACHMENTS PART OF THIS AGREEMENT:

Attachment A:

- [X] A-1 Program Specific Terms and Conditions
- [X] A-2 Federally Funded Grants

Attachment B:

- [X] B-1 Expenditure Based Budget
- [ ] B-2 Performance Based Budget
- [ ] B-3 Capital Budget
- [ ] B-4 Net Deficit Budget
- [ ] B-1 (A) Expenditure Based Budget (Amendment)
- [ ] B-2 (A) Performance Based Budget (Amendment)
- [ ] B-3 (A) Capital Budget (Amendment)
- [ ] B-4 (A) Net Deficit Budget (Amendment)

Attachment C: Work Plan

Attachment D: Payment and Reporting Schedule

Other:

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

IN WITNESS THEREOF, the parties hereto have electronically executed or approved this Master Contract on the dates below their signature.

In addition, I, acting in the capacity as Contractor, certify that I am the signing authority, or have been delegated or designated formally as the signing authority by the appropriate authority or officials, and as such I do agree, and I have the authority to agree, to all of the terms and conditions set forth in the Master Contract, including all appendices and attachments. I understand that (i) payment of a claim on this Master Contract is conditioned upon the Contractor's compliance with all applicable conditions of participation in this program and (if I am acting in the capacity as a not-for profit Contractor) the accuracy and completeness of information submitted to the State of New York through the Gateway vendor prequalification process and (ii) by electronically indicating my acceptance of the terms and conditions of the Master Contract, I certify that (a) to the extent that the Contractor is required to register and/or file reports with the Office of Attorney General's Charities Bureau ("Charities Bureau"), the Contractor's registration is current, all applicable reports have been filed, and the Contractor has no outstanding requests from the Charities Bureau relating to its filings and (b) all data and responses in the application submitted by the Contractor are true, complete and accurate. I also understand that use of my assigned User ID and Password on the State's contract management system is equivalent to having placed my signature on the Master Contract and that I am responsible for any activity attributable to the use of my User ID and Password. Additionally, any information entered will be considered to have been entered and provided at my direction. I further certify and agree that the Contractor agrees to waive any claim that this electronic record or signature is inadmissible in court, notwithstanding the choice of law provisions.

CONTRACTOR:

AMHERST TOWN OF

By: _____

_____

Printed Name

Title: _____

Date: _____

In addition, the party below certifies that it has verified the electronic signature of the Contractor to this Master Contract.

STATE AGENCY:

Office of Parks Recreation & Historic Preservation

_____

By: _____

_____

Printed Name

Title: _____

Date: _____

ATTORNEY GENERAL'S SIGNATURE
APPROVED AS TO FORM

By: _____

Printed Name

Title: _____

Date: _____

STATE COMPTROLLER'S SIGNATURE

By: _____

Printed Name

Title: _____

Date: _____

Contract Number: # PRK01-T62002GG-1290000

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

STATE OF NEW YORK
MASTER CONTRACT FOR GRANTS

This State of New York Master Contract for Grants (Master Contract) is hereby made by and between the State of New York acting by and through the applicable State Agency (State) and the public or private entity (Contractor) identified on the face page hereof (Face Page).

WITNESSETH:

WHEREAS, the State has the authority to regulate and provide funding for the establishment and operation of program services, design or the execution and performance of construction projects, as applicable and desires to contract with skilled parties possessing the necessary resources to provide such services or work, as applicable; and

WHEREAS, the Contractor is ready, willing and able to provide such program services or the execution and performance of construction projects and possesses or can make available all necessary qualified personnel, licenses, facilities and expertise to perform or have performed the services or work, as applicable, required pursuant to the terms of the Master Contract;

NOW THEREFORE, in consideration of the promises, responsibilities, and covenants herein, the State and the Contractor agree as follows:

STANDARD TERMS AND CONDITIONS

I. GENERAL PROVISIONS

A. Executory Clause: In accordance with Section 41 of the State Finance Law, the State shall have no liability under the Master Contract to the Contractor, or to anyone else, beyond funds appropriated and available for the Master Contract.

B. Required Approvals: In accordance with Section 112 of the State Finance Law (or, if the Master Contract is with the State University of New York (SUNY) or City University of New York (CUNY), Section 355 or Section 6218 of the Education Law), if the Master Contract exceeds $50,000 (or $85,000 for contracts let by the Office of General Services, or the minimum thresholds agreed to by the Office of the State Comptroller (OSC) for certain SUNY and CUNY contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount including, but not limited to, changes in amount, consideration, scope or contract term identified on the Face Page (Contract Term), it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the New York Attorney General Contract Approval Unit (AG) and OSC. If, by the Master Contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by, and filed with, the AG and OSC.

***Budget Changes*:** An amendment that would result in a transfer of funds among program activities or budget cost categories that does not affect the amount, consideration, scope or other terms of such contract may be subject to the approval of the AG and OSC where the amount of such modification is, as a portion of the total value of the contract, equal to or greater than ten percent for contracts of less than five million dollars, or five percent for contracts of more than

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

five million dollars; and, in addition, such amendment may be subject to prior approval by the applicable State Agency as detailed in Attachment D (Payment and Reporting Schedule).

C. Order of Precedence:

In the event of a conflict among (i) the terms of the Master Contract (including any and all attachments and amendments) or (ii) between the terms of the Master Contract and the original request for proposal, the program application or other attachment that was completed and executed by the Contractor in connection with the Master Contract, the order of precedence is as follows:

1. Standard Terms and Conditions
2. Modifications to the Face Page
3. Modifications to Attachment A-2[1], Attachment B, Attachment C and Attachment D
4. The Face Page
5. Attachment A-2[2], Attachment B, Attachment C and Attachment D
6. Modification to Attachment A-1
7. Attachment A-1
8. Other attachments, including, but not limited to, the request for proposal or program application

D. Funding: Funding for the term of the Master Contract shall not exceed the amount specified as "Contract Funding Amount" on the Face Page or as subsequently revised to reflect an approved renewal or cost amendment. Funding for the initial and subsequent periods of the Master Contract shall not exceed the applicable amounts specified in the applicable Attachment B form (Budget).

E. Contract Performance: The Contractor shall perform all services or work, as applicable, and comply with all provisions of the Master Contract to the satisfaction of the State. The Contractor shall provide services or work, as applicable, and meet the program objectives summarized in Attachment C (Work Plan) in accordance with the provisions of the Master Contract, relevant laws, rules and regulations, administrative, program and fiscal guidelines, and where applicable, operating certificate for facilities or licenses for an activity or program.

F. Modifications: To modify the Attachments or Face Page, the parties mutually agree to record, in writing, the terms of such modification and to revise or complete the Face Page and all the appropriate attachments in conjunction therewith. In addition, to the extent that such modification meets the criteria set forth in Section I.B herein, it shall be subject to the approval of the AG and

[1] To the extent that the modifications to Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the modifications to Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

[2] To the extent that the terms of Attachment A-2 are required by Federal requirements and conflict with other provisions of the Master Contract, the Federal requirements of Attachment A-2 shall supersede all other provisions of this Master Contract. See Section I(V).

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

OSC before it shall become valid, effective and binding upon the State. Modifications that are not subject to the AG and OSC approval shall be processed in accordance with the guidelines stated in the Master Contract.

G. Governing Law: The Master Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

H. Severability: Any provision of the Master Contract that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties to the Master Contract shall attempt in good faith to reform the Master Contract in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent. If any provision is held void, invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

I. Interpretation: The headings in the Master Contract are inserted for convenience and reference only and do not modify or restrict any of the provisions herein. All personal pronouns used herein shall be considered to be gender neutral. The Master Contract has been made under the laws of the State of New York, and the venue for resolving any disputes hereunder shall be in a court of competent jurisdiction of the State of New York.

J. Notice:

1. All notices, except for notices of termination, shall be in writing and shall be transmitted either:

   a) by certified or registered United States mail, return receipt requested;

   b) by facsimile transmission;

   c) by personal delivery;

   d) by expedited delivery service; or

   e) by e-mail.

2. Notices to the State shall be addressed to the Program Office designated in Attachment A-1 (Program Specific Terms and Conditions).

3. Notices to the Contractor shall be addressed to the Contractor's designee as designated in Attachment A-1 (Program Specific Terms and Conditions).

4. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or e-mail, upon receipt.

5. The parties may, from time to time, specify any new or different e-mail address, facsimile number or address in the United States as their address for purpose of receiving notice under the

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

Master Contract by giving fifteen (15) calendar days prior written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under the Master Contract. Additional individuals may be designated in writing by the parties for purposes of implementation, administration, billing and resolving issues and/or disputes.

K. Service of Process: In addition to the methods of service allowed by the State Civil Practice Law & Rules (CPLR), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. The Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

L. Set-Off Rights: The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold, for the purposes of set-off, any moneys due to the Contractor under the Master Contract up to any amounts due and owing to the State with regard to the Master Contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of the Master Contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State Agency, its representatives, or OSC.

M. Indemnification: The Contractor shall be solely responsible and answerable in damages for any and all accidents and/or injuries to persons (including death) or property arising out of or related to the services to be rendered by the Contractor or its subcontractors pursuant to this Master Contract. The Contractor shall indemnify and hold harmless the State and its officers and employees from claims, suits, actions, damages and cost of every nature arising out of the provision of services pursuant to the Master Contract.

N. Non-Assignment Clause: In accordance with Section 138 of the State Finance Law, the Master Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, or otherwise disposed of without the State's previous written consent, and attempts to do so shall be considered to be null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract, let pursuant to Article XI of the State Finance Law, may be waived at the discretion of the State Agency and with the concurrence of OSC, where the original contract was subject to OSC's approval, where the assignment is due to a reorganization, merger, or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that the merged contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless the Master Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

O. Legal Action: No litigation or regulatory action shall be brought against the State of New York, the State Agency, or against any county or other local government entity with funds provided under the Master Contract. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

any of the State of New York, the State Agency, or any county, or other local government entity. The term "regulatory action" shall include commencing or threatening to commence a regulatory proceeding, or requesting any regulatory relief from any of the State of New York, the State Agency, or any county, or other local government entity.

P. No Arbitration: Disputes involving the Master Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

Q. Secular Purpose: Services performed pursuant to the Master Contract are secular in nature and shall be performed in a manner that does not discriminate on the basis of religious belief, or promote or discourage adherence to religion in general or particular religious beliefs.

R. Partisan Political Activity and Lobbying: Funds provided pursuant to the Master Contract shall not be used for any partisan political activity, or for activities that attempt to influence legislation or election or defeat of any candidate for public office.

S. Reciprocity and Sanctions Provisions: The Contractor is hereby notified that if its principal place of business is located in a country, nation, province, state, or political subdivision that penalizes New York State vendors, and if the goods or services it offers shall be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that it be denied contracts which it would otherwise obtain.[3]

T. Reporting Fraud and Abuse: Contractor acknowledges that it has reviewed information on how to prevent, detect, and report fraud, waste and abuse of public funds, including information about the Federal False Claims Act, the New York State False Claims Act, and whistleblower protections.

U. Non-Collusive Bidding: By submission of this bid, the Contractor and each person signing on behalf of the Contractor certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive binding certification on the Contractor's behalf.

V. Federally Funded Grants and Requirements Mandated by Federal Laws: All of the Specific Federal requirements that are applicable to the Master Contract are identified in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto. To the extent that the Master Contract is funded in whole or part with Federal funds or mandated by Federal laws, (i) the provisions of the Master Contract that conflict with Federal rules, Federal regulations, or Federal program specific requirements shall not apply and (ii) the Contractor agrees to comply with all applicable Federal rules, regulations and program specific requirements including, but not limited to, those provisions that are set forth in Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws) hereto.

[3]As of October 9, 2012, the list of discriminatory jurisdictions subject to this provision includes the states of Alaska, Hawaii, Louisiana, South Carolina, West Virginia and Wyoming. Contact NYS Department of Economic Development for the most current list of jurisdictions subject to this provision.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

II. TERM, TERMINATION AND SUSPENSION

A. Term: The term of the Master Contract shall be as specified on the Face Page, unless terminated sooner as provided herein.

B. Renewal:

1. *General Renewal*: The Master Contract may consist of successive periods on the same terms and conditions, as specified within the Master Contract (a "Simplified Renewal Contract"). Each additional or superseding period shall be on the forms specified by the State and shall be incorporated in the Master Contract.

2. *Renewal Notice to Not-for-Profit Contractors*:

a) Pursuant to State Finance Law §179-t, if the Master Contract is with a not-for-profit Contractor and provides for a renewal option, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract no later than ninety (90) calendar days prior to the end of the term of the Master Contract, unless funding for the renewal is contingent upon enactment of an appropriation. If funding for the renewal is contingent upon enactment of an appropriation, the State shall notify the Contractor of the State's intent to renew or not to renew the Master Contract the later of: (1) ninety (90) calendar days prior to the end of the term of the Master Contract, and (2) thirty (30) calendar days after the necessary appropriation becomes law. Notwithstanding the foregoing, in the event that the State is unable to comply with the time frames set forth in this paragraph due to unusual circumstances beyond the control of the State ("Unusual Circumstances"), no payment of interest shall be due to the not-for-profit Contractor. For purposes of State Finance Law §179-t, "Unusual Circumstances" shall not mean the failure by the State to (i) plan for implementation of a program, (ii) assign sufficient staff resources to implement a program, (iii) establish a schedule for the implementation of a program or (iv) anticipate any other reasonably foreseeable circumstance.

b) Notification to the not-for-profit Contractor of the State's intent to not renew the Master Contract must be in writing in the form of a letter, with the reason(s) for the non-renewal included. If the State does not provide notice to the not-for-profit Contractor of its intent not to renew the Master Contract as required in this Section and State Finance Law §179-t, the Master Contract shall be deemed continued until the date the State provides the necessary notice to the Contractor, in accordance with State Finance Law §179-t. Expenses incurred by the not-for-profit Contractor during such extension shall be reimbursable under the terms of the Master Contract.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

C. Termination:

1. *Grounds*:

a) Mutual Consent: The Master Contract may be terminated at any time upon mutual written consent of the State and the Contractor.

b) Cause: The State may terminate the Master Contract immediately, upon written notice of termination to the Contractor, if the Contractor fails to comply with any of the terms and conditions of the Master Contract and/or with any laws, rules, regulations, policies, or procedures that are applicable to the Master Contract.

c) Non-Responsibility: In accordance with the provisions of Sections IV(N)(6) and (7) herein, the State may make a final determination that the Contractor is non-responsible (Determination of Non-Responsibility). In such event, the State may terminate the Master Contract at the Contractor's expense, complete the contractual requirements in any manner the State deems advisable and pursue available legal or equitable remedies for breach.

d) Convenience: The State may terminate the Master Contract in its sole discretion upon thirty (30) calendar days prior written notice.

e) Lack of Funds: If for any reason the State or the Federal government terminates or reduces its appropriation to the applicable State Agency entering into the Master Contract or fails to pay the full amount of the allocation for the operation of one or more programs funded under this Master Contract, the Master Contract may be terminated or reduced at the State Agency's discretion, provided that no such reduction or termination shall apply to allowable costs already incurred by the Contractor where funds are available to the State Agency for payment of such costs. Upon termination or reduction of the Master Contract, all remaining funds paid to the Contractor that are not subject to allowable costs already incurred by the Contractor shall be returned to the State Agency. In any event, no liability shall be incurred by the State (including the State Agency) beyond monies available for the purposes of the Master Contract. The Contractor acknowledges that any funds due to the State Agency or the State of New York because of disallowed expenditures after audit shall be the Contractor's responsibility.

f) Force Majeure: The State may terminate or suspend its performance under the Master Contract immediately upon the occurrence of a "force majeure." For purposes of the Master Contract, "Force majeure" shall include, but not be limited to, natural disasters, war, rebellion, insurrection, riot, strikes, lockout and any unforeseen circumstances and acts beyond the control of the State which render the performance of its obligations impossible.

2. *Notice of Termination*:

a) Service of notice: Written notice of termination shall be sent by:

(i) personal messenger service; or

(ii) certified mail, return receipt requested and first class mail.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

b) Effective date of termination: The effective date of the termination shall be the later of (i) the date indicated in the notice and (ii) the date the notice is received by the Contractor, and shall be established as follows:

(i) if the notice is delivered by hand, the date of receipt shall be established by the receipt given to the Contractor or by affidavit of the individual making such hand delivery attesting to the date of delivery; or

(ii) if the notice is delivered by registered or certified mail, by the receipt returned from the United States Postal Service, or if no receipt is returned, five (5) business days from the date of mailing of the first class letter, postage prepaid, in a depository under the care and control of the United States Postal Service.

3. ***Effect of Notice and Termination on State's Payment Obligations*:**

a) Upon receipt of notice of termination, the Contractor agrees to cancel, prior to the effective date of any prospective termination, as many outstanding obligations as possible, and agrees not to incur any new obligations after receipt of the notice without approval by the State.

b) The State shall be responsible for payment on claims for services or work provided and costs incurred pursuant to the terms of the Master Contract. In no event shall the State be liable for expenses and obligations arising from the requirements of the Master Contract after its termination date.

4. *Effect of Termination Based on Misuse or Conversion of State or Federal Property*:

Where the Master Contract is terminated for cause based on Contractor's failure to use some or all of the real property or equipment purchased pursuant to the Master Contract for the purposes set forth herein, the State may, at its option, require:

a) the repayment to the State of any monies previously paid to the Contractor; or

b) the return of any real property or equipment purchased under the terms of the Master Contract; or

c) an appropriate combination of clauses (a) and (b) of Section II(C)(4) herein.

Nothing herein shall be intended to limit the State's ability to pursue such other legal or equitable remedies as may be available.

D. Suspension: The State may, in its discretion, order the Contractor to suspend performance for a reasonable period of time. In the event of such suspension, the Contractor shall be given a formal written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor shall comply with the particulars of the notice. The State shall have no obligation to reimburse Contractor's expenses during such suspension period. Activities may resume at such time as the State issues a formal written notice authorizing a resumption of performance under the Master Contract.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

III. PAYMENT AND REPORTING

A. Terms and Conditions:

1. In full consideration of contract services to be performed, the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page.

2. The State has no obligation to make payment until all required approvals, including the approval of the AG and OSC, if required, have been obtained. Contractor obligations or expenditures that precede the start date of the Master Contract shall not be reimbursed.

3. Contractor must provide complete and accurate billing invoices to the State in order to receive payment. Provided, however, the State may, at its discretion, automatically generate a voucher in accordance with an approved contract payment schedule. Billing invoices submitted to the State must contain all information and supporting documentation required by Attachment D (Payment and Reporting Schedule) and Section III(C) herein. The State may require the Contractor to submit billing invoices electronically.

4. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the head of the State Agency, in the sole discretion of the head of such State Agency, due to extenuating circumstances. Such electronic payment shall be made in accordance with OSC's procedures and practices to authorize electronic payments.

5. If travel expenses are an approved expenditure under the Master Contract, travel expenses shall be reimbursed at the lesser of the rates set forth in the written standard travel policy of the Contractor, the OSC guidelines, or United States General Services Administration rates. No out-of-state travel costs shall be permitted unless specifically detailed and pre-approved by the State.

6. Timeliness of advance payments or other claims for reimbursement, and any interest to be paid to Contractor for late payment, shall be governed by Article 11-A of the State Finance Law to the extent required by law.

7. Article 11-B of the State Finance Law sets forth certain time frames for the Full Execution of contracts or renewal contracts with not-for-profit organizations and the implementation of any program plan associated with such contract. For purposes of this section, "Full Execution" shall mean that the contract has been signed by all parties thereto and has obtained the approval of the AG and OSC. Any interest to be paid on a missed payment to the Contractor based on a delay in the Full Execution of the Master Contract shall be governed by Article 11-B of the State Finance Law.

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B. Advance Payment and Recoupment:

1. Advance payments, which the State in its sole discretion may make to not-for-profit grant recipients, shall be made and recouped in accordance with State Finance Law Section 179(u), this Section and the provisions of Attachment D (Payment and Reporting Schedule).

2. Initial advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the first day of the Contract Term or, if renewed, in the period identified on the Face Page. Subsequent advance payments made by the State to not-for-profit grant recipients shall be due no later than thirty (30) calendar days, excluding legal holidays, after the dates specified in Attachment D (Payment and Reporting Schedule).

3. For subsequent contract years in multi-year contracts, Contractor will be notified of the scheduled advance payments for the upcoming contract year no later than 90 days prior to the commencement of the contract year. For simplified renewals, the payment schedule (Attachment D) will be modified as part of the renewal process.

4. Recoupment of any advance payment(s) shall be recovered by crediting the percentage of subsequent claims listed in Attachment D (Payment and Reporting Schedule) and Section III(C) herein and such claims shall be reduced until the advance is fully recovered within the Contract Term. Any unexpended advance balance at the end of the Contract Term shall be refunded by the Contractor to the State.

5. If for any reason the amount of any claim is not sufficient to cover the proportionate advance amount to be recovered, then subsequent claims may be reduced until the advance is fully recovered.

C. Claims for Reimbursement:

1. The Contractor shall submit claims for the reimbursement of expenses incurred on behalf of the State under the Master Contract in accordance with this Section and the applicable claiming schedule in Attachment D (Payment and Reporting Schedule).

Vouchers submitted for payment shall be deemed to be a certification that the payments requested are for project expenditures made in accordance with the items as contained in the applicable Attachment B form (Budget) and during the Contract Term. When submitting a voucher, such voucher shall also be deemed to certify that: (i) the payments requested do not duplicate reimbursement from other sources of funding; and (ii) the funds provided herein do not replace funds that, in the absence of this grant, would have been made available by the Contractor for this program. Requirement (ii) does not apply to grants funded pursuant to a Community Projects Fund appropriation.

2. Consistent with the selected reimbursement claiming schedule in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the appropriate following provisions:

a) Quarterly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

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The Contractor shall submit to the State Agency quarterly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

b) Monthly Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency monthly voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

c) Biannual Reimbursement: The Contractor shall be entitled to receive payments for work, projects, and services rendered as detailed and described in Attachment C (Work Plan).

The Contractor shall submit to the State Agency biannually voucher claims and supporting documentation. The Contractor shall submit vouchers to the State Agency in accordance with the procedures set forth in Section III(A)(3) herein.

d) Milestone/Performance Reimbursement:[4] Requests for payment based upon an event or milestone may be either severable or cumulative. A severable event/milestone is independent of accomplishment of any other event. If the event is cumulative, the successful completion of an event or milestone is dependent on the previous completion of another event.

Milestone payments shall be made to the Contractor when requested in a form approved by the State, and at frequencies and in amounts stated in Attachment D (Payment and Reporting Schedule). The State Agency shall make milestone payments subject to the Contractor's satisfactory performance.

e) Fee for Service Reimbursement:[5] Payment shall be limited to only those fees specifically agreed upon in the Master Contract and shall be payable no more frequently than monthly upon submission of a voucher by the contractor.

f) Rate Based Reimbursement:[6] Payment shall be limited to rate(s) established in the Master Contract. Payment may be requested no more frequently than monthly.

g) Scheduled Reimbursement:[7] The State Agency shall generate vouchers at the frequencies and amounts as set forth in Attachment D (Payment and Reporting Schedule), and service reports shall be used to determine funding levels appropriate to the next annual contract period.

[4] A milestone/ performance payment schedule identifies mutually agreed-to payment amounts based on meeting contract events or milestones. Events or milestones must represent integral and meaningful aspects of contract performance and should signify true progress in completing the Master Contract effort.
[5] Fee for Service is a rate established by the Contractor for a service or services rendered.
[6] Rate based agreements are those agreements in which payment is premised upon a specific established rate per unit.
[7] Scheduled Reimbursement agreements provide for payments that occur at defined and regular intervals that provide for a specified dollar amount to be paid to the Contractor at the beginning of each payment period (i.e. quarterly, monthly or bi-annually). While these payments are related to the particular services and outcomes defined in the Master Contract, they are not dependent upon particular services or expenses in any one payment period and provide the Contractor with a defined and regular payment over the life of the contract.

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h) Interim Reimbursement: The State Agency shall generate vouchers on an interim basis and at the amounts requested by the Contractor as set forth in Attachment D (Payment and Reporting Schedule).

i) Fifth Quarter Payments:[8] Fifth quarter payment shall be paid to the Contractor at the conclusion of the final scheduled payment period of the preceding contract period. The State Agency shall use a written directive for fifth quarter financing. The State Agency shall generate a voucher in the fourth quarter of the current contract year to pay the scheduled payment for the next contract year.

3. The Contractor shall also submit supporting fiscal documentation for the expenses claimed.

4. The State reserves the right to withhold up to fifteen percent (15%) of the total amount of the Master Contract as security for the faithful completion of services or work, as applicable, under the Master Contract. This amount may be withheld in whole or in part from any single payment or combination of payments otherwise due under the Master Contract. In the event that such withheld funds are insufficient to satisfy Contractor's obligations to the State, the State may pursue all available remedies, including the right of setoff and recoupment.

5. The State shall not be liable for payments on the Master Contract if it is made pursuant to a Community Projects Fund appropriation if insufficient monies are available pursuant to Section 99-d of the State Finance Law.

6. All vouchers submitted by the Contractor pursuant to the Master Contract shall be submitted to the State Agency no later than thirty (30) calendar days after the end date of the period for which reimbursement is claimed. In no event shall the amount received by the Contractor exceed the budget amount approved by the State Agency, and, if actual expenditures by the Contractor are less than such sum, the amount payable by the State Agency to the Contractor shall not exceed the amount of actual expenditures.

7. All obligations must be incurred prior to the end date of the contract. Notwithstanding the provisions of Section III(C)(6) above, with respect to the final period for which reimbursement is claimed, so long as the obligations were incurred prior to the end date of the contract, the Contractor shall have up to ninety (90) calendar days after the contract end date to make expenditures; provided, however, that if the Master Contract is funded, in whole or in part, with Federal funds, the Contractor shall have up to sixty (60) calendar days after the contract end date to make expenditures.

D. Identifying Information and Privacy Notification:

1. Every voucher or New York State Claim for Payment submitted to a State Agency by the Contractor, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property, must include the Contractor's Vendor Identification Number assigned by the Statewide Financial System, and any or all of the following identification numbers: (i) the Contractor's Federal employer identification number,

[8] Fifth Quarter Payments occurs where there are scheduled payments and where there is an expectation that services will be continued through renewals or subsequent contracts. Fifth Quarter Payments allow for the continuation of scheduled payments to a Contractor for the first payment period quarter of an anticipated renewal or new contract.

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(ii) the Contractor's Federal social security number, and/or (iii) DUNS number. Failure to include such identification number or numbers may delay payment by the State to the Contractor. Where the Contractor does not have such number or numbers, the Contractor, on its voucher or Claim for Payment, must provide the reason or reasons for why the Contractor does not have such number or numbers.

2. The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. The personal information is requested by the purchasing unit of the State Agency contracting to purchase the goods or services or lease the real or personal property covered by the Master Contract. This information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York, 12236.

E. Refunds:

1. In the event that the Contractor must make a refund to the State for Master Contract-related activities, including repayment of an advance or an audit disallowance, payment must be made payable as set forth in Attachment A-1 (Program Specific Terms and Conditions). The Contractor must reference the contract number with its payment and include a brief explanation of why the refund is being made. Refund payments must be submitted to the Designated Refund Office at the address specified in Attachment A-1 (Program Specific Terms and Conditions).

2. If at the end or termination of the Master Contract, there remains any unexpended balance of the monies advanced under the Master Contract in the possession of the Contractor, the Contractor shall make payment within forty-five (45) calendar days of the end or termination of the Master Contract. In the event that the Contractor fails to refund such balance the State may pursue all available remedies.

F. Outstanding Amounts Owed to the State: Prior period overpayments (including, but not limited to, contract advances in excess of actual expenditures) and/or audit recoveries associated with the Contractor may be recouped against future payments made under this Master Contract to Contractor. The recoupment generally begins with the first payment made to the Contractor following identification of the overpayment and/or audit recovery amount. In the event that there are no payments to apply recoveries against, the Contractor shall make payment as provided in Section III(E) (Refunds) herein.

G. Program and Fiscal Reporting Requirements:

1. The Contractor shall submit required periodic reports in accordance with the applicable schedule provided in Attachment D (Payment and Reporting Schedule). All required reports or other work products developed pursuant to the Master Contract must be completed as provided by the agreed upon work schedule in a manner satisfactory and acceptable to the State Agency in order for the Contractor to be eligible for payment.

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2. Consistent with the selected reporting options in Attachment D (Payment and Reporting Schedule), the Contractor shall comply with the following applicable provisions:

a) If the Expenditure Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with one or more of the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Narrative/Qualitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a report, in narrative form, summarizing the services rendered during the quarter. This report shall detail how the Contractor has progressed toward attaining the qualitative goals enumerated in Attachment C (Work Plan). This report should address all goals and objectives of the project and include a discussion of problems encountered and steps taken to solve them.

(ii) *Statistical/Quantitative Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed report analyzing the quantitative aspects of the program plan, as appropriate (e.g., number of meals served, clients transported, patient/client encounters, procedures performed, training sessions conducted, etc.)

(iii) *Expenditure Report*: The Contractor shall submit, on a quarterly basis, not later than the time period listed in Attachment D (Payment and Reporting Schedule), a detailed expenditure report, by object of expense. This report shall accompany the voucher submitted for such period.

(iv) *Final Report*: The Contractor shall submit a final report as required by the Master Contract, not later than the time period listed in Attachment D (Payment and Reporting Schedule) which reports on all aspects of the program and detailing how the use of funds were utilized in achieving the goals set forth in Attachment C (Work Plan).

(v) *Consolidated Fiscal Report* (CFR): The Contractor shall submit a CFR, which includes a year-end cost report and final claim not later than the time period listed in Attachment D (Payment and Reporting Schedule).

b) If the Performance-Based Reports option is indicated in Attachment D (Payment and Reporting Schedule), the Contractor shall provide the State Agency with the following reports as required by the following provisions and Attachment D (Payment and Reporting Schedule) as applicable:

(i) *Progress Report*: The Contractor shall provide the State Agency with a written progress report using the forms and formats as provided by the State Agency, summarizing the work performed during the period. These reports shall detail the Contractor's progress toward attaining the specific goals enumerated in Attachment C (Work Plan). Progress reports shall be submitted in a format prescribed in the Master Contract.

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(ii) *Final Progress Report*: Final scheduled payment is due during the time period set forth in Attachment D (Payment and Reporting Schedule). The deadline for submission of the final report shall be the date set forth in Attachment D (Payment and Reporting Schedule). The State Agency shall complete its audit and notify the Contractor of the results no later than the date set forth in Attachment D (Payment and Reporting Schedule). Payment shall be adjusted by the State Agency to reflect only those services/expenditures that were made in accordance with the Master Contract. The Contractor shall submit a detailed comprehensive final progress report not later than the date set forth in Attachment D (Payment and Reporting Schedule), summarizing the work performed during the entire Contract Term (i.e., a cumulative report), in the forms and formats required.

3. In addition to the periodic reports stated above, the Contractor may be required (a) to submit such other reports as are required in Table 1 of Attachment D (Payment and Reporting Schedule), and (b) prior to receipt of final payment under the Master Contract, to submit one or more final reports in accordance with the form, content, and schedule stated in Table 1 of Attachment D (Payment and Reporting Schedule).

H. Notification of Significant Occurrences:

1. If any specific event or conjunction of circumstances threatens the successful completion of this project, in whole or in part, including where relevant, timely completion of milestones or other program requirements, the Contractor agrees to submit to the State Agency within three (3) calendar days of becoming aware of the occurrence or of such problem, a written description thereof together with a recommended solution thereto.

2. The Contractor shall immediately notify in writing the program manager assigned to the Master Contract of any unusual incident, occurrence, or event that involves the staff, volunteers, directors or officers of the Contractor, any subcontractor or program participant funded through the Master Contract, including but not limited to the following: death or serious injury; an arrest or possible criminal activity that could impact the successful completion of this project; any destruction of property; significant damage to the physical plant of the Contractor; or other matters of a similarly serious nature.

IV. ADDITIONAL CONTRACTOR OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

A. Contractor as an Independent Contractor/Employees:

1. The State and the Contractor agree that the Contractor is an independent contractor, and not an employee of the State and may neither hold itself out nor claim to be an officer, employee, or subdivision of the State nor make any claim, demand, or application to or for any right based upon any different status. Notwithstanding the foregoing, the State and the Contractor agree that if the Contractor is a New York State municipality, the Contractor shall be permitted to hold itself out, and claim, to be a subdivision of the State.

The Contractor shall be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries and management of its project personnel. These functions shall be carried out in accordance with the provisions of the Master Contract, and all applicable Federal and State laws and regulations.

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2. The Contractor warrants that it, its staff, and any and all subcontractors have all the necessary licenses, approvals, and certifications currently required by the laws of any applicable local, state, or Federal government to perform the services or work, as applicable, pursuant to the Master Contract and/or any subcontract entered into under the Master Contract. The Contractor further agrees that such required licenses, approvals, and certificates shall be kept in full force and effect during the term of the Master Contract, or any extension thereof, and to secure any new licenses, approvals, or certificates within the required time frames and/or to require its staff and subcontractors to obtain the requisite licenses, approvals, or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval, or certification to perform the services or work, as applicable, under the Master Contract, Contractor shall immediately notify the State.

B. Subcontractors:

1. If the Contractor enters into subcontracts for the performance of work pursuant to the Master Contract, the Contractor shall take full responsibility for the acts and omissions of its subcontractors. Nothing in the subcontract shall impair the rights of the State under the Master Contract. No contractual relationship shall be deemed to exist between the subcontractor and the State.

2. If requested by the State, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, that are in excess of $100,000 for the performance of the obligations contained herein until it has received the prior written permission of the State, which shall have the right to review and approve each and every subcontract in excess of $100,000 prior to giving written permission to the Contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of the Master Contract, (2) that nothing contained in the subcontract shall impair the rights of the State under the Master Contract, and (3) that nothing contained in the subcontract, nor under the Master Contract, shall be deemed to create any contractual relationship between the subcontractor and the State. In addition, subcontracts shall contain any other provisions which are required to be included in subcontracts pursuant to the terms herein.

3. If requested by the State, prior to executing a subcontract, the Contractor agrees to require the subcontractor to provide to the State the information the State needs to determine whether a proposed subcontractor is a responsible vendor.

4. If requested by the State, when a subcontract equals or exceeds $100,000, the subcontractor shall submit a Vendor Responsibility Questionnaire (Questionnaire).

5. If requested by the State, upon the execution of a subcontract, the Contractor shall provide detailed subcontract information (a copy of subcontract will suffice) to the State within fifteen (15) calendar days after execution. The State may request from the Contractor copies of subcontracts between a subcontractor and its subcontractor.

6. The Contractor shall require any and all subcontractors to submit to the Contractor all financial claims for Services or work to the State agency, as applicable, rendered and required supporting documentation and reports as necessary to permit Contractor to meet claim deadlines and documentation requirements as established in Attachment D (Payment and Reporting

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Schedule) and Section III. Subcontractors shall be paid by the Contractor on a timely basis after submitting the required reports and vouchers for reimbursement of services or work, as applicable. Subcontractors shall be informed by the Contractor of the possibility of non-payment or rejection by the Contractor of claims that do not contain the required information, and/or are not received by the Contractor by said due date.

C. Use Of Material, Equipment, Or Personnel:

1. The Contractor shall not use materials, equipment, or personnel paid for under the Master Contract for any activity other than those provided for under the Master Contract, except with the State's prior written permission.

2. Any interest accrued on funds paid to the Contractor by the State shall be deemed to be the property of the State and shall either be credited to the State at the close-out of the Master Contract or, upon the written permission of the State, shall be expended on additional services or work, as applicable, provided for under the Master Contract.

D. Property:

1. Property is real property, equipment, or tangible personal property having a useful life of more than one year and an acquisition cost of $1,000 or more per unit.

a) If an item of Property required by the Contractor is available as surplus to the State, the State at its sole discretion, may arrange to provide such Property to the Contractor in lieu of the purchase of such Property.

b) If the State consents in writing, the Contractor may retain possession of Property owned by the State, as provided herein, after the termination of the Master Contract to use for similar purposes. Otherwise, the Contractor shall return such Property to the State at the Contractor's cost and expense upon the expiration of the Master Contract.

c) In addition, the Contractor agrees to permit the State to inspect the Property and to monitor its use at reasonable intervals during the Contractor's regular business hours.

d) The Contractor shall be responsible for maintaining and repairing Property purchased or procured under the Master Contract at its own cost and expense. The Contractor shall procure and maintain insurance at its own cost and expense in an amount satisfactory to the State Agency, naming the State Agency as an additional insured, covering the loss, theft or destruction of such equipment.

e) A rental charge to the Master Contract for a piece of Property owned by the Contractor shall not be allowed.

f) The State has the right to review and approve in writing any new contract for the purchase of or lease for rental of Property (Purchase/Lease Contract) operated in connection with the provision of the services or work, as applicable, as specified in the Master Contract, if applicable, and any modifications, amendments, or extensions of an existing lease or purchase prior to its execution. If, in its discretion, the State disapproves of any

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Purchase/Lease Contract, then the State shall not be obligated to make any payments for such Property.

g) No member, officer, director or employee of the Contractor shall retain or acquire any interest, direct or indirect, in any Property, paid for with funds under the Master Contract, nor retain any interest, direct or indirect, in such, without full and complete prior disclosure of such interest and the date of acquisition thereof, in writing to the Contractor and the State.

2. For non-Federally-funded contracts, unless otherwise provided herein, the State shall have the following rights to Property purchased with funds provided under the Master Contract:

a) For cost-reimbursable contracts, all right, title and interest in such Property shall belong to the State.

b) For performance-based contracts, all right, title and interest in such Property shall belong to the Contractor.

3. For Federally funded contracts, title to Property whose requisition cost is borne in whole or in part by monies provided under the Master Contract shall be governed by the terms and conditions of Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

4. Upon written direction by the State, the Contractor shall maintain an inventory of all Property that is owned by the State as provided herein.

5. The Contractor shall execute any documents which the State may reasonably require to effectuate the provisions of this section.

E. Records and Audits:

1. *General*:

a) The Contractor shall establish and maintain, in paper or electronic format, complete and accurate books, records, documents, receipts, accounts, and other evidence directly pertinent to its performance under the Master Contract (collectively, Records).

b) The Contractor agrees to produce and retain for the balance of the term of the Master Contract, and for a period of six years from the later of the date of (i) the Master Contract and (ii) the most recent renewal of the Master Contract, any and all Records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under the Master Contract. Such Records may include, but not be limited to, original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

(i) personal service expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, cash and check disbursement records including copies of money orders and the like, vouchers and invoices, records of contract labor, any and all records listing payroll and the money value of non-cash advantages provided to employees, time cards, work schedules and logs, employee personal history folders,

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detailed and general ledgers, sales records, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(ii) payroll taxes and fringe benefits: cancelled checks, copies of related bank statements, cash and check disbursement records including copies of money orders and the like, invoices for fringe benefit expenses, miscellaneous reports and returns (tax and otherwise), and cost allocation plans, if applicable.

(iii) non-personal services expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.

(iv) receipt and deposit of advance and reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.

c) The OSC, AG and any other person or entity authorized to conduct an examination, as well as the State Agency or State Agencies involved in the Master Contract that provided funding, shall have access to the Records during the hours of 9:00 a.m. until 5:00 p.m., Monday through Friday (excluding State recognized holidays), at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

d) The State shall protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records, as exempt under Section 87 of the Public Officers Law, is reasonable.

e) Nothing contained herein shall diminish, or in any way adversely affect, the State's rights in connection with its audit and investigatory authority or the State's rights in connection with discovery in any pending or future litigation.

2. *Cost Allocation*:

a) For non-performance based contracts, the proper allocation of the Contractor's costs must be made according to a cost allocation plan that meets the requirements of OMB Circulars A-87, A-122, and/or A-21. Methods used to determine and assign costs shall conform to generally accepted accounting practices and shall be consistent with the method(s) used by the Contractor to determine costs for other operations or programs. Such accounting standards and practices shall be subject to approval of the State.

b) For performance based milestone contracts, or for the portion of the contract amount paid on a performance basis, the Contractor shall maintain documentation demonstrating that milestones were attained.

3. *Federal Funds*: For records and audit provisions governing Federal funds, please see Attachment A-2 (Federally Funded Grants and Requirements Mandated by Federal Laws).

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F. Confidentiality: The Contractor agrees that it shall use and maintain personally identifiable information relating to individuals who may receive services, and their families pursuant to the Master Contract, or any other information, data or records marked as, or reasonably deemed, confidential by the State (Confidential Information) only for the limited purposes of the Master Contract and in conformity with applicable provisions of State and Federal law. The Contractor (i) has an affirmative obligation to safeguard any such Confidential Information from unnecessary or unauthorized disclosure and (ii) must comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

G. Publicity:

1. Publicity includes, but is not limited to: news conferences; news releases; public announcements; advertising; brochures; reports; discussions or presentations at conferences or meetings; and/or the inclusion of State materials, the State's name or other such references to the State in any document or forum. Publicity regarding this project may not be released without prior written approval from the State.

2. Any publications, presentations or announcements of conferences, meetings or trainings which are funded in whole or in part through any activity supported under the Master Contract may not be published, presented or announced without prior approval of the State. Any such publication, presentation or announcement shall:

a) Acknowledge the support of the State of New York and, if funded with Federal funds, the applicable Federal funding agency; and

b) State that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretations or policy of the State or if funded with Federal funds, the applicable Federal funding agency.

3. Notwithstanding the above, (i) if the Contractor is an educational research institution, the Contractor may, for scholarly or academic purposes, use, present, discuss, report or publish any material, data or analyses, other than Confidential Information, that derives from activity under the Master Contract and the Contractor agrees to use best efforts to provide copies of any manuscripts arising from Contractor's performance under this Master Contract, or if requested by the State, the Contractor shall provide the State with a thirty (30) day period in which to review each manuscript for compliance with Confidential Information requirements; or (ii) if the Contractor is not an educational research institution, the Contractor may submit for publication, scholarly or academic publications that derive from activity under the Master Contract (but are not deliverable under the Master Contract), provided that the Contractor first submits such manuscripts to the State forty-five (45) calendar days prior to submission for consideration by a publisher in order for the State to review the manuscript for compliance with confidentiality requirements and restrictions and to make such other comments as the State deems appropriate. All derivative publications shall follow the same acknowledgments and disclaimer as described in Section IV(G)(2) (Publicity) hereof.

H. Web-Based Applications-Accessibility: Any web-based intranet and Internet information and applications development, or programming delivered pursuant to the Master Contract or procurement shall comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility

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Web-Based Information and Applications, and New York State Enterprise IT Standard NYS-S08-005, Accessibility of Web-Based Information Applications, as such policy or standard may be amended, modified or superseded, which requires that State Agency web-based intranet and Internet information and applications are accessible to person with disabilities. Web content must conform to New York State Enterprise IT Standards NYS-S08-005, as determined by quality assurance testing. Such quality assurance testing shall be conducted by the State Agency and the results of such testing must be satisfactory to the State Agency before web content shall be considered a qualified deliverable under the Master Contract or procurement.

I. Non-Discrimination Requirements: Pursuant to Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex (including gender expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that the Master Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under the Master Contract. The Contractor shall be subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 of the Labor Law.

J. Equal Opportunities for Minorities and Women; Minority and Women Owned Business Enterprises: In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if the Master Contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting State Agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting State Agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting State Agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Contractor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is Contractor's equal employment opportunity policy that:

1. The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

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2. The Contractor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts;

3. The Contractor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

4. At the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative shall not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative shall affirmatively cooperate in the implementation of the Contractor's obligations herein; and

5. The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants shall be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall include the provisions of subclauses 1 – 5 of this Section (IV)(J), in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (Work) except where the Work is for the beneficial use of the Contractor. Section 312 of the Executive Law does not apply to: (i) work, goods or services unrelated to the Master Contract; or (ii) employment outside New York State. The State shall consider compliance by the Contractor or a subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The State shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the State shall waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

K. Omnibus Procurement Act of 1992: It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises, as bidders, subcontractors and suppliers on its procurement contracts.

1. If the total dollar amount of the Master Contract is greater than $1 million, the Omnibus Procurement Act of 1992 requires that by signing the Master Contract, the Contractor certifies the following:

a) The Contractor has made reasonable efforts to encourage the participation of State business enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

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b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

c) The Contractor agrees to make reasonable efforts to provide notification to State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of the Master Contract and agrees to cooperate with the State in these efforts.

L. Workers' Compensation Benefits:

1. In accordance with Section 142 of the State Finance Law, the Master Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of the Master Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

2. If a Contractor believes they are exempt from the Workers Compensation insurance requirement they must apply for an exemption.

M. Unemployment Insurance Compliance: The Contractor shall remain current in both its quarterly reporting and payment of contributions or payments in lieu of contributions, as applicable, to the State Unemployment Insurance system as a condition of maintaining this grant.

The Contractor hereby authorizes the State Department of Labor to disclose to the State Agency staff only such information as is necessary to determine the Contractor's compliance with the State Unemployment Insurance Law. This includes, but is not limited to, the following:

1. any records of unemployment insurance (UI) contributions, interest, and/or penalty payment arrears or reporting delinquency;

2. any debts owed for UI contributions, interest, and/or penalties;

3. the history and results of any audit or investigation; and

4. copies of wage reporting information.

Such disclosures are protected under Section 537 of the State Labor Law, which makes it a misdemeanor for the recipient of such information to use or disclose the information for any purpose other than the performing due diligence as a part of the approval process for the Master Contract.

N. Vendor Responsibility:

1. If a Contractor is required to complete a Questionnaire, the Contractor covenants and represents that it has, to the best of its knowledge, truthfully, accurately and thoroughly completed such Questionnaire. Although electronic filing is preferred, the Contractor may

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obtain a paper form from the OSC prior to execution of the Master Contract. The Contractor further covenants and represents that as of the date of execution of the Master Contract, there are no material events, omissions, changes or corrections to such document requiring an amendment to the Questionnaire.

2. The Contractor shall provide to the State updates to the Questionnaire if any material event(s) occurs requiring an amendment or as new information material to such Questionnaire becomes available.

3. The Contractor shall, in addition, promptly report to the State the initiation of any investigation or audit by a governmental entity with enforcement authority with respect to any alleged violation of Federal or state law by the Contractor, its employees, its officers and/or directors in connection with matters involving, relating to or arising out of the Contractor's business. Such report shall be made within five (5) business days following the Contractor becoming aware of such event, investigation, or audit. Such report may be considered by the State in making a Determination of Vendor Non-Responsibility pursuant to this section.

4. The State reserves the right, in its sole discretion, at any time during the term of the Master Contract:

a) to require updates or clarifications to the Questionnaire upon written request;

b) to inquire about information included in or required information omitted from the Questionnaire;

c) to require the Contractor to provide such information to the State within a reasonable timeframe; and

d) to require as a condition precedent to entering into the Master Contract that the Contractor agree to such additional conditions as shall be necessary to satisfy the State that the Contractor is, and shall remain, a responsible vendor; and

e) to require the Contractor to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. By signing the Master Contract, the Contractor agrees to comply with any such additional conditions that have been made a part of the Master Contract.

5. The State, in its sole discretion, reserves the right to suspend any or all activities under the Master Contract, at any time, when it discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the State issues a written notice authorizing a resumption of performance under the Master Contract.

6. The State, in its sole discretion, reserves the right to make a final Determination of Non-Responsibility at any time during the term of the Master Contract based on:

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a) any information provided in the Questionnaire and/or in any updates, clarifications or amendments thereof; or

b) the State's discovery of any material information which pertains to the Contractor's responsibility.

7. Prior to making a final Determination of Non-Responsibility, the State shall provide written notice to the Contractor that it has made a preliminary determination of non- responsibility. The State shall detail the reason(s) for the preliminary determination, and shall provide the Contractor with an opportunity to be heard.

O. Charities Registration: If applicable, the Contractor agrees to (i) obtain not-for-profit status, a Federal identification number, and a charitable registration number (or a declaration of exemption) and to furnish the State Agency with this information as soon as it is available, (ii) be in compliance with the OAG charities registration requirements at the time of the awarding of this Master Contract by the State and (iii) remain in compliance with the OAG charities registration requirements throughout the term of the Master Contract.

P. Consultant Disclosure Law:[9] If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal, or similar services, then in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

Q. Wage and Hours Provisions: If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

[9] Not applicable to not-for-profit entities.

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ATTACHMENT A-1
AGENCY SPECIFIC TERMS AND CONDITIONS
CERTIFIED LOCAL GOVERNMENT SUBGRANTS

A. The **Program Office, Designated Payment Office** and **Designated Refund Office** shall be the STATE AGENCY identified on the face page.

B. For purposes of notice, the **Contractor's designee** shall be the CONTRACTOR DOS (Department of State) INCORPORATED NAME at the CONTRACTOR PRIMARY MAILING ADDRESS, as identified on the face page.

C. **Payment** shall be made to CONTRACTOR SFS PAYEE NAME at the CONTRACTOR PAYMENT ADDRESS identified on the Face Page.

D. The **Assigned State Staff** referred to in this Attachment can be reached at:

By U.S. Mail to:
Daniel McEneny
Division for Historic Preservation
Peebles Island
PO Box 189
Waterford, New York 12188-0189

For Physical Delivery:
Daniel McEneny
Division for Historic Preservation
Peebles Island
10 Delaware Avenue, North
Cohoes, NY 12047

Phone: (518) 268-2162
Fax: (518) 233-9049
Email: daniel.mceneny@parks.ny.gov

E. **Changes to Budget and Program Work Plan.** Changes shall not be made in the work described in Attachment C (Work Plan) or the proposed expenditure of funds as shown in Attachment B (Budget), without the prior written approval of the State. Such approval will be granted if the changes are not substantive and do not alter the scope, intent or basic elements of the contract. Changes in the Work Plan or Budget that are substantive or alter the scope, intent or basic elements of the contract, if agreed to by the State, will be implemented by an amendment that may require approval and filing with the New York Attorney General Contract Approval Unit (AG) and the Office of the State Comptroller (OSC or State Comptroller), per Section I (B) of this Master Contract.

F. **Procurement**. All goods and services required for this project must be procured in a manner so as to assure the prudent and economical use of grant moneys, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption.

1. If the Contractor is subject to General Municipal Law, documentation of the Contractor's compliance with the procurement and bidding requirements of General Municipal Law shall be included with the applicable request for reimbursement.

2. If the total amount of the goods or services is less than the dollar threshold for competitive bidding, or if the Contractor is not subject to General Municipal Law, the Contractor must follow procurement procedures designed to achieve the purpose of this clause. Such procedures may include, but are not limited to: competitive bidding, the solicitation of three price quotes, written requests for proposals, etc. When submitting a request for reimbursement, the Contractor must include a copy of the organizational procurement policy applicable to the relevant expenditures and/or documentation of the specific procurement process used for those expenditures.

G. The Contractor and all users of this contract are strongly encouraged, to the maximum extent practicable and consistent with legal requirements, to use responsible and responsive **New York State businesses** as subcontractors, suppliers, and in other supporting roles. The Contractor will be required to identify and

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describe New York State businesses used and the value of subcontracts and supply contracts.

H. Providing **equal employment opportunities** for minority group members and women ("EEO") and **contracting opportunities** for certified minority and women-owned business enterprises ("MWBEs") are a priority of the State of New York. In addition to the requirements set forth in Section IV(J) of this Master Contract, the Contractor shall take affirmative steps to expand opportunities for New York State certified MWBE firms and/or for businesses preferenced by federal programs, as specified below.

I. Non-Discrimination:

1. If the project involves development of public facilities, the Contractor shall not limit access or discriminate in the operation of the facilities on the basis of place of residence, race, creed, color, national origin, sex, age, disability or marital status.
2. The Contractor agrees to comply with all applicable Federal, State, and local Civil Rights and Human Rights laws with reference to equal employment opportunities and the provisions of service.

J. It is the Contractor's responsibility, pursuant to Sections 57 and 220(8) of the Workers' Compensation Law, to maintain for State audit and review either proof that they have **Workers' Compensation and Disability Benefits Insurance** coverage for any employees, or proof of exemption from the New York State Workers' Compensation Board. The Contractor must also obtain from any contractor or subcontractor hired to provide a service pursuant to this Master Contract, similar proof or waivers from the contractor or subcontractor, and must maintain such documentation on file for audit.

K. Planning Requirements.

1. All planning documents, plans and specifications must be accepted by the State before the Contractor awards contracts for the project or the subject property. These must be prepared by a qualified professional accepted by the State.
2. Any documents developed under this Master Contract shall acknowledge Certified Local Government funding under an Historic Preservation Fund grant from the National Park Service, U.S. Department of the Interior, administered by the NYS Office of Parks, Recreation and Historic Preservation.

L. Termination. In addition to the options available to the State in the Master Contract, in the event the Contractor fails to comply with its terms and conditions regarding completion of the project, the State at its option may require the Contractor to bring the project to a point of educational/interpretive, historical, and/or recreational usefulness determined by the State.

M. Documents submitted to the State may be subject to disclosure under the **Freedom of Information Law.**

N. Non-Sectarian Purposes. The Contractor agrees that funds made available as shown in Attachment B will only be used to achieve the intended public benefit and will not be used for any sectarian purposes.

O. International Boycott Prohibition. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (§2NYCRR 105.4).

P. Prohibition on Purchase of Tropical Hardwoods. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the

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specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime contractor for the project will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive.

Q. MacBride Fair Employment Principles. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

R. Procurement Lobbying. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§139-j and 139-k, by signing this agreement the Contractor certifies and affirms that all disclosures made in accordance with §§139-j and 139-k are complete, true and accurate. In the event, such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

S. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors. To the extent this agreement is a contract as defined by Tax Law §5-a, if the Contractor fails to make the certification required by Tax Law §5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law §5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

T. Iran Divestment Act. By entering into this Agreement, each Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012."

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

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U. Archeology. In the event of any unanticipated archeological discoveries, the Contractor shall stop all work and notify the State immediately. Work shall not resume until the State determines how any previously undiscovered archeological remains will be treated. Special attention shall be given to any discovery of burials, graves, or human remains.

V. Preservation of Historic Properties. It is the public policy and in the public interest of the State to preserve New York's historical, archeological, architectural and cultural heritage. All activities under this Master Contract shall be reviewed under either Section 106 of the National Historic Preservation Act or Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law to ensure that adverse effects or impacts on significant properties are avoided or mitigated. Any work that affects historic properties shall conform to *The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995, The Secretary of the Interior's Standards and Guidelines for Archeological Documentation* or any other applicable *Secretary of the Interior's Standards* (collectively referenced as *STANDARDS*), which are available from the State.

W. Post-Completion Requirements. Following completion of the project, the Contractor shall be responsible for maintaining project records for a period of six years after the grant is closed out. Where the project involves improvement of real property, the Contractor shall be responsible for maintaining and operating the property and improvements; providing public access; maintaining public signage related to the project; and seeking any required State approvals. The State shall have the right and responsibility to audit records and inspect the project and property for compliance.

X. Admissibility of Reproduction of Contract. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

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ATTACHMENT A-2
PROGRAM SPECIFIC TERMS AND CONDITIONS
CERTIFIED LOCAL GOVERNMENT SUBGRANTS

I. Program Specific Terms and Conditions

A. Funding. Funding for grants to Certified Local Governments comes from the Historic Preservation Fund (HPF), a Federal grants program appropriated by the U.S. Congress and administered by the National Park Service (NPS), which provides financial support to State Preservation Offices (SHPOs). In New York State, the SHPO is the Office of Parks, Recreation and Historic Preservation (OPRHP). OPRHP administers the HPF funding, setting aside 10% of its annual HPF allocation for pass-through grants to eligible Certified Local Governments. HPF funds are subject to both federal and state requirements, as set forth below.

B. Performance Standards. The scope of work and products for this project shall be as described and cannot be changed without prior written approval from the State. Work must be completed according to the timetable set forth below and products must meet all accepted professional standards, including the Secretary of the Interior's "Standards and Guidelines for Archaeology and Historic Preservation," as published in the Federal Register, Thursday, September 29, 1983 (48 FR 44716-28) and subsequently updated (http://www.nps.gov/history/local-law/arch_stnds_0.htm) and must be conducted or supervised and reviewed by persons who meet the professional qualifications for the appropriate discipline, as specified in 36 CFR 61. Final products that do not conform to the terms and conditions of this Master Contract or that do not meet the applicable Secretary of the Interior's "Standards" will not be reimbursed.

C. Equipment. Grant expenditures for purchase of any equipment with an individual unit cost of more than $5,000 must have advance authorization from the State and the National Park Service. The Contractor must maintain a property inventory and comply with federal property management requirements of OMB Circular A-102 for all equipment purchased with grant funds.

II. Requirements of the National Park Service, United States Department of the Interior

A. NPS-49. The Contractor shall conform with the policies and procedures set forth in the *Historic Preservation Fund Grants Manual*, available at: https://www.nps.gov/preservation-grants/manual/HPF_Manual.pdf

1. **Fiscal Management.** In addition to the terms detailed in this Master Contract, all Federal requirements governing grants including administrative and audit provisions set forth in 2 CFR Part 200, Subpart F are applicable, in particular Subpart E for the determination of allowable costs and Subpart F for audit requirements.

2. **Audit Requirements.** If the Contractor expends more than $750,000 of Federal funds (from all sources), the Contractor must obtain and submit an audit of grant expenditure records performed in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and 2 CFR Part 200, Subpart F. Non-Federal entities that expend less than $750,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the National Park Service, the General Accounting Office and the State.

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B. Personnel. Primary project personnel must demonstrate requisite experience and training in historic preservation to meet the professional qualifications set forth in the Code of Federal Regulations 36 CFR Part 61, Appendix A. Professional services and subcontracts must be procured in compliance with Federal competitive procurement requirements. Documentation of the competitive selection process, along with its justification and resume(s) for consultant(s) selected for grant-assisted work must be submitted to the State for approval.

C. Consultant Requirements. Neither employees of the Contractor or consultants hired by the Contractor who work directly or indirectly on the activities described in this Master Contract shall do any of the following:

1. Use his or her position for the actual or apparent purpose of private gain for him or herself or for another person, other than payment for services rendered, or

2. Convey inside information to any person for the purpose of private gain for his or herself or for another person, when that information has not become part of the body of public information, and would not be available upon request, or

3. Engage in teaching, lecturing or writing that is dependent on information obtained as a result of his or her activities under this contract, except when that information has been made available to the general public, or will be made available upon request, or with the written authorization of the State.

D. Intangible Property:

1. The Contractor hereby awards to the State, the United States of America and their officers, agents and employees, when acting within the scope of their official duties, a royalty-free non-exclusive and irrevocable license, to publish, translate, reproduce and use and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all data and copyrightable material first produced or composed under this Master Contract by the Contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material. Unless other arrangements are specified in this Master Contract,

   a) the product of all services performed pursuant to this Master Contract shall be placed in the public domain by the State and the Contractor, except that information locating historical and archeological sites shall be restricted as necessary to protect the sites from unauthorized investigation, and

   b) project products other than publications shall be made available to the public at a cost not to exceed the actual cost of reproduction.

2. The Contractor shall not include any copyrighted matter in any product resulting from this Master Contract without proper acknowledgement of its source. Subject data shall not be used without written approval of the copyright owner, including permission for Government use as noted above.

3. If any discovery or invention arises or is developed in the course of grant-assisted research, developmental, experimental, or demonstration work, the Contractor shall immediately notify the State and the National Park Service of such fact. The NPS will determine whether protection on the invention or discovery will be sought and how the rights

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

in the invention or discovery, including any rights under any patent issued thereon, will be allocated and administered in order to protect the public interest.

4. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, no party will unilaterally publish a joint publication without consulting the other party and in all cases proper credit will be given to the efforts of those parties' contribution to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion. This restriction does not apply to popular publications of previously published technical matter.

E. Deliverables and Publications

1. Deliverables/publications include but are not limited to: grant project reports; books, pamphlets, brochures or magazines; video or audio files; documentation f events, including programs, invitations and photos, websites, mobile apps, exhibits and interpretive signs.

2. **Acknowledgement**. Any publication or deliverable resulting from the services performed pursuant to this Master Contract, including publication of any material based on, or developed under, any activity supported by this grant, shall contain the following credit line acknowledging federal support and nondiscrimination:

"This material was produced with assistance from the Historic Preservation Fund, administered by the National Park Service, Department of the Interior. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views or policies of the Department of the Interior.

This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as amended, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, disability, or age in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to: Office of Equal Opportunity, National Park Service, 1849 C Street, N.W., Washington, D.C. 20240"

3. Three copies of all publications and videos funded by this grant must be submitted to the State with the Final Report.

4. In addition to the requirement above, one digital copy of each deliverable r publication/deliverable must be furnished to the State for submission to the NPS.

a) Refer to the supplemental guidance document "Digital Copies of Grant Products Worksheet" for instructions on creating, naming, and submitting digital copies of deliverables/publications.

b) All consultants hired by the Contractor must be informed of this requirement.

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F. Rights in Data. The Contractor must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.

G. Nondiscrimination. All activities pursuant to this Master Contract shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended; Title V, Section 504 of the Rehabilitation Act of 1973, as amended;the Age Discrimination Act of 1975, as amended; and with all other federal laws and regulations prohibiting discrimination on grounds race, color, sexual orientation, national origin, disabilities, religion, age, or sex and the Americans with Disabilities Act, which prohibits discrimination against individuals with disabilities.

1. In executing this Master Contract, the Contractor agrees to comply with these laws and all requirements imposed by or pursuant to the associated Department of the Interior regulations. Execution of the Master Contract constitutes the Contractor's assurance that it will take immediate measures to effectuate this Master Contract and that the assurance will remain in effect for the period during which the federal financial assistance is extended to it.

2. In particular, the Contractor must assure that:

- the historic preservation program receiving federal funding evidences overall compliance with the nondiscrimination statutes; specifically, that it considers the role of all segments of the population in the history, archaeology, architecture, and cultural development of the community;
- the public is provided with nondiscrimination information, including information regarding the right to file a complaint, with particular consideration given to informing non-English speaking populations or those with communication impairment;
- discrimination complaints are forwarded to the appropriate agencies within the mandated timeframes;
- appointed planning and advisory bodies associated with the program involve participation by minority and handicapped persons;
- the program is operated in cooperation with private individuals and organizations representing the interests of minority and handicapped populations;
- minority and handicapped individuals have full accessibility to federally assisted activities and services; and
- qualified handicapped persons are being treated in a nondiscriminatory fashion in employment.

H. Procurement Procedures.

It is a national policy to place a fair share of purchases with minority business firms. The Contractor shall make positive efforts to use small businesses, minority-owned firms, and women's business enterprises, whenever possible, taking all of the following steps to further this goal:

a) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

b) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

c) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

d) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

e) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

I. Equal Employment Opportunity. The Contractor must comply with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60), including the reporting requirements set forth in 41 CFR 60-1.7. A provision requiring such compliance must be included in any subcontracts the Contractor awards in excess of $10,000.

J. Lobbying.

1. No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt. or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its Departments or agencies from communicating to any such Members or officials, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business. or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities.

2. In addition to the above, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply: No Federal appropriated funds will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

K. Debarment and Suspension (E.O.s 12549 and 12689). No contracts shall be made to parties listed on the General Services Administration's SAM Exclusions in accordance with E.O.s 12549 and 12689 and 2 CFR Parts 180 and 1400 "Non-Procurement Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding their exclusion status and that of their principals.

L. Buy American Act Requirements. In the case of any equipment or product that may be authorized to be purchased with financial assistance provided under this Master Contract, the Contractor should purchase only American-made equipment and products. Pursuant to Section 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, the Contractor agrees to follow the requirements in 43 CFR Part 12, Subpart E, Buy American Requirements for Assistance Programs.

M. Insurance.

1. The Contractor and any subcontractors shall (1) obtain liability insurance or (2) demonstrate present financial resources in an amount determined sufficient by the State to cover claims brought by third parties for death, bodily injury, property damage, or other loss resulting from one or more identified activities carried out in connection with this Agreement.

2. Insured. The United States, the National Park Service, the People of the State of New York, OPRHP and its officers, employees and representatives shall be named as an additional insured under the Contractor's or subcontractor's insurance policies.

3. Indemnification. The Contractor and any subcontractor shall indemnify the United States, NPS and the State from any act or omission of the contractor or subcontractor, its officers, employees, or (members, participants, agents, representatives, agents as appropriate), (1) against third party claims for damages arising from one or more identified activities carried out in connection with this Agreement and (2) for damage or loss to government property resulting from such an activity. This obligation shall survive the termination of this Agreement.

a) The Contractor and any subcontractors shall purchase public and employee liability insurance at their own expense from a responsible company or companies with a minimum limitation of one million dollars ($1,000,000) per person for any one claim, and an aggregate limitation of three million dollars ($3,000,000) for any number of claims arising from any one incident. The policies shall specify that the insured shall have no right of subrogation against the United States, NPS or the State for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk

b) The Contractor and any subcontractors shall pay the United States the full value for all damage to the lands or other property of the United States caused by the contractor's or sub-contractor's officers, employees, or representatives.

c) The Contractor and any subcontractors shall provide workers' compensation and disability insurance. Insurance coverage shall be provided only by an insurance

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

carrier rated A- Class VII or better throughout the term of this Cooperative Agreement.

d) All insurance policies and certificates shall name as additional insured "the People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, their officers, agents and employees, the United States and the National Park Service." Designating these entities as "certificate holders" shall not constitute compliance.

e) The Contractor and any subcontractors shall cooperate with NPS or the State in the investigation and defense of any claims that may be filed with NPS or the State arising out of the contractor's or subcontractor's activities of the State, its agents, and employees.

N. Conflict of Interest. The Contractor must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the Contractor's ability to provide impartial, technically sound, and objective performance under or with respect to this agreement. The Contractor must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. Any conflict of interest that is known or identified during the life of this agreement must be disclosed in writing to the National Park Service's Financial Assistance Officer, who will evaluate the conflict and, as necessary, develop an appropriate means for resolving it.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

SUMMARY

PROJECT NAME: Preservation Day

CONTRACTOR SFS PAYEE NAME: AMHERST TOWN OF

CONTRACT PERIOD: From: 10/01/2019

To: 09/30/2021

CATEGORY OF EXPENSE	GRANT FUNDS	MATCH FUNDS	MATCH %	OTHER FUNDS	TOTAL
1. Personal Services					
a) Salary	$0.00	$2,880.00	0 %	$0.00	$2,880.00
b) Fringe	$0.00	$1,120.00	0 %	$0.00	$1,120.00
Subtotal	$0.00	$4,000.00	0 %	$0.00	$4,000.00
2. Non Personal Services					
a) Contractual Services	$3,850.00	$0.00	0 %	$0.00	$3,850.00
b) Travel	$0.00	$0.00	0 %	$0.00	$0.00
c) Equipment	$0.00	$0.00	0 %	$0.00	$0.00
d) Space/Property & Utilities	$3,500.00	$0.00	0 %	$0.00	$3,500.00
e) Operating Expenses	$0.00	$0.00	0 %	$0.00	$0.00
f) Other	$2,650.00	$8,360.00	315 %	$0.00	$11,010.00
Subtotal	$10,000.00	$8,360.00	83 %	$0.00	$18,360.00
TOTAL	$10,000.00	$12,360.00	123 %	$0.00	$22,360.00

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

ATTACHMENT B-1 EXPENDITURE BASED BUDGET

PERSONAL SERVICES DETAIL

SALARY					
POSITION TITLE	**ANNUALIZED SALARY PER POSITION**	**STANDARD WORK WEEK (HOURS)**	**PERCENT OF EFFORT FUNDED**	**NUMBER OF MONTHS FUNDED**	**TOTAL**
State & Federal Grant Administrator	$60,000.00				$1,200.00
Economic Development Director	$88,000.00				$1,408.00
Senior Planner	$64,000.00				$192.00
Town Councilperson	$35,000.00				$80.00
				Subtotal	$2,880.00
TOTAL FRINGE					
					$1,120.00
				PERSONAL SERVICES TOTAL	$4,000.00

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

CONTRACTUAL SERVICES - TYPE/DESCRIPTION	TOTAL
Workshops & Support	$3,850.00
TOTAL	$3,850.00

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

ATTACHMENT B-1 - EXPENDITURE BASED BUDGET
NON-PERSONAL SERVICES DETAIL

TRAVEL - TYPE/DESCRIPTION	TOTAL
TOTAL	

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

SPACE/PROPERTY EXPENSES: RENT - TYPE/DESCRIPTION	TOTAL
Facilities & Tent Rental	$3,500.00
TOTAL	$3,500.00

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

OTHER - TYPE/DESCRIPTION	TOTAL
Volunteer Labor	$8,360.00
Supplies - Banners, Brochures	$2,650.00
TOTAL	$11,010.00

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

ATTACHMENT C - WORK PLAN

SUMMARY

PROJECT NAME: Preservation Day

CONTRACTOR SFS PAYEE NAME: AMHERST TOWN OF

CONTRACT PERIOD: From: 10/01/2019

To: 09/30/2021

Project Summary: A high-level overview of the project, including the overall goal and desired outcomes.

The Amherst Historic Preservation Commission has teamed up with Preservation Buffalo Niagara and the Buffalo Niagara Heritage Village to develop a Preservation Day program for the Buffalo Niagara Region. The event will take place on August 7, 2021 at the Buffalo Niagara Heritage Village in Amherst NY, which boarders both Erie and Niagara counties strategically targeting a wider audiences. This collaborative approach will maximize marketing, resources, and contact lists to reach attendees goals. The grant also includes community-wide professional preservation training workshops and marketing tools.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

ATTACHMENT C - WORK PLAN

DETAIL

Objective	
1	Host Preservation Day Event - On August 7, 2021, Preservation Day at Buffalo Niagara Heritage Village will take place.

Tasks	
1.1	Schedule Workshops, Tours & Support Services - Coordinate tasks for Preservation Day event.

Performance Measures

1.1.1 Collect and interpret attendance data for Preservation Day Event - Capture data regarding Preservation Day event.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

ATTACHMENT D

PAYMENT AND REPORTING SCHEDULE

I. **PAYMENT PROVISIONS**

In full consideration of contract services to be performed the State Agency agrees to pay and the Contractor agrees to accept a sum not to exceed the amount noted on the Face Page hereof. All payments shall be in accordance with the budget contained in the applicable Attachment B form (Budget), which is attached hereto.

A. Advance Payment, Initial Payment and Recoupment Language (if applicable):

1. The State Agency will make an advance payment to the Contractor, during the initial period, in the amount of ___ percent (___%) the budget as set forth in the most recently approved applicable Attachment B form (Budget).

2. The State Agency will make an initial payment to the Contractor in the amount of ___ percent (___%) of the annual budget as set forth in the most recently approved applicable Attached B form (Budget). This payment will be no later than ___ days from the beginning of the budget period.

3. Scheduled advance payments shall be due in accordance with an approved payment schedule as follows:

Period	Amount	Due Date

4. Recoupment of any advance payment(s) or initial payment(s) shall be recovered by crediting (___%) of subsequent claims and such claims will be reduced until the advance or initial payment is fully recovered within the contract period.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

B. Interim and/or Final Claims for Reimbursement

Claiming Frequency: Milestone/Performance Reimbursement

Number of Days/Claims: 1

For Quarterly, Monthly and Biannual Reimbursement Claim Frequency, the above field represents the number of days after the claim period that the claim is due to the State from the Grantee.

For Interim Reimbursement as Requested by Contractor the Number of Days/Claims is not applicable.

For all other selected Claim Frequency, the Number of Days/Claims represents the number of claims due under the contract and listed in the table below.

Expenditure Period Dates		Due Date
From	To	
10/01/2019	09/30/2021	11/01/2020

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State

II. REPORTING PROVISIONS

A. Expenditure-Based Reports (select the applicable report type):

[X] Narrative/Qualitative Report

The Contractor will submit, on a quarterly basis, not later than 30 days from the end of the quarter, the report described in Section III(G)(2)(a)(i) of the Master Contract

[ ] Statistical/Quantitative Report

The Contractor will submit, on a quarterly basis, not later than ___ days from the end of the quarter, the report described in Section III(G)(2)(a)(ii) of the Master Contract.

[ ] Expenditure Report

The Contractor will submit, on a quarterly basis, not later than ___ days after the end date for which reimbursement is being claimed, the report described in Section III(G)(2)(a)(iii) of the Master Contract.

[X] Final Report

The Contractor will submit the final report as described in Section III(G)(2)(a)(iv) of the Master Contract, no later than 60 days after the end of the contract period.

[ ] Consolidated Fiscal Report (CFR) [1]

The Contractor will submit the CFR on an annual basis, in accordance with the time frames designated in the CFR manual. For New York City contractors, the due date shall be May 1 of each year; for Upstate and Long Island contractors, the due date shall be November 1 of each year.

[1] The Consolidated Fiscal Reporting System is a standardized electronic reporting method accepted by Office of Alcoholism & Substance Services, Office of Mental Health, Office of Persons with Developmental Disabilities and the State Education Department, consisting of schedules which, in different combinations, capture financial information for budgets, quarterly and/or mid-year claims, an annual cost report, and a final claim. The CFR, which must be submitted annually, is both a year-end cost report and a year-end claiming document.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

B. Progress-Based Reports

1. Progress Reports

The Contractor shall provide the report described in Section III(G)(2)(b)(i) of the Master Contract in accordance with the forms and in the format provided by the State Agency, summarizing the work performed during the contract period (See Table 1 below for the annual schedule).

2. Final Progress Report

Final scheduled payment will not be due until ___ days after completion of agency's audit of the final expenditures report/documentation showing total grant expenses submitted by vendor with its final invoice. Deadline for submission of the final report is ___. The agency shall complete its audit and notify vendor of the results no later than ___. The Contractor shall submit the report not later than ___ days from the end of the contract.

C. Other Reports

The Contractor shall provide reports in accordance with the form, content and schedule as set forth in Table 1.

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

TABLE 1 - REPORTING SCHEDULE

OTHER REPORT #	PERIOD COVERED		Due Date
1	10/01/2019	09/30/2020	11/01/2020
2	10/01/2020	02/01/2021	02/15/2021
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

III. SPECIAL PAYMENT AND REPORTING PROVISIONS

Attachment: OPRHP_original_contract (RES-2021-806 : Town of Amherst Agreement with New York State Office of Parks, Recreation & Historic

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Senior Services
Initiated by: **Brian Bray**
Co-Sponsored by:

DOC ID: 24701 **RESOLUTION 2021-807** **ADOPTED**

Senior Center Software - Xavus Soulutions, LLC (CRS ID # 2853)

Authorize the Supervisor to sign a contract between the Town of Amherst (Senior Services Department) and Xavus Soulutions, LLC (DBA MySeniorCenter) for a software licensing/maintenance agreement from September 27, 2021 to September 26, 2023. As this is a software only agreement, we are requesting a waiver of the insurance requirement.

9/13/2021
Consent

FINANCIAL IMPACT:

A6772-4110: $2400 (Annually)

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

Xavus Solutions
PO Box 55071 #30713
Boston, MA 02205-5071
5088344113
tina@myseniorcenter.com

INVOICE

BILL TO
Brian Bray
Town of Amherst
Purchasing Department - 2nd Floor
5583 Main Street
Williamsville, NY 14221

SHIP TO
Brian Bray
Town of Amherst
Amherst Senior Center
370 John James Audubon
Amherst, NY 14228

INVOICE # 17875
DATE 10/03/2021
DUE DATE 10/03/2021
TERMS Due Upon Receipt

DESCRIPTION	QTY	RATE	AMOUNT
MySeniorCenter - Annual Upgrades, Maintenance & Support for staff system software and first touchscreen software. The fee covers the database license, security for the staff system and application/cloud hosting. It also entitles you to: • Access to our technical support team via telephone, email and web between 8:30 am and 8:30 pm ET • Generally available product updates pushed out automatically • Nightly database back-up services • Periodic web-based refresher training	1	1,800.00	1,800.00
MySeniorCenter - Annual Upgrades, Maintenance & Support for 2nd touchscreen software	1	300.00	300.00
MySeniorCenter - Annual Upgrades, Maintenance & Support for 3rd touchscreen software	1	300.00	300.00
MySeniorCenter - Annual Upgrades, Maintenance & Support for 4th touchscreen software	1	300.00	300.00
Voice Connect PREMIUM 1 year - unlimited calls; allows for Center's number to show on caller id when using the service. Also includes access to text/SMS broadcast function. This is an annual fee	1	300.00	300.00
Discount - Sponsor-based model	1	-600.00	-600.00

Please make check payable to:
Xavus Solutions
PO Box 55071 #30713
Boston, MA 02205-5071

BALANCE DUE **$2,400.00**

To pay by credit card call 508-834-4113
Tax ID # 20-3434634

All prices are in USD unless otherwise stated.

Attachment: Agreement MSC (RES-2021-807 : Senior Center Software - Xavus Soulutions, LLC (CRS ID # 2853))

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Senior Services
Initiated by: **Melissa Abel**
Co-Sponsored by:

DOC ID: 24723 **RESOLUTION 2021-808** **ADOPTED**

Presenter/Performer Commitment Form - Hawk Creek Wildlife CRS #2858

We respectfully request Town Board permission to authorize the Supervisor to sign the Presenter/Performer Commitment Form between the Town of Amherst (Department of Senior Services) and Hawk Creek Wildlife for a presentation on September 24, 2021. Fee per event is $225.00.

9/13/2021
Consent

FINANCIAL IMPACT:

Cost of $225.00 per event will be charged to A6772-4090

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

TOWN OF AMHERST

PRESENTER/PERFORMER COMMITMENT FORM

Amherst Center for Senior Services
370 John James Audubon Pkwy.
Amherst NY 14228

Presenter/Performer Name: Hawk Creek Wildlife

Payment/Check payable to: Hawk Creek Wildlife

Address: 1963 Mill Road

West Falls, NY 14170

Program (and any Future Events) : Open House

This is a 5 **year contract.**

Start Date: 9/24/2021 **/ Date executed below by the Center Director**

End Date: 9/24/2026

Cost Per Event: $225.00

Hawk Creek Wildlife, **agrees to indemnify and hold the Town of Amherst harmless for any charges, damages, or liability resulting directly or indirectly from the negligence or culpable conduct of the instructor, its agents and/or employees and to release the Town of Amherst and its employees, agents, districts, commissions, and boards from liability arising from the performance of this agreements.**

Presenter/Performer Signature	8/9/21 Date
Brian J. Kulpa, Supervisor, Town of Amherst	Date

Equipment Request Form

Please **"X"** below any equipment you may need for your event:

Attachment: hawk creek-08242021110951-0001 (RES-2021-808 : Presenter/Performer Commitment Form - Hawk Creek Wildlife CRS#2858)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 24706 **RESOLUTION 2021-809** **ADOPTED**

Lease Agreement CRS#2855

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and 716 Music & More for rental of space at the Harlem Road Community Center.

9/13/2021
Consent

FINANCIAL IMPACT:

A1621.02410 (revenue); 2021: -$2,040.00, 2022: -$6,120.00

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

AGREEMENT
Between the Town of Amherst
and
716 Music & More, Inc.

THIS AGREEMENT, made as of _____, 2021 between the Town of Amherst, a municipal corporation with its principal office at 5583 Main Street, Williamsville, New York 14221 (Landlord) and 716 Music & More, Inc., a company organized pursuant to the Laws of the State of New York, with an office at the Harlem Road Community Center, (the "Center"), 4255 Harlem Road, Amherst, New York 14226 (Tenant).

WITNESSETH, that the Landlord has agreed to let, and does hereby let, and the said Tenant has agreed to take, and does hereby take, certain premises containing one classroom consisting of approximately 500 square feet for a term commencing the first day of September 2021 and ending the thirty-first day of December 2022. The said Tenant shall pay the Landlord the total rent of $2,040.00 for 2021 and $6,120.00 for 2022 in installments of $510.00, due on the 15th day of each month.

Landlord shall supply utilities and maintain the premises in a habitable manner in order to permit the Tenant to carry out the purposes and intent of the corporation as specified in the Certificate of Incorporation.

Tenant shall have the right to make interior modifications to the building, subject however, to prior approval of the Landlord. Any items glued to the floors or the walls, if permitted, will become property of the Landlord. Tenant shall obtain all necessary permits.

Tenant will at its own expense defend, indemnify, save harmless and make good any damage that shall in the course of the activities of Tenant under this lease agreement be done or caused to the Center, including but not limited to land, foundations, walls, roof or other part of the structure and any equipment of the Landlord therein.

Tenant shall hold the Landlord harmless from any and all demands, claims or expenses, awards or judgments for personal injury to third parties, whether other users of the Center or employees of the Landlord, and damage to property of such other third parties resulting from the Tenant's use of the described premises.

Tenant shall at all times maintain general liability insurance with at least $1,000,000 per occurrence/$2,000,000 aggregate, with contractual indemnification coverage for the premises and the Landlord and shall cause the Landlord to be named as an additional named insured on a primary and non-contributory basis and as certificate holder under each such policy, none of which shall be cancelled, reduced in amount of coverage, surrendered or allowed to expire without thirty (30) days prior written notice to the Landlord. Tenant shall also carry statutory Workers' Compensation coverage or produce satisfactory proof that such coverage is not required.

Attachment: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

If default be made in the payment of the rent or any part thereof, or if the Tenant shall without the written consent of the Landlord, let, underlet, or assign the said premises, or a part thereof, for the whole or any part of said term, or shall use said premises or any part thereof for any other purpose than as specified in the Certificate of Incorporation for the Tenant, the Landlord shall have the right at its discretion to terminate this Lease on first giving to the Tenant ten (10) days notice of such election.

Additional classroom space, if so desired, will be available to the Tenant by reservation, and at a 10% discount off of the effective rate at the time of reservation. Rental of the auditorium, gym, and youth center, if desired will be at the effective rate at the time of reservation.

Tenant shall have access to the building during stated business hours, normally 7:30am until 11:30pm, Monday through Friday and 8:00am until 4:00pm, Saturday and Sunday. The building is closed on federal holidays (see Attachment A). The Landlord shall provide written notice of permanent changes to building hours.

This agreement may be terminated by either party with thirty (30) days written notice.

IN WITNESS THEREOF, the parties hereto have caused their corporate seals to be here unto affixed and these presents to be signed by their duly authorized officers the day and year first above written.

716 Music & More, Inc.

Colleen Croce

Colleen Croce, Director

TOWN OF AMHERST

_____

Brian J. Kulpa, Supervisor

Attachment: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

Attachment A – Holiday Closing Schedule

2021

January 1, 2021 – New Year's Day

January 18, 2021 – Martin Luther King Day

February 15, 2021 – President's Day

April 2, 2021 – Good Friday

April 4, 2021 – Easter

May 31, 2021 – Memorial Day

July 4 & 5, 2021 – Independence Day

September 6, 2021 – Labor Day

November 11, 2021 – Veterans' Day

November 25 & 26, 2021 – Thanksgiving

December 24 & 25, 2021 – Christmas

December 31, 2021 – New Year's Eve

2022

January 1, 2022 – New Year's Day

January 17, 2022 – Martin Luther King Day

February 21, 2022 – President's Day

April 15, 2022 – Good Friday

April 17, 2022 – Easter

May 30, 2022 – Memorial Day

June 20, 2022 - Juneteenth

July 4, 2022 – Independence Day

September 5, 2022– Labor Day

October 10, 2022 – Columbus Day

Attachment: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

November 11, 2022 – Veterans' Day

November 24 & 25, 2022 – Thanksgiving

December 24 & 25, 2021 – Christmas

December 31, 2021 – New Year's Eve

Attachment: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

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: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

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: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

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:

716 Music & More
Print Name of Company

By: Colleen Croce
Signature

Colleen Croce
Printed name

Date: 8/4/2021

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

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: 716 Music & More

Signature: Colleen Croce

Print Name: Colleen Croce

Title: Owner

Date: 8/4/2021

Sworn To Before Me This

4 Day of Aug., 2021

TIMOTHY JAMES O'GARA
NOTARY PUBLIC, STATE OF NEW YORK
REG# 01OG6402120
QUALIFIED IN NIAGARA COUNTY
COMMISSION EXPIRES 12/23/2023

Notary Public

Revised 4.2017

Attachment: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/19/2021

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

StateFarm

Michele Proietti State Farm Insurance Company
3140 Sheridan Drive
Amherst, New York 14226

CONTACT NAME: Lee Ann Williams
PHONE (A/C, No, Ext): 716-838-3500 FAX (A/C, No): 716-838-3548
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : State Farm Insurance Companies	25143
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED

716 Music & More, Inc.
3 Beaumont Drive
Amherst, New York 14228

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
X	COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ General Liability GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☒ LOC ☐ OTHER:			98-cu-k238-7	08/19/2021	08/19/2022	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
X	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		98-cu-y670-9	08/19/2021	08/19/2022	☐ PER STATUTE ☐ OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

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 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

Completed by an authorized State Farm representative. If signature is required, please contact a State Farm agent.

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Attachment: 716 Music (RES-2021-809 : Lease Agreement CRS #2855)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 24710 **RESOLUTION 2021-810** **ADOPTED**

Sheltering Agreement - Transit CRS #2835

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and the Williamsville Central School District for use of the Clearfield Community Center by Transit Middle School in case of an emergency.

9/13/2021
Consent

FINANCIAL IMPACT:

None

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

TRANSIT MIDDLE SCHOOL

Daniel F. Walh Ph.D.
Principal
(716) 626-8701

Williamsville Central Schools
Encouraging · Nurturing · Challenging

Patrick Quast
Assistant Principal
(716) 626-8702

WILLIAMSVILLE CENTRAL SCHOOL DISTRICT

SHELTERING AGREEMENT

This agreement is made on the on the _____, by and between WILLIAMSVILLE CENTRAL SCHOOL DISTRICT (WCSD), with principal offices for the conducting of its business as a central school district in the Town of Amherst, New York at 105 Casey Road, East Amherst, New York (the "District") and **TOWN OF AMHERST** with a principal office for the conducting of its activities and affairs located at **5583 Main Street, Amherst, NY 14221** (hereinafter referred to as the **"TOWN OF AMHERST"**, is as follows:

WHEREAS, the District may have a need from time to time because of unforeseen circumstances to obtain the use of off-site facilities for the conducting of its student classes and/or activities or to use the same as a temporary shelter of its students and have outside facilities available to it on an emergency as-needed basis; and

WHEREAS, the **TOWN OF AMHERST** has various facilities under its possession and control, particularly including the lobby, public assembly areas and restrooms located in the **CLEARFIELD COMMUNITY CENTER IN WILLIAMSVILLE, NY** and

WHEREAS, the **TOWN OF AMHERST** is willing to make its aforesaid facilities available to the District on as as-needed and as-requested basis so long as such facilities are available at the time of the District's request for the use of the same; and

NOW, THEREFORE, upon the above and foregoing premises and the other terms, covenants and agreements hereinafter set forth in this Agreement, the parties hereto by and through their respective authorized agents and representatives, hereby agree as follows:

1. The **TOWN OF AMHERST** agrees to permit the use by the District of its lobby, public assembly areas and restrooms facilities located at **CLEARFIELD COMMUNITY CENTER, WILLIAMSVILLE, New York**, on such emergency occasions as the same may be requested by the District from **AUGUST 14, 2021,** through and including **AUGUST 19, 2022**, provided said facilities are otherwise not in the use or being prepared for any previously scheduled use by the Town or any of its own activities.

Attachment: Sheltering Agreement Transit w CoL (RES-2021-810 : Sheltering Agreement - Transit CRS #2835)

2. In the event of the District makes a request for the use of the **CLEARFIELD COMMUNITY CENTER,** aforesaid facilities and its permitted to possess and occupy said facilities, then for each such day or per thereof, the District will pay the **TOWN OF AMHERST** an amount pursuant to the actual cost of any food services provided to students and staff as deemed necessary. The District will give such notice of its intention to use the **TOWN OF AMHERST'S** facilities as is reasonably practicable, but the parties acknowledge that no particular amount of advance notice shall be required, and the District's uses of said facilities shall be subject only to the facilities availability at the time a request is made for the use thereof.

3. The district will be solely responsible for the transportation of all students to and from the facilities for their supervision while there and further agrees to hold harmless and indemnify the **TOWN OF AMHERST** from any and all losses, claims, damages, suits and/or liabilities to person or property arising from the District's use, possession and occupancy of the facilities and further agrees to name and include the **TOWN OF AMHERST** as an additional insured on the District's liability policies for the purpose of providing said indemnification and loss protection.

4. That neither this Agreement nor any part of provision thereof shall create or be constructed as creating any type of partnership or other principal and agent or any other type business relationship between the parties hereto, actually occupies the **TOWN OF AMHERST'S** aforesaid facilities.

5. That this Agreement shall be renewable every year upon the mutual consent of the parties.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective authorized agents, representatives and/or employees, have duly executed this Agreement on the day and yet set forth above.

WILLIAMSVILLE CENTAL SCHOOL DISTRICT

By:_____ _____

DR. BROWN-HALL, Superintendent Date

By:_____ _____

BRIAN J. KULPA, Supervisor Date

Attachment: Sheltering Agreement Transit w CoL (RES-2021-810 : Sheltering Agreement - Transit CRS #2835)

CERTIFICATE OF LIABILITY INSURANCE

DATE (M 07/21/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER NEW YORK SCHOOLS INSURANCE RECIPROCAL 333 Earle Ovington Blvd. Uniondale NY,11553	**CONTACT NAME:** **PHONE (A/C, No, Ext):** **FAX (A/C, No):** **E-MAIL ADDRESS:**
INSURED Williamsville CSD 105 Casey Road East Amherst, NY 14051	**INSURER(S) AFFORDING COVERAGE** / **NAIC #** INSURER A : New York Schools Insurance Reciprocal / 34843 INSURER B : / INSURER C : / INSURER D : / INSURER E : / INSURER F : /

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	**GENERAL LIABILITY** X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	X		SSP WMV 001	07/01/2021	07/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$1,000,000 $1,000,000 $10,000 $1,000,000 UNLIMITED $1,000,000
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $
A	UMBRELLA LIAB X OCCUR X EXCESS LIAB CLAIMS-MADE DED RETENTION $			ECL WMV 001	07/01/2021	07/01/2022	EACH OCCURRENCE AGGREGATE	$15,000,000 UNLIMITED
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N N / A **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder is an Additional Insured as per the terms stated on Additional Insured Endorsement CG 20 26 04 13 - use of premises/facilities for all the District's events during the policy period.

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 Deborah Hepper

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Attachment: Sheltering Agreement Transit w CoL (RES-2021-810 : Sheltering Agreement - Transit CRS #2835)

The New York Schools Insurance Reciprocal
333 Earle Ovington Blvd., Suite 905 • Uniondale, NY, 11553-3624 • 1-800-ISNYSIR • (516) 227 3355 • Fax: (516) 227-2352

Named Insured		Endorsement Number
Williamsville CSD		**2**
Policy Number	Policy Period	Effective Date of Endorsement
SSP WMV 001	**07/01/2021 - 07/01/2022**	**07/21/2021**
Issued by (Name of Insurance Company)		
New York Schools Insurance Reciprocal		

THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT CAREFULLY

In consideration of no additional premium, it is hereby understood and agreed that the policy is amended as follows:

Form CG 20 26 04 13 has been added to include the following as an Additional Insured:

Town of Amherst
5583 Main Street
Williamsville, NY 14221

All other terms and conditions to remain the same

Deborah Hepper
Authorized Representative

Attachment: Sheltering Agreement Transit w CoL (RES-2021-810 : Sheltering Agreement - Transit CRS #2835)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 20 26E 04 13

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Town of Amherst 5583 Main Street, Williamsville, NY 14221

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations: or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement: or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Attachment: Sheltering Agreement Transit w CoL (RES-2021-810 : Sheltering Agreement - Transit CRS #2835)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 24725 **RESOLUTION 2021-811** **ADOPTED**

Sheltering Agreement - Casey CRS #2871

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and the Williamsville Central School District for use of the North Amherst Recreation Center by Casey Middle School in case of an emergency.

9/13/2021
Consent

FINANCIAL IMPACT:

None

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

CASEY MIDDLE SCHOOL

Williamsville Central Schools

Encouraging • Nurturing • Challenging

WILLIAMSVILLE CENTRAL SCHOOL DISTRICT

SHELTERING AGREEMENT FOR CASEY MIDDLE SCHOOL

This agreement is made on the on the ____ day of _____, by and between WILLIAMSVILLE CENTRAL SCHOOL DISTRICT (WCSD), with principal offices for the conducting of its business as a central school district in the Town of Amherst, New York at 105 Casey Road, East Amherst, New York (the "District") and TOWN OF AMHERST with a principal office for the conducting of its activities and affairs located at 5583 Main St. Amherst, NY 14221 (hereinafter referred to as the "*Town of Amherst*"), is as follows:

WHEREAS, the District may have a need from time to time because of unforeseen circumstances to obtain the use of off-site facilities for the conducting of its student classes and/or activities or to use the same as a temporary shelter of its students and have outside facilities available to it on an emergency as-needed basis; and

WHEREAS, the *TOWN OF AMHERST* has various facilities under its possession and control, particularly including the lobby, public assembly areas and restrooms located in the *NORTH AMHERST RECREATION CENTER* at in East Amherst, NY and

WHEREAS, the *TOWN OF AMHERST* is willing to make its aforesaid facilities available to the District on as as-needed and as-requested basis so long as such facilities are available at the time of the District's request for the use of the same; and

NOW, THEREFORE, upon the above and foregoing premises and the other terms, covenants and agreements hereinafter set forth in this Agreement, the parties hereto by and through their respective authorized agents and representatives, hereby agree as follows:

1. The *TOWN OF AMHERST* agrees to permit the use by the District of its lobby, public assembly areas and restrooms facilities located at *NORTH AMHERST RECREATION CENTER*, New York, on such emergency occasions as the same may be requested by the District from *JULY 15, 2021*, through and including *JULY 14, 2022*, provided said facilities are otherwise not in the use or being prepared for any previously scheduled use by the *TOWN OF AMHERST* or any of its own activities.

105 Casey Road, East Amherst, NY 14051 • Phone: (716) 626-8585 • Fax: (716) 626-8562

MR. PETER DOBMEIER
Principal

MR. RYAN HARDING
Assistant Principal

Attachment: Sheltering Agreement Casey (RES-2021-811 : Sheltering Agreement - Casey CRS #2871)

2. In the event of the District makes a request for the use of the *NORTH AMHERST RECREATION CENTER* aforesaid facilities and its permitted to possess and occupy said facilities, then for each such day or per thereof, the District will pay the *TOWN OF AMHERST* an amount pursuant to the actual cost of any food services provided to students and staff as deemed necessary. The District will give such notice of its intention to use the *TOWN OF AMHERST'S* facilities as is reasonably practicable, but the parties acknowledge that no particular amount of advance notice shall be required, and the District's uses of said facilities shall be subject only to the facilities availability at the time a request is made for the use thereof.

3. The district will be solely responsible for the transportation of all students to and from the facilities for their supervision while there and further agrees to hold harmless and indemnify the *TOWN OF AMHERST* from any and all losses, claims, damages, suits and/or liabilities to person or property arising from the District's use, possession and occupancy of the facilities and further agrees to name and include the *TOWN OF AMHERST* as an additional insured on the District's liability policies for the purpose of providing said indemnification and loss protection.

4. That neither this Agreement nor any part of provision thereof shall create or be constructed as creating any type of partnership or other principal and agent or any other type business relationship between the parties hereto, actually occupies the *TOWN OF AMHERST'S* aforesaid facilities.

5. That this Agreement shall be renewable every year upon the mutual consent of the parties.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective authorized agents, representatives and/or employees, have duly executed this Agreement on the day and yet set forth above.

WILLIAMSVILLE CENTAL SCHOOL DISTRICT

By:_____ 7/29/21

DR. DARREN J. BROWN-HALL, Superintendent Date

By:_____ _____

Date

105 Casey Road, East Amherst, NY 14051 • Phone: (716) 626-8585 • Fax: (716) 626-8562

MR. PETER DOBMEIER
Principal

MR. RYAN HARDING
Assistant Principal

Attachment: Sheltering Agreement Casey (RES-2021-811 : Sheltering Agreement - Casey CRS #2871)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 07/21/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
NEW YORK SCHOOLS INSURANCE RECIPROCAL 333 Earle Ovington Blvd. Uniondale NY,11553	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : New York Schools Insurance Reciprocal	34843
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Williamsville CSD
105 Casey Road
East Amherst, NY 14051

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC	X		SSP WMV 001	07/01/2021	07/01/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$1,000,000 $1,000,000 $10,000 $1,000,000 UNLIMITED $1,000,000
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ $ $ $
A	[ ] UMBRELLA LIAB [X] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			ECL WMV 001	07/01/2021	07/01/2022	EACH OCCURRENCE AGGREGATE	$15,000,000 UNLIMITED
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						[ ] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Certificate Holder is an Additional Insured as per the terms stated on Additional Insured Endorsement CG 20 26 04 13 - use of premises/facilities for all the District's events during the policy period.

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 Deborah Heppes

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The ACORD name and logo are registered marks of ACORD

Attachment: Sheltering Agreement Casey (RES-2021-811 : Sheltering Agreement - Casey CRS #2871)

The New York Schools Insurance Reciprocal
333 Earle Ovington Blvd., Suite 905 • Uniondale, NY, 11553-3624 • 1-800-ISNYSIR • (516) 227 3355 • Fax: (516) 227-2352

Named Insured		Endorsement Number
Williamsville CSD		**2**
Policy Number	Policy Period	Effective Date of Endorsement
SSP WMV 001	**07/01/2021 - 07/01/2022**	**07/21/2021**
Issued by (Name of Insurance Company)		
New York Schools Insurance Reciprocal		

THIS ENDORSEMENT CHANGES THIS POLICY. PLEASE READ IT CAREFULLY

In consideration of no additional premium, it is hereby understood and agreed that the policy is amended as follows:

Form CG 20 26 04 13 has been added to include the following as an Additional Insured:

Town of Amherst
5583 Main Street
Williamsville, NY 14221

All other terms and conditions to remain the same

Deborah Hepper
Authorized Representative

Attachment: Sheltering Agreement Casey (RES-2021-811 : Sheltering Agreement - Casey CRS #2871)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 20 26E 04 13

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Town of Amherst 5583 Main Street, Williamsville, NY 14221

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations: or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement: or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

Attachment: Sheltering Agreement Casey (RES-2021-811 : Sheltering Agreement - Casey CRS #2871)

© Insurance Services Office, Inc., 2012

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 24740 **RESOLUTION 2021-812** **ADOPTED**

Bedford Park Improvements - CRS #2864

Authorize the Supervisor to sign an agreement (secured through Legislator Jeanne Vinal) between the Town of Amherst (Youth & Recreation Department) and Erie County for improvements to Bedford Park in Willow Ridge.

9/13/2021
Consent

FINANCIAL IMPACT:

A 7115.04002: - $15,000.00 (revenue)

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

CONTRACT

THIS CONTRACT, made as of the 1st day of January, 2021, effective through December 31, 2021, by and between **THE COUNTY OF ERIE**, a municipal corporation of the State of New York, having its principal place of business at 95 Franklin Street, in the City of Buffalo, New York, 14202 (the "County"), and **TOWN OF AMHERST** (the "Organization"), a not-for-profit corporation, having its principal place of business at **5583 Main St, Williamsville, NY 14221**

W I T N E S S E T H:

WHEREAS, the County, pursuant to the authority granted to it by Sections 224 and 225 of the County Law and Local Law No. 3-2002, has appropriated funds in the County's 2021 Budget for the purpose of making a conditional grant to the Organization; and

WHEREAS, the County and Organization wish to more specifically define the terms and conditions related to the payment of said conditional grant to the Organization by the County and the obligations of the Organization upon receipt of said conditional grant.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES:

1. The Organization agrees to provide public benefit services for and within Erie County as specified in the Scope of Work which is attached hereto and incorporated herein as **Exhibit A** ("Scope of Work"). No funds granted under this Contract shall be applied to any purposes other than those described in paragraph 22 below.

2. In support of such public benefit services, the County agrees to pay to the Organization, subject to the terms and conditions enumerated herein, an amount not to exceed **Fifteen-Thousand Dollars ($15,000.00)**, within 30 days of the execution of this Contract.

Payments shall be made on one invoice submitted by the Organization to the Erie County Legislature (the "Department") and approved by the Department. The Department will approve payment once it has received the invoices and signed attestation regarding the Organization's financial documentation as described in **Exhibit B** as "Additional Understandings". The invoice should be dated the same date as the Contract signed by the Organization.

3. This Contract shall be deemed executory only to the extent of funds available as determined by the Budget Director and appropriated by the County for the performance of the terms hereof, and no liability on account thereof shall be incurred by the County beyond such funds. Funds provided pursuant to this Contract shall not be used for any purpose prohibited by law.

This Contract is also subject to further financial analysis of (1) the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Contract; and (2) the impact of any federal government budgetary actions, including but not limited to the "sequestration" process. The County shall retain the right, upon the occurrence of any release by

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and following certain congressional budgetary actions and adjustments through sequestration or related legislative actions, and for a reasonable period after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget or sequestration on County finances. After such analysis, the County shall retain the right to either terminate this Contract or to change the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to the Organization, then the Organization shall have the right to terminate this Contract upon reasonable prior written notice.

4. Notwithstanding any contrary provision of this Contract, or any provision of the County's current budget, the County Executive may reduce the total amount of funds in this Contract, and not yet paid to the Organization, upon ten (10) days written notice.

5. The Organization shall maintain complete, accurate and current records of all financial transactions relating to its operation and the services performed pursuant to this Contract. During the term of this Contract and at any time within six (6) years thereafter, the Organization shall make such records available, upon request, to the County for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Organization, its offices and facilities, for the purpose of verifying information supplied to the County or for any other purpose reasonably related to monitoring the services to be performed by the Organization pursuant to this Contract.

6. The Organization agrees to furnish to the County any management letter, if issued and independent auditor's report and related financial statements and notes made for it or for other agencies and available to it, which reflects the receipt and use of funds paid to it hereunder, within thirty (30) days after receipt of the request.

7. The Organization also agrees to make available to the County for inspection at reasonable times and places, its current membership and Board of Trustees/Directors lists, financial reports, and minutes of its last annual meeting, Board of Directors or Trustees meetings, and such other minutes as may be pertinent to the operation of such Organization in the public interest. No such membership list shall be published or be made available for any commercial use.

8. To the extent that the funds provided by this Contract are for specific activities or services, the Organization agrees to furnish verified accounts of its disbursements hereunder, together with certified or verified invoices thereto attached, at such times as the County may determine, in such form and detail as may be required by the County, and a final account within one hundred twenty (120) days after the close of the Organization's fiscal year.

9. The County may, at its option, audit such books and records of the Organization as are reasonably pertinent to this Contract to substantiate the basis for payment. The County shall, in addition, have the right to audit such books and records subsequent to payment, if such audit is commenced within one year following termination of this Contract. Any expenditure determined by audit to be inconsistent with this contact may be disallowed by the County and shall be subject to refund by the Organization to the County.

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

10. a. The Organization agrees to refund to the County any unused amount of monies paid to it hereunder, that is, any amount of said moneys encumbered by any current operating expenses, it being understood that in the event the unencumbered revenue of the Organization exceeds its expenses for the Organization's fiscal year, the Organization shall refund to the County within ninety (90) days of the Organization's audit report that part of the surplus which bears the same ratio to the total surplus as the amount actually paid to the Organization by the County bears to the total revenue of the Organization.

b. In determining whether a surplus is accrued by the Organization during the fiscal year, pursuant to subdivision "a" of this paragraph, all revenue of the Organization, not expressly restricted to a particular purpose by the grantor of the revenue, shall be deemed "operating revenue". All encumbered expenses of the Organization, other than those paid from funds specifically restricted to a particular purpose by a grantor, or paid from a segregated capital fund, shall be deemed "operating expense". The Organization shall be deemed to have a surplus if operating revenue exceeds expenses before any transfer of operating revenue into capital, endowment or other restricted funds or accounts.

c. Upon showing in writing to the Budget Director of the County that such a refund would cause extreme hardship to the Organization owing to unforeseen or unanticipated circumstances, the Budget Director may, subject to approval by the Erie County Legislature, authorize the Organization to retain all or part of any funds which the Organization would otherwise be required to refund to the County under this paragraph if the Legislature determines that such retention is consistent with the purpose and intent of this agreement, as applicable. Such authorized retained funds shall be used only for the purposes authorized under this Contract, but may be expended in the calendar year subsequent to this Contract.

11. The Organization agrees to perform the public benefit services which are the object of this Contract as an Independent Contractor and neither it nor any of its employees, members, directors, agents, or representatives shall be or hold themselves out to be employees, officers, agents or representatives of the County.

12. The Organization shall comply, at its own expense, with the provisions of all applicable local, state and federal laws, rules and regulations. The Organization shall further comply, at its own expense, with all applicable rules, regulations and licensing requirements pertaining to its professional status and that of its employees, partners, associates, subconsultants and others employed to render the services hereunder.

13. The Organization shall be fully accountable for its performance under this Contract and it and its officers agree to answer under oath all questions relative to the performance hereof, and to any transaction, act or omission, had, done or omitted in connection herewith if called before any judicial, county, state or federal agency empowered to investigate this Contract or its performance.

14. The Organization shall not delegate any duties or assign any of its rights under this Contract without the prior express written consent of the County. The Organization shall not subcontract any part of the services without the written consent of the County, subject to any necessary legal approvals. Any purported delegation of duties, assignment of rights or subcontracting of services

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

under this Contract without the prior express written consent of the County is void. All subcontracts that have received such prior written consent shall provide that subcontracts are subject to all terms and conditions set forth in this Contract. It is recognized and understood by the Organization that for the purposes of this Contract, all services performed on an approved subcontract shall be deemed services performed by the Organization and the Organization shall insure that such subcontracted service is subject to the material terms and conditions of this Contract.

15. The Organization shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Organization or third parties under the direction or control of the Organization; and to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Contract and to bear all other costs and expenses related thereto.

16. During the term of this Contract, the Organization agrees to procure and maintain insurance coverage naming the County as additional insured: Commercial General Liability with a minimum combined single limit of bodily injury and property damage of $1,000,000 per occurrence and general aggregate of $1,000,000. The Organization shall provide a Certificate of Insurance as evidence of such coverage(s) on the County of Erie Standard Insurance Certificate or its equivalent.

In the event that the Organization utilizes vehicles, whether owned, leased, hired/borrowed or non-owned, in the performance of the services provided pursuant to this Contract, the Organization agrees to procure and maintain insurance coverage.

The Organization shall further provide evidence of workers compensation insurance on NYS Form C105.2 or U26.3 obtained from insurer. If there are no paid employees of the Organization, the Organization shall provide a "Certificate of Attestation of Exemption from New York State Workers' Compensation and/or Disability Benefits Insurance Coverage" (Form CE-200) which can be obtained at the State Worker's Compensation Board website: www.wcb.ny.gov.

Attached hereto and incorporated herein as **Exhibit C** are copies of the Organization's Certificates of Insurance evidencing the aforementioned coverage.

17. The County and the Organization and their respective employees are not and shall not be considered as joint venturers, employees, partners or agents of each other and neither shall have the power to bind or obligate the other except as set forth in this Contract. There shall be no liability on the part of the County or Organization to any person for any debts incurred by the other.

18. In the event of a breach or default by the Organization of any of the terms and conditions of this Contract, the County may terminate this Contract on ten (10) days written notice to the Organization and request such other remedy as may be reasonable and appropriate in view of the circumstances of such breach or default, including but not limited to, reimbursement to the County

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

by the Organization of all or part of the funds granted to the Organization under this Contract.

19. The Organization shall comply with Erie County Executive Order 13 (2014) and agrees to complete the Certificate collectively attached hereto as **Exhibit D** and made a part hereof. The Organization shall make such records available, upon request, to the County's Division of Equal Employment Opportunity for review. The County shall have the right, upon reasonable notice and at reasonable times, to inspect the books and records of the Organization its offices and facilities, for the purpose of verifying information supplied in the Erie County Equal Pay Certification and for any other purpose reasonably related to confirming the Agency's compliance with Erie County Executive Order 13 (2014). Notwithstanding the termination provisions contained herein, violation of the provisions of Executive Order 13 (2014) , may constitute grounds for the immediate termination of this Agreement and may constitute grounds for determining that the Organization is not qualified to participate in future County contracts.

20. The Organization agrees to comply with the terms, if any, of the resolution of the County Budget, and implementing resolutions appropriating funds for this Contract.

21. The Organization agrees to acknowledge in any and all promotional material the fact that the Organization receives financial support from the County, including, but not limited to the Organization's website, marketing materials and/or other publications.

22. Except as specifically provided otherwise in this Contract, the use of County funds shall be limited to current operating expenses including salaries, program costs, fringe benefits, rents, utilities, office supplies and equipment. No County funds shall be used for or applied toward any capital project or improvement, nor as a set-off against accounts receivable. No funds received under this Contract shall be used for any service provided or activity performed outside Erie County.

23. Erie County strongly encourages all not-for-profit agencies that Contract with the County of Erie to participate in the community service component of the County's Welfare to Work Initiative. This program places qualified public assistance recipients in community service placements. Clients participating in this component must work in their respective community assignments as a condition for receipt of welfare benefits. An agency representative should contact the Director of Employment and Training Program, Erie County Department of Social Services, for additional information regarding this program.

24. This Contract and its attachments constitute the entire Contract between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. It shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

In the event of any conflict between the terms of this Contract and the terms of any schedule or attachment hereto, it is understood that the terms of this Contract shall be controlling with respect to any interpretation of the meaning and intent of the parties.

25. Nothing herein is intended or shall be construed to confer upon or give to any third party

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Contract, except in the event that specific third party rights are expressly granted herein.

26. This Contract 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. This Contract shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Contract shall be brought in the County of Erie.

If any term or provision of this Contract is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Contract shall in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision shall be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision shall be interpreted and enforced to give effect to the original written intent of the parties prior to the determination of such invalidity or unenforceability.

27. All notices of any nature referred to in this Contract shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice sent by registered or certified mail postage pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to the following:

To the County:
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

With a copy to:
County Attorney
95 Franklin Street, Room 1634
Buffalo, New York 14202

To the Organization: at the address first listed above.

28. The Organization represents and warrants to the County as follows:

a. The execution of this Contract and the provision of services hereunder have been duly authorized by its Board of Directors or Trustees of the Organization and that this Contract has been signed by a duly authorized officer of the Organization.

b. That this Contract is valid and enforceable against the Organization in accordance with the terms hereof and that there is no order, decision, judgment or provision of this Organization's certificate of incorporation or by-laws, or Contract, mortgage, or lien which would limit or prohibit the Organization from fully performing the terms and condition of this Contract.

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

[END TEXT]

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

COUNTY OF ERIE

_____
MARK POLONCARZ/ MARIA R. WHYTE
County Executive / Deputy County Executive
Dated: _____

TOWN OF AMHERST

_____
Name: _____
Title: _____
Dated: _____

Witness to Organization's Signature:

_____
Name: _____
Dated: _____

APPROVED AS TO CONTENT

_____
SEAN MULLIGAN
Deputy Chief of Staff
County Legislature
Dated: _____

APPROVED AS TO FORM

_____
MARTIN POLOWY
Assistant County Attorney
Document No._____
Dated: _____

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

EXHIBIT A

SCOPE OF WORK

Public Benefit Services to be Provided Pursuant to this Contract by the Organization. (Reference Contract Paragraph 1)

Funds will be used for improvements to Bedford Park, Amherst NY including the purchase of picnic tables, benches, sun shades and trees.

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

EXHIBIT B

ADDITIONAL UNDERSTANDINGS

(Reference Contract Paragraph 2)

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

ADDITIONAL UNDERSTANDINGS

1. It is your responsibility to promptly notify the Department of Environment and Planning of any adverse situation which impacts the Organization's operation in a way which impairs its ability to deliver services to Erie County. A representative of the Department of Environment and Planning will meet with representatives of the Organization regarding these circumstances as a prelude to further release of County funds.

2. A representative of the Department of Environment and Planning may request a meeting with the Organization's Executive Director and Board Chair at least once during the year, at which time the Organization will be required to supply pertinent information including, but not limited to, its:

a. Strategic Plan (three to five year time horizon);
b. Annual Business Plan;
c. Performance metrics and progress on those metrics related to County funding;
d. Managerial competence;
e. Organizational sustainability; and
f. An accounting of the Organization's use of County funding, including a detailed list of expenditures of funds received from Erie County.

I, the undersigned, do hereby acknowledge and agree to the requirements detailed under paragraphs 1 and 2 under Exhibit B, entitled "Additional Understandings," and do certify based on my knowledge, that the supporting documentation provided in response to the 2021 Community Funding Application:

- *Are accurate, correct and do not contain any untrue statement of material fact;*
- *Have not been materially altered since they were submitted to the County during the application process;*
- *Do not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and*
- *Fairly presents, in all material respects, the financial condition and results of operations of the Organization as of and for the periods presented in the financial statements.*

_____
[Signature of Executive Director or Chair]
Name: _____
Date: _____

NOTE: In the event that the Organization is not able to attest as to the above-listed information and/or that the materials submitted during the 2021 Application Process have been either materially altered or found by the Organization to have contained inaccurate information, the Organization is asked to contact the Department of Environment and Planning for further instruction.

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

EXHIBIT C

INSURANCE CERTIFICATES

To be Provided Pursuant to this Contract by the Organization
(Reference Contract Paragraph 16)

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

TOWN OF AMHERST

ERIE COUNTY, NEW YORK

5583 MAIN STREET
WILLIAMSVILLE, NEW YORK 14221
(716) 631-7030
Fax (716) 631-7101
www.amherst.ny.us

Stanley J. Sliwa
Town Attorney

Nicole M. Burroughs
Senior Paralegal

Samuel A. Alba
Sr. Deputy Town Attorney

Ann Demopoulos
Deputy Town Attorney

Ann Nichols
Town Prosecutor

August 27, 2021

County of Erie
95 Franklin Street
Buffalo, New York 14202

Re: Town of Amherst Self-Insured Status

The Town of Amherst is insured for liability purposes through its own insurance reserved fund established pursuant to the provisions of §6-n of the New York General Municipal law. Approved or appropriate claims are paid for from funds established under the terms of the program established by the Town Board pursuant to the authority of §6-n. Furthermore, on September 29, 1986, the Town Board adopted a resolution agreeing to "hold harmless" any other municipality, corporation, partnership, association or individual that provides facilities, real property or other assets to the Town for purposes of carrying out its functions and programs. A copy of that resolution is enclosed.

Very truly yours,

/s/Stanley J. Sliwa

Stanley J. Sliwa, Esq.
Town Attorney's Office

SJS:nmb
Enclosure

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

SEPTEMBER 29, 1986

A special meeting of the Amherst Town Board, 5583 Main Street, Williamsville. New York 14221 on Monday , September 29, 1986 at 3:30 P.M.,
Roll call: John R. Sharpe, Supervisor; Richard C. Barton, Councilman; Charles W. Moses, Councilman; Harold J. Collier, Councilman; William L Kindel, Councilman; Lynn Millane, Councilman; Lawrence Southwick. Councilman
Also present: Dolores B. Shearer. Deputy Town Clerk; James M. Nesper, Town Attorney
A motion was made by Councilman Southwick, seconded by Supervisor Sharpe to approve the following resolution:
WHEREAS, the Hartford Insurance Co. has proposed a renewal of the Town's insurance policies at an annual premium of from $1.2 million to $1.8 million and,
WHEREAS, the expected cost of a self insurance program for the Town is substantially less than the price charged by Hartford and
WHEREAS, certain insurance coverages formerly available to the Town are no longer available at any price and,
WHEREAS, the limits on coverage have been reduced and,
WHEREAS, the Town Board wishes to save the taxpayers' money and believes that the risks are acceptable in accord with the September 13 memorandum from Councilman Southwick,
NOW, THEREFORE, BE IT RESOLVED that the basic liability insurance coverages from the Hartford be canceled as of the earliest feasible date and,
BE IT FURTHER RESOLVED that the umbrella policies be canceled as of October 3, 1986 and,
BE IT FURTHER RESOLVED that the workers' compensation policies be transfered to the State Insurance Fund as soon as is feasible and,
BE IT FURTHER RESOLVED that the Supervisor be authorized to sign a contract with the Gallagher-Bassett organization, or with another firm should the Gallagher-Bassett price be too high, for claims handling and
BE IT FURTHER RESOLVED that the Town retain, where feasible, insurance coverage for buildings and contents, boilers, crime, electronic data processing equipment, papers and public officials' liability and
BE IT FURTHER RESOLVED that a fund for claims be set up in the maximum allowable amount and,
BE IT FURTHER RESOLVED that the Town Attorney be authorized to engage outside counsel to defend against actions brought against the Town where such actions would have formerly been defended by the insurance company and,
BE IT FURTHER RESOLVED that the Supervisor be authorized to seek a consulting firm specializing in loss control and prevention services to be contracted for such services.
Roll call: Southwick, aye; Sharpe, aye; Kindel, no; Millane, aye; Collier, aye; Moses, no; Barton, no. Ayes, 4 Noes, 3.
Approved.
A motion was made by Supervisor Sharpe, seconded by Councilman Kindel to approve the following reso lution:
WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town of Amherst to purchase Automobile and General liability insurance coverage, and
WHEREAS, AS OF THE 3rd day of October 1986 the Town of Amherst will no longer be insured and thus be uninsured for Automobile liability and General liability, and
WHEREAS, there are numerous individuals, agencies, associations, partnerships and corporations servicing the

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

Town of Amherst, and/or its Special Improvement District as volunteers, and

WHEREAS, it is desirable and necessary in order to maintain the present level of services to the residents of the Town to continue to utilize the services of said volunteers,

NOW, THEREFORE, BE IT RESOLVED, that the Town of Amherst hereby holds harmless any and all individuals, associations, partnerships and corporations from any claim, action or proceeding arising out of said volunteers' services to the Town of Amherst and/or its Special Improvement District, and

BE IT FURTHER RESOLVED that the Town Attorney be authorized and directed to defend any and all said actions and proceedings as may be commenced by a third party against said volunteers, and

BE IT FURTHER RESOLVED, that the officers of the Town of Amherst be authorized and directed to take all steps necessary to carry out the intent and purpose of this resolution.

Roll call: Sharpe, aye; Kindel, aye; Moses, aye; Barton, aye; Millane, aye; Southwick, aye; Collier, aye. Ayes, 7; Noes, 0. Approved.

A motion was made by Councilman Southwick, unanimously seconded to approve the following resolution:

WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town to purchase Automobile and General liability insurance coverage, and

WHEREAS, the Town of Amherst has utilized from time to time facilities, real property and assets of other municipalities, corporations partnerships, associations, and individuals in order to carry out various Town of Amherst functions and programs and

WHEREAS, it is necessary to continue to utilize said real and personal property of said entities so as to maintain the present level of services to the residents of the Town of Amherst, and

WHEREAS, as part of the consideration for the use of said real and/or personal property it has been necessary to provide a certificate of insurance naming said entities as a party insured

NOW, THEREFORE, BE IT RESOLVED, that the Supervisor with the assistance of the Town Attorney be authorized and directed to enter into "save harmless" agreements with said municipalities, corporations Partnerships, associations and individuals for the purpose of continuing to utilize said entities real or personal property for various functions and programs sponsored and administered by the Town of Amherst and/or its Special Improvement Districts. and

BE IT FURTHER RESOLVED, that the Supervisor and Town Attorney take all other necessary steps to carry out the intent and purpose of this Resolution.

Roll call: Southwick, aye; Sharpe. aye, Moses, aye; Barton, aye; Collier. aye, Millane, aye; Kindel, aye. Ayes, 7; Noes, 0. Approved.

Adjourn: 4:30 P.M.

Dolores B. Schearer
Deputy Town Clerk
Town of Amherst,
Erie County New York

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

SEPTEMBER 29, 1986

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Roll call: John R. Sharpe, Supervisor; Richard C. Barton, Councilman; Charles W. Moses, Councilman; Harold J. Collier, Councilman; William L Kindel, Councilman; Lynn Millane, Councilman; Lawrence Southwick. Councilman

Also present: Dolores B. Shearer. Deputy Town Clerk; James M. Nesper, Town Attorney

A motion was made by Councilman Southwick, seconded by Supervisor Sharpe to approve the following resolution:

WHEREAS, the Hartford Insurance Co. has proposed a renewal of the Town's insurance policies at an annual premium of from $1.2 million to $1.8 million and,

WHEREAS, the expected cost of a self insurance program for the Town is substantially less than the price charged by Hartford and

WHEREAS, certain insurance coverages formerly available to the Town are no longer available at any price and,

WHEREAS, the limits on coverage have been reduced and,

WHEREAS, the Town Board wishes to save the taxpayers' money and believes that the risks are acceptable in accord with the September 13 memorandum from Councilman Southwick,

NOW, THEREFORE, BE IT RESOLVED that the basic liability insurance coverages from the Hartford be canceled as of the earliest feasible date and,

BE IT FURTHER RESOLVED that the umbrella policies be canceled as of October 3, 1986 and,

BE IT FURTHER RESOLVED that the workers' compensation policies be transfered to the State Insurance Fund as soon as is feasible and,

BE IT FURTHER RESOLVED that the Supervisor be authorized to sign a contract with the Gallagher-Bassett organization, or with another firm should the Gallagher-Bassett price be too high, for claims handling and

BE IT FURTHER RESOLVED that the Town retain, where feasible, insurance coverage for buildings and contents, boilers, crime, electronic data processing equipment, papers and public officials' liability and

BE IT FURTHER RESOLVED that a fund for claims be set up in the maximum allowable amount and,

BE IT FURTHER RESOLVED that the Town Attorney be authorized to engage outside counsel to defend against actions brought against the Town where such actions would have formerly been defended by the insurance company and,

BE IT FURTHER RESOLVED that the Supervisor be authorized to seek a consulting firm specializing in loss control and prevention services to be contracted for such services.

Roll call: Southwick, aye; Sharpe, aye; Kindel, no; Millane, aye; Collier, aye; Moses, no; Barton, no. Ayes, 4 Noes, 3.

Approved.

A motion was made by Supervisor Sharpe, seconded by Councilman Kindel to approve the following reso lution:

WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town of Amherst to purchase Automobile and General liability insurance coverage, and

WHEREAS, AS OF THE 3rd day of October 1986 the Town of Amherst will no longer be insured and thus be uninsured for Automobile liability and General liability, and

WHEREAS, there are numerous individuals, agencies, associations, partnerships and corporations servicing the

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

Town of Amherst, and/or its Special Improvement District as volunteers, and

WHEREAS, it is desirable and necessary in order to maintain the present level of services to the residents of the Town to continue to utilize the services of said volunteers,

NOW, THEREFORE, BE IT RESOLVED, that the Town of Amherst hereby holds harmless any and all individuals, associations, partnerships and corporations from any claim, action or proceeding arising out of said volunteers' services to the Town of Amherst and/or its Special Improvement District, and

BE IT FURTHER RESOLVED that the Town Attorney be authorized and directed to defend any and all said actions and proceedings as may be commenced by a third party against said volunteers, and

BE IT FURTHER RESOLVED, that the officers of the Town of Amherst be authorized and directed to take all steps necessary to carry out the intent and purpose of this resolution.

Roll call: Sharpe, aye; Kindel, aye; Moses, aye; Barton, aye; Millane, aye; Southwick, aye; Collier, aye. Ayes, 7; Noes, 0. Approved.

A motion was made by Councilman Southwick, unanimously seconded to approve the following resolution:

WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town to purchase Automobile and General liability insurance coverage, and

WHEREAS, the Town of Amherst has utilized from time to time facilities, real property and assets of other municipalities, corporations partnerships, associations, and individuals in order to carry out various Town of Amherst functions and programs and

WHEREAS, it is necessary to continue to utilize said real and personal property of said entities so as to maintain the present level of services to the residents of the Town of Amherst, and

WHEREAS, as part of the consideration for the use of said real and/or personal property it has been necessary to provide a certificate of insurance naming said entities as a party insured

NOW, THEREFORE, BE IT RESOLVED, that the Supervisor with the assistance of the Town Attorney be authorized and directed to enter into "save harmless" agreements with said municipalities, corporations Partnerships, associations and individuals for the purpose of continuing to utilize said entities real or personal property for various functions and programs sponsored and administered by the Town of Amherst and/or its Special Improvement Districts. and

BE IT FURTHER RESOLVED, that the Supervisor and Town Attorney take all other necessary steps to carry out the intent and purpose of this Resolution.

Roll call: Southwick, aye; Sharpe. aye, Moses, aye; Barton, aye; Collier. aye, Millane, aye; Kindel, aye. Ayes, 7; Noes, 0. Approved.

Adjourn: 4:30 P.M.

Dolores B. Schearer
Deputy Town Clerk
Town of Amherst,
Erie County New York

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

NEW YORK STATE OF OPPORTUNITY. | Workers' Compensation Board

ANDREW M. CUOMO
GOVERNOR

CLARISSA M. RODRIGUEZ
CHAIR

Office of the Secretary
Compliance With Workers' Compensation Law

I, Kim McCarroll, Secretary for the Workers' Compensation Board, DO HEREBY Certify that:

Name: Amherst, Town of

WCB #: W802169

Tax ID #: 16-6002157

Qual Date: 7/3/1993

has secured compensation to its employees as a self-insurer in the following manner:

Pursuant to Section 50, subdivisions 3 and 4 of the Workers' Compensation Law. (County, city, village, town, school district, fire district or other political subdivision)

The status of the self-insurer was effective as noted above and remains in full force.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Workers' Compensation Board this 18th day of December 2020.

KIM MCCARROLL
SECRETARY

Status Confirmed By
Krystie Freedman
12/18/2020

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

EXHIBIT D

ERIE COUNTY EQUAL PAY CERTIFICATION

(Reference Contract Paragraph 19)

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

Erie County Equal Pay Certification

In order to comply with Executive Order 13 dated November 6, 2014, we hereby certify that we are in compliance with federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together "Equal Pay Law"). The average compensation for female employees is not consistently below the average compensation for male employees, taking into account mitigating factors. We understand that this certification is a material component of this contract. Violation of the provisions of Executive Order 13, which is attached hereto and made a part hereof, can constitute grounds for the immediate termination of this contract and may constitute grounds for determining that a bidder is not qualified to participate in future county contracts.

We have evaluated wages and benefits to ensure compliance with the Federal Equal Pay Law.

_____
Signature

Verification

STATE OF _____)
COUNTY OF _____) SS:

A)
_____, being duly sworn, states he or she is the owner of (or a partner in) _____, and is making the foregoing Certification and that the statements and representations made in the Certification are true to his or her own knowledge.

B)
_____, being duly sworn, states that he or she is the
(Name of Corporate Officer)
_____, of _____,
(Title of Corporate Officer) (Name of Corporation)

the enterprise making the foregoing Certification, that he or she has read the Certification and knows its contents, that the statements and representations made in the Certification are true to his or her own knowledge, and that the Certification is made at the direction of the Board of Directors of the Corporation.

Sworn to before me this _____ Day of _____, 20____

_____
Notary Public

Attachment: Bedford Park Improvements (RES-2021-812 : Bedford Park Improvements - CRS #2864)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 24744 **RESOLUTION 2021-813** **ADOPTED**

Registration Software - CRS #2888

Authorize the Supervisor to sign an agreement between the Town of Amherst (Youth & Recreation Department) and Civic Rec/SHI (under approved Sourcewell contract CRS #2787) for registration software, pending successful completion of the contract routing process. As this is a software-only contract, we are also requesting a waiver of insurance.

9/13/2021
Consent

FINANCIAL IMPACT:

2021: A7145.4110 - $23,788.50

2022: A 7145.4110 - $24,451.88; A 7253.4110 - $48,240.38

2023: A 7145.4110 - $25,674.47; A 7253.4110 - $25,674.48

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

CivicPlus
302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #: Q-17270-1
Date: 6/3/2021 9:54 AM
Expires On: 9/1/2021
Product: CivicRec

Client:
Amherst Town NY - CivicRec

Bill To:
Amherst Town NY - CivicRec

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Craig Roach	x(785) 222-4985	roach@civicplus.com		Net 30

CivicRec - Statement of Work

QTY	Product Name	DESCRIPTION	PRODUCT TYPE	TOTAL
1.00	CivicRec Ultimate	Ultimate Package -Project Coordination -Branded Public Portal -Help Center Access -Access to Live Project Support -Named Implementation Consultant	One-time	USD 3,525.00
1.00	CivicRec Annual Fee	CivicRec Annual Fee	Renewable	USD 40,000.01
1.00	CivicRec Year 1 Annual Fee Discount	Year 1 Annual Fee Discount	Renewable	USD -5,000.01
6.00	CivicRec Virtual Training (Half Day Block)	Training (Virtual) - half day, up to 4 hours	One-time	USD 3,000.00
2.00	CivicRec Virtual Consulting (Half Day Block)	Consulting (Virtual) - half day, up to 4 hours	One-time	USD 700.00
1.00	CivicRec AudioEye Managed	AudioEye Managed for CivicRec	Renewable	USD 5,000.00
1.00	CivicRec Pay - Global Payments Integrated	CivicRec Pay - Global Payments Integrated		USD 0.00
1.00	CivicRec Pay Annual Fee - Global Payments Integrated	CivicRec Pay Annual maintenance and support fee	Renewable	USD 0.00
1.00	CivicRec Pay Implementation - Global Payments Integrated	Includes setting CivicPlus Pay configuration, configuring CivicPlus products for accepting payments, advanced troubleshooting with our partner's support.	One-time	USD 0.00
1.00	Residency Import	Residency Import - Imports a flat file of addresses that will be used to determine residency in the new system.	One-time	USD 525.00
1.00	Memberships/Passes Import	Memberships/Passes Import	One-time	USD 1,150.00

Attachment: NY - Amherst Town - CivicRec - SOW AE SOW - Updated FINAL - 06302021 (RES-2021-813 : Registration Software - CRS #2888)

QTY	Product Name	DESCRIPTION	PRODUCT TYPE	TOTAL
1.00	Future Facility Reservation Import	Future Facility Rentals Import	One-time	USD 1,100.00

~~List Price - Year 1 Total~~	~~USD 105,858.00~~
Total Investment - Year 1	USD 50,000.00
Annual Recurring Services - Year 2	USD 47,250.01
Annual Recurring Services – Year 3	USD 49,612.51

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at https://www.civicplus.com/master-services-agreement ("MSA"), to which this SOW is hereby attached as the CivicRec Statement of Work. By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.

2. This SOW shall remain in effect for an initial term equal to 365 days from the date of signing ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".

3. The Total Investment - Year 1 Fees shall be invoiced as follows:
a. Upon signing of this SOW – one half (50%) of the Total Investment - Year 1 Fees;
b. The earlier of 6 months from signing or upon completed implementation of the CivicRec Recreation Management Software – the remaining half of the Total Investment - Year 1 Fees.

4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in year 2 of service. Client will pay all invoices within 30 days of the date of such invoice.

5. The Client's Annual Recurring Services Fees agreed upon herein are based on Client processing up to USD 3,000,000.00 of revenue per year ("Predicted Processing Volume"). Starting with the fourth year of services under this SOW, CivicPlus reserves the right (but not the obligation) to audit Client once every 12 months to determine Client's actual processing volume ("Actual Processing Volume"). In the event Client's Actual Processing Volume exceeds the PredictedProcessing Volume, CivicPlus will notify client within 30 days of the audit of the Actual Processing Volume and the applicable increase in the Annual Fees resulting from such Actual Processing Volume. The increase in the Annual Fees shall be implemented the first of the month following the notice.

6. For the purposes of obtaining merchant account services through CivicPlus Pay, Client may choose to utilize the designated merchant account for CivicRec through an integrated partnership with a merchant providers that is within CivicPlus's network ("Partner Network"). In the event Client chooses a merchant account from the Partner Network ("Integrated Partner"), Client will enter into a merchant account such Integrated Partner. Such agreement's terms and conditions will solely enure to the benefit and obligation of Client; CivicPlus shall not be a party to such agreement. In the event Client chooses an Integrated Partner merchant account provider, CivicPlus will provide Client and Integrated Partner contact information to the other party for contracting purposes, and shall integrate the Integrated Partner merchant account system at no additional charge to Client. If Client desires to use an integrated merchant account processor gateway besides one of the Integrated Partners designated as members of the Partner Network, CivicPlus will provide Client with a list of approved processors and an integration fee will be charged to Client. Client agrees to assume responsibility for ensuring execution of a merchant account contract with Client's select merchant account

Attachment: NY - Amherst Town - CivicRec - SOW AE SOW - Updated FINAL - 06302021 (RES-2021-813 : Registration Software - CRS #2888)

provider, to comply with all terms and conditions of such contract and pay all fees required to maintain the services. Client acknowledges that the fees set forth in this SOW do not include any transaction, processing or other fees imposed by Client's merchant account processor. Client is fully responsible for their relationship with their selected processor. In no event will CivicPlus: (i) take part in negotiations, (ii) pay any fees incumbent on the Client or merchant account, or (iii) acquire any liability for the performance of services of any chosen merchant account processor, including those in the Partner Network. Client acknowledges switching to a different merchant account processor after signing this SOW may incur additional fees and require a written and signed modification to this SOW. Client shall continue to be responsible for negotiating and executing any merchant account agreement as described herein for any additional merchant account processor changes.

7. When Client uses CivicPlus Pay, then Client may take online credit card payments for certain services or products they provide via the Client websites supported by CivicPlus. As such, through CivicPlus Pay, CivicPlus facilitates an automated process for redirecting credit card payments to Client's chosen payment gateways / merchant account processors. For card payments, CivicPlus will redirect any payments processing to the Client's merchant account processor gateway, and the merchant account processor gateway presents the payment form page and processes the card payment. CivicPlus does not transmit, process or store cardholder data and does not present the payment form. CivicPlus implements and maintains PCI compliant controls for the system components and applications that provide the redirection services only.

8. Client understands and agrees that CivicPlus is not liable for any failure of service or breach of security by any merchant account processor gateway provider selected by Client, whether such provider is an Integrated Partner or not.

Signature Page to Follow

Attachment: NY - Amherst Town - CivicRec - SOW AE SOW - Updated FINAL - 06302021 (RES-2021-813 : Registration Software - CRS #2888)

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: https://www.civicplus.com/master-services-agreement.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client	CivicPlus
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

Attachment: NY - Amherst Town - CivicRec - SOW AE SOW - Updated FINAL - 06302021 (RES-2021-813 : Registration Software - CRS #2888)

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization URL

Street Address

Address 2

City State Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Billing Contact E-Mail

Phone Ext. Fax

Billing Address

Address 2

City State Postal Code

Tax ID # Sales Tax Exempt #

Billing Terms Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [ ] or N [ ]

Please list all external sources: _____

Contract Contact Email

Phone Ext. Fax

Project Contact Email

Phone Ext. Fax

Attachment: NY - Amherst Town - CivicRec - SOW AE SOW - Updated FINAL - 06302021 (RES-2021-813 : Registration Software - CRS #2888)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Youth & Recreation
Initiated by: **Mary Diana Pouli**
Co-Sponsored by:

DOC ID: 24749 **RESOLUTION 2021-814** **ADOPTED**

Nuflow Services of Upstate NY, LLC Contract - CRS #2868

Authorize the Supervisor to sign a contract between the Town of Amherst (Youth & Recreation Department) and Nuflow Services of Upstate NY, LLC for emergency lining of pipe at the Northtown Center at Amherst.

9/13/2021
Consent

FINANCIAL IMPACT:

KP 2122.4972 - up to $13,800.00

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

NU FLOW
RELINE REPAIR RENEW ®
140 Mushroom Blvd., Rochester. New York. 14623

August 27, 2021

Eric W. Guzdek, CIRM
Recreation Specialist
Town of Amherst Youth & Recreation Department
Northtown Center at Amherst – General Manager
1615 Amherst Manor Drive
Williamsville, NY 14221

Re: Ice Rink Drain Liner

Eric:

I appreciate the opportunity to provide the following scope of work and respective pricing for the work we've been reviewing.
From my site visit yesterday, we televised the 3" cast iron drain line just outside of the rink area. Below are the links to the videos.

https://nuflowservicesofupstateny.box.com/s/hlpc1bic8pz9it1e2tbd43ljrtu2iajx
https://nuflowservicesofupstateny.box.com/s/l9kxuswwwjlqwke1qkvl71chzl4ecfrd
https://nuflowservicesofupstateny.box.com/s/7hapi705rcwu5xfemecpqeqt4s45g6vi

Specifically, there is a suspect area at approximately 35' from the access point. Overall, the pipe does show signs of average to significant scale and pitting.
You have requested the following:
Lining proposal to include:
10 lineal feet (spot repair)
35 lineal feet (repair up to and including suspect fitting)
60 lineal feet (lining from excavation to main)

Our scope of work would be the same for each of the above. The only difference is the actual footage of the material.

1. Pre-lining video inspection to determine extent of damage. I pretty much have already done this above.
2. Mill existing cast iron to ensure the pitting and scale has been removed. This is important as the existing pipe acts as the host pipe for our liner.
3. Supply and install the necessary length of Nu Flow CIPP Lining system.

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

4. Once cured, reinstate the necessary branch lines.
5. Provide a post lining CCTV.

Notes:

1. No tax has been figured in my pricing
2. Prevailing wages have been accounted for as we discussed.
3. Scheduling this work is a priority for you and although our schedule is quite busy, I told you if approved, we would have to do it next week.
4. Pricing excludes any plumbing work, reinstallation of any fittings, piping, drains, clean outs, etc.
5. No inspections or permits will be necessary for our work.
6. No water can be introduced into the system once we have inflated our bladder system.
7. Approximate duration of work would be 2-3 days.

Pricing:

1. 10LF-$5,500.00
2. 35LF-$9,800.00
3. 60LF-$13,800.00

Upon your review of the above, please contact me with any questions.

Sincerely,

John Billone
Principal

NU FLOW
RELINE REPAIR RENEW

Services of Upstate New York

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

Addendum to Contract Minor 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

(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.

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

5. Any accident shall be reported to the Office of the Town Attorney as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Town of Amherst as soon thereafter as possible as and no later than three (3) days after the date of such accident.

6. No Assignment: In accordance with the provisions of section 109 of the General Municipal Law, the Contractor is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Town.

7. Required Provisions of Law: Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party this Agreement shall be physically amended forthwith to make such insertion. In particular, the Contractor shall, among other things, fully comply with:

(a) Article 8 of the NYS Labor Law for public work contracts and Article 9 of the Labor Law regarding prevailing wage for Building Service employees.
(b) Labor Law Section 220-e and Executive Law Sections 291-299 and the Civil Rights Law relating to prohibition against discrimination and equal opportunity.
(c) Affirmative action as required by the Labor Law.
(d) Prevention of dust hazard required by Labor Law Section 222-a.
(e) Preference in employment of persons required by Labor Law Section 222.
(f) Eight-hour workday as required by Labor Law Section 220(2).
(g) Chapter 32 of the Town of Amherst: Minority Women and Business Utilization Commitment.
(h) Chapter 163 of the Town of Amherst: Registration of Sex Offenders.

8. The Contractor, in accordance with its status as an independent Contractor, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as nor claim to be, an officer or employee of the Town by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

Waiver: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

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:

Nuflow Services of Upstate NY
Print Name of Company

By: John Billone
Signature

John R Billone
Printed name

Date: August 16, 2021

Agreed to and Accepted by:

Town of Amherst

By: _____
Brian J. Kulpa, Supervisor

Date: _____

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

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: Nuflow Services of Upstate NY, LLC

Signature: John Billone

Print Name: John Billone

Title: Managing member

Date: August 16, 2021

Sworn To Before Me This

16 Day of August, 2021

LISA IDDINGS
NOTARY PUBLIC
NO. 01ID6151724
QUALIFIED IN WAYNE COUNTY
COMM. EXP. 08-21-2022
STATE OF NEW YORK

Notary Public

Revised 4.2017

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/16/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Dawn Sucher-Gumina
Eastern Shore Associates An ISU Network Member P.O. Box 480, 101 Cayuga St. Fulton NY 13069	PHONE (A/C, No, Ext): (315) 598-6000 FAX (A/C, No): (315) 598-1183 E-MAIL ADDRESS: dgumina@esainsurance.com

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Nu Flow Services of Upstate New York LLC 140 Mushroom Blvd Rochester NY 14623	INSURER A : Selective Insurance Co Of America	12572
	INSURER B : Selective Ins Co of South Carolina	19259
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 21-22 Master **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] CG7300NY 0119,CG7988NY 0119 GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	S2396806	03/17/2021	03/17/2022	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 500,000 $ 15,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
B	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [X] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY [X] CA78091117	Y	Y	S2264823	05/08/2021	05/08/2022	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000	Y	Y	S2396806	03/17/2021	03/17/2022	EACH OCCURRENCE AGGREGATE	$ 5,000,000 $ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [ ] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ $ $
A	Leased/rented equipment			S2396806	03/17/2021	03/17/2022	Special form Deductible	500,000 500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Town of Amherst
5583 Main Street
Williamsville NY 14221

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

AGENCY CUSTOMER ID: 00066162

LOC #:

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY	NAMED INSURED
Eastern Shore Associates	Nu Flow Services of Upstate New York LLC
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

Certificate holder is additional insured on a primary and non contributory basis per written contract, agreement,permit per CG7300NY 0119 and CA7809NY 1117. Completed operations per CG7988NY 0119. Waiver of subrogation applies.

Auto additional insured, primary and non contributory basis and waiver of subrogation per CA7809NY 1117.

Umbrella additional insured per CXL4 0403, Primary and non contributory per CXL449NY 0617, waiver of subrogation per CXL456NY 0517.

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

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NEW YORK STATE | Workers' Compensation Board

CERTIFICATE OF INSURANCE COVERAGE
DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier

1a. Legal Name & Address of Insured (use street address only)
NUFLOW SERVICES OF UPSTATE NY LLC
140 MUSHROOM BLVD
ROCHESTER, NY 14623

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
5856476116

1c. Federal Employer Identification Number of Insured or Social Security Number
47-4480227

2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)
Town of Amherst
5583 Main Street
Williamsville, NY 14221

3a. Name of Insurance Carrier
Standard Security Life Insurance Company of New York

3b. Policy Number of Entity Listed in Box "1a"
R20771-000

3c. Policy effective period
6/1/2018 to 8/15/2022

4. Policy provides the following benefits:
- [x] A. Both disability and paid family leave benefits.
- [ ] B. Disability benefits only.
- [ ] C. Paid family leave benefits only.

5. Policy covers:
- [x] A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- [ ] B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed 8/16/2021 By Debi A. Schmidt
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number (212) 355-4141 Name and Title SUPERVISOR-DBL/POLICY SERVICES

IMPORTANT: If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)

State of New York
Workers' Compensation Board

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed _____ By _____
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number _____ Name and Title _____

Please Note: *Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1.* ***Insurance brokers are NOT authorized to issue this form.***

DB-120.1 (10-17)

DB-120.1 (10-17)

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices my be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.

DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

§220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and not withstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

NYSIF
New York State Insurance Fund

199 CHURCH STREET, NEW YORK, N.Y. 10007-1100
| nysif.com

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

^^^^^^ 474480227
KEEVILY,SPERO-WHITELAW INC.
500 MAMARONECK AVENUE
HARRISON NY 10528

SCAN TO VALIDATE
AND SUBSCRIBE

POLICYHOLDER	CERTIFICATE HOLDER
NU FLOW SERVICES OF UPSTATE NEW YORK, LLC 140 MUSHROOM BLVD ROCHESTER NY 14623	TOWN OF AMHERST 5583 MAIN STREET WILLIAMSVILLE NY 14221

POLICY NUMBER	CERTIFICATE NUMBER	POLICY PERIOD	DATE
G2416 336-2	770092	05/01/2021 TO 05/01/2022	8/16/2021

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 2416 336-2, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP. THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.

THIS POLICY DOES NOT COVER THE SOLE PROPRIETOR, PARTNERS AND/OR MEMBERS OF A LIMITED LIABILITY COMPANY.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR,INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 466250035

U-26.3

Attachment: Nuflow Services of Upstate NY LLC (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

Ice Center Feature Rink Leak Repair (Temporary)

Attachment G
TOWN OF AMHERST-EMERGENCY PURCHASE(S) DOCUMENTATION FORM

This form is to be completed for all emergency purchases made that contravene the Town's Purchasing Policy. You must contact the Supervisor (or Deputy Supervisor in the Supervisors absence) to obtain his/her approval prior to making the purchase. This form must be completed and submitted to the Town Board at the first work session following the Emergency purchase. A copy should also be submitted to the Town Attorney and Contract Compliance & Administration Department.

An exception to the competitive bidding requirements exists for emergency situations (GML, §103[4]). There are three basic statutory criteria to be met in order to fall within this exception. These are that (1) the situation arises out of an accident or other unforeseen occurrence or condition; (2) the circumstances affect public buildings, public property or life, health, safety or property of the political subdivision's residents; and (3) the situation requires immediate action which cannot await competitive bidding.

Generally, there must be a present, immediate and existing condition which is creating an imminent threat or danger and which requires such immediate action that a further delay to comply with competitive bidding requirements is so detrimental to the public interest that it overcomes the strong public policy in favor of bidding. Further, because the emergency must arrive out of an accident or unforeseen occurrence, it is doubtful a local government may invoke the emergency exception in a situation which the result of inaction or dilatory behavior on the part of local officials and which, therefore, could have been foreseen in time to advertise for bids.

Even when a governing board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible costs, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

1. Date of Emergency Purchase: 8/31/21
2. Date of Town Board work session where Board is notified: _____
3. Date you received approval from the Supervisor: _____
4. Amount of Emergency Purchase. Please provide a detailed listing of items purchased and the cost of each (Attach additional detail if necessary):
   $9,800 - $13,800 (verbal quote) depending on length of pipe to be lined (30' to 60')
5. Is there adequate funding in your current operating budget to cover this purchase? Yes
   Identify budget Org/Object: KP 2122.4972
6. Please describe the circumstances that resulted in the need to make an emergency purchase without following the Town's Purchasing Policy:
   We have been unable to find a contractor who can line pipe of this size - we need to have ice back in the feature rink by 9/15. Concrete cutting to help
7. Please describe what steps were taken to ensure the lowest cost for the Emergency Purchase. If none, please explain why your department was prevented from doing so.
   We have been working on this problem all summer. There are other contractors who can line pipe, but not pipe this small or this long.
8. Department Head Signature: Mary Dara Gorui Date: 8/30/21

CC: Town Board
Town Attorney
Contract Compliance & Administration

For Contract Compliance & Administration Use Only
Date of Town Board Resolution: Emergency Purchase Tracking/Res #:

Stem the leak cannot be performed until pipe is lined. Trane, Danforth and Mollenberg-Betz have all confirmed that this is the best and only course of action at this time

Attachment: Emergency Purchase Request - Ice Center Feature Rink (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS

Pouli, Mary-Diana

From: Kulpa, Brian J.
Sent: Monday, August 30, 2021 10:06 AM
To: Pouli, Mary-Diana; Juul, Lynda
Cc: McMahon, Joe; Guzdek, Eric
Subject: RE: Emergency Purchase Request

I approve the action.

From: Pouli, Mary-Diana <MPouli@amherst.ny.us>
Sent: Monday, August 30, 2021 10:05 AM
To: Kulpa, Brian J. <bkulpa@amherst.ny.us>; Juul, Lynda <ljuul@amherst.ny.us>
Cc: McMahon, Joe <jmcmahon@amherst.ny.us>; Guzdek, Eric <EGuzdek@amherst.ny.us>
Subject: Emergency Purchase Request

Good morning,

I spoke with Lynda about this on Friday and she directed me to submit this as an emergency purchase request.

This concerns the leak in the Feature Rink at the Northtown Center.

Any questions, please contact Eric at eguzdek@amherst.ny.us or 207-2227 as he can explain it better than I can.

We have all of their required documents and will be submitting a contract for routing.

Thank you,
Mary-Diana

Attachment: Supervisor Approval - Nuflow (RES-2021-814 : Nuflow Services of Upstate NY, LLC Contract - CRS #2868)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 22672 **RESOLUTION 2021-78** **TABLED (NO VOTE)**

Local Law Amending Chapter 19, Ethics

A public hearing for "A Local Law Amending Chapter 19 of The Code Of The Town of Amherst With Respect To The Code of Ethics".

The purpose of this Local Law shall be to amend various section of Chapter 19 of the Code of the Town of Amherst with respect to the list of officials, notice and verification of filing.

1/19/2021
A motion to adjourn to April 19th was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

4/19/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:08 PM.

There were no speakers from the public. Supervisor Kulpa moved to Table the public hearing, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was Tabled at 7:09 PM.

FINANCIAL IMPACT:

None for the purposes of this resolution.

RESULT:	**TABLED (NO VOTE)**	**Next: 9/27/2021 7:00 PM**

LOCAL LAW NO.___ -2021

TOWN OF AMHERST

COUNTY OF ERIE, STATE OF NEW YORK

A Local Law Amending Chapter 19 of the Code of the Town of Amherst With Respect to the Code of Ethics

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 19 of The Code of The Town of Amherst With Respect To The Code of Ethics."

Section 2. Purpose

The purpose of this Local Law shall be to amend various sections of Chapter 19 of the Code of the Town of Amherst with respect to the list of officials, notice and verification of filing.

Section 3.

Chapter 19 of the Code of the Town of Amherst is amended as follows:

§ 19-1. Title.
This chapter may be cited as the "The Code of Ethics."

§ 19-2. Statutory authority; ~~intent.~~
The Code of Ethics is enacted pursuant to Article 18 of the General Municipal Law and in recognition of the policy of the State of New York and the Town of Amherst to maintain the highest standards of integrity in public service.

§ 19-3. Intent.
A. The Code of Ethics is intended to afford Town officers and employees guidance in conforming to ethical standards; to promote public confidence in the integrity of Town government; to require public disclosure of financial interests that may influence, or be perceived as influencing, actions of Town officers and employees; to minimize unwarranted suspicion; and, to provide for fair and effective administration of this Code. This Code of Ethics shall be in addition to all of the restrictions, standards and provisions pertaining to the conduct of Town officers and employees.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

B. This Code of Ethics is further enacted to:

1. Establish high standards of ethical conduct for Town officers and employees.

2. Afford Town officers and employees clear guidance in conforming to such standards.

3. Promote public confidence in the integrity of Town government.

4. Require public disclosure of financial interests that may influence, or be perceived as influencing, actions of Town officers and employees.

5. Facilitate consideration of potential ethical problems before they arise.

6. Minimize unwarranted suspicion.

7. Enhance accountability of government to the people it serves.

8. Provide for fair and effective administration of this Code.

§ 19-~~3~~4. Definitions.
As used in the Code of Ethics, the following terms shall have the meanings indicated:

AGENCY
Any office, board, body, advisory board, council, commission, agency, department, district, administration, division, bureau or committee of the Town of Amherst; and shall include but not be limited to the Town Board, ~~Zoning Board of Appeals, Planning Board, Traffic Safety Board, Recreation Commission, Library Board of Trustees, Board of Ethics, Government Study Committee, Youth Board, Board of Assessment Review, Senior Citizens Advisory Board, Amherst Industrial Development Agency, 9/11 Commemoration Commission, Amherst Committee on Disabilities, Amherst Community Diversity Council, Amherst Veterans Committee, Arts and Culture in Public Places Board, Board of Electrician Examiners, Board of Plumbing and Drainage Examiners, Citizens' Financial Advisory Committee, Employee Suggestion Review Committee, Energy Conservation Committee, FOIL Board, Glen Park Joint Board, Historic Preservation Commission, Information Technology Advisory Committee, Minority/Woman Owned Business in Amherst, Open Government Advisory Board, Recycling and Waste Committee~~ Amherst Committee on Disabilities, Amherst Community Diversity Council, Amherst Industrial Development Agency, Amherst Veterans Committee, Arts and Culture in Public Places Board, Board of Assessment Review, Board of Electrician Examiners, Board of Ethics, Board of Plumbing and Drainage Examiners, Citizens' Financial Advisor Committee, Design Advisory Board, Employee Suggestion Review Committee, Energy Conservation Committee, FOIL Board, Glen Park Joint Board,

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

Government Study Committee, Historic Preservation Commission, Information Technology Advisory Committee, Library Board of Trustees, Minority/Woman Owned Business, 911 Commemoration Commission, Open Government Advisory Board, Planning Board, Recreation Commission, Recycling and Waste Committee, Senior Citizens Advisory Board, Traffic Safety Board, Youth Board and Zoning Board of Appeals in Amherst, or an improvement district as provided by Article 12 of the Town Law.

APPEAR and APPEAR BEFORE
Communicating in whatever form, whether personally or through another person.

BUSINESS DEALING
Having or providing any contract, service or work with a municipality; buying, selling, renting, leasing or otherwise acquiring from or dispensing to a municipality any goods, services or property; or applying for, petitioning, requesting or obtaining any approval, grant, loan, license, permit or other privilege from the municipality.

CONFLICT OF INTEREST
A situation in which a person has a duty to more than one person or entity but could not do justice in the actual performance adverse to the interest of both parties. This also includes the situation in which the concerns or aims of two different parties or organizations are incompatible or a situation in which a person is in a position to derive personal benefits from actions or decisions made in their official capacity.

DISCRETIONARY ACT
Any action involving the exercise of judgment or discretion by a municipal officer or employee, either individually or as a member of any agency, and includes but is not limited to negotiation, approval, advice, recommendation, authorization or audit.

FAMILY MEMBER
A spouse, child, stepchild, brother, sister, parent, half-child, brother/sister-in-law, parent-in-law or dependent of a municipal officer or employee.

GIFT OR FINANCIAL BENEFIT
Money, service, loan, travel, entertainment, hospitality or any financial transaction on terms not available to the general public but shall not include normal hospitality or promotional materials if such hospitality or materials do not exceed One Hundred Dollars ($100.00) in value and are not received in circumstances in which it might reasonably be inferred that they were given with intention to influence or reward them in relation to the performance of their duties.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

GOVERNING BODY
The Town Board of the Town of Amherst.

MINISTERIAL ACT
An action performed in a prescribed manner without the exercise of judgment or discretion as to the propriety of the act.

PAID TOWN OFFICER, EMPLOYEE OR OFFICIAL
Any Town officer, employee or official who receives a salary from the Town or who is compensated by the Town on a per-diem or hourly basis, but does not include a Town officer, employee or official who is solely reimbursed by the Town for expenses incurred in the course of his or her duties.

PARTICULAR MATTER
Any business dealing with the Town or any application therefor or any case, proceeding, determination, investigation, charge, accusation or arrest or any other matter involving a discretionary act of a Town officer or employee, but does not include the proposal, consideration or enactment of local laws, ordinances or regulations of general application.

PERSON
An individual, corporation, partnership, unincorporated association, LLC, LLP and all other legal entities.

POLITICAL PARTY
Any political party which appears on the ballot in the last biennial Town election.

RELATED PARTY
A spouse, child, parent, brother or sister of the Town officer or employee and a party with whom the Town officer or employee or his/her spouse, child, parent, brother or sister has or intends to enter into an employment, professional, business or financial relationship.

SPOUSE
A husband or wife from whom the Town officer or employee is not legally separated.

TOWN
The Town of Amherst, and includes all agencies thereof and officers, employees and officials thereof.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

TOWN CLERK
The Clerk of the Town of Amherst.

TOWN OFFICER OR EMPLOYEE
Any officer, ~~or~~ employee, or intern of the Town of Amherst, whether paid or unpaid, including public officials and all other members of any agency in the Town of Amherst, but does not include the Town Justices, officers or employees of the Unified Court System. Volunteer firemen and civil defense volunteers shall not be deemed to be Town officers or employees.

TOWN OFFICIAL
Any Town officer, employee who has the authority, either alone or as a member of an agency/committee/board to perform discretionary acts on behalf of the Town with respect to any business dealing. "Town official" shall not include Town Justice and any Town officer or employee who performs only ministerial acts and duties.

§ 19-5. Applicability.

The requirements of this Code shall not replace but shall be in addition to all other legal requirements pertaining to the conduct of Town officers and employees. Every provision of this Code, except as expressly limited herein, shall apply to every officer and employee of the Town, whether paid or unpaid. It shall also apply to members, directors, officers and employees of any not-for-profit corporation if a majority of such corporation's members or directors serve by reason of their Town positions or if a majority of such corporation's officers or directors are appointed by one or more Town officers or bodies, such as the Amherst Industrial Development Agency. Any such not-for-profit corporation shall be deemed to be a Town agency for the purpose of this Code. The members, directors, officers and employees of any such corporation shall be deemed to be Town officers or employees for the purposes of this Code. It shall also apply to any person who is a member of a Town board, agency, commission, council or body, whether paid or unpaid, as well as to personal service/consultant contractors of Town Development Agencies defined above. This Code shall not apply to officers or employees of the Town Court of the Town of Amherst, unless adopted by their respective governing bodies. The Board of Ethics shall have discretion to grant a temporary exception to the provisions of this Chapter for any officer, employee, person, board, commission or agency to which this Chapter applies.

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

§ 19-46. General regulations.

A. No Town official or employee shall:

(1) Act as attorney, agent, broker, employee, consultant or representative for any person in connection with any business dealing that person has with the Town.

(2) Directly or indirectly, solicit any gift, or accept or receive any gift or series of gifts, having an annual aggregate value of One Hundred Dollars ($100.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his or her part. The foregoing limitation shall not apply to campaign contributions not otherwise prohibited by law.

(3) Take or refrain from taking any action or agree to take or refrain from taking any action or induce or attempt to induce any other Town officer or employee to take or refrain from taking any action on any matter before the Town in order to obtain a pecuniary or material benefit for:

(a) Himself or herself;

(b) A family member;

(c) Any partnership, LLP or unincorporated association of which the Town officer or employee or family member, is a member or employee or in which he or she has a proprietary interest;

(d) Any corporation, LLC of which the Town officer or employee, or family member is an officer or director or of which he or she legally or beneficially owns or controls more than five percent (5%) of the outstanding stock;

(e) Any person with whom the Town official, or his or her family member, has an employment, professional, business or financial relationship; or

(f) Any person from whom the Town officer or employee or his or her spouse has received within any twelve-month period during the previous twenty-four (24) months a pecuniary or material benefit having an aggregate value greater than One Thousand Dollars and Zero

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

Cents ($1,000.00), unless said individuals make up less than five percent (5%) of a class of individuals benefitted.

(4) Appear before the agency/committee/board served by or which employs such Town officer or employee except on behalf of the Town or on his or her own behalf.

(5) Appear before the Town except on behalf of the Town or on his or her own behalf. This subsection shall only apply to officers and employees who are elected or who are paid by the Town.

(6) Appear as attorney or counsel against the interests of the Town in any matter in which the Town is a party or a complainant.

(7) Solicit any nonelected officer or employee of the Town to participate in an election campaign. This subsection shall not prohibit an elected officer from soliciting such participation from officers and employees who are appointed by and directly subordinate to such elected officer and who serve in positions which are in the exempt classification or the unclassified service under the Civil Service Law.

(8) Directly or through a person, campaign committee or other organization authorized to act on his or her behalf solicit any nonelected officer or employee of the Town to pay or promise to pay any assessment, subscription or contribution to a political party, political party organization or election campaign. This subsection shall not prohibit a general solicitation of a class of persons.

(9) Directly or through a person or campaign committee or other organization authorized to act on his or her behalf, solicit participation in an election campaign or payment or promise of payment of any assessment, subscription or contribution to a political party, political party organization or election campaign from any person who, to the knowledge of the municipal officer or employee, has or, within the previous twelve (12) months, has had any business dealing with the municipality. This subsection shall not prohibit a general solicitation of a class of persons.

(10) Directly or through a person or campaign committee or other organization authorized to act on his or her behalf, utilize Town property, the Town Seal, the Town Logo or stationery where the header or footer states the person's employment as a Town of Amherst employee, to solicit participation in an election campaign or payment or promise of payment of any assessment, subscription or contribution to a political party, political party organization or election campaign.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

(11) Except where such disclosure is authorized by law, disclose any confidential information acquired in the course of his or her official duties or use any such information to advance the financial or other private interest of himself or herself or any other person.

(12) After termination of his or her term of office or employment with the Town, appear before the Town or receive compensation for any services rendered on behalf of any person other than the Town in relation to any particular matter upon which he or she took any discretionary act during his or her term of office or employment with the Town.

B. No partnership, LLP, LLC or corporation or unincorporated association of which a Town official is a member or employee or in which he or she has a proprietary interest nor any corporation, LLC of which he or she is an officer or director or legally or beneficially owns or controls more than five percent (5%) of the outstanding stock shall appear before the agency served by such Town official on behalf of any person other than the Town or itself.

C. No partnership, LLP or unincorporated association of which a Town official who is elected or paid by the Town is a member or employee or in which he or she has a proprietary interest nor any corporation, LLC of which he or she is an officer or director or of which he or she legally or beneficially owns or controls more than five percent (5%) of the outstanding stock shall appear before the Town on behalf of any person other than the Town or itself.

D. Nothing in this section shall be construed to prohibit a Town officer or employee or any other person from receiving a municipal service or benefit or using a municipal facility which is generally available to residents or a class of residents in the Town.

E. Nothing in this section shall be construed to prohibit any Town officer or employee listed in §11 of the Domestic Relations Law from accepting any gift or benefit having a value of One Hundred Dollars ($100.00) or less for the solemnization of a marriage by that Town officer or employee at a place other than the Town officer's or employee's normal place of business or at a time other than the officer's or employee's normal hours of business and except as may be otherwise restricted by law.

F. Nothing in this section shall be construed to prohibit a Town officer or employee from performing any ministerial act.

G. A person who knowingly violates any provision of this section may, in addition to any penalty contained in any other provisions of law, be dismissed,

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

suspended or removed from office or employment in the manner provided by law.

§ 19-~~5~~7. Transactional disclosure and recusal; definitions.

A. Whenever a Town official is requested or required to take any action on a matter before the Town and, to his or her knowledge, either the performance or nonperformance of that action would provide a pecuniary or material benefit to himself or herself or to any related person different from that which would be derived from the action by reason of its general application to a broad class of persons deriving such benefit, the Town official shall not participate in that matter unless the official's recusal prohibits Town action, then said officer or employee shall participate after full disclosure and reference to the particular legislation otherwise prohibiting Town action. The Town officer or employee also shall file promptly with his or her immediate superior, if any, and with the Town Clerk a signed statement disclosing the nature and extent of that interest.

B. For purposes of this section, the following terms shall have the meanings indicated:

RELATED PERSON

(1) A family member.

(2) Any corporation of which the municipal officer or employee is an officer or director or of which he or she legally or beneficially owns or controls more than five percent (5%) of the outstanding stock.

(3) Any person with whom the municipal officer or employee or his or her family member has an employment, business or financial relationship.

(4) Any person from whom the municipal officer or employee or his or her spouse has received within any twelve (12) month period during the previous twenty-four (24) months a pecuniary or material benefit having an aggregate value greater than One Thousand Dollars and Zero Cents ($1,000.00).

C. Nothing in this section shall be construed to prohibit a Town officer or employee from performing any ministerial act or to require a Town officer or employee to file a disclosure statement pursuant to Subsection A of this section prior to performing any ministerial act. The award of a contract by an officer or employee pursuant to the public bidding requirements of §103 of the General Municipal Law shall be deemed a ministerial act.

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

§ 19-~~6~~8. Disclosure statement.

A. Long Form Disclosures: All elected Town officials, all department heads and all Town Officials who are elected, appointed, paid or unpaid, who are members of the ~~Zoning Board of Appeals, Planning Board, Youth Board, Traffic Safety Board, Government Study Committee, Recreation Commission, Board of Assessment Review Amherst Industrial Development Agency, Board of Ethics, Board of Electrician Examiners, Board of Plumbing and Drainage Examiners, Citizens' Financial Advisory Committee, Energy Conservation Committee, FOIL Board, Historic Preservation Commission and the Open Government Advisory Board~~ Amherst Industrial Development Agency, Board of Assessment Review, Board of Plumbing and Drainage Examiners, Board of Electrician Examiners, Board of Ethics, Citizens' Financial Advisory Committee, Design Advisory Board, Energy Conservation Committee, FOIL Board, Government Study Committee, Historic Preservation Commission, Open Government Advisory Board, Planning Board, Recreation Commission, Traffic Safety Board, Youth Board and Zoning Board of Appeals shall file with the Town Clerk, who for the purpose of this section shall also be deemed the Secretary of the Board of Ethics as hereinafter set forth, a signed, annual disclosure statement within thirty (30) days of taking office and no later than April 30 of each year thereafter. Within thirty (30) days of any change in the information contained in his or her most recently filed statement, the ~~public~~ Town official shall file a signed amendment to the statement indicating the change.

B. Information to be disclosed by all those Town officials defined in Section 19-6A shall be in the following form:

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

(1) Name:

Address:
Email Address:

If married, spouse's name:

(2) (a) Title of Town position:

(b) Department, agency or other governmental entity:

(3) Do you receive any benefits, compensation or other consideration that are derive directly or indirectly from your employment or association with the Town of Amherst other than your remuneration from the Town?

Yes _____ No _____

If YES, please describe the nature, source of and amount such benefits, compensation o other consideration.

Nature	**Source**	**Amount**

(4) List the address and SBL of all real property in which you, your spouse or other famil member of your household has an ownership or other financial interest.

Name of Owner	**Address**

(5) List the name and address of any partnership, unincorporated association, corporatio business or employer of any sort of which you or your spouse is a member, officer o employee or from which you or your spouse derive income of any nature, giving you position and/or your spouse's position, if any, with such entity.

Self/Spouse	**Position**	**Organization and Address**

(6) List the name and address of any corporation, partnership, unincorporated associatio or business of which you or your spouse legally or beneficially owns or controls mor than 5% of the issued and outstanding stock or other ownership rights.

Self/Spouse	**Organization and Address**

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

~~Strikethrough~~ = Deleted language; Underline = Added language

(7) State any self-employment, and the general nature thereof, from which you or you spouse has derived gross income in excess of $2,000 during the previous calendar year.

Self/Spouse **General Nature**

(8) If you are unable, after reasonable effort, to obtain any of the information required hereir so state and explain.

(9) List any position you held within the last 5 years as an officer of any political committe or political organization. The term "political organization" includes any independen body or any organization that is affiliated with or a subsidiary of a political party.

(10) List the source of all gifts received in the past year from the same or affiliated source aggregating in excess of $100.00 by you or a close relative, from any person or organization having had a regulatory or financial relationship with the Town within the past 2 years or expected to have such a relationship within the next 2 years, excluding gifts from a relative. The term "gifts" includes gifts of cash, property, personal items services, payments to third parties on your behalf, loans, forgiveness of debt honorariums, travel, entertainment, hospitality, tickets and any financial transaction or terms not available to the general public. The term "gifts" shall not include norma hospitality or promotional materials received within the past year if such hospitality or materials which, when aggregated by source, do not exceed $100.00 in value and are not received in circumstances in which it might reasonably be inferred that they were given with the intention to influence or reward you in relation to the performance of your duties.

Name of Family Member	Relationship to You	Name of Business Entity	Involvemen with Town

(11) List your interest or any close relative in an entity which has had financial or regulatory activity with the Town or Amherst Industrial Development Agency within the last 2 years or is expected to have such activity within the next 2 years, except for a publicly traded business organization of which you own less than 5% of the outstanding stock or ownership interest. It is not necessary to disclose personal savings accounts and retirement accounts.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

(12)

Name of Family Member	Relationship to You	Name of Business Entity	Involvement with Town

Outside employment. Describe any outside occupation, employment, trade, business or profession providing more than $1,000.00 per year for you or a close relative, if any, and indicate whether such activities are regulated by any state or local agency.

Name of Family Member	Position	Name, Address & Description of Organization	State or Local Agency

(13) Future employment. Describe any contract, promise or other agreement between you and anyone else with respect to your employment after leaving your Town office or position.

Past employment. Identify the source and nature of any income in excess of $1,000.00 per year from any employer, including deferred income, contributions to a pension or retirement fund, profit-sharing plan, severance pay or payments under a buy-out agreement for this year and the year prior to this year.

Name and Address of Income Source	Description of Income (i.e. pension, deferred compensation, etc)

(14) Identify and describe the source of any third-party payment or reimbursement for Town of Am st travel-related expenditures in excess of $250.00 for any matter that relates to your official duti The term "reimbursement" includes any travel-related expenses provided by anyone other than the wn for speaking engagements, conferences or fact-finding events that relate to your official duties.

Source	Description

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

(15) Describe all loans and debts of you or a close relative in excess of $5,000.00 (excluding retail accommodations such as primary mortgages, home equity loans, charge accounts, lines of credit and credit cards extended in the normal course of business which are ordinarily available to the general public by financial institutions (for example, banks) and/or merchants and which are not extended in circumstances in which it might be reasonably inferred that they were extended with the intention to influence or reward you in relation to the performance of your duties):

_____ _____

~~(month, day, year)~~
(date) Signature of Reporting Individual

C. Short Form Disclosure. All Town officials who are appointed, paid or unpaid, to any board of committee for who a long form disclosure is not required shall file a Short Form Disclosure form containing the following information:

(1) Name, Address, Email Address, Telephone Number (Both Home and Cell) and if married, Spouse's name.

(2) Title of Position (Name of Board or Committee)

(3) I hereby certify that I have read Chapter 19 of the Town of Amherst Town Code (Code of Ethics) and understand its restrictions upon my activities. I further certify that I will follow these provisions and that I do not have any conflict of interest as defined in the Code of Ethics.

Name & Date

§ 19-9. Transactional Disclosure Statement Required

A. Private interests. A Town officer or employee shall, before taking, advising or participating in any official discretionary action affecting his or her known private interest or the private interest of a related party, file a statement disclosing such interest and defining the proposed action.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

B. Professional or business transactions. If a Town officer or employee wishes to enter into an employment, professional, business or financial transaction, other than a normal retail purchase or credit transaction on the same terms as are available to the general public, with another party and such other party has pending or is known by such Town officer or employee to be considering or has had pending within the prior twelve (12) months any financial or regulatory matter with a Town agency and the Town officer or employee or a subordinate officer or employee has participated in or is authorized to participate in any official discretionary action affecting such matter, the Town officer or employee shall file a statement disclosing such transaction and disclosing the nature of his or her participation in such action prior to entering into such transaction. If a Town officer or employee learns that a related party proposed to enter or has entered into such a transaction, then he or she shall promptly file such a statement.

§ 19-~~7~~10. Civil penalty; penalties for offenses.

A. Statement of financial disclosure.

(1) A reporting individual who knowingly ~~and willfully~~ fails to file an annual statement of financial disclosure as ~~provided~~ required herein shall be presumed to have voluntarily withdrawn from membership on the committee/board they were appointed to.

(2) A reporting individual who knowingly and ~~willfully with intent to deceive~~ makes a false statement or gives information which such individual knows or should have known to be false on such statement of financial disclosure filed pursuant to this Chapter shall be assessed a civil penalty in an amount not exceed Ten Thousand Dollars and Zero Cents ($10,000.00). Assessment of a civil penalty hereunder shall be made by the Town of Amherst Board of Ethics following a hearing which follows the procedure set forth in the rules of procedure adopted by the Board of Ethics.

(3) A reporting individual fails to file an amended financial disclosure within thirty (30) days of any change in information contained in his/her most recently filed financial disclosure statement shall be presumed to have withdrawn from membership in the committee or board that they were appointed to.

(4) For a violation of this subsection 2, the Town of Amherst Board of Ethics may, in lieu of a civil penalty, refer said violation to the District Attorney and, upon such conviction~~, but only after such referral, such violation shall be punishable as a misdemeanor~~.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

(5) Notwithstanding any other provision of law to the contrary, no other penalty, civil or criminal, may be imposed for failure to file or for false filing of such statement, except that the appointing authority may impose disciplinary actions as otherwise provided by law.

B. For violations of the conflict of interest and transactional disclosure provisions of this chapter, the Town of Amherst Board of Ethics shall assess a civil penalty in an amount not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) or, in lieu thereof, issue a public censure or private admonition. In addition, the appointing authority may impose disciplinary action as otherwise provided by law.

C. For violations of the Section 19-4(A)(10) the Town of Amherst Board of Ethics shall assess a civil penalty in an amount not to exceed Ten Thousand Dollars and Zero Cents ($10,000.00) or, in lieu thereof, issue a public censure or private admonition. In addition, the appointing authority may impose disciplinary action as otherwise provided by law including removal from office/employment. For a violation of Section 19-4(A)(10), the Town of Amherst Board of Ethics may, in lieu of a civil penalty, refer a violation to the District Attorney and upon such conviction but only after such referral, such violation shall be punishable as a Class A misdemeanor.

D. The Town of Amherst Board of Ethics shall adopt rules governing the conduct of adjudicatory proceedings and appeals relating to the assessment of civil penalties herein authorized. Such rules shall provide for due process procedural mechanisms substantially similar to those set forth in Article 3 of the State Administrative Procedures Act, but such mechanisms may not be identical in terms or scope.

E. No reporting individual shall be subject to the sanction contained in Subsections 1 or 2 for any offense that occurred more than two (2) years before Notice is provided to that individual that he/she has violated the provisions of the Ethics Code.

F. Assessment of a civil penalty shall be final unless modified, suspended or vacated within thirty (30) days of imposition and, upon becoming final, shall be subject to review at the instance of the affected reporting individual in a proceeding commenced against the Town of Amherst Board of Ethics pursuant to Article 78 of the Civil Practice Law and Rules.

§ 19-~~8~~11. Maintenance of disclosure statements.
Transitional disclosure statements and annual disclosure statements shall be a matter of public record and shall be filed and indexed with the Town Clerk.

~~Strikethrough~~ = Deleted language; Underline = Added language

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

The Town Clerk shall retain such disclosure statements for a period of not less than seven (7) years from the date of filing.

§ 19-~~9~~12. List of officials; notice and verification of filing.

A. On or before the first day of April of each year the Town Supervisor, together with the Town Clerk, shall:

(1) File with the Town Clerk a list of names and offices or positions of all officials and employees required to file annual disclosures; and

(2) Notify all persons required to file annual disclosure forms and request that the same be filed with the Town Clerk no later than April 30th of ~~each year~~ or the subsequent business day. Said notifications are to be sent to the person's current residence on file with the Town Clerk and also be sent via email, if email is available.

(3) Notify all Department Heads/Town Board liaisons of the names of these persons required of the names and offices or positions of all officers and employees required to file annual disclosures with an indication of whether that individual has filed the required disclosure form.

(4) If the notice is returned, the Town Clerk within three (3) business days will then notify the relevant Department Head/Town Board liaison of the same within three (3) business days. Upon receipt of such notice, the Department Head/Town Board liaison shall immediately notify the person in writing (email shall suffice) that he/she needs to file the annual disclosure statement.

B. On or before the 15th day of May of each and every year, the Board of Ethics shall meet to ascertain and verify that every required individual has filed the required disclosure statement.

C. Failure of the Supervisor and the Town Clerk to notify any or all individuals required to file disclosure statements shall not relieve Town officials~~s~~ or employees of their duty to file the disclosure statements.

§19-13. Disclosure of Interest by Town Board member; abstention from action.

When a member of the Town Board must take official action on a matter in which the board member has a substantial personal economic interest, which interest is distinct from that of the general community, the member's constituents or a substantial class of the general community he or she shall

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

divest himself or herself of that interest or shall publicly disclose the nature and extent of such interest in writing to the Town Board. The board member ~~may~~ shall abstain from participating in such action upon consideration of any possible inference of impropriety and the affirmative public need for his or her participation in the action under consideration. ~~The board member's decision not to abstain shall not be deemed unethical.~~

§19-14. Applicant Disclosure

A. Where a person requests the Town or a Town officer, official or employee to take or fail to take any action (other than a ministerial act) that may result in a financial benefit ~~both to the requester and~~ to either any officer, official or employee of the Town, the ~~requester~~ Town officials shall disclose the names of any such persons, to the extent known to the requester at the time of the request.

B. If the request is made in writing, the disclosure shall accompany the request. If the request is oral and made at a meeting of a public body, the disclosure shall be set forth in the public record of the body. If the request is oral and not made at a meeting of a public body, the disclosure shall be set forth in writing filed with the Town Clerk.

§19-15. Registration before Town Agency

No Town officer or employee shall receive or enter into any agreement, whether expressed or implied, for compensation for services to be rendered in relation to any matter before any Town agency; provided, however, that this Section shall not be applicable if the Town officer or employee does not receive compensation by reason of his or her Town position and the matter is not before his or her own agency.

§19-16. Gifts and Financial Benefit.

A. No Town officer or employee shall directly or indirectly solicit, accept or receive any gift or financial benefit from or on behalf of any person or organization that has pending or is known by such Town officer or employee to be considering or has had pending within the prior twelve (12) months any financial or regulatory transaction with any Town agency in which he or she serves or over which he or she has any jurisdiction or appointing power.

B. For purposes of this Code, a Town officer's or employee's acceptance of travel and travel-related expenses from or on behalf of any person or organization that has pending or is known by such Town officer or employee to be considering or has had pending within the prior twelve (12) months can be considered a gift to the Town of Amherst rather than to the Town officer or employee when:

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

(1) The travel is for a Town purpose and therefore could properly be paid for with Town funds;

(2) The travel arrangements are appropriate to that purpose; and

(3) The travel is no longer than reasonably necessary to accomplish the business which is its purpose.

C. To avoid an appearance of impropriety, advanced notice of such travel, including itinerary and a proposed travel budget, should be submitted to the Board of Ethics for review, when practicable. Following the conclusion of the trip, the official should report to the Board of Ethics the itinerary and actual travel disbursements and payments or reimbursements of expenses.

§19.17. Future Employment.

No Town officer or employee, without proper disclosure to the Town Board shall solicit, negotiate for or promise to accept employment by any person, firm or corporation with which he or she or his or her agency is engaged on behalf of the Town in the transaction of business or which is or may be affected by his or her official action.

§19.18. Appearance of Compensation After Termination of Service

No Town officer or employee without proper disclosure to the Town Board shall, after the termination of service or employment with such municipality, appear before any agency of the Town or receive compensation for services in relation to any specific case, proceeding, application or matter before a Town agency or against the Town's interest in which he or she personally participated in the course of his or her service or employment.

§19.19. Abuse of Position

No Town officer or employee shall accept any employment, enter into any transaction or acquire any investment under circumstances in which any impression may reasonably be created that he or she will be influenced thereby in the conduct of his or her duties. No Town officer or employee shall use or attempt to use his or her official position to secure unwarranted benefits, privileges or exemptions for himself or herself or for others.

§19.20. Board Removal

Notwithstanding provisions set forth in the Code of the Board of Ethics, Town officials or its officers covered by this Code of Ethics who violate its provisions set forth herein may be removed by the Supervisor if appointed by him/her,

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

by the Town Board through a majority vote for appointments made by the Town Board, and by the Town Board through a majority vote for individuals appointed or designated by third parties.

§19.21.

~~B.~~ Any member serving on a Town board or committee who affirmatively commences a lawsuit against the Town, or is a named party to a lawsuit against the Town and/or any board while serving as a member of that board, must disclose to that board his or her involvement in the lawsuit and must refrain from participating in all board decisions that entail or are likely to entail issues that form the basis of the litigation and may be removed; and

§19.22

~~C.~~ Any member who receives financial and/or noneconomic gains from representing groups, corporations, or individuals in legal actions brought against the Town and/or any board shall not simultaneously serve as a board member on any board of the Town of Amherst and may be removed; and

§19-23

~~D.~~ Whenever necessary, the Supervisor shall require each member to disclose all conflicts on matters before the Board, and Board members shall recuse him/herself, if necessary, from any decision or underlying considerations regarding such matters.

(1) Nothing herein shall be deemed to impose civil penalties on Board members.

(2) Nothing herein shall be deemed to bar a Board member from bringing a timely suit against the Town or its agencies for personal injuries or damages as allowed by law.

§19-21~~4~~. Reservation of Right.

Nothing in this Code shall be deemed to bar or prevent the timely filing by a present or former Town officer or employee of any claim, account, demand or suit against the Town or any agency thereof on behalf of himself or any member of his family arising out of personal injury or property damage or for any lawful benefit authorized or permitted by law.

§19.2~~2~~5 Distribution of Provisions.

The Supervisor shall cause a copy of this Code to be compiled with Article 18 of the New York General Municipal Law and such other material he or she shall deem relevant. He or she shall cause a copy of such compilation to be

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

distributed to every officer and employee of the Town within thirty (30) days of the adoption of this code or as soon thereafter as may be practicable. Every officer and employee elected or appointed thereafter shall be furnished a copy of such compilation within ten (10) days after entering upon the duties of his or her position.

§ 19-~~112326~~. Duty to report.
Every Town officer or employee shall report to the Erie County District Attorney or the Town Attorney any action which may reasonably be interpreted as an improper attempt to influence him in the conduct of his office.

§19-~~102427~~. Board of Ethics.
A. A Board of Ethics is established and shall be known as the "Town of Amherst Board of Ethics."

B. The Board of Ethics shall consist of five (5) members who shall serve five (5) year terms of office, one such term expiring each year. Members shall be appointed by the Supervisor, subject to confirmation by the Town Board. If the Supervisor shall fail to appoint the members within thirty (30) days after the establishment of the Board of Ethics or within thirty (30) days after a vacancy occurs on the Board of Ethics, the Town Board shall appoint such member or members as the case may be. ~~Only o~~ One (1) member of the Board shall be an officer or employee of the Town of Amherst. In the event that a vacancy occurs prior to the expiration of the five (5) year term, such vacancy shall be filled for the balance of such term in the same manner as members are appointed to full terms. All members shall reside within the Town of Amherst. All members shall serve without compensation except that any member who is a Town of Amherst officer or employee shall be entitled to his usual compensation when attending upon the business of the Board of Ethics during normal working hours.

C. No more than two (2) members of the Board of Ethics may be affiliated with the same political party. No member of the Board of Ethics may hold an officer's position in any political party except such person may be a member of a county committee of a political party. The members shall elect a Chairman from among themselves and such other officers as may be deemed necessary from time to time.

D. A Board of Ethics member may be removed by the Town Supervisor with the approving consent of not fewer than four (4) members of the Town Board after a finding of substantial neglect of duty, gross misconduct in office, inability to discharge the powers or duties of the office or violation of this chapter after written notice of the charges and an opportunity for reply.

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

E. The Town Clerk shall be the Clerk of the Board of Ethics. All documents filed with the Town Clerk shall be deemed for the purposes of this chapter to be filings with the Board of Ethics.

F. The Board of Ethics established hereunder shall render advisory opinions to Town residents or employees on written request and, upon request of the Town Board, make recommendations to such Town Board as to any amendments of this chapter. The opinions of the Board of Ethics shall be advisory and confidential and in no event shall the identity of the town employee be disclosed except to authorized persons and agencies. Such opinions shall be on the advice of counsel employed by the Board of Ethics or, if none, of the Town Attorney.

G.~~F~~. The Board of Ethics shall have all the powers and duties as prescribed by Article 18 of the General Municipal Law. The Board of Ethics may adopt and amend such rules or procedures as are appropriate.

H. Such Board of Ethics upon its formation shall promulgate its own rules and regulations as to its form and procedures and shall maintain appropriate records of its opinions and proceedings.

Section 4. Effective Date

This Local Law shall take effect immediately and be filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 and 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, New York

Attachment: ProposedLocalLaw2021 (RES-2021-78 : Local Law Amending Chapter 19, Ethics)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Kathleen Cooper**
Co-Sponsored by:

DOC ID: 22856 **RESOLUTION 2021-153** **TABLED (NO VOTE)**

Amend the Audubon Development Plan and the Zoning Map to Reclassify 2160 & 2170 North Forest Road from NCD-SA to NCD-ND

DRAFT RESOLUTION
(2/22/21)

Amend the Audubon Development Plan and the Zoning Map
[2160 & 2170 North Forest Road (NCD); Z-2020-06]

RESOLVED, that pursuant to 6NYCRR Part 617 (SEQR) and Town Code Section 104, as amended, that the requirements of SEQR have been completed and the Town Board issues the attached Negative Declaration, and be it further

RESOLVED, that pursuant to NYS Town Law Sec.272-a, the Town Board concurs with the findings of the Planning Board as stated in their resolution of January 21, 2021 that the proposed New Community District - Neighborhood District (NCD-ND) classification at 2160 & 2170 North Forest Road is consistent with the adopted Bicentennial Comprehensive Plan, as amended, and be it further

RESOLVED, that to the extent the proposed classification is not consistent with the adopted Comprehensive Plan, the plan is hereby amended to be consistent with the proposed classification at this location, and be it further

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

1. That the petitioner include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.

2/22/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Lavin and unanimously approved 5-0. The public hearing was opened at 7:32 PM.

Sean Hopkins, Esq. presented.

The following speakers addressed the Town Board:
Joseph Hausbeck, 2180 N. Forest Rd. - Spoke in opposition; does not fit the concept of the neighborhood; submitted a letter listing various concerns

Fran Cummings, 2200 N. Forest Rd. - Voiced her concerns; property floods; traffic
Karen Macris, 2230 N. Forest Rd. - Asked questions; concern of dorm-like apartments; dumpster location and noise

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to March 8th. The motion was seconded by Councilmember Szukala and unanimously approved 5-0. The public hearing was adjourned at 8:17 PM.

3/8/2021
A motion to adjourn to April 5th was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

4/5/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was opened at 7:05 PM.

Sean Hopkins, Esq. presented updated plans.

The following speakers addressed the Town Board:
Fran Cummings, 2200 N. Forest Rd. - Concerned about it being student housing, lighting spillover, flooding and traffic
Joseph Hausbeck, 2180 N. Forest Rd. - Concerned about excavation of the site and the project being too large

There were no further speakers from the public, therefore Supervisor Kulpa moved to adjourn the public hearing to April 19th. The motion was seconded by Deputy Supervisor Berger and unanimously approved 5-0. The public hearing was adjourned at 7:34 PM.

4/19/2021
Per Supervisor Kulpa, the Petitioner has requested an adjournment. Supervisor Kulpa then moved to Adjourn to May 3rd, seconded by Deputy Supervisor Berger and unanimously approved 5-0. The hearing was adjourned at 7:09 PM.

5/03/2021
A motion to open the public hearing was made by Supervisor Kulpa, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was opened at 7:09 PM.

Sean Hopkins, Esq. presented updated plans.

The following speaker addressed the Town Board:
Fran Cummings, 2200 N. Forest Rd. - Voiced her continued concerns regarding flooding, student housing in their senior citizen community

There were no further speakers from the public, therefore Supervisor Kulpa moved to close the public hearing, seconded by Councilmember Bucki and unanimously approved 5-0. The public hearing was closed at 7:29 PM.

1/18/2022

A motion was made by Supervisor Kulpa to remove from Unfinished Business, seconded by Councilmember Bucki and unanimously approved 5-0.

A motion was made by Supervisor Kulpa to schedule a public hearing for the February 28th Town Board meeting, seconded by Deputy Supervisor Berger and unanimously approved 5-0.

RESULT:	**TABLED (NO VOTE)**	**Next: 9/27/2021 7:00 PM**

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

Kathleen Cooper
Deputy Town Clerk

Timothy Koller
Deputy Town Clerk

March 3, 2021

MEMO TO: David Marrano, Town Assessor

FROM: Francina Spoth, Town Clerk

RE: Petition

The attached petition, in connection with the parcel located at 2160 and 2170 North Forest Road was received in my office. Will you kindly check if the protest has been signed by the owners of 20% or more, either of the area of the land included in such proposed change, or of the immediately adjacent extending 100 ft. therefrom, or of that directly opposite thereto, extending 100 ft. from the street frontage of such opposite land, as provided in Zoning Ordinance, section XXI, Article 2.

Attachment
cc: Town Board
Town Attorney

Attachment: protest petition 2160 n forest-03042021095641 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

To: Members of the Amherst Town Board

c/o: Town of Amherst, Office of the Town Clerk

MAR03'21 PM 1:06 RCVD

Date: March 2, 2021

In Re: Requested Amendment to Rezone Property

Located at 2160 and 2170 North Forest Road

PROTEST PETITION

Pursuant to New York Consolidated Laws, Town Law, Section 265 (1)(b), we, the undersigned, being the owners of 20% or more of the area of land immediately adjacent to the land included in the above referenced proposed change, extending 100 feet therefrom, hereby petition that any such amendment shall require the approval of at least three-fourths of the members of the town board.

NAME:	ADDRESS:
Virginia Hancock	2180 North Forest Rd
Rosemary Blando	2180 North Forest Rd

Attachment: protest petition 2160 n forest-03042021095641 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Town of Amherst, NY
Office of the Assessor
David C. Marrano SCA Assessor

5583 Main Street
Williamsville, New York 14221
Phone: (716) 631-7038
www.amherst.ny.us
dmarrano@amherst.ny.us

Memorandum

March 4, 2021

To: Francina Spoth, Town Clerk
Re: Petition – 2160 & 2170 North Forest Road

The protest petition for 2170 North Forest Road has been signed by the required property owners of one of Zoning Ordinance section XXI, Article 2. The signature(s) satisfied test 2. The Super Majority calculations are based on three tests:

1. 20% or more of the owners signed a petition
2. **20% of the AREA surround said rezoning within 100 feet has signed a petition**
3. 20% of the AREA within 100 feet directly across the street from said rezoning has signed a petition

Therefore a super majority vote will be required to enact the change in zoning, as it relates to 2170 North Forest Road.

2160 North Forest Road has not been signed by the required property owners to satisfy the Zoning Ordinance referenced above, as it relates to the 3 aforementioned tests.

Should you have questions, please feel free to contact me.

Cheryl E. Walfrand
Senior Real Property Appraiser

cc: David C. Marrano
Assessor

Attachment: protest petition 2160 n forest-03042021095641 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

D R A F T (2/22/21)

SEQR

NEGATIVE DECLARATION

NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

Lead Agency:	Town of Amherst Town Board	**Project**: Z-2020-06
Address:	5583 Main Street Williamsville, NY 14221 (716) 631-7051	**Date**:

This notice is issued pursuant to Part 617 and Local Law #3-82, as amended, of the implementing regulations pertaining to Article 8 (State Environmental Quality Review) of the Environmental Conservation Law.

The Lead Agency has determined that the proposed action described below will not have a significant adverse effect on the environment.

Title of Action:	Rezoning Request.
SEQR Status:	Type I
Description of Action:	Rezoning of 2.35± acres of land from NCD-SA to NCD-ND to allow a proposed 2-story, 8-unit apartment building.
Location:	2160 & 2170 North Forest Road (NCD), Town of Amherst, Erie County, New York
Petitioner:	Coromandel Estates Amherst, LLC

Attachment: Z-2020-06_draft TB Neg Dec_2160 & 2170_2.22.21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Reasons Supporting This Determination

Based on information submitted by the applicant, including a Full Environmental Assessment Form (EAF) - Part 1, a complete rezoning application, and concept plan, a preliminary staff analysis was undertaken. Compared to the criteria listed in Section 617.7, all indications are that the proposed rezoning of 2.35± acres of land from NCD-SA to NCD-ND for a proposed 2-story, 8-unit apartment building will not have a significant impact on the environment, as follows:

1. The action is not expected to cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, or noise levels; a substantial increase in solid waste production; or a substantial increase in the potential for erosion, flooding, leaching or drainage problems. The Town Engineering Department on December 24, 2020 reviewed the application and EAF submitted on December 18, 2020, and had no objection or comments on the proposed rezoning. The Building Department requires that a floodplain development permit be obtained prior to final site plan approval.

2. The action will not result in the removal or destruction of large quantities of vegetation or fauna; or in significant adverse impacts to fish or wildlife species, habitats or other natural resources. A Landscape/Tree preservation Plan shall be required of the applicant upon submittal of a site plan application for development of the site at which stage all landscape requirements of the Zoning Ordinance will be met.

3. The action is not expected to create any material conflict with the Town Comprehensive Plan. The project will comply with all regulations of the Town Zoning Ordinance before final site plan approval is granted. The Town Building Department on January 13, 2021 reviewed the application and EAF submitted on December 18, 2020, and has no objection or comments on the proposed rezoning.

4. The property is within an area identified by the State as potentially containing significant cultural or archeological resources. A Phase I Archaeological Reconnaissance Survey was conducted in October 2020 by the University at Buffalo's Department of Anthropology. The report concluded that no prehistoric or historic sites were identified and recommended no further work. The NYS Office of Parks, Recreation and Historic Preservation's letter of October 30, 2020 concurred that the action will not impair the character or quality of important historical resources.

5. The action will not impair the character or quality of important aesthetic resources or of existing community or neighborhood character. The subject request is for reclassification from NCD-SA to NCD-ND. This property is in an area of Town with a variety of residential uses. The majority of this area is occupied by single-family homes, however, directly across North Forest Road from this site is the Beechwood Senior Residence/Asbury Pointe development. Within the past few years, apartment developments have been constructed further west along North Forest Road, most notably the "Muir Lake" apartments between Millersport Highway and John James Audubon Parkway. Therefore, the project is considered consistent with surrounding land use.

Attachment: Z-2020-06_draft TB Neg Dec_2160 & 2170_2.22.21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

6. The proposed reclassification to NCD-ND for the proposed 2-story, 8-unit apartment building will not cause a major change in the use of either the quantity or type of energy.

7. The reclassification to NCD-ND for the proposed 2-story, 8-unit apartment building will not create any hazard to human health.

8. The reclassification to NCD-ND will not cause a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. The proposed 2-story, 8-unit apartment building will be consistent with the scale of surrounding land uses.

9. The reclassification to NCD-ND for the proposed 2-story, 8-unit apartment building will not significantly increase the number of people using the site over its previous level of use.

10. Review by the Town Traffic/Safety Board on December 30, 2020 and the NYS Department of Transportation on November 28, 2020 indicate that significant negative traffic impacts are not expected to result from the proposed project.

11. Coordinated reviews of the project have been undertaken by Town Departments including Building on January 13, 2021, Engineering on December 24, 2020, Attorney on January 4, 2021, Traffic/Safety Board on December 30, 2020, Assessor on December 23, 2020, and Right-of-Way Agent on December 29, 2020, along with outside agencies including the NYS Department of Environmental Conservation on January 22, 2021 and the Williamsville School District on December 28, 2020. These reviews have not identified any significant environmental issues and indicate that the proposal will not have a significant damaging impact on the environment.

12. Issues not specifically mentioned above and/or those not specifically reviewed were not raised by Town departments, outside agencies or the public and are not determined to be causing significant negative environmental impacts.

_____ _____
Signature & title of preparer date

_____ _____
Brian J. Kulpa, Supervisor date

EK/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-06_(2160 &_2170_North_Forest_Rd_NCD)_2020\Z-2020-06_draft TB Neg Dec_2.22.21.docx
cc: Amherst Town Clerk
Amherst Building Department
ECDEP
NYSDEC

Attachment: Z-2020-06_draft TB Neg Dec_2160 & 2170_2.22.21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

LOCAL LAW NO. _____-201_

TOWN OF AMHERST
COUNTY OF ERIE, STATE OF NEW YORK

A LOCAL LAW AMENDING CHAPTER 203 OF THE TOWN OF AMHERST CODE, KNOWN AS THE ZONING ORDINANCE, TO REZONE/RECLASSIFY 2160 AND 2170 NORTH FOREST ROAD FROM NCD-SA TO NCD-ND AND TO AMEND THE AUDUBON DEVELOPMENT PLAN AND TO AMEND THE ZONING MAP ACCORDINGLY.

Be it enacted by the Town Board of the Town of Amherst as follows:

Section 1. Title.

This Local Law shall be referred to as, "A Local Law Amending Chapter 203 of Town of Amherst Code, Known As The Zoning Ordinance, to Rezone/Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend The Audubon Development Plan and to Amend The Zoning Map Accordingly".

Section 2. Legislative Findings and Intent.

The Town Board of the Town of Amherst finds that an application to rezone/reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and Amend the Audubon Development Plan and to Amend the Zoning Map Accordingly has been filed and is in proper order. The Town Board further finds that the request including the rezoning/reclassification and the amendment of the Audubon Development Plan is consistent with the Comprehensive Plan.

Section 3. Amherst Zoning Map.

The Town Board hereby: 1.) amends its Zoning Map which is incorporated by reference in the Town Zoning Code by amending/reclassifying from NCD-SA to NCD-ND the parcels at 2160 and 2170 North Forest Road; and 2.) amending the Audubon Development Plan, both being **subject to any conditions imposed by the authorizing resolution**; legally described as follows:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 68, Township 12, Range 7 of the Holland Land Survey so-called and further bounded and described as follows.

BEGINNING at the intersection of the centerline of Stahl Road (66.0 feet wide) with the centerline of North Forest Road (66.0 feet wide):

THENCE: Southerly, along the centerline of Stahl Road extended southerly, a

Attachment: Draft Local Law-Reclassification of 2160 2170 North Forest Road-08-24-20 (RES-2021-153 : 2160 & 2170 Request to Rezone and

distance of 108 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly along said north bank of Ellicott Creek, a distance of 583 feet more or less to the west line of lands conveyed to Peter D. Durham by deed recorded in the Erie County Clerk's Office in Liber 9264 of Deeds at page 188;

THENCE: Northerly along said west line of Peter D. Durham lands, a distance of 10 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly and southerly along said north bank of Ellicott Creek, a distance of 227 feet more or less to a point distant 100 feet westerly from the said west line of Peter D. Durham lands as measured at right angles;

THENCE: Northerly along a line parallel with the west line of said Peter D. Durham lands distant 100.00 feet westerly therefrom measured at right angles, a distance of 491 feet more or less to the centerline of North Forest Road;

THENCE: Easterly, along said centerline of North Forest Road, a distance of 564.74 feet to the POINT OR PLACE OF BEGINNING.

Section 4. Validity.

This Local Law is adopted under the authority granted to the Town Board of the Town of Amherst pursuant to §§10(1)(ii)(a)(12), 20 and 27 of the Municipal Home Rule Law and §265 of the Town Law of the State of New York.

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 5. Effective Date.

This Local Law shall take effect immediately when it is filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 & 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

Francina J. Spoth
Town Clerk
Town of Amherst
County of Erie, State of New York

Attachment: Draft Local Law-Reclassification of 2160 2170 North Forest Road-08-24-20 (RES-2021-153 : 2160 & 2170 Request to Rezone and

Amherst

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

Brian J. Kulpa
Supervisor

Daniel C. Howard, A
Planning Directo

Ellen M. Kost, AICP
Assistant Planning Dir

Town Board Agenda of February 22, 2021

February 9, 2021

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

Subject: Amendment #73 to the Audubon New Community District Development Plan to reclassify 2.35± acres of land from NCD-SA to NCD-ND; property located at 2160 & 2170 North Forest Road (NCD). Z-2020-06.

Honorable Members:

The subject property consists of two lots and forms a 2.35± acre irregularly shaped area located on the south side of North Forest Road, just west of the Stahl Road intersection. The site has 278.60± ft. of frontage and a depth of 497.16± ft. The site is vacant and partially wooded.

The south boundaries of the two lots are directly adjacent to Ellicott Creek, and the Ellicott Creek floodway extends onto both properties. A preliminary wetland investigation by Earth Dimensions, Inc. in July 2020 did not identify any federal jurisdictional wetlands or NYS wetlands on the subject properties. North Forest Road is a County collector.

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

The purpose of this request is to reclassify the land to allow a 2-story, 8-unit apartment building. The concept plan shows the building in the central portion of the site, with 17 parking spaces in front of the building, eight (8) of which are proposed to be in a free-standing garage. Parking would be accessed by one driveway to North Forest Road approximately in the center of the site. Space for emergency vehicle turnaround is shown between the building and the road. The plan also shows a covered patio with fire pit on the west side of the building and a dumpster location west of the building. Two stormwater basins are proposed near the north and south ends of the west property line. All development is shown outside the Ellicott Creek floodway.

The property was zoned New Community District – Suburban Agriculture (NCD-SA) with adoption of the Town-wide zoning ordinance and maps in 1976. No other requests are on file.

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

continued . .

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

A) **EXTENT TO WHICH THE PROPOSED AMENDMENT MEETS THE INTENT AND OBJECTIVES OF A NEW COMMUNITY DISTRICT AS EXPRESSED IN SECTION 5-2-2 OF THE ZONING ORDINANCE.**

The proposed revision to the development plan addresses the following objectives of the Zoning Ordinance.

Objectives

2-2A *A varied choice in the types of environment, occupancy, tenure, types and cost of housing, lot sizes, and community facilities available to existing and potential Town residents.*

The proposed project consists of a 2-story, 8-unit apartment building with 17 parking spaces in front of the building, eight (8) of which will be in a free-standing garage. One driveway to North Forest Road is shown in the central portion of the site. Two stormwater basins are proposed near the west property line. All development is shown outside the Ellicott Creek floodway.

The Assessor's office agrees with all statements made in the application and has no issue with the rezoning since units will be leased and not sold with condominium tax status.

The Building Department has approved the rezoning as submitted.

2-2B *Extensive usable open space and recreation areas, appropriate in terms of location, size and suitability of intended function.*

No usable open space or recreation areas are proposed with this project. The Ellicott Creek floodway, which extends onto these properties, will remain as open space and is prohibited by FEMA regulations from containing any structures.

2-2C *The provision of commercial, office or industrial uses of substantial real property tax productivity intended to support the financing of additional educational, municipal, and other public services required as a result of the development.*

No commercial, office or industrial uses are proposed with this project.

2-2D *Convenience in location of Commercial and Service Areas*

The closest commercial/service areas to the subject property are located on Millersport Highway (0.5 miles) and on Maple Road (1.5 miles). These include gas stations and a variety of restaurants. The UB North campus, on the opposite side of Ellicott Creek, also offers commercial services.

2-2E *The preservation of such features as trees, outstanding natural topography and geological features; the prevention of soil erosion; and the comprehensive design of storm water retention and proper drainage systems.*

As most of the wooded areas in the southern and eastern portions of these properties are within the Ellicott Creek floodway, they are proposed to remain undisturbed.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

The NYS Department of Environmental Conservation concurs that the Town of Amherst should act as SEQR Lead Agency and has the following comments:

1. Note that Ellicott Creek has a water classification and standard of B. Therefore, any physical alteration (ie, land clearing, filling, drainage pipe/ditch installation, etc.) to the bed or banks (within 50 feet of the stream) will require an Article 15, Title 5, Protection of Waters Permit from the NYSDEC.

2. The project site is located near a NYS Flood Control Easement, specifically Amherst Ellicott Creek Flood Control Project. Use of this easement requires an Article 16 Flood Control Land Use Permit from the NYSDEC.

3. The site is located within the designated 100-year floodplain per the Federal Emergency Management Agency's (FEMA) Firm Map No. 36029C0069H. The proposed project should be designed in accordance with all applicable local municipal laws for flood damage reduction. In addition, Ellicott Creek has a regulatory floodway, and any encroachment into floodway, including fill, requires an engineering analysis that demonstrates a 0.0' rise in the base flood elevation before a permit can be issued. Based on submitted plans, it also appears that the proposed patio/fire pit area is within the floodway and may require a separate floodplain development permit.

4. If any project activities will involve land disturbance of 1 acre or more, the project sponsor is required to obtain a State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity.

5. This proposed project requires a sanitary sewer connection that is designed to convey 2,500 gallons/day or more of municipal sewage and is therefore considered a sanitary sewer extension. The Erie County Health Department will be the approving agency. A detailed Downstream Sewer Capacity Analysis must be performed and submitted for the proposed project as part of the Project's Engineering Report.

6. Portions of this project area are located on hydric soils. The project sponsor should contact the United States Department of the Army, Corps of Engineers (COE) to ensure that the project will not involve federally regulated wetlands or any other approval from that agency. If Federal Wetlands are involved, the COE may require Water Quality Certification from DEC.

7. The project site appears to be within an archaeologically sensitive area based on information obtained through the Cultural Resources Information System (CRIS) on the NYS Office of Park, Recreation and Historic Preservation's (OPRHP) website. As part of the SEQR process, this concern should be evaluated, unless it can be verified by appropriate documentation that the sites have been significantly disturbed in a way that would destroy potential artifacts. Note: If any of the described Department approvals are required, an appropriate archaeological investigation must be conducted in order to satisfy the NYS Historic Preservation Act.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

2-2F *The creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.*

The subject properties are located within an area of Town with a variety of residential uses. The majority of this area is occupied by single-family homes, however, directly across North Forest Road from this site is the Beechwood Senior Residence/Asbury Pointe development. Within the past few years, apartment developments have been constructed further west along North Forest Road, most notably the "Muir Lake" apartments between Millersport Highway and John James Audubon Parkway.

The ROW Agent agrees with all statements made in the application and notes that an easement to the Town of Amherst on this property (liber 7105, page 369) should continue to be in effect and be reduced to an agreement.

2-2G *An efficient use of land resulting in smaller networks of utilities and streets and lessened burden of traffic on streets and highways thereby lowering utility and maintenance costs borne by new development.*

As the floodway is located on nearly half of the subject site, the concept plan submitted with this application shows the development limited to the central portion of the site. One driveway to North Forest Road is shown in the center of the site.

The Engineering Department, Traffic-Safety Board and Fire Chiefs' Association agree with all statements made in the application. The Highway Department review is pending.

NYSDOT reviewed the project, concurred with the Town acting as Lead Agency, and stated that the proposed project will not have a significant impact to traffic on the State Highway System.

The Erie County DPW – Highways Division concurs with the Town of Amherst being the Lead Agency for this project and has the following comments:

Permit Requirements:

1. The Developer will be required to apply for and obtain an Erie County Highway Work Permit for Utility Work Perm-2 for construction within the North Forest Road highway right-of-way.

2. The Developer will be required to apply for and obtain an Erie County Highway Work Permit for Non-Utility Work, Perm 3 for construction of a new entrance drive within the North Forest Road highway right-of-way.

Traffic Concerns:

1. A Traffic Impact Study may be needed due to the close proximity of the project to the intersection of North Forest and Stahl Road.

2-2H *Creation and preservation of natural and man-made features which will give increased environmental quality, encourage uses which will maintain high environmental quality and provide an attractive community design.*

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

The most important natural feature on this development site is the Ellicott Creek floodway, which according to FEMA regulations cannot hold structures of any kind. The wooded areas in the southern and eastern portions of the site within the floodway are therefore proposed to remain undisturbed.

This project is in an archaeologically sensitive location based on NYS mapping. A Phase I Archaeological Reconnaissance Survey was conducted in October 2020 by the Department of Anthropology at the University at Buffalo. The survey found that no historic or prehistoric sites were identified and recommended no further work. The NYS Office of Parks, Recreation and Historic Preservation concurs with the report's conclusion that no further archaeological investigations are warranted, and their opinion is that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project.

2-2I *Guidance and control of development in Flood Hazard Areas so that life and property both within and without such areas are protected.*

The Building Department is responsible for administering all flood code provisions; that department has no issue with the proposed rezoning but notes that a floodplain permit will be required. Town mapping from 2019 shows this property within the existing flood hazard area.

2-2J *Increased safety for all modes of travel, including pedestrian and bicycle.*

There are no sidewalks on North Forest Road in the vicinity of this project, and the petitioner does not propose to install any. An internal sidewalk is shown around the proposed building and parking lot but does not extend to the road.

The Williamsville Central School District notes that the District has received information on this project and placed it on file, and that a future bus stop will be located at a driveway entrance at North Forest Road in accordance with District policy.

2-2K *An appropriate balancing or accommodation of the effect of major public or private development elsewhere in the Town or its vicinity.*

While the proposed 8-unit apartment building presents a denser development than the nearby single-family lots, it is consistent with the adjacent Beechwood Senior Residence/Asbury Pointe development across North Forest Road. The property is close to the UB North Campus on the opposite side of Ellicott Creek. The development can also be expected to supplement the off-campus housing stock for faculty, staff and students. The developer has stated that these units are intended to be marketed to professionals who often work remotely.

2-2L *Sufficient civic and community facilities, carefully integrated with adjoining areas.*

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

There are no civic or community facilities proposed with this project; adequate civic and community facilities are located in the area.

2-2M *Provision for the orderly updating of long-term, large-scale development plans to reflect changing circumstances within an overall, Town-approved planning framework.*

The Comprehensive Plan's Conceptual Land Use Plan (Figure 6) indicates Mixed Residential use for the section of North Forest Road between Stahl Road and Millersport Highway. The Mixed Residential designation is aimed at projects with densities of 4 – 12 units/acre. The subject project will result in a density of 3.4 units/acre.

The requested change is generally compatible with the character of development in the area, although the other comparable developments are not located on the 'creek side' of North Forest Road. The 3-story, 90-unit "Muir Lake" apartments between Millersport Highway and J. J. Audubon Parkway, as well as the Beechwood/Asbury senior residence, do not back up to Ellicott Creek. It should be noted that the subject site is within the boundary of the Town's Local Waterfront Revitalization Program (LWRP) currently in progress. This project would require another level of review for consistency with waterfront policies if the LWRP was adopted by the Town (adoption is not expected within the next year).

2-2N *A more desirable environment than would be possible through the strict application of other sections of this Zoning Ordinance.*

The current zoning of New Community District – Suburban Agriculture (NCD-SA) allows single family dwellings only. The proposed development of the site includes 8 apartment units that would not be allowed under the current zoning classification. The demand for student housing in the area surrounding the UB campus makes this a desirable location for apartment use.

B) EXTENT TO WHICH THE PROPOSED DEVELOPMENT PLAN MEETS ALL THE REQUIREMENTS OF SUBSECTIONS 5-2-4, 5-2-5, and 5-2-6 OF THE ZONING ORDINANCE.

5-2-4 Location of NCD Not applicable (pertains to entire existing NCD within the Town).

5-2-5 Permitted Uses

5-2-5A(2) Neighborhood District. This classification includes primarily residential areas designed to provide living space for families and individuals. Ancillary uses designed to conveniently serve residents may be located within them. The classification includes:

a. Residences and dwelling units of every type, except as otherwise specified in this subsection.
b. Fraternity and sorority houses, dormitories, hostels and boardinghouses.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

c. Small convenience retail and service facilities, except for automobile drive-in restaurants, and ancillary office facilities designed to serve the needs of residents of the neighborhood.
d. Public or quasi-public facilities, including schools and day-care centers, religious buildings and other community facilities.
e. Recreation facilities, open space areas, and personal training facilities.
f. Special limited commercial services and facilities not already included in the above uses, storage yards, and open equipment structures.

5-2-5B Use Mixture: Not applicable.

5-2-6 Dimensional Standards

5-2-6A The overall residential density of an NCD shall not exceed five (5) dwelling units per gross acre. This density regulation applies to the entire New Community District (4,121± acres) within the Town. Although the density of the proposed development is 3.4 units/acre, it would not bring the overall NCD density beyond the threshold of 5 units/acre.

5-2-6B Dwelling Unit Area. Information not provided. All dwelling units and rooms included in a dwelling are required to have sufficient floor area to satisfy the applicable minimum floor area requirements of the State Building Construction Code or the Town Building Code, whichever is applicable. This requirement will need to be met.

5-2-6C Minimum Area. Not applicable

5-2-6D Building Arrangements. The proposed development will result in a 2-story, 8-unit apartment building in the central portion of the site. The proposed 17 parking spaces will result in 2 spaces/unit, the minimum required by code elsewhere in the Town.

C) THE PROPOSED DEVELOPMENT PLAN IS CONCEPTUALLY SOUND IN THAT IT MEETS PRESENT AND FUTURE COMMUNITY NEEDS

The requested NCD-ND classification and proposed project concept will generally result in a sound development plan for the subject area; however, the concept should include space for overflow parking beyond that required for residents of the development. Section 5-2-7A(8) in the Zoning Ordinance states that "Off-street parking, loading, and stacking spaces shall be provided so as to prevent overflow of parked or standing vehicles onto public or common vehicular or pedestrian rights-of-way."

D) THERE ARE ADEQUATE SERVICES AND UTILITIES AVAILABLE OR PROPOSED TO BE MADE AVAILABLE IN THE CONSTRUCTION OF THE DEVELOPMENT.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

All services and utilities are or will be made available with this development.

E) THE PROPOSED DEVELOPMENT PLAN IS CONSISTENT WITH THE TOWN COMPREHENSIVE PLAN

The proposed project generally complies with the locational and use criteria in the Comprehensive Plan for land near a university campus.

SEQR

This is a Type I action, and an environmental assessment consistent with SEQR has been prepared for the subject proposal. Pursuant to Local Law #3-82, as amended, the requirements of SEQR are complete and the proposal is not expected to have a significant adverse effect on the environment.

RECOMMENDATION

The Planning Board recommends that your Honorable Body concur with the Planning Board's findings relative to SEQR and issue the attached Negative Declaration, and that the subject request be **approved** based on the attached resolution.

Very truly yours,

DANIEL C. HOWARD, AICP
Planning Director

DH/EK/ac
Att.
X:\Current_Planning\Files\Rezonings\2020\Z-2020-06_(2160 &_2170_North_Forest_Rd_NCD)_2020\Z-2020-06_TB Letter_2.22.21.docx
cc: Stanley Sliwa, Town Attorney

Planning Board Approval – January 21, 2021
Ayes 7; Noes 0

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #73 TO THE AUDUBON DEVELOPMENT PLAN
Z-2020-06

PETITIONER
Coromandel Estates Amherst LLC
c/o Sean Hopkins, Esq.
Hopkins Sorgi & McCarthy PLLC
5500 Main St., Suite 343
Williamsville, NY 14221

PROPERTY LOCATION
2160 & 2170 North Forest Road (NCD)

JAN29'21 AM 8:32 RCVD

WHEREAS the Town of Amherst Planning Board on Thursday, January 21, 2021 held a public hearing on Amendment #73 to the Audubon New Community District Development Plan to classify the subject property as suitable for use as an apartment development, and

WHEREAS the Planning Board has reviewed the Amendment plans and supporting documentation, and

WHEREAS the Amendment has been referred to the various Town review agencies, and

WHEREAS the Planning Board finds that:

A. The proposed Revision to the Development Plan meets the intent and objectives of a New Community District as expressed in Subsection 1-1.1.

B. The proposed Revision to the Development Plan meets all the requirements of Section 5-2-3 through 5-2-6.

C. The proposed Revision to the Development Plan is conceptually sound in that it meets present and future community needs.

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

E. The proposed Amendment to the Development Plan is consistent with the Town Comprehensive Plan.

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

NOW THEREFORE BE IT RESOLVED that the Planning Board, in accordance with Section 8-15-2 of the Zoning Ordinance offers a positive report and recommends Town Board approval of Amendment #73 to the Audubon Development Plan with the following condition:

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

TOWN OF AMHERST
PLANNING BOARD RESOLUTION
AMENDMENT #73 TO THE AUDUBON DEVELOPMENT PLAN
Z-2020-06

PETITIONER
Coromandel Estates Amherst LLC

PROPERTY LOCATION
2160 & 2170 North Forest Road (NCD)

JAN29'21 AM 8:33 RCVD

1. That the petitioner include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.

The foregoing resolution was adopted by the Town of Amherst Planning Board, January 21, 2021; moved by Chmiel; seconded by Giuliani; ayes 7, noes 0.

Robert J. Gilmour, Chair — Date 1/28/21

EK/ac
X:\Current_Planning\Files\Rezonings\2020\Z-2020-06_(2160 &_2170_North_Forest_Rd_NCD)_2020\Z-2020-06_resolution_012121.doc
cc: Commissioner of Building
Town Engineer
Highway Superintendent
Traffic/Safety Coordinator
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
Chris Wood, Carmina Wood Morris, 487 Main St., Suite 500, Buffalo NY 14203
Christina Barmosz, Silvestri Architects, 1321 Millersport Hwy., Amherst, NY 14221
David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amended Application - Reclassification 2160 and 2170 North Forest Road and to Amend the Audubon Development Plan
Date: December 17, 2020

Applicant: Pyramandel Estates
Amherst LLC c/o Sean Hopkins, Esq.
5500 Main Street, Suite 343
Williamsville, NY 14221
Tel: 716.510-4338
E-mail: shopkins@hsr-legal.com

Original

TOWN OF AMHERST PLANNING DEPARTMENT

Application for Rezoning Review and, if required Comprehensive Plan Amendment

For Official Use

File #: Z-2020-06 **Acreage** — **Fee $** -0-

Address Verified by Assessor's Office _____ VERIFIED BY DATE

Materials Accepted by Town Clerk & Fee Paid _____ ACCEPTED BY DATE

Materials Checked by Building Dept. _____ RECEIVED BY DATE

Materials Received by Planning Dept. _____ RECEIVED BY DATE

		Fill In Applicable Fees
2 ACRES OR LESS	**$1,250**	$1,250.00
2 – 20 ACRES **$1,250 + $250/acres or fraction thereof over 2 acres**		$250.00
20 – 30 ACRES **$5,700 + $150/acre or fraction thereof over 20 acres**		____
OVER 30 ACRES **$6,900 +$75/acre or fraction thereof over 30 acres**		____
Request for Relief of/Change to Conditions of Zoning Approval	**$ 1,200**	____
AFFIDAVIT FEE FOR PUBLIC HEARING	**$ 15.00**	$15.00
	TOTAL FEE:	$ 1,515.00

REVISED
DEC 18 2020
TOWN OF AMHERST
PLANNING DEPT.

Z-2020-06,
2160 & 2170 N. Forest Rd. (RCD)

[Note: A completed Amended Part 1 of the Full Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is attached as Exhibit "2" of this Application.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

TO BE COMPLETED BY APPLICANT

1. **Petitioner:** Name: Coromandel Estates Amherst LLC

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

Phone: 510-4338 Fax:

E Mail shopkins@hsr-legal.com

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

From: NCD-SA District

To: NCD-ND District

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

2160 and 2170 North Forest Road

SBL #: 55.02-1-2 and 55.01-1-19.2

4. **Area of land to be rezoned** (in acres): 2.35

5. **Owner of Land:**

Name: Allen and Kristen Guerin

Address: 270 Rosedale Boulevard, Amherst, NY 14226

Telephone:

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

Name: Sean W. Hopkins, Esq.

Address: 5500 Main Street, Suite 343
Williamsville, New York 14221
Tel: 716.510-4338 - E-mail: shopkins@hsr-legal.com
City State Zip Code

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

7. **Petitioner's interest in property**

_____Option to purchase

_____Owner

__X__Other (explain) Petitioner has entered into a contract to purchase the Project Site. A signed Authorization Form is attached as Exhibit 1 of this Amended Application.

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

Not Applicable.

9. **Attach Survey and Legal description of land to be rezoned. The Survey must be prepared by a New York State Licensed Land Surveyor.** The legal description of property to be reclassified is attached as Exhibit "3" and a full size copy of the Survey prepared by GPI dated dated July 13, 2020 is attached. A reduced size copy of the Survey is also attached as Exhibit "4".

10. **Said property has the following deed restrictions or Covenants:** (attach copy) Not Applicable.

Liber _____ Page _____

11. **Information on proposed project:**

A. Description of the character of the proposed development:

See Exhibit 5.

B. Rationale for rezoning request:

1. Why was this site chosen?

See Exhibit 5.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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

See Exhibit 5.

3. How will this rezoning impact surrounding properties?

See Exhibit 5.

4. How will this rezoning impact the school system?

See Exhibit 5.

12. Quantitative Data:

A. Total # of dwelling units 8
[The density of the proposed project has been reduced from 18 units to 8 units.]

B. Distribution of dwelling units by type Attached residential units for lease

C. Gross Residential Density per acre 3.40 units per acre

D. Total amount of Open Space Approximately 1 acre of greenspace and landscaping

E. Proposed Non-Residential Floor Area Not Applicable

13. Development Schedule:

Start Spring/Summer 2021

Finish 2022

Stages (# of) 1

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

The attached residential units will be leased to residential tenants.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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

Greenspace and landscaping will be privately owned and maintained.

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

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

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

See Exhibit 6.

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

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

See Exhibit 6.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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

See Exhibit 6.

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

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

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

See Exhibit 6.

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

See Exhibit 6.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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

See Exhibit 6.

17. The petitioner encloses herewith the sum of $ 1,515.00 to pay the fee, and consents to the placement of a sign(s) at the described location identifying this request for a period of time to be determined by the Town Clerk.
[The filing fee was previously paid .]

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

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

[Note: Authorization letter of property owners dated August 18, 2020 is attached to this Application.]

Counsel for Petitioner
Signature of Petitioner

Subscribed and sworn to before me this 17th day of December, 20 20

Notary Public, Erie County, New York

MARIANNE BRAUTLACHT
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 01/14/20

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

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

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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

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

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

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

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

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

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 1 – Authorization Form of Property Owners dated August 18, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Authentisign ID: 5F5EDAC5-6B0F-4377-B19F-0884A050FD33

AUTHORIZATION

Allen Guerin and Kristen Guerin, as the record owners of the parcels of land located at 2160 North Forest Road [SBL No. 55.02-1-1] and 2170 North Forest Road [SBL No. 55.01-1-19.2] in the Town of Amherst (collectively the "Project Site") hereby authorizes Postwork Capital LLC and its consultants to seek a rezoning and all other required governmental approvals from the municipal boards of the Town of Amherst in connection with a proposed multifamily project to be located on the Project Site.

Date: August 18, 2020 Signature: Authentisign Allen Guerin 08/19/2020
8/19/2020 9:14:43 AM EDT
Print Name: Allen Guerin

Date: August 18, 2020 Signature: Authentisign Kristen Guerin 08/19/2020
Print Name: Kristen Guerin

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 2 – Amended Part 1 of Full Environmental Assessment Form Prepared Pursuant to the State Environmental Quality Review Act ("SEQRA") with Attachments "A" and "B"

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amended Part 1 of Full Environmental Assessment Form with Attachments
Date: December 17, 2020

Full Environmental Assessment Form Part 1 - Project and Setting

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

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project: Proposed Multifamily Project		
Project Location (describe, and attach a general location map): 2160 and 2170 North Forest Road - Town of Amherst - Erie County		
Brief Description of Proposed Action (include purpose or need): The proposed action involves an amendment of the land use classification of 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and an amendment of the Audubon Development Plan to accommodate the development of the Project Site as a three-story multifamily building consisting of 8 attached residential units for lease and all related site improvements as depicted on the Concept Site Plan prepared by Silvestri Architects, P.C. The proposed action has been defined broadly to include the construction of the proposed two-story multifamily building as well as all necessary site improvements including: parking spaces, a curb cut onto North Forest Road, access aisles, water and sanitary sewer lines as well as utility connections. Although the proposed project ("action") will not cross of any of the thresholds for a Type I action contained in 6 NYCRR Part 617.4. of SEQRA Regulations, it is a Type I action due the proximity of the Project Site to Ellicott Creek, which is a flowing watercourse, pursuant to a local law adopted by the Town of Amherst in 1982. The local law requires projects within 100 ft. of a flowing watercourse to be classified as Type I action. Given that the proposed project will not result in any potentially significant adverse environmental impacts, the issuance of a negative declaration pursuant to SEQRA is appropriate.		
Name of Applicant/Sponsor: Coromandel Estates Amherst LLC c/o Sean Hopkins, Esq.	Telephone: 716.510-4338 E-Mail: shopkins@hsr-legal.com	
Address: 5500 Main Street, Suite 343		
City/PO: Williamsville	State: NY	Zip Code: 14221
Project Contact (if not same as sponsor; give name and title/role): Same as Above.	Telephone: E-Mail:	
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor): Allen and Kristen Guerin	Telephone: E-Mail:	
Address: 270 Rosedale Boulevard		
City/PO: Amherst	State: NY	Zip Code: 14226

REVISED
DEC 18 2020
TOWN OF AMH
PLANNING DEPT.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, or Village Board of Trustees ☑Yes ☐No	Town of Amherst Town Board - Reclassification NCD Property and Amend. of Audubon Dev. Plan	August 24, 2020
b. City, Town or Village Planning Board or Commission ☑Yes ☐No	Planning Board - Site Plan Approval	To be Determined
c. City, Town or Village Zoning Board of Appeals ☐Yes ☑No		
d. Other local agencies ☑Yes ☐No	Building Dept. - Building and Floodplain Permits; Stormwater Permit - Eng. Dept.	To be Determined
e. County agencies ☑Yes ☐No	ECDPW - Curb cut onto North Forest Road; ECWA - Water	To be Determined
f. Regional agencies ☐Yes ☑No		
g. State agencies ☑Yes ☐No	NYSDEC - DSCA and SPDES Permit and NYSOPRHP - Cultural resource review	To be Determined
h. Federal agencies ☐Yes ☑No		

i. Coastal Resources.
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? ☐Yes ☑No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program? ☐Yes ☑No
iii. Is the project site within a Coastal Erosion Hazard Area? ☐Yes ☑No

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐Yes ☑No

- **If Yes,** complete sections C, F and G.
- **If No,** proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☑Yes ☐No
If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☑Yes ☐No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☑Yes ☐No
If Yes, identify the plan(s):
NYS Heritage Areas:West Erie Canal Corridor

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐Yes ☑No
If Yes, identify the plan(s):

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. ☑ Yes ☐ No
If Yes, what is the zoning classification(s) including any applicable overlay district?
The zoning classification of the Project Site is NCD-SA.

b. Is the use permitted or allowed by a special or conditional use permit? ☐ Yes ☑ No

c. Is a zoning change requested as part of the proposed action? ☑ Yes ☐ No
If Yes,
i. What is the proposed new zoning for the site? NCD-ND

C.4. Existing community services.

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

b. What police or other public protection forces serve the project site?
Town of Amherst Police Department

c. Which fire protection and emergency medical services serve the project site?
Getzville Volunteer Fire Department

d. What parks serve the project site?
There are various Town parks that will be accessible to future residents of the project.

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? Multifamily residential consisting of attached residential units for lease.

b. a. Total acreage of the site of the proposed action? 2.35 acres
b. Total acreage to be physically disturbed? 1.3 +/- acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? 2.35 acres

c. Is the proposed action an expansion of an existing project or use? ☐ Yes ☑ No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? ☐ Yes ☑ No
If Yes,
i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? ☐ Yes ☐ No
iii. Number of lots proposed? _____
iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? ☐ Yes ☑ No
i. If No, anticipated period of construction: _____ months
ii. If Yes:
- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year
- Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases:

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f. Does the project include new residen... uses? ☑ Yes ☐ No
If Yes, show numbers of units proposed.

	One Family	Two Family	Three Family	Multiple Family (four or more)
Initial Phase				8
At completion of all phases				8

g. Does the proposed action include new non-residential construction (including expansions)? ☐ Yes ☑ No
If Yes,
i. Total number of structures _____
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length
iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? ☑ Yes ☐ No
If Yes,
i. Purpose of the impoundment: Stormwater management.
ii. If a water impoundment, the principal source of the water: ☐ Ground water ☐ Surface water streams ☑ Other specify: Runoff from impervious surfaces to be located on the Project Site.
iii. If other than water, identify the type of impounded/contained liquids and their source.
iv. Approximate size of the proposed impoundment. Volume: TBD million gallons; surface area: 0.3 acres
v. Dimensions of the proposed dam or impounding structure: n/a height; _____ length
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):
impoundment is an excavation, a dam is not required

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? ☐ Yes ☑ No
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
If Yes:
i. What is the purpose of the excavation or dredging? _____
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?
- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.
iv. Will there be onsite dewatering or processing of excavated materials? ☐ Yes ☐ No
If yes, describe. _____
v. What is the total area to be dredged or excavated? _____ acres
vi. What is the maximum area to be worked at any one time? _____ acres
vii. What would be the maximum depth of excavation or dredging? _____ feet
viii. Will the excavation require blasting? ☐ Yes ☐ No
ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? ☐ Yes ☑ No
If Yes:
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

Attached as Attachment "A" of this Amended Part 1 of the Full EAF is a wetland investigation letter prepared by Scott Livingstone of Earth Dimensions, Inc. dated July 7, 2020 confirming there are not any wetland subject to the jurisdiction of either of the NYS Dept. of Environmental Conservation of the United States Army Corps of Engineers located on the Project Site.

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ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? ☐Yes ☐No
If Yes, describe:

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? ☐Yes ☐No
If Yes:

- acres of aquatic vegetation proposed to be removed:
- expected acreage of aquatic vegetation remaining after project completion:
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access):
- proposed method of plant removal:
- if chemical/herbicide treatment will be used, specify product(s):

v. Describe any proposed reclamation/mitigation following disturbance:

c. Will the proposed action use, or create a new demand for water? ☑Yes ☐No
If Yes:

i. Total anticipated water usage/demand per day: 1,850 gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☐Yes ☐No
If Yes:

- Name of district or service area: ECWA
- Does the existing public water supply have capacity to serve the proposal? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No
- Do existing lines serve the project site? ☑Yes ☐No

iii. Will line extension within an existing district be necessary to supply the project? ☐Yes ☑No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project:
- Source(s) of supply for the district:

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐ Yes ☑No
If, Yes:

- Applicant/sponsor for new district:
- Date application submitted or anticipated:
- Proposed source(s) of supply for new district:

v. If a public water supply will not be used, describe plans to provide water supply for the project:

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? ☑Yes ☐No
If Yes:

i. Total anticipated liquid waste generation per day: 1,850 gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each):

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

- Name of wastewater treatment plant to be used: Town of Amherst Waste Water Treatment Plan on Tonawanda Creek Road
- Name of district: Town of Amherst Consolidated Sanitary Sewer District
- Does the existing wastewater treatment plant have capacity to serve the project? ☑Yes ☐No
- Is the project site in the existing district? ☑Yes ☐No
- Is expansion of the district needed? ☐Yes ☑No

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- Do existing sewer lines serve the project site? ☑Yes ☐No
- Will a line extension within an existing district be necessary to serve the project? ☐Yes ☑No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? ☐Yes ☑No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? ☑Yes ☐No

If Yes:

i. How much impervious surface will the project create in relation to total size of project parcel?

_____ Square feet or 0.5 acres (impervious surface)

_____ Square feet or 2.35 acres (parcel size)

ii. Describe types of new point sources. roof, parking lot

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

Private on-site storm water management area. Discharge will be to Ellicott Creek.

- If to surface waters, identify receiving water bodies or wetlands: Ellicott Creek.
- Will stormwater runoff flow to adjacent properties? ☐Yes ☑No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? ☐Yes ☑No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? ☐Yes ☑No

If Yes, identify:

i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? ☐Yes ☑No

If Yes:

i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) ☐Yes ☐No

ii. In addition to emissions as calculated in the application, the project will generate:

- _____Tons/year (short tons) of Carbon Dioxide (CO_2)
- _____Tons/year (short tons) of Nitrous Oxide (N_2O)
- _____Tons/year (short tons) of Perfluorocarbons (PFCs)
- _____Tons/year (short tons) of Sulfur Hexafluoride (SF_6)
- _____Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflourocarbons (HFCs)
- _____Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

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h. Will the proposed action generate or ... methane (including, but not limited to, sewage ... atment plants, landfills, composting facilities)? ☐Yes ☑No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐Yes ☑No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐Yes ☑No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐Morning ☐Evening ☐Weekend ☐Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? ☐Yes ☐No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? ☐Yes ☐No

vii Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐Yes ☐No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐Yes ☐No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☑Yes ☐No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: Typical energy usage for a project of this type

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): National Grid

iii. Will the proposed action require a new, or an upgrade, to an existing substation? ☐Yes ☑No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: 7:00 a.m. to 7:00 p.m.
- Saturday: 8:00 a.m. to 5:00 p.m.
- Sunday: As needed
- Holidays: Not Applicable

ii. During Operations:

- Monday - Friday: Not Applicable
- Saturday: Not Applicable
- Sunday: Not Applicable
- Holidays: Not Applicable

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m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? ☑ Yes ☐ No

If yes:

i. Provide details including sources, time of day and duration:

There will be short-term unavoidable noise impacts during the construction of the project that will result from construction equipment.

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? ☐ Yes ☑ No

Describe:

n. Will the proposed action have outdoor lighting? ☑ Yes ☐ No

If yes:

i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

Parking lot lights, 15' mounting height, dark sky compliant, minimum of 30' from nearest residence.

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? ☐ Yes ☑ No

Describe:

o. Does the proposed action have the potential to produce odors for more than one hour per day? ☐ Yes ☑ No

If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? ☐ Yes ☑ No

If Yes:

i. Product(s) to be stored

ii. Volume(s) _____ per unit time _____ (e.g., month, year)

iii. Generally, describe the proposed storage facilities:

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? ☐ Yes ☑ No

If Yes:

i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? ☐ Yes ☐ No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? ☐ Yes ☑ No

If Yes:

i. Describe any solid waste(s) to be generated during construction or operation of the facility:

- Construction: 3 tons per week (unit of time)
- Operation : 2 tons per month (unit of time)

ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:

- Construction: at the discretion of the contractor
- Operation: Project will follow town of Amherst recycling program

iii. Proposed disposal methods/facilities for solid waste generated on-site:

- Construction: NYSDEC approved landfill
- Operation: NYSDEC approved landfill

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s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☑ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☑ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☐ Industrial ☑ Commercial ☑ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Aquatic ☑ Other (specify): Asbury Pointe Retirement Community

ii. If mix of uses, generally describe:

There are a mixture of land uses in the vicinity of the Project Site including single-family homes, the Asbury Pointe Retirement Community and the Audubon Women's Health Medical Office.

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	0	0.9	+0.9
• Forested	.5	.5	0
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	1.8	.4	-1.4
• Agricultural (includes active orchards, field, greenhouse etc.)	0	0	0
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)	0	0	0
• Non-vegetated (bare rock, earth or fill)	0	0	0
• Other Describe: lawn/landscaping		0.3	+1.4

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

c. Is the project site presently used by members of the community for public recreation? ☐Yes ☑No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☑Yes ☐No
If Yes,
i. Identify Facilities:
The Asbury Pointe Retirement Community is located at 50 Stahl Road.

e. Does the project site contain an existing dam? ☐Yes ☑No
If Yes:
i. Dimensions of the dam and impoundment:
- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☐Yes ☑No
If Yes:
i. Has the facility been formally closed? ☐Yes ☐No
- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐Yes ☑No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☐Yes ☑No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐Yes ☐No
☐ Yes – Spills Incidents database — Provide DEC ID number(s): _____
☐ Yes – Environmental Site Remediation database — Provide DEC ID number(s): _____
☐ Neither database

ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☐Yes ☑No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

v. Is the project site subject to an institutional control limiting property uses? ☐Yes ☐No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? ☐Yes ☐No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? >5 feet

b. Are there bedrock outcroppings on the project site? ☐Yes ☑No
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____%

c. Predominant soil type(s) present on project site:
Cosad loamy fine sand 100 %
_____ %
_____ %

d. What is the average depth to the water table on the project site? Average: >5 feet

e. Drainage status of project site soils:
☐ Well Drained: _____% of site
☐ Moderately Well Drained: _____% of site
☑ Poorly Drained 100 % of site

f. Approximate proportion of proposed action site with slopes:
☑ 0-10%: 100 % of site
☐ 10-15%: _____% of site
☐ 15% or greater: _____% of site

g. Are there any unique geologic features on the project site? ☐Yes ☑No
If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? ☑Yes ☐No

ii. Do any wetlands or other waterbodies adjoin the project site? ☑Yes ☐No
If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? ☑Yes ☐No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name 837-25 Classification B
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name Federal Waters, Federal Waters, Federal Waters,... Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? ☑Yes ☐No
If yes, name of impaired water body/bodies and basis for listing as impaired:
Name - Pollutants - Uses:Ellicott Creek, Lower, and tribs – Nutrients;Silt/Sediment – Aquatic Life

i. Is the project site in a designated Floodway? [There will not be any development in the Floodway associated with Ellicott Creek.] ☑Yes ☐No

j. Is the project site in the 100-year Floodplain? ☑Yes ☐No

k. Is the project site in the 500-year Floodplain? ☑Yes ☐No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? ☐Yes ☑No
If Yes:
i. Name of aquifer: _____

[Note: Attached as Attachment "A" of this Amended Part 1 of the Full EAF is a wetland investigation letter prepared by Scott Livingstone of Earth Dimensions, Inc. dated July 7, 2020 confirming there are not any wetland subject to the jurisdiction of either of the NYS Dept. of Environmental Conservation of the United States Army Corps of Engineers located on the Project Site.]

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

m. Identify the predominant wildlife species that occupy or use the project site:
Typical suburban species

n. Does the project site contain a designated significant natural community? ☐Yes ☑No
If Yes:
i. Describe the habitat/community (composition, function, and basis for designation):
ii. Source(s) of description or evaluation:
iii. Extent of community/habitat:
- Currently: _____ acres
- Following completion of project as proposed: _____ acres
- Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? ☐Yes ☑No
If Yes:
i. Species and listing (endangered or threatened):

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? ☐Yes ☑No
If Yes:
i. Species and listing:

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? ☐Yes ☑No
If yes, give a brief description of how the proposed action may affect that use:

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐Yes ☑No
If Yes, provide county plus district name/number:

b. Are agricultural lands consisting of highly productive soils present? ☐Yes ☑No
i. If Yes: acreage(s) on project site?
ii. Source(s) of soil rating(s):

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? ☐Yes ☑No
If Yes:
i. Nature of the natural landmark: ☐ Biological Community ☐ Geological Feature
ii. Provide brief description of landmark, including values behind designation and approximate size/extent:

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? ☐Yes ☑No
If Yes:
i. CEA name:
ii. Basis for designation:
iii. Designating agency and date:

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? ☐ Yes ☑ No

If Yes:

i. Nature of historic/archaeological resource: ☐ Archaeological Site ☐ Historic Building or District

ii. Name: _____

iii. Brief description of attributes on which listing is based:

_____

f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? ☑ Yes ☐ No

g. Have additional archaeological or historic site(s) or resources been identified on the project site? ☐ Yes ☑ No

If Yes:

i. Describe possible resource(s): _____

ii. Basis for identification: _____

h. Is the project site within fives miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? ☐ Yes ☑ No

If Yes:

i. Identify resource: _____

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

iii. Distance between project and resource: _____ miles.

i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? ☐ Yes ☑ No

If Yes:

i. Identify the name of the river and its designation: _____

ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? ☐ Yes ☐ No

[Note: A copy of the No Impact determination letter issued by the NYS Office of Parks, Recreation and Historic Preservation dated October 30, 2020 is provided at Attachment "B" of this Amended Part 1 of the Full EAF.]

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Coromandel Estates Amherst LLC Date December 17, 2020

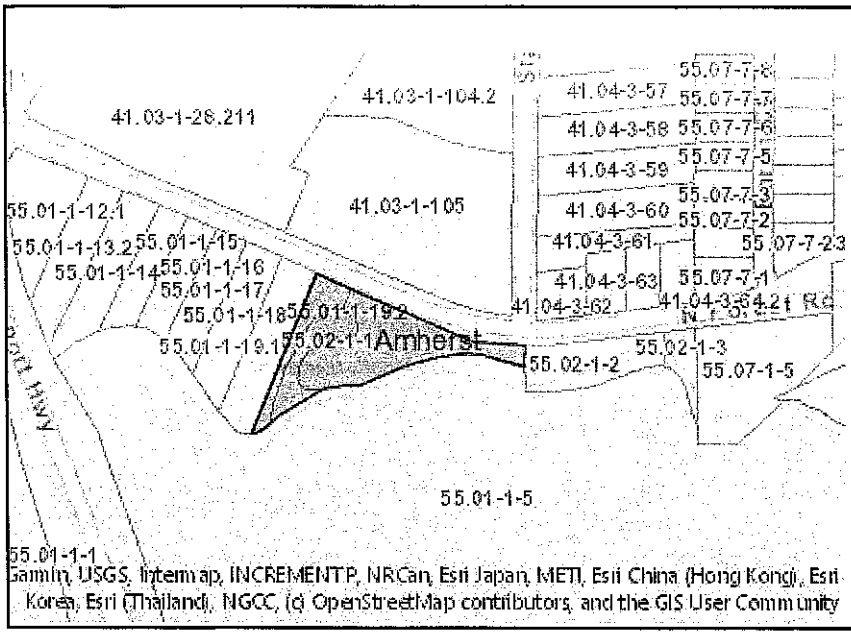
Signature _____ Title Counsel for Project Sponsor

PRINT FORM

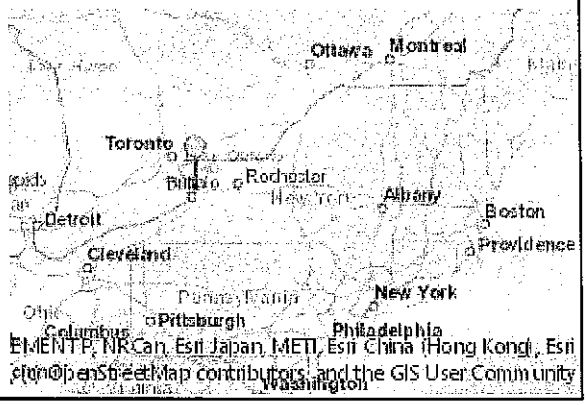
Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EAF Mapper Summary Report

Monday, August 17, 2020 7:45 AM



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Stream Name]	837-25
E.2.h.iv [Surface Water Features - Stream Classification]	B
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters
E.2.h.v [Impaired Water Bodies]	Yes
E.2.h.v [Impaired Water Bodies - Name and Basis for Listing]	Name - Pollutants - Uses:Ellicott Creek, Lower, and tribs – Nutrients;Silt/Sediment – Aquatic Life

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

E.2.i. [Floodway]	Yes
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	Yes
E.3.i. [Designated River Corridor]	No

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment "A" of Amended Part 1 of Full Environmental Assessment Form – Wetland Investigation Letter of Scott J. Livingstone of Earth Dimensions, Inc. dated July 7, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EARTH DIMENSIONS, INC.
* Soil & Hydrogeologic Investigations * Wetland Delineations
1091 Jamison Road, Elma NY 14059
(716) 655-1717 * Fax (716) 655-2915 www.earthdimensions.com

July 7, 2020 W4E87a

Thiru Vikram
4515 Chestnut Ridge Road
Amherst, New York 14228

Re: Preliminary Wetland Investigation – 1.9± acres
2160-2170 North Forest Road
Town of Amherst
Erie County, New York

Dear Mr. Vikram:

Earth Dimensions, Inc. (EDI) has completed a preliminary wetland investigation at the above referenced site for the purpose of identifying potential regulated wetlands and waterways. The site investigation was conducted on July 7, 2020. The attached map depicts the limits of our investigation. EDI did not identify any federally regulated wetlands as defined by the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manuals within the limits of investigation. However, Ellicott Creek abuts the site on the south boundary and would be regulated by USACE under Section 404 of the Clean Water Act.

The New York State Department of Environmental Conservation (NYSDEC) On-line Resource Mapper does not depict any Freshwater Wetlands within or adjacent to the subject parcel. NYSDEC, thus, has no jurisdiction over any wetlands within the site. However, Ellicott Creek is a Class B stream and is regulated under Article 15 of New York Conservation Law.

Based on this investigation, it is our professional opinion that as long as no disturbance is proposed to the bed and banks of Ellicott Creek, your project may move forward without the need for a Section 404 permit from USACE or Article 15 permit from NYSDEC. Should your project propose impacts to the bed or banks of Ellicott Creek, we recommend that a Joint Application for permit be submitted to USACE and/or NYSDEC with a request for a Section 404 and/or an Article 15 permit, respectively.

If you have any questions, please contact our office at (716) 655-1717 or email slivingstone@earthdimensions.com.

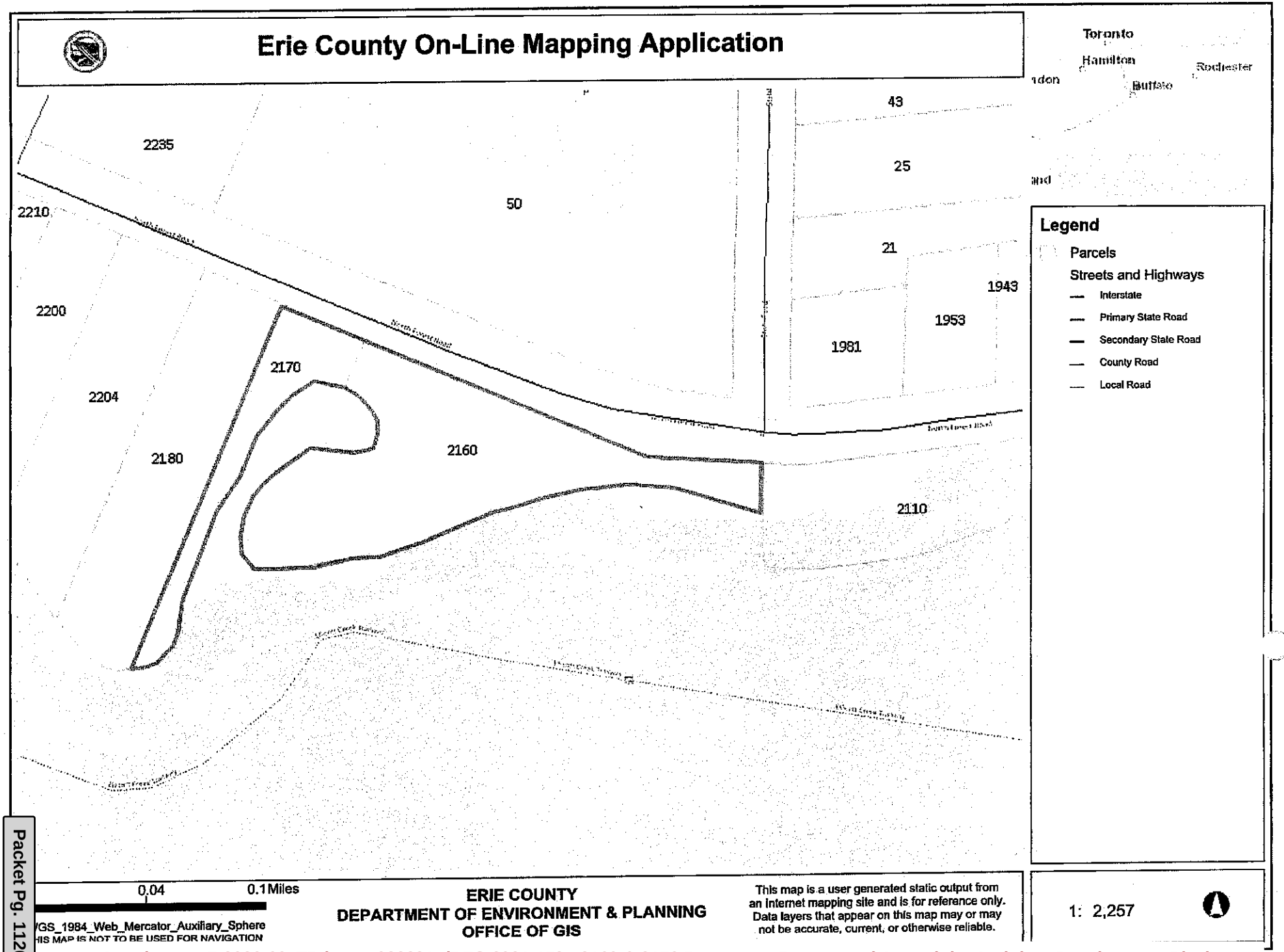
Very truly yours,
Earth Dimensions, Inc.

Scott J. Livingstone
Wetlands Operations Manager

Encl.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Erie County On-Line Mapping Application



ERIE COUNTY
DEPARTMENT OF ENVIRONMENT & PLANNING
OFFICE OF GIS

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

/GS_1984_Web_Mercator_Auxiliary_Sphere
HIS MAP IS NOT TO BE USED FOR NAVIGATION

Attachment "B" of Amended Part 1 of Full Environmental Assessment Form – No Impact Determination Letter of Josalyn Ferguson of the New York State Office of Parks, Recreation and Historic Preservation dated October 30, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

NEW YORK STATE OF OPPORTUNITY | Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Commissioner

October 30, 2020

Roberta Rappoccio
Associate Planner
Town of Amherst, NY Planning Department
5583 Main Street
Amherst, NY 14221

Re: DEC
Rezoning for 18-Unit 3-story New Construction Project
2160 North Forest Rd, Amherst, Erie County, NY
20PR05460
Z-2020-06

Dear Roberta Rappoccio:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the Phase I Archaeological Reconnaissance Survey report prepared by the University at Buffalo's Archaeological Survey (Whalen & Angelini, October 2020; 20SR00539) in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation, and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on this review, it is OPRHP's understanding that no archaeological sites were identified during the above-noted investigation, and we concur with the report's conclusion that no further archaeological investigations are warranted. It is, therefore, OPRHP's opinion that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project. Should the project design be changed OPRHP recommends further consultation with this office.

If you have any questions, I can be reached via e-mail at Josalyn.Ferguson@parks.ny.gov.

Sincerely,

Josalyn Ferguson, Ph.D.
Scientist Archaeology

via email only

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 3 – Legal Description of Property to be Reclassified from NCD-SA to NCD-ND

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EXHIBIT 3 OF AMENDED APPLICATION

LEGAL DESCRIPTION OF PROPERTY TO BE RECLASSFIED FROM NCD-SA TO NCD-ND – 2160 AND 2170 NORTH FOREST ROAD

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Amherst, County of Erie, State of New York, being part of Lot 68, Township 12, Range 7 of the Holland Land Survey so-called and further bounded and described as follows.

BEGINNING at the intersection of the centerline of Stahl Road (66.0 feet wide) with the centerline of North Forest Road (66.0 feet wide):

THENCE: Southerly, along the centerline of Stahl Road extended southerly, a distance of 108 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly along said north bank of Ellicott Creek, a distance of 583 feet more or less to the west line of lands conveyed to Peter D. Durham by deed recorded in the Erie County Clerk's Office in Liber 9264 of Deeds at page 188;

THENCE: Northerly along said west line of Peter D. Durham lands, a distance of 10 feet more or less to the north bank of Ellicott Creek;

THENCE: Westerly and southerly along said north bank of Ellicott Creek, a distance of 227 feet more or less to a point distant 100 feet westerly from the said west line of Peter D. Durham lands as measured at right angles;

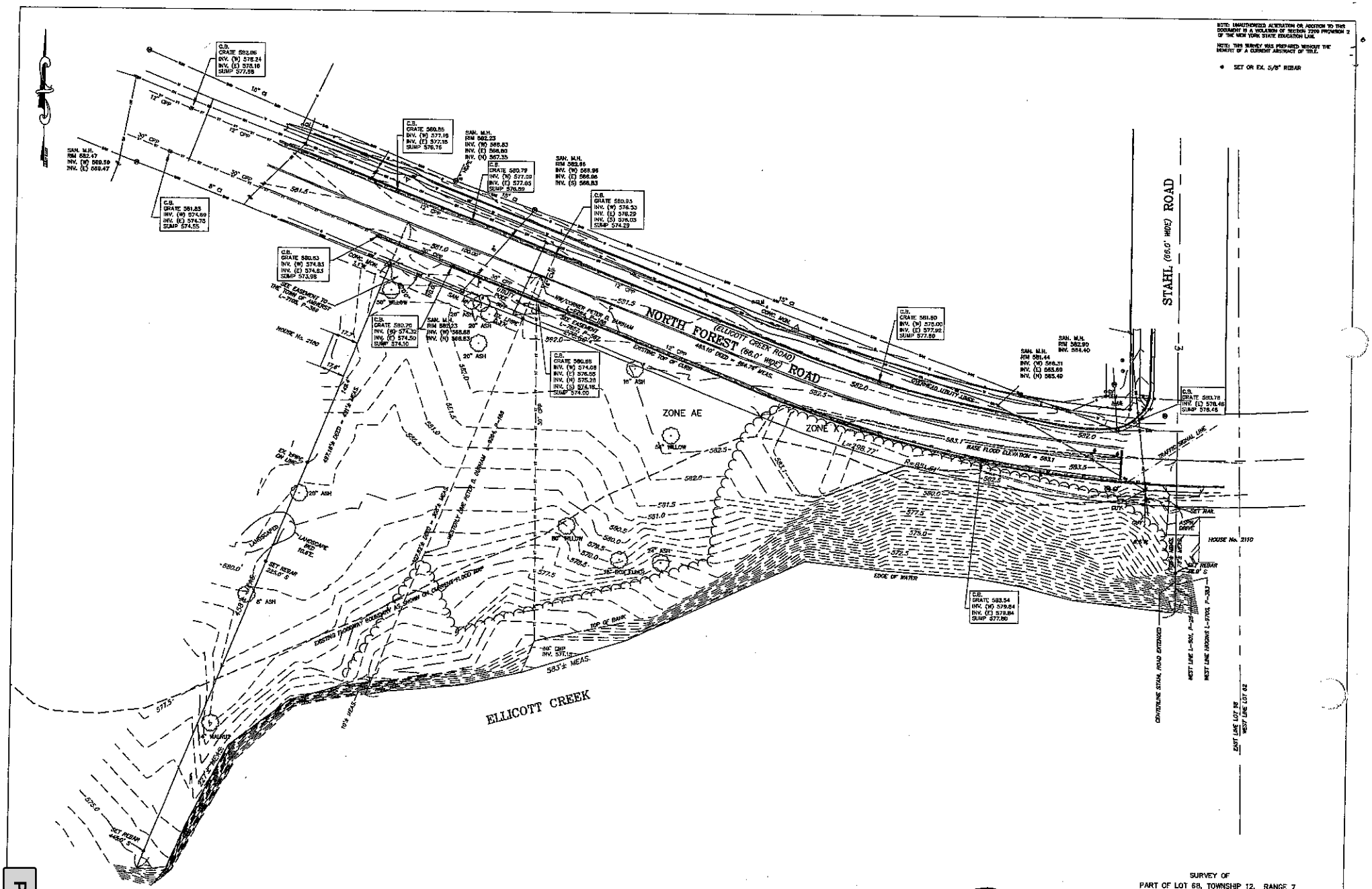
THENCE: Northerly along a line parallel with the west line of said Peter D. Durham lands distant 100.00 feet westerly therefrom measured at right angles, a distance of 491 feet more or less to the centerline of North Forest Road;

THENCE: Easterly, along said centerline of North Forest Road, a distance of 564.74 feet to the POINT OR PLACE OF BEGINNING.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 4 – Reduced Size Copy of Survey of 2160 and 2170 North Forest Road as Prepared by GPI Surveying dated July 13, 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



	REVISION/TYPE
D	UPDATE SURVEY AND TOPOGRAPHY
	RE-SURVEY
7	REVISED FLOODWAY BOUNDARY

REFERENCES:

SEE SURVEY PREPARED BY GORDON & BRODERICK ASSOCIATES JOB No. 2-15-219
SEE SURVEY PREPARED BY GORDON & BRODERICK ASSOCIATES JOB No. 2-24-219
LETTER OF MAP REVISION (LOMR) CASE No. 95-02-015P DATED 1/11/96
FLOOD INSURANCE RATE MAP NUMBER 36029C0069H DATED JUNE 7, 2019*
*MAP NUMBER 36029C0069H DATED 6/7/19 SUPERCEDES LOMR CASE No. 95-02-015P DATED 1/11/96

EQUITY TITLE REPORT No. E18-10758T EXCEPTIONS:

EASEMENT TO THE TOWN OF AMHERST L-7105, P-369 – AS SHOWN

EASEMENT TO NEW YORK TELEPHONE COMPANY L-7957, P-307 – AS SHOWN

STATE OF NEW YORK
MARK L. ANDREWS
050435
LICENSED LAND SURVEYOR

SURVEY OF
PART OF LOT 68, TOWNSHIP 12, RANGE 7
HOLLAND LAND COMPANY
TOWN OF AMHERST, ERIE COUNTY, NEW YORK

GPI ENGINEERING, LANDSCAPE ARCHITECTURE & SURVEYING, LLP
ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE
4820 CONSOLE STREET, SUITE 100
BUFFALO, NEW YORK 14228
(716) 633-4844 FAX 633-4840

Job No. 5083-BOUNDARY Date: JUNE 24, 2014
Scale 1" = 40' Tax No.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 5 – Responses to Questions 11A & 11B of the Rezoning Application

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EXHIBIT 5

AMENDED APPLICATION TO RECLASSIFY 2160 AND 2170 NORTH FOREST ROAD FROM NCD-SA TO NCD-ND

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

Response to Question 11(A): The modified layout of the proposed residential project is depicted on the updated Concept Site Plan prepared by Silvestri Architects P.C. A full size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 12/16/20] is attached to this Amended Application and a reduced size copy is also provided at Exhibit "7". The updated layout of the proposed residential project consists of a two-story building consisting of eight (8) units for lease with related site improvements as depicted on the updated Concept Site Plan. It is important to mention that the updated Concept Plan reflects a deliberate effort made by the project team to reduce the density of the proposed multifamily project that previously consisted of a three-story building with eighteen (18) units. A copy of the previous Concept Plan for the project as prepared by Carmina Wood Morris DPC is provided at Exhibit "8" of this Amended Application.

It is important to mention that the layout of the proposed project as depicted on the updated Concept Site Plan provided is not meant to represent the final layout of the proposed project since modifications may be necessary based on the project review process and the preparation of fully engineered plans.

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

Response to Question 11(B)(1): The Project Site is an appropriate location for the proposed project given its location on North Forest Road in an area that consist of a mixture of uses and zoning

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

classifications. The Project Site was listed for sale and the Petitioner has entered into a contract to purchase the Project Site.

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

Response to Question 11(B)(2): The Project Site is currently zoned NCD-SA. The allowable uses of property zoned NCD-SA are extremely limited given that the NCD-SA classification is intended for agricultural uses in rural areas.

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

Response to Question 11(B)(3): The requested reclassification of the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project will not result in any potentially significant adverse impacts on surrounding properties. The density of the proposed residential project has been reduced from eighteen (18) units to eight (8) units as depicted on the updated Concept Plan prepared by Silvestri Architects P.C. [Drawing AS-101 – Date: 12/16/20]. An effort has been to reduce the density of the residential project and also to design the residential project to minimize environmental impacts associated with the proximity of Ellicott Creek. A completed Amended Part 1 of the Full Environmental Assessment Form prepared pursuant to the State Environmental Quality Review Act ("SEQRA") is attached as Exhibit "2".

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

Response to Question 11(B)(4): The proposed project will have positive impacts on the school district since the project will generate annual property taxes to be received by taxing jurisdictions. The proposed project will not generate a substantial demand for educational services.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 6 – Responses to Questions 16A, 16B, 16D & 16E of the Rezoning Application

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

EXHIBIT 6

AMENDED APPLICATION TO RECLASSIFY 2160 AND 2170 NORTH FOREST ROAD FROM NCD-SA TO NCD-ND

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

Response to Question 16(A)(1): The request to reclassify the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project consisting of eighteen attached units for lease is consistent with the adopted Bicentennial Comprehensive Plan. The Town of Amherst adopted the Bicentennial Comprehensive Plan in January of 2007 after completing a lengthy planning process that included numerous public meetings and public hearings involving the Comprehensive Plan Advisory Committee, the Planning Board and the Town Board.[1] On September 3, 2019, the Town Board most recently adopted an amendments to the Bicentennial Comprehensive Plan. The Comprehensive Plan is intended to guide future growth and redevelopment in the Town.

Figure 6 of the Bicentennial Comprehensive Plan is the Conceptual Land Use Plan and it depicts the Project Site as being appropriate for "Mixed Residential" use. A copy of Figure 6 of the Comprehensive Plan is provided at Exhibit "9". The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development in the Town of Amherst. The Mixed-Residential land use category is described in Chapter 3 of the Comprehensive Plan as

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

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

being appropriate for a residential density of 4-12 units per acre the density of the proposed project is 7.66 units per acre.

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

Response to Question 16(A)(2): The adopted Comprehensive Plan does not need to be amended to accommodate the requested reclassification of the Project Site from NCD-SA to NCD-ND.

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

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

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

The request reclassification of the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project is consistent with the "Purpose" of the Zoning Code. Section 1-2-2 of the Zoning Code sets forth the objectives of the Zoning Code. This section of the Zoning Code lists thirteen (13) objectives that are discussed below as follows:

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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

Response: The proposed project will be consistent with the objective of protecting the character and value of existing land uses and represents orderly and beneficial development.

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

Response: The proposed project is consistent with this objective.

C. To prevent overcrowding of land;

Response: The proposed residential project will not result in the overcrowding of land.

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

Response: The proposed residential project will not result in an excessive concentration of population. The proposed residential project is not an example of uncoordinated development.

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

Response: The requested reclassification of the Project Site from NCD-SA to NCD-ND and the proposed residential project are consistent with the policies of the Comprehensive Plan.

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

Response: The Site Plan review process will trigger the need for an Engineer's Report and SWPPP prepared by a licensed engineer to be prepared for review and approval by the Town's Engineering Department. The residential project will not increase the

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

likelihood of damage and injury due to fire and flood. The proposed project will be constructed per the stringent requirements of the NYS Building Code including the fire safety standards contained therein.

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

Response: The proposed residential project will not be inconsistent with this objective.

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

Response: The development of the Project Site in a manner consistent with the updated Concept Site Plan depicting a two-story building with 8 units will result in a residential project that is aesthetically harmonious with nearby areas and structures.

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

Response: The proposed residential project will not result in any potentially significant traffic impacts and only curb cut will be provided onto North Forest Road, which is an Erie County Highway. The potential traffic impacts of the proposed project will be evaluated in connection with the coordinated environmental review of the project pursuant to SEQRA.

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

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

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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

Response: The proposed reclassification of the Project Site from NCD-SA to NCD-ND is consistent with this objective since the project is generally consistent with the recommended land use category of "Mixed Residential" as well as the planning objectives and policies in the Comprehensive Plan.

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

Response: The proposed residential project is consistent with this objective.

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

Response: The proposed residential project will not be inconsistent with this objective.

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

Response to Question 16(C): The proposed project is compatible with the present zoning and conforming uses of nearby properties and the character of the neighborhood.

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

Response to Question 16(D): The Project Site is not suitable for agricultural uses allowed in the NCD-SA district given its size, location and nearby land uses.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

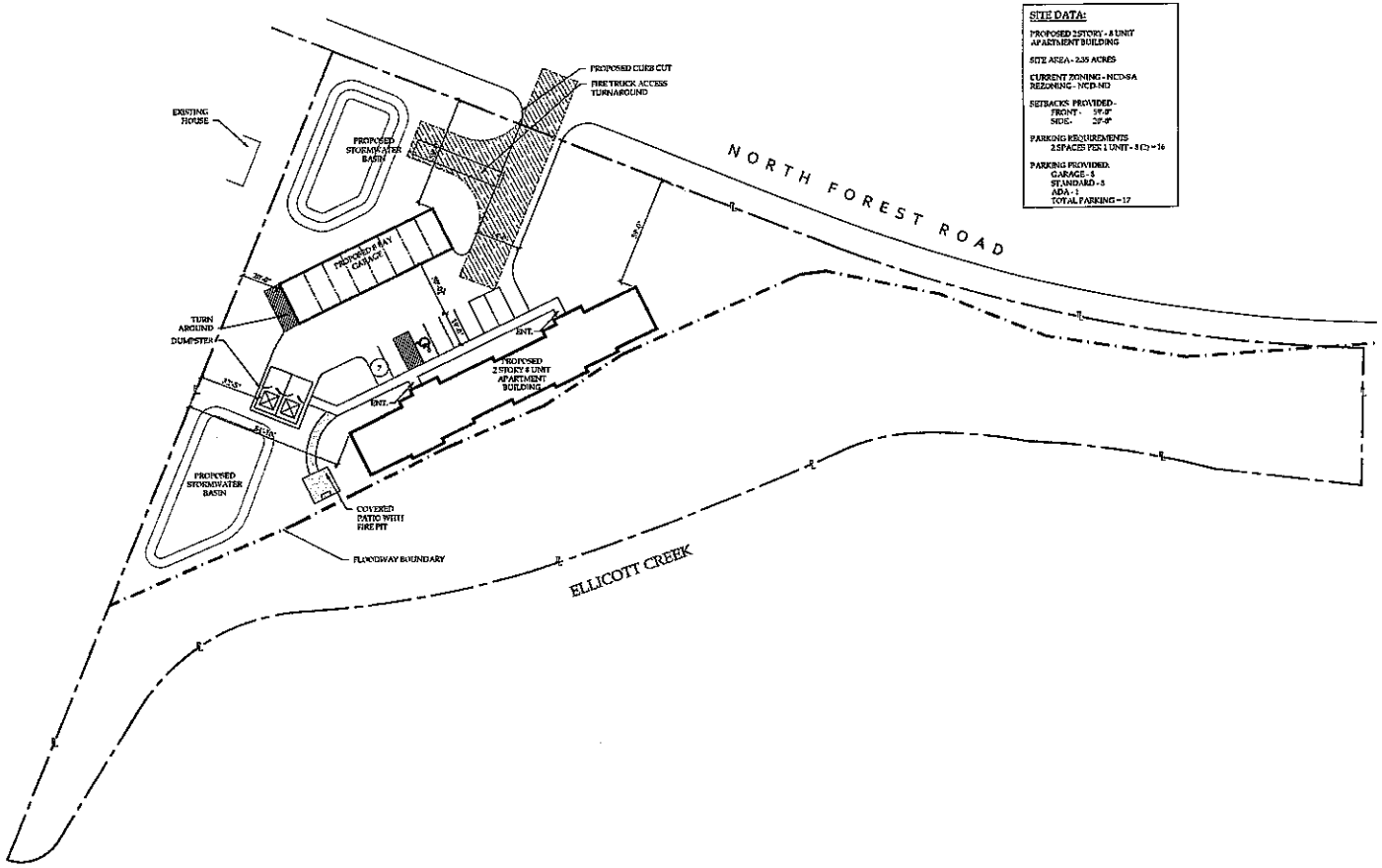
Question 16(E): **Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town:**

Response to Question 16(D): The requested reclassification of the Project Site from NCD-SA to NCD-ND to accommodate the proposed residential project will have positive impacts on the balance of uses in the Town since there is demand for upscale attached residential units for lease in the Town.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 7 – Reduced Size Copy of the Updated Concept Site Plan for the Proposed Project as Prepared by Silvestri Architects PC [Drawing AS-101 – Date: 12/16/20] [Note: A full size copy of Updated Concept Site Plan is also attached to this Amended Application]

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



N

A1 CONCEPT SITE PLAN

NOTICE

This document, the property of, prepared and issued by the architect, is submitted for the specific project named _____ and the recipient by accepting this document assumes custody and agrees that this document will not be copied or reproduced in part or in whole, and any special features peculiar to this design shall not be incorporated in any other project, unless prior agreement has been obtained in writing. These documents will be returned immediately upon completion of the project or upon the request of the architect.

This document is the exclusive property of the architect, no rights to ownership are transferable, or shall be lost by the filing of this document with any and all public authorities for the purpose of compliance with Codes and or Ordinances, i.e. Building Permit, etc.

NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL R.Silvestri
PROJ. ARCH. S.Hunt DRAFTER B.Meinhardt
JOB CAPT. _____ INTERIORS K. Hanssen

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS • PC
1321 MILLERSPORT HWY PH. 716.691.0909
AMHERST, NY 14221 FAX 716.691.4773

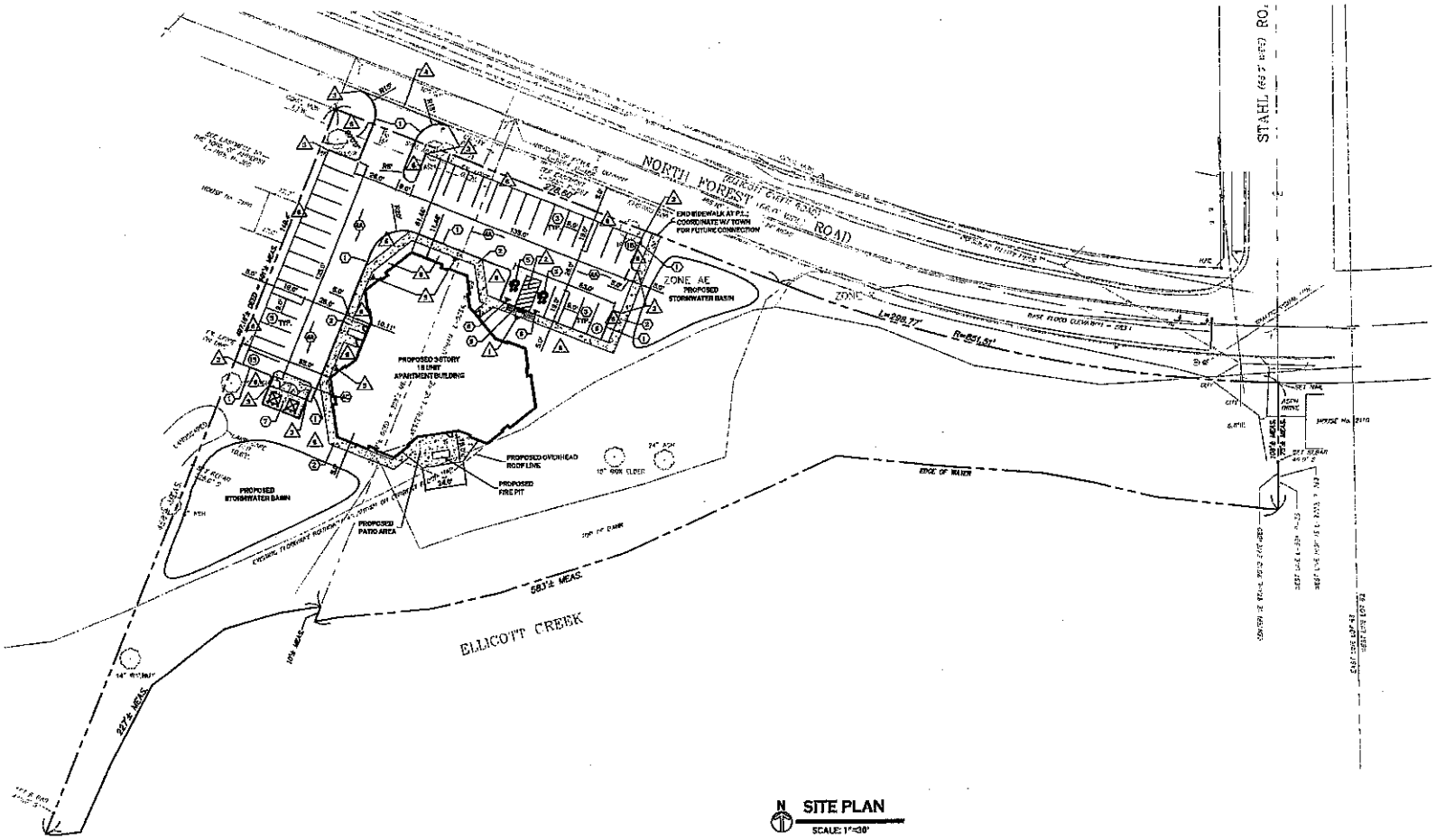
SA JOB #: 20060.02
DATE: 12/16/20

DRAWING #: AS-101

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Exhibit 8 – Reduced Size Copy of the Previous Concept Site Plan as Prepared by Carmina Wood Morris DPC [Drawing C-100 – Date: August 2020]

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



N SITE PLAN
SCALE: 1"=30'

SITE DATA

TOTAL SITE 2.36 ACRES
ZONED: HC/BA (CURRENT) TO BE REZONED TO HC/AD
USE: PROPOSED 3-STORY 18 UNIT APARTMENT BUILDING

PARKING REQ'D: 2 SPACE PER UNIT.
18 UNITS x 2 = 36 SPACES REQ'D.
56 SPACES PROVIDED.

SITE LEGEND

- PROPERTY LINE
- PROPOSED CONCRETE CURB
- PROPOSED CONCRETE SIDEWALK
- PROPOSED ASPHALT PAVEMENT
- PROPOSED SIGN
- PROPOSED PARKING NUMBER (27)
- PROPOSED LIGHT POLE
- PROPOSED WALL MOUNTED LIGHT

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

30 0 30 60FT.

GENERAL NOTES:

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

SITE NOTES:

1. ALL RADII SHALL BE 3'-0" UNLESS OTHERWISE NOTED.
2. ALL DISTURBED AREAS: SHALL HAVE 4" MIN. OF TOPSOIL AND SEED.
3. ALL DIMENSIONS FROM PROPERTY LINES SHALL BE MEASURED PERPENDICULAR TO THE PROPERTY LINE.
4. CENTER ENTRANCE SIDEWALKS ON DOOR OPENINGS.
5. BUILDING DIMENSIONS ARE APPROXIMATE, REFER TO ARCHITECTURAL DRAWINGS FOR LAYOUT DIMENSIONS.

DETAIL LEGEND SEE SITE DETAIL SHEET

1. CONCRETE CURB
2. CONCRETE SIDEWALK, 5' WIDE UNLESS OTHERWISE NOTED
3. 90° PARKING STALL
4. STANDARD DUTY ASPHALT
4C. EXTERIOR CONCRETE SLAB ON GRADE
5. HANDICAP PAVEMENT MARKINGS
6. HANDICAPPED PARKING SIGN
7. DUMPSTER ENCLOSURE
8. LIGHT POLE FOUNDATION
9. HANDICAP PAVEMENT RAMP

NOTE LEGEND

A. INSTALL "NO PARKING" SIGN, M.U.T.C.D. SIGN NO. R7-1C
A. 4" WIDE YELLOW PAINT STRIPE @ 45° @ 2'0 O.C., INFILL AREA AS SHOWN
A. REMOVE CURB IN 2' OR MATCH EXISTING CURB
A. MATCH EX. EDGE OF PAVEMENT, SAWCUT AS REQ'D TO ACHIEVE SQUARE EDGE TO MATCH
A. INSTALL "NO PARKING - FIRE LANE" SIGN, M.U.T.C.D. SIGN NO. R8-3
A. LANDSCAPED AREA - SEE LANDSCAPE PLAN. IF NO PLANTINGS, INSTALL TOPSOIL & SEED

© Carmina Wood Morris DPC
All plans, record, Boots of these documents without the expressed written permission of Carmina Wood Morris DPC is prohibited. WARNING: It is violation of article 145 section 7209 of the N.Y.S. Education Law for any person, unless acting under the direction of a registered architect, licensed engineer or land surveyor to alter this drawing. If altered, add the N.Y.S. architect's or L.S. seal to the drawing and specify the alteration made, signed by and a notation stating "altered by" and a description of the alteration.

Carmina Wood Morris DPC
437 Main Street Suite 300
Buffalo, New York 14203
P 716.842.3195
F 716.842.0263

REVISIONS:
No. Description Date

PROJECT NAME:
Site Development Plans for:
Proposed 3-Story Apartment bldg
2160 - 2170 North Forest Road
Amherst, New York

Date: 08/2020
Drawn by: C. Wood
Scale: As Noted

DRAWING NAME:
Concept Site Plan

DRAWING NO.
C-100
Project no.: 20.143

Exhibit 9 - Color Copy of Figure 6 of the Adopted Bicentennial Comprehensive Plan (titled "Conceptual Land Use Plan")

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Town of Amherst Bicentennial Comprehensive Plan

The Conceptual Land Use Plan is intended to communicate the overall direction and concept of future development. While it is not a zoning map and does not show the existing or proposed use of individual parcels, it is intended to show land use relationships, provide a generalized guide for future development, and establish a context for detailed area planning and design.

Location of Project Site - Designated as Appropriate for Mixed Residential Use

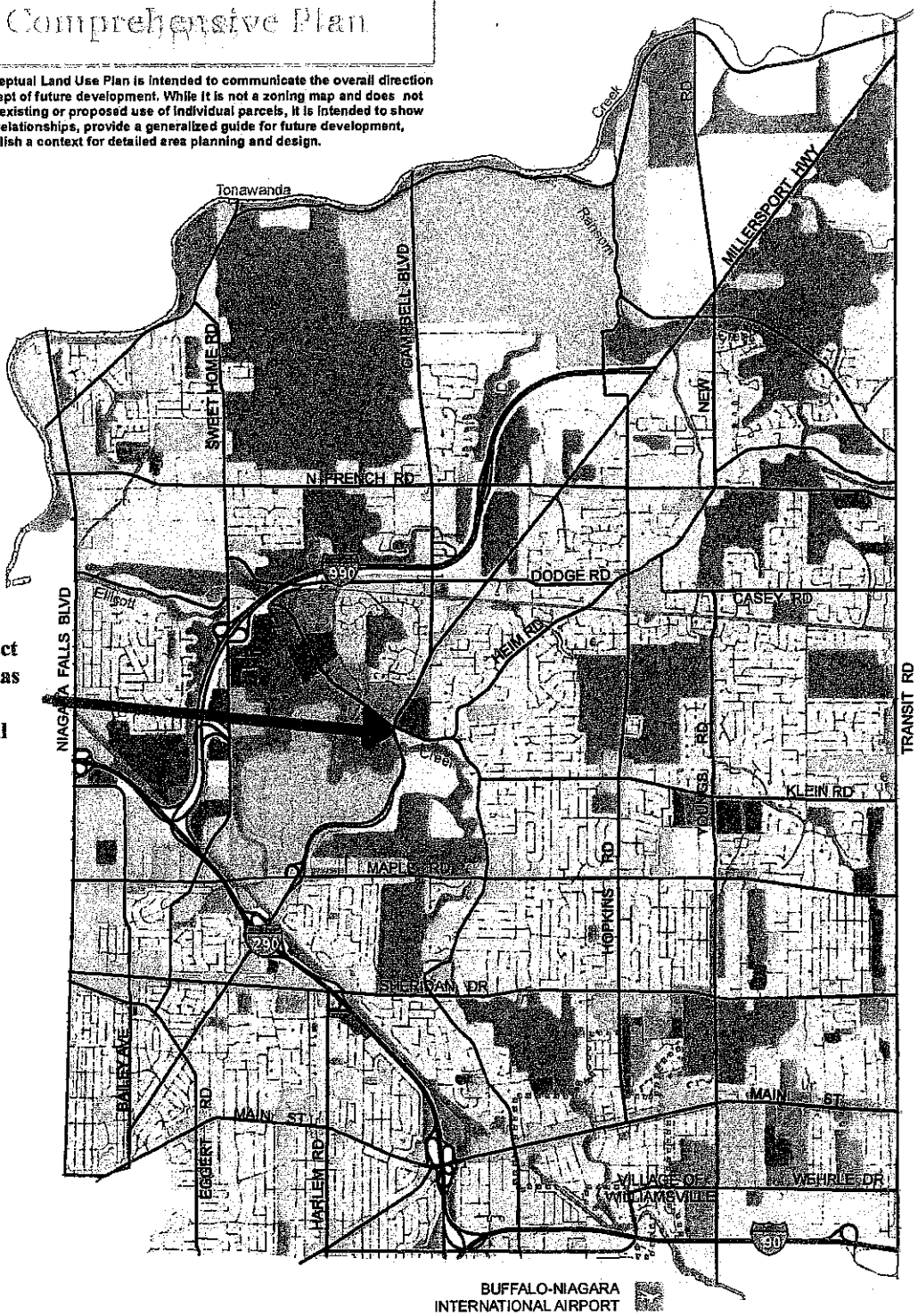


FIGURE 6

Conceptual Land Use Plan

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

* See Map Figure 6-A for Additional Designations

SOURCE NOTES:

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

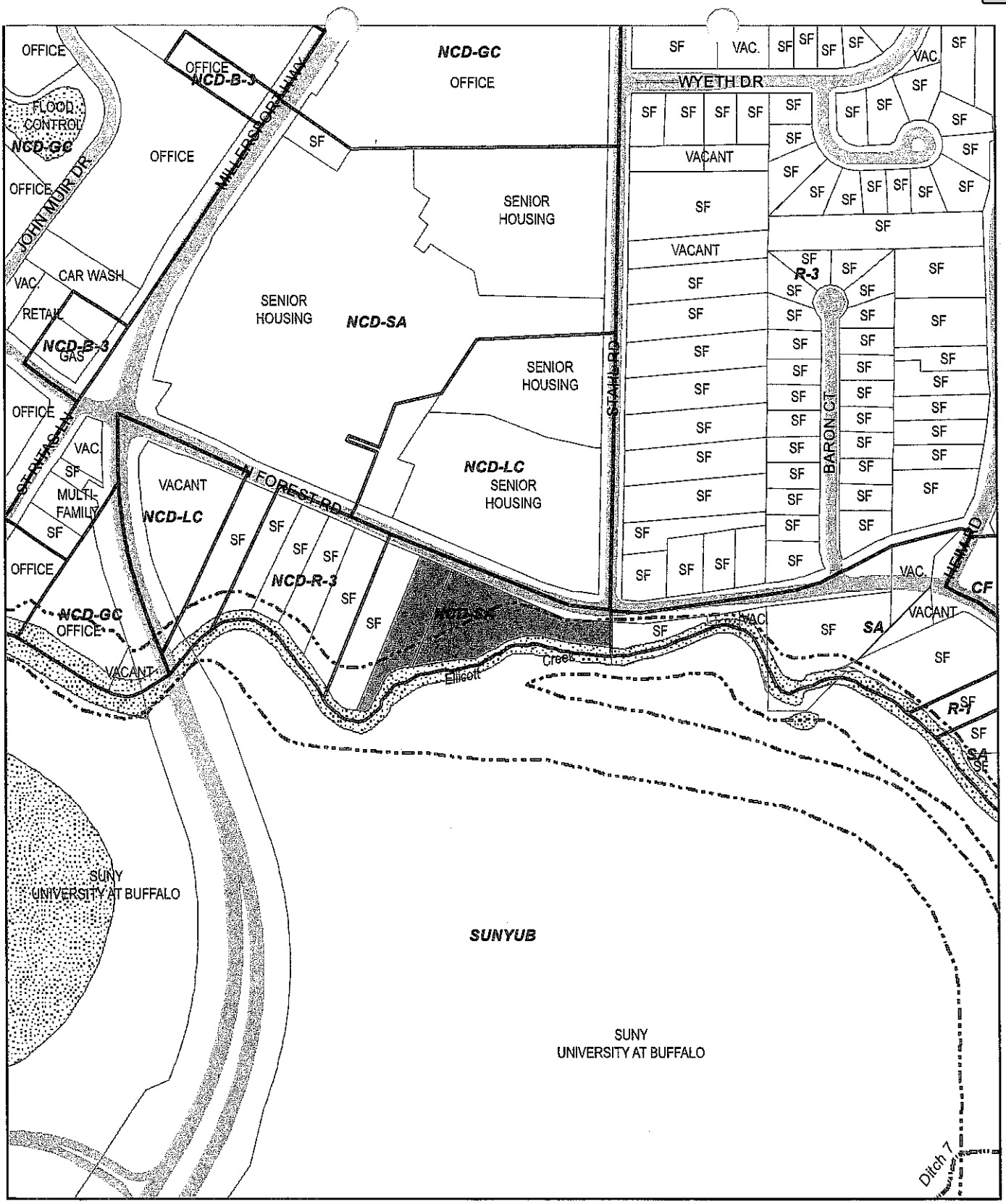
Map Compiled by the Town of Amherst Planning Department

Date: September 2019

N

0 0.25 0.5 0.75 1 1.25
Miles

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



Z-2020-06
Proposed Amendment #73 to the Audubon New Community Development Plan to Reclassify 2.35+/- AC of Land from NCD-SA to NCD-ND
Property Located at 2160 & 2170 North Forest Road (NCD)

Coromandel Estates Amherst, LLC, Petitioner

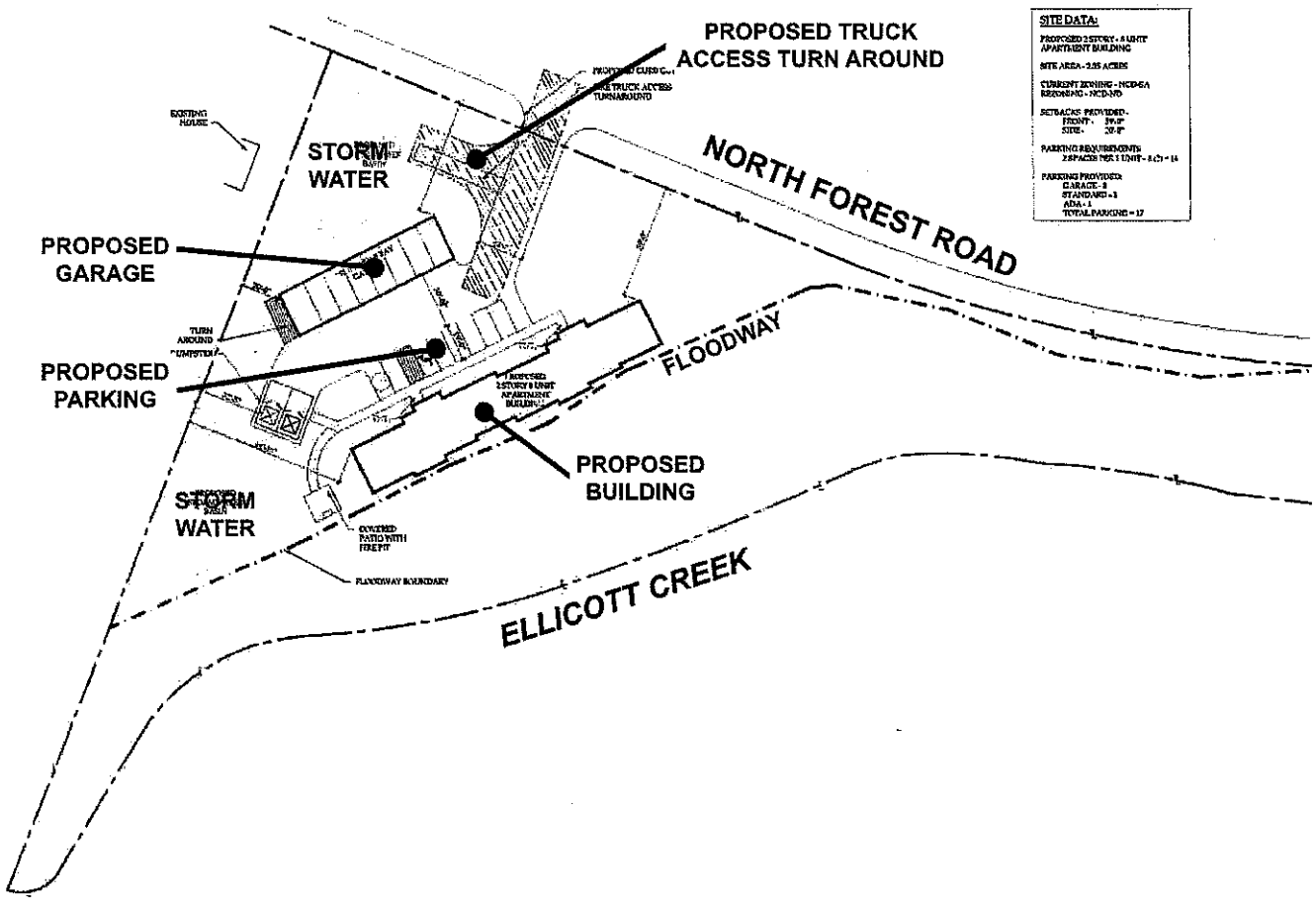
January 21, 2021

2160 & 2170 North Forest

Floodway Boundary

Prepared by the Town of Amherst Planning Department

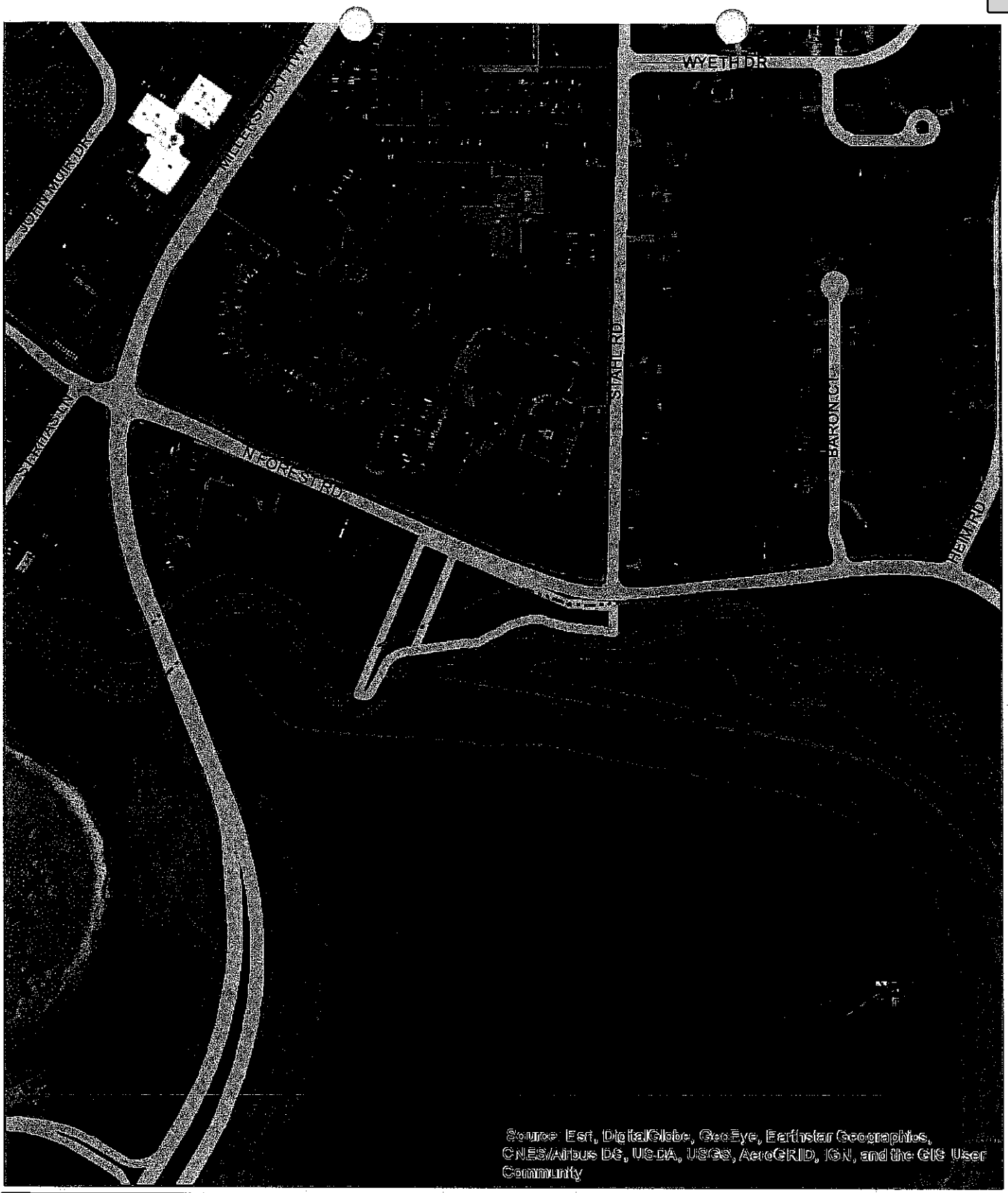
Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



CONCEPT PLAN

Z-2020-06
2160 & 2170 North Forest Road
Received: 12/21/20

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



Z-2020-06
Proposed Amendment #73 to the Audubon New Community Development Plan to Reclassify 2.35+/- AC of Land from NCD-SA to NCD-ND
Property Located at 2160 & 2170 North Forest Road (NCD)

Coromandel Estates Amherst, LLC, Petitioner
January 21, 2021

2160 & 2170 North Forest

Floodway Boundary

Prepared by the Town of Amherst Planning Department

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Williamsville Central Schools

Encouraging • Nurturing • Challenging

RECEIVED
SEP 22 2020
TOWN OF AMHERST
PLANNING DEPT.

September 15, 2020

Ms. Ellen Kost
Associate Planner
Town of Amherst Planning Department
5583 Main Street
Williamsville, NY 14221

RE: PROPOSED AMENTMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35 ACRES OF LAND FROM **NCD-SA** TO **NCD-ND, Z-2020-06**; PROPERTY LOCATED AT **2160 AND 2170 NORTH FOREST ROAD (NCD)**; COROMANDEL ESTATES AMHERST, LLC, PETITIONER.

Dear Ms. Kost:

The Williamsville Central School District has reviewed file number **Z-2020-06** for the request by Coromandel Estates Amherst, LLC to reclassify land for the above-named property.

Please note that the District has received this information and placed it on file. A future bus stop will be located at a driveway entrance at N. Forest Road in accordance with District policy.

Sincerely,

Thomas R. Maturski
Assistant Superintendent for Finance & Management Services

TRM/ld

cc: Coromandel Estates Amherst LLC c/o Sean Hopkins, Esq, 5500 Main St., Suite 343, Williamsville NY 14221; shopkins@hsr-legal.com
Scott Marshall, Principal Planner; smarshall@amherst.ny.us

105 Casey Road, P.O. Box 5000, East Amherst, NY 14051-5000 • Phone: (716) 626-8012, Fax: (716) 626-8017
www.williamsvillek12.org
Thomas R. Maturski, Assistant Superintendent for Finance & Management Services

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

William E. Geary, Jr.,
COMMISSIONER

DEPARTMENT OF PUBLIC WORKS
RATH BUILDING 14TH FLOOR

TELEPHONE:716.858.8300
FAX: 716.858.8228

September 27, 2020
Ms. Ellen M. Kost, AICP
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Re: Lead Agency Request
Proposed 3 Story Apartment Building
2160-2170 North Forest Road (CR-294)
(T) of Amherst, County of Erie

Dear Ms. Kost:

This Department has received your request for Lead Agency for the above referenced project and the rezoning of 2.35 acres. Erie County Department of Public Works takes no exception with the Town of Amherst being the Lead Agency for this project. This approval of Lead Agency is only from Erie County Department of Public Works and does not imply that other County Departments concur with this approval, as their response will be coming by separate letter.

Permit Requirements

The Developer will be required to apply for and obtain an Erie County Highway Work Permit for Utility Work Perm-2 for construction within the North forest Road highway right-of-way.

The Developer will be required to apply for and obtain an Erie Count Highway Work Permit for Non-Utility Work, Perm 3 for construction of a new entrance drive within the North Forest Road highway right-of-way.

Traffic Concerns

A Traffic Impact Study may be needed due to the close proximity of the project to the intersection of North Forest and Stahl Road.

We ask that you please keep us informed as this project progresses and forward design plans and reports when they become available.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Sincerely,

ERIE COUNTY DEPARTMENT OF PUBLIC WORKS

Darlene M. Svilokos, P.E.
Principal Civil Engineer

cc: Karen Hoak, Deputy Commissioner – Highways
Brian A. Rose, P.E., Supervisor of Engineering
Gina Wilkolaski, P.E., Traffic and Safety Engineer
John Dennee, Senior Highway Maintenance Engineer
File: CR-294

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7165 I F: (716) 851-7168
www.dec.ny.gov

January 22, 2021

Ms. Ellen Kost
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Dear Ms. Kost,

SEQR Lead Agency Coordination
Audubon New Community Development
2160 and 2170 North Forest Road
Town of Amherst, Erie County

This letter is in response to your December 23, 2020 correspondence regarding the above-noted project. The revised project plan has been reviewed and the Department has no additional comments on the proposed project beyond those in the attached September 30, 2020 SEQR lead agency response letter from this agency. Thank you.

If you have any other questions, please feel free to contact Ms. Kerri Pickard-DePriest of my staff or me at 716/851-7165.

Sincerely,

David S. Denk

Digitally signed by David S. Denk
DN: cn=David S. Denk, o=NYS DEC, ou=Div. of Env. Permits, email=david.denk@dec.ny.gov, c=US
Date: 2021.01.22 14:13:13 -05'00'

David S Denk
Regional Permit Administrator

KPD

ecc: Mr. Theodore Myers, NYSDEC, Division of Water
Mr. Sean Hopkins, Esq, shopkins@hsr-legal.com

Z-2020-06

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

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

RECEIVED
JAN 14 2021
TOWN OF AMHERST
PLANNING DEPT.

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Directo

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

DEC 23 2020
TOWN OF AMHERST
BUILDING DEPT

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND;** PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: a floodplain development permit will be required

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Doug Gesel **Date:** 1-13-21

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
Chris Wood, Carmina Wood Morris, 487 Main St., Suite 500, Buffalo NY 14203
Christina Barmosz, Silvestri Architects, 1321 Millersport Hwy., Amherst, NY 14221
David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
DEC 17 2020
TOWN ATTORNEY

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
Chris Schregel, Traffic/Safety Coordinator (c/o Eng)
Brian Barnes, Senior GIS Analyst (Eng.) (letter only)
Bryan Parnell, Fire Chiefs' Association (c/o Bldg)
Stan Sliwa, Town Attorney (Local Law Only)
Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

RECEIVED
JAN 05 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: _____

General comments relative to your agency interests: None at this time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: Stanley Sliwa **Date:** 1/4/2021

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
Coromandel Estates Amherst LLC, c/o Sean Hopkins, 5500 Main St., Suite 343, Williamsville, NY 14221
Thiru Vikram, c/o Coromandel Estates LLC, 4515 Chestnut Ridge Road, Unit 106, Amherst NY 14228
Chris Wood, Carmina Wood Morris, 487 Main St., Suite 500, Buffalo NY 14203
Christina Barmosz, Silvestri Architects, 1321 Millersport Hwy., Amherst, NY 14221
David Pawlik, Creative Structures Services, 550 Seneca St., Suite 100, Buffalo NY 14204

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
DEC 21 2020
TOWN ATTORNEY

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
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ECHWY
NYSDEC
Williamsville Central School District

RECEIVED
JAN 05 2021
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director

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REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: N/A

General comments relative to your agency interests: N/A

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)
N/A

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

Signature: _____ **Date:** 12/29/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

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Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
DEC 31 2020
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
~~Dave Marrano~~, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

TO: Ellen Kost
From: Dave Marrano
12/23/20
See Below

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? Yes

If you do not, briefly state why: No Issue.

General comments relative to your agency interests: No Issue since units will be Leased, not sold w/ Condominium Tax Status

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.) N/A

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

Signature: _____ **Date:** 12/23/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

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Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
DEC 31 2020
TOWN OF AMHERST
PLANNING DEPT.

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

TOWN OF AMHERST
ENGINEERING
DEPARTMENT
2020 DEC 22 P 12:51

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? YES

If you do not, briefly state why: _____

General comments relative to your agency interests: None At This Time

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 12/30/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

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Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

RECEIVED
Williamsville Central School District
DEC 23 2020
Asst Superintendent for
Finance & Management Services

MEMORANDUM December 18, 2020

RECEIVED
DEC 31 2020
TOWN OF AMHERST
PLANNING DEPT.

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? In regard to site plan and SEQRA, the

If you do not, briefly state why: District does not have comments on these items

General comments relative to your agency interests: Williamsville Central School District school bus service will follow policy, presently, bus service would be at entrance of the apartment complex.

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: [signature] **Date:** 12/28/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
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Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst

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

Brian J. Kulpa
Supervisor
Daniel C. Howard, AICP
Planning Director
Ellen M. Kost, AICP
Assistant Planning Director

TOWN OF AMHERST ENGINEERING DEPARTMENT
2020 DEC 22 P 12:37

MEMORANDUM December 18, 2020

TO: Daniel Ulatowski, Principal Planner
Dave Marrano, Town Assessor
Douglas Gesel, Supervising Code Enforcement Officer, Building Department
Jeffrey Burroughs, Town Engineer
Patrick Lucey, Superintendent of Hwys/Mark Gortzig Gen. Crew Chief
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Ann Demopoulos, Deputy Town Attorney, Right-of-Way Agent
Integrated Review Coordinator, ECDEP
ECHWY
NYSDEC
Williamsville Central School District

RECEIVED
DEC 28 2020
TOWN OF AMHERST
PLANNING DEPT.

FROM: Planning Department, Ellen M. Kost, AICP, Assistant Planning Director EMK

SUBJECT: PROPOSED AMENDMENT #73 TO THE AUDUBON NEW COMMUNITY DEVELOPMENT PLAN TO RECLASSIFY 2.35± ACRES OF LAND FROM **NCD-SA** TO **NCD-ND**; PROPERTY LOCATED AT **2160 and 2170 NORTH FOREST ROAD (NCD);** COROMANDEL ESTATES AMHERST, LLC, PETITIONER. **Z-2020-06**

REVISED APPLICATION AND CONCEPT PLAN:
Received December 18, 2020

REVIEW:

Do you agree with all statements made? YES.

If you do not, briefly state why: _____

General comments relative to your agency interests: NONE

If improvements are required involving your agency, please state schedule for completion (sewer construction, road widening, etc.)

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

Signature: _____ **Date:** 12/24/20

EK/jfa
X:\Current_Planning\Files\Rezonings\2006\Z-2006-06_(9290_Transit_Rd)_2006\Z-2020-06_Rev_Transmittal_Application & Concept Plan_121820.doc

cc: Scott Marshall, Principal Planner
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Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

RECEIVED
NOV 30 2020
TOWN OF AMHERST
PLANNING DEPT.

Kost, Ellen

From: Rutkowski, Edward (DOT) <Edward.Rutkowski@dot.ny.gov>
Sent: Saturday, November 28, 2020 12:50 PM
To: Kost, Ellen
Subject: 2160-2170 North Forest Rd, Proposed Rezoning for 18 Unit Apartment Building, Amherst
Attachments: 2160-2170 N Forest.pdf

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Ellen,

New York State Department of Transportation (NYSDOT) reviewed the information submitted for the subject project and has the following comments:

- NYSDOT concurs with the Town of Amherst acting as the Lead Agency.
- The proposed project will not have a significant impact to traffic on the Stathe Highway System.

If you have any questions, please contact me either by email or phone.

Sincerely,
Ed Rutkowski

Edward S. Rutkowski, P. E.
SEQR/Site Plan Review Coordinator
NYSDOT - Region 5
100 Seneca Street
Buffalo, New York 14203
716-847-3575

NEW YORK STATE OF OPPORTUNITY. Department of Transportation

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

NEW YORK STATE OF OPPORTUNITY. | Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ERIK KULLESEID
Commissioner

October 30, 2020

Roberta Rappoccio
Associate Planner
Town of Amherst, NY Planning Department
5583 Main Street
Amherst, NY 14221

Re: DEC
Rezoning for 18-Unit 3-story New Construction Project
2160 North Forest Rd, Amherst, Erie County, NY
20PR05460
Z-2020-06

Dear Roberta Rappoccio:

Thank you for requesting the comments of the Division for Historic Preservation of the Office of Parks, Recreation and Historic Preservation (OPRHP). We have reviewed the Phase I Archaeological Reconnaissance Survey report prepared by the University at Buffalo's Archaeological Survey (Whalen & Angelini, October 2020; 20SR00539) in accordance with the New York State Historic Preservation Act of 1980 (section 14.09 of the New York Parks, Recreation, and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on this review, it is OPRHP's understanding that no archaeological sites were identified during the above-noted investigation, and we concur with the report's conclusion that no further archaeological investigations are warranted. It is, therefore, OPRHP's opinion that no properties, including archaeological and/or historic resources, listed in or eligible for the New York State and National Registers of Historic Places will be impacted by this project. Should the project design be changed OPRHP recommends further consultation with this office.

If you have any questions, I can be reached via e-mail at Josalyn.Ferguson@parks.ny.gov.

Sincerely,

Josalyn Ferguson, Ph.D.
Scientist Archaeology

via email only

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: ann bealer <annri35@msn.com>
Sent: Tuesday, October 06, 2020 3:26 PM
To: Carrato, Amy
Subject: Rezoning of property at 2160&2170 N. Forest Rd.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

I am totally against the rezoning of the above properties for a 3 story apartment building. I spend my summers outside in my backyard and I would lose all my privacy. Traffic is a problem. We have trouble getting in and out of our driveways. At rush hour it is almost impossible. We also have frequent water brakes as the lines are old. They were supposed to put new lines in 3or4 years ago and they never did. How much more water can those pipes handle? Water pressure is another issue. Am and pm the pressure is low. I ask also where is the green space in Amherst. It seems all the developers want to do is build. And I would ask the Board members and the Planning Board if they would like a 3 story building right next door to them.

Ann Bealer
2204 N. Forest Rd.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: sprinter16@roadrunner.com
Sent: Sunday, October 11, 2020 11:29 AM
To: Carrato, Amy
Subject: Rezoning request located at 2160 & 2170 N Forest Rd.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It May Concern,

We received a notice regarding the request to rezone 2160 & 2170 N Forest Rd. We live at 2200 N Forest Rd which is 3 houses down from the proposed rezoning and would like it noted that we are definitely not in favor of a 3 story apartment building or any apartment building for that matter.

Several years ago an effort was made to rezone the corner of N Forest Rd and Millersport Hwy to a 3 story apartment building and that effort was successfully denied based on various issues such as excessive traffic which is already a terrible problem, frequent water main breaks that occur in our area and the proposed targeted tenants which would have been college students. At the time, there was a house on the property that was being rented out to college students and the loud parties and noise created many complaints that required a police response.

As well as the concerns already mentioned, the project calls for 2 retention ponds that will drain in to Ellicott Creek. We always have flooding occur on the lower portion of our property during heavy rains and we do not want additional discharge of water from other sources as we feel this will create more opportunity for additional flooding as well as perhaps change the flow of the water.

Most of the homes that would be directly impacted by the proposed apartment building would lose all backyard privacy based on the illustration provided in the rezoning request. One of the only saving graces of living on an extremely busy, noisy street is the fact that we have no rear neighbors and are able to enjoy the view of the creek as well as the natural habitat. Having a 3 story apartment building and the noise it will create just through everyday living will definitely have a negative impact on those of us nearest to it.

We will continue to remain involved in the meetings and decisions regarding this request.

Fran & Dennis Cummings

2200 N Forest Rd

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: Dan Boscarino <dboscarino@yahoo.com>
Sent: Tuesday, October 13, 2020 3:07 PM
To: Carrato, Amy
Subject: Property at 2160& 2170 North Forest Road Planning Board meeting October 15

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

I'm writing to voice my opinion that I'm not in favor of rezoning the property. The corner is extremely busy and less than a half a mile from a school zone. The traffic is already unbearable on weekday mornings and evenings. This is a residential neighborhood and should stay that way, with single family homes only. I cannot see how anyone could approve a zoning change.

Regards,

Daniel M. Boscarino
Carrie Boscarino
57 Baron Ct
Getzville, New York

Sent from Yahoo Mail for iPad

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Carrato, Amy

From: Rosemary Blando <rblando@durham.com>
Sent: Tuesday, October 13, 2020 8:04 AM
To: Carrato, Amy
Cc: jjh2180@verizon.net
Subject: 2160 & 2170 North Forest Rd
Attachments: Amherst final draft.docx; Signed petitions.pdf

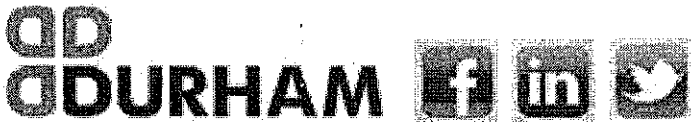
CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

Planning Board:
Attached please find our response to the request to approve **Amendment #73 of the Audubon New Community Development Plan**. This matter is scheduled to be heard as **item #3** on the Planning Board's **October 15th agenda**. Kindly acknowledge receipt via email as well as **jjh2180@vereizon.net**. My husband, Joseph Hausbeck plans to appear at the hearing, via Zoom, and requests permission to speak in rebuttal. The second attachment are (2) petitions in opposition to petitioner's request.
Thank you for your consideration,

Joseph J. Hausbeck
Rosemary Blando
Residents 2180 North Forest Rd
Williamsville, NY 14221

716.473.3972 cell

www.durhamstaffing.com



CONFIDENTIALITY NOTICE: The information contained in this email message is intended only for the personal and confidential use of the designated recipients named above. This message is an attorney-client communication or may be subject to a common interest privilege / protection, and as such, is privileged and confidential. If the reader of this message is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone 716-684-3333.

This email has been checked for viruses by Avast antivirus software.
www.avast.com

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Amherst Planning Board
5583 Main Street
Williamsville, New York 14221

Via email to: acarrato@amherst.ny.us

Re: Request to Approve Amendment #73 of the Audubon New Community Development Plan to Reclassify Property located at 2160 and 2170 North Forest Road.

To Whom It May Concern:

My wife and I are the owners and residents of 2180 North Forest Road, the property immediately adjoining the subject property. We have resided there over 23 years. We are hereby expressing our **strong opposition** to the above referenced matter which is scheduled for consideration by the Town Planning Board on Thursday, October 15th.

PROCEDURAL MATTER:

Prior to setting forth our concerns about the proposed project, I wish to raise a **procedural** concern. I am very concerned that there has been insufficient notice given of the upcoming hearing. In preparation for the hearing, I attempted to contact local residents to gauge their interest in the matter. I was advised that the Beechwood Campus and, specifically, the residents of Asbury Point, located directly across from the subject property on North Forest Road, were **not** given notice of the hearing. In addition, in speaking with the residents of eight (8) other parcels in close proximity to the subject, three (3) residents advised that they had **not** received any notice whatsoever. I attempted to contact other residents without success, perhaps because of the Covid 19 times in which we are living. I am therefore respectfully requesting that the Town insure that all reasonable efforts are made to assure that all Town Residents potentially impacted by the requested action be afforded their basic right to Notice and an Opportunity to be Heard.

SUBSTANTIVE MATTERS:

I would like to address the Request from two (2) perspectives.

I. **Character of the Neighborhood and the Subject Property:**

The property in question is the eighth parcel on the west side of North Forest Road, south of Millersport Highway. It is the last parcel on North Forest before Stahl Road and is immediately adjacent to the "zombie" property, known throughout Amherst as "that white house". The seven parcels between it and Millersport consist of six (6) single family ranch homes and one (1) one- story building, housing a Women's Medical Center. The Medical Center is on the corner of Millersport Highway (a commercial thoroughfare) and North Forest Rd. There is a substantial fenced buffer zone between the Medical Center and the first residential property, including an area dedicated to a Stormwater Management Practices Bio-retention Project, permitted by the NYS Dept. of Environmental Conservation. The rear of all the ranch homes, as well as the subject property, abut Ellicott Creek.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

It should be noted that the Medical Center required a rezoning. However, prior to that being accomplished, a different developer attempted to rezone that property to build a similar residential rental structure. That proposed redevelopment plan was objected to by the residents and was not approved by the Town. The question may therefore be asked as to why the Town should approve this application for a three-story multifamily residence on property which sits further down the same block (removed from any commercial intersection) which also presents potentially significant adverse environmental impacts.

On the opposite side of North Forest sits Asbury Point, a quiet and pristine retirement residence. Asbury Point is set back far from North Forest Road. There are dense wooded areas, landscaped areas, abundant mature trees and open greenspaces that act as a buffer between Asbury Point and North Forest Rd. The Asbury Point structure referred to by the petitioner is, indeed, three stories, but it has some underground parking. The structure, as well as its infrequently used limited surface parking area, is setback, partially concealed, and surrounded by walking paths. The building is entirely occupied by senior citizens who have a vested interest in the self-contained elderly campus. They are wonderful neighbors.

In contrast, the proposed project is a three-story, 18 unit apartment building with surface area parking for 36 cars. The site abuts our southern property line and is just 17.5 feet (+ or -) from the south wall of our home. It should be noted that the site plan describes the site as being 2.35 acres. However, the structure, surface parking and all appurtenances are "sandwiched in" on less than ½ of the "site". The remainder of the site sits in the existing floodway and is unusable. It is wooded, but sits behind the proposed development and offers no buffer between the structure and the street or our adjoining property. The "sandwiching" is so tight, that the proposed site plan reveals that portions of the proposed fire pit actually encroach into the floodway.

The site plan appears to show only a 5' "landscaped" area between the 15 parking spaces (that face our lot line and house) and the lot line itself. As the wall of our home sits approximately 17.5' from the lot line, and our home (a ranch which has no basement) sits on a concrete pad, cars will be parked 22.5' from the south wall of our house, with headlights shining in our bedroom windows. In addition, most likely because of the "sandwiching", the site plan seeks to place what appears to be a double bay dumpster extremely close to both our unfenced yard (which we use regularly throughout the spring, summer and fall) and our home. For the past 23 years we have had an unobstructed view of Ellicott Creek and the Ellicott Creek Trailway (bikepath). If this project is approved, we will have only an unobstructed view of the dumpster. We are also concerned about the potential impact of dumpster odors and the potential for rodent and pest infestation. Throughout the entire 23 years we have lived here, we have enjoyed the wildlife that regularly occupies these parcels. That wildlife includes the deer which miraculously seem to present us, each spring, with two new spotted fawns. However, it also includes the raccoon (anxiously awaiting the installation of the dumpsters) that we have observed in the tree on the property line, these are not the only potential significant adverse impacts on our property, but they are clearly indicative of the fact that this project is simple much too large for this site.

I would encourage all members of the Planning Board to personally visit the site to fully appreciate the concerns expressed.

II. <u>Specific Issues applicable to the Neighborhood:</u>

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

The proposed project is totally out of character and inconsistent with our neighborhood. It simply does not fit the site (see preceding section). The quality of life for the current residents on North Forest Road, will be adversely affected for numerous reasons. There are serious concerns over potential loss of property values; there are privacy concerns, traffic and traffic safety concerns, water issues and flooding concerns, erosion concerns, and soil and land subsidence concerns, among others.

WATER ISSUES – Over the years, the proposed site, as well as adjacent properties, have Experienced flooding issues from Ellicott Creek. During wet weather events, waters from the adjacent creek and diversion channel regularly flood portions of the proposed site, our premises, and the premises of neighbors to the north.

Prior to the construction of the Ellicott Creek diversion channel, the subject property had large depressions that used to flood regularly. Neighbors have told me that the property was actually used by local children for ice skating, and at some point a public berm was constructed along the creek in an effort to prevent the flooding. I have also been told that this berm material was later excavated and used by a prior owner of the subject property to fill the depressed areas that regularly flooded. This story may be substantiated by the following observation: on the property, there is a large old willow tree sitting about 5' deep in a rip rap well. Within that well are several plastic drain hoses, with clamps that appear to drain into the "well" area. This may be some indication of the possible depth of fill placed upon the subject property by prior owners. However, I have no idea what the composition of that fill is.

Attached to the petitioner's application for a variance is a copy of a letter from Earth Dimensions, Inc. related to a preliminary wetland investigation. That letter references an attached map which "depicts the limits of our investigation". The attached map (entitled "Erie County On-Line Mapping Application") purports to depict the subject property (2170 and 2160 North Forest Road). Please compare the configuration of the subject property shown upon that map with the configuration of the "same" property (2170 and 2160 North Forest Road) shown on the site plan. A comparison may substantiate the alleged prior flooding and the later use of fill should these questions be relevant to the question of site suitability for the proposed project.

It is my understanding that a pipe for drainage of surface water from the Asbury Point property was installed years ago, and ran under North Forest Road to what was once a culvert along the road adjoining the proposed site. Allegedly, a prior owner of the proposed site later had a 36" drainage pipe installed. That pipe bisected the proposed site and discharged the drainage water to the bank or bed of Ellicott Creek. I believe the discharge pipe itself is visible at the creek bank. However, I was unable to note any reference to that discharge system on the site plans or application documents. I have no knowledge as to whether there is any public record of this.

Based upon:

Past and current flooding issues;
The addition of ½ acre of impervious surface;
The non-use of pervious surfaces;

Lack of information regarding proposed excavations;
Lack of information regarding storm water basins and their location with respect to the topography of adjacent lands;
The discharge of storm water to Ellicott Creek; and
concerns over storm water management generally,

We have serious concern that this project will have a significant adverse environmental impact on our property and that of our neighbors to the north.

ERROSION CONCERNS - We have personally observed substantial erosion of the bank of Ellicott Creek on the site of the subject property. When we acquired our property 23 years ago, the subject property, which adjoins ours, had a large concrete wall comprised of sections of concrete attached to metal supports mounted along the creek bank. The wall was along the peninsular-like portion of the western end of the property. Over the years, due to substantial erosion of the bed behind the wall, the entire wall has fallen, section by section, into Ellicott Creek. All that currently remains of the structure are a few of the metal supports.

At the opposite end of the subject property (at the Stahl Road intersection) sits the infamous "white house". Its driveway is a matter of inches from the eastern end of the subject property. The White house (a zombie property) is generally believed to be falling into Ellicott Creek.

In our mind, concern over erosion raises an issue as to the safety and appropriateness of a construction project of this magnitude.

FLOOD CONTROL EASEMENT - Our property (which adjoins the subject property) is subject to a Flood Control Easement held by, or of interest to NYSDEC, USACOE and the TOWN of AMHERST. We assume the adjoining upstream property is, or should be, also subject to such an easement. However, I did not see it directly addressed in the petitioner's Environmental Assessment Form.

Concerns over storm water and its management (see above) would seem to have a direct impact upon any Flood Control Easement applicable to the subject property, as well as to ours.

SEWERS - The petitioner's "Application to Reclassify" represents that there is adequate sanitary Sewer capacity for the proposed project. This may not be the case. We have learned that the proposed action is considered a Sanitary Sewer Extension by the NYSDEC, and a detailed sewer capacity analysis must be performed and submitted for review and approval. Further investigation is necessary to avoid potential substantial adverse environmental impacts upon the community.

PUBLIC WATER - Again, the "Application to Reclassify" represents that adequate public water

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capacity exists. However, we can attest to the fact that, in the past, we and others in our block (North Forest Rd from Millersport Hwy to Stahl Rd) have experienced numerous interruptions in water service. These interruptions have occurred from broken pipes in our block, and have occurred principally during cold weather. Interruptions have been for long periods and have been extremely inconvenient. Ruptured pipes were the culprit and geysers with flooding of the street were common.

In August, 2016, the Town Board approved a measure to replace the water line from Stahl Road to Millersport Highway. To date, I do not believe that project has been completed. Further investigation is necessary to avoid potential adverse environmental impacts on the community.

TRAFFIC – Petition asserts that the proposed project will not result in a substantial increase in traffic above present levels. This is simply not true. Having lived on this block of North Forest for over 23 years, I am familiar with its unique problems. North Forest to Millersport Highway is a major route to the University of Buffalo. It is also the preferred route for many cars entering the Beechwood Complex on Stahl Road. It is also the route followed by large numbers of Amherst residents seeking to access the I-290 and I-990.

This block (between Millersport and Stahl) is a two way (one lane in each direction) residential street. It experiences the full impact of traffic going ***to*** the University in the morning and returning from it in the afternoon. Depending upon the time of day, the traffic can be backed up from Stahl to Millersport or from Millersport to Stahl.

As Stahl Road is the main access point for the Beechwood Complex, and ends at North Forest, traffic is also regularly backed up on Stahl Road, at the intersection. To complicate matters further, there is a serious bend on North Forest, right at the intersection. Between cars coming down North Forest and cars turning at Stahl, living on North Forest and being the first driveway from Stahl is a serious challenge. It makes it extremely difficult to find an opening in traffic long enough to enter or exit our driveway.

The proposed project seeks a curb cut for a driveway entrance onto the site. The proposed driveway is near our joint property line. It is, therefore, even closer to the Stahl Road intersection. The project allows for 36 parking places. Potentially, that makes 36 more cars attempting the same maneuvers as we must attempt and further obstructing our ability to enter and exit. This is a problem common to each of my neighbors.

It should be noted that "traffic concerns" are not limited solely to traffic flow and traffic visibility. A multi-family residential project such as this should consider the safety of pedestrians and cyclists. Due to the proximity to the University and to the Ellicott Creek Trailway (Bike Path), this stretch of North Forest Road is used regularly by both. There are no discrete bike paths along this section, and sidewalks are limited to the opposite side of North Forest. Additionally, it is questionable whether either could be practically installed along North Forest, south of the subject site, due to the proximity to the creek and its erosion issues in that area.

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SOIL ISSUES AND DEPTH TO BEDROCK – Over the years, there have been numerous efforts by individuals to acquire and build on the subject property. It is our understanding that most of the efforts involved proposed single family residences. Despite contractual agreements to purchase, none of these efforts materialized. We assume that some were discouraged because of the existence of floodplain/floodway issues. However, some failed as a result of depth to bedrock issues. Borings have been taken on a number of occasions and the results, which are unknown to us, are rumored to be unfavorable to construction due to the depth to bedrock. It should also be noted that we learned that when Asbury Point was constructed, it was necessary to drive an extraordinary number of I-beams into the ground, in places up to 40 to 50' in depth.

It is noted that the petitioner's EAF references the depth to bedrock as being "greater than 5 feet". It also identifies the soils on 100% of the site to be "cosad loamy fine sand" and 100% of the site to be poorly drained.

In light of the afore referenced information relating to prior flooding, the prior placement of fill, and existing erosion concerns, the possibility of depth to bedrock discrepancies simply reinforces our concerns relating to the integrity of the potential structure. We believe that a complete geo-technical investigation and inspection should be required. We have heard of instances of properties collapsing, in one case into a creek, within the Town of Amherst. We have no desire to see that occur next door.

CONCLUSION:

In a perfect world, the subject site would be a small neighborhood park and a continuation of the beautiful greenspace located directly across the creek from the site. It could contain a pedestrian bridge over Ellicott Creek, accessible by the general public seeking safer access to the Bike Trail, as well as the residents of Asbury Point, who, in the past, have casually strolled on this site. Possibly, a kayak launch point could serve this site as well. My wife and I, as adjoining neighbors would welcome such alternative uses. We do not oppose this proposal on the basis of change. However, the property is privately owned and we lack the power of Eminent Domain.

Based upon the foregoing considerations, we, Joseph Hausbeck and Rosemary Blando, strongly oppose approval of the petitioner's request. As 23 year residents of the site immediately adjoining the subject site, we are of the opinion that the proposed project will result in potentially significant adverse environmental impacts upon this community. Additionally, we are firmly of the belief that the applicant has failed to provide sufficient information to establish that there will be no impacts and, at the very least, a Draft Environmental Impact Statement should be required.

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Town of Amherst Planning Board

5583 Main Street

Williamsville, NY 14221

We, the undersigned, being residents of North Forest Rd. between Stahl Rd and Millersport Highway, hereby **OPPOSE** the request filed by the petitioner **Coromandel Estates Amherst, LLC**, to approve amendment # 73 of the Audubon New Community Development Plan to reclassify 2.35 acres, more or less, of land located at 2160 and 2170 North Forest Rd.

Joseph Lagumbay 2160 North Forest Rd.
Rodney Rhands 2180 North Forest Rd
Ann Beahen 2204 N. Forest Rd.
Donna J Beahen 2204 N. Forest Rd.
Lisa Dennis Cummings 2220 N. Forest Rd.
Sterling Lawson 1881 N. Forest Rd
Joan Amico, 1936 North Forest, Amh NY 14221
Steve Amico, 1936 North Forest, Amh NY 14221

October 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Town of Amherst Planning Board

5583 Main Street

Williamsville, NY 14221

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George De Rosa
2220 North Forest Road, Williamsville, N.Y. 14221
Allen Miles
25 Stahl Rd, Getzville 14068 Allen Miles
[illegible]
W.R.D. 2220 N. Forest Rd. 14221
Karen Macura 2230 N FOREST RD 14221

October 2020

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Z-2020-06
2160 & 2170 N. Forest Rd

Carrato, Amy

From: Joan Amico <jamico99@gmail.com>
Sent: Wednesday, October 14, 2020 7:15 AM
To: Carrato, Amy
Subject: Planning Board Meeting 10/15 - Amendment #73 of the Audubon New Community Development Plan.

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

My husband and I received notice of the proposed rezoning of residential property on North Forest Road and I would like to speak at the Planning Board meeting on October 15 about this rezoning.

Also, please share my comments below with the board:

This stretch of North Forest is primarily a residential area. It is not a commercial area and it should not be rezoned. It seems that over the last several years, long stretches of North Forest Road have been turned into apartment buildings and other commercial properties. Do we really need to build such structures alongside and embedded between single family homes? Would you want to live in-between commercial properties? Do we even need another apartment complex in this area?

The Town of Amherst should first and foremost make decisions that are best for the residents that live in their community. Please think about the residents, people like my husband and I, when deciding to rezone this and any property.

Kindly reply back to confirm receipt of this email.

Thank-you,

Joan and Steve Amico
1936 N Forest Rd, Williamsville, NY 14221

Attachment: Z-2020-06_TB letter_022221 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

GINEERING DPC|DBA
GEOTECHNICAL
INEERING SERVICES

Z-2020-06,
2160 and 2170 N. Fores

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September 17, 2020
Project No. WB-20-105
(SJB Project No. BE-20-105)

Postwork Capital

c/o Buffalo Automation
10236 Transit Road
East Amherst, New York
14051

Attn. Mr. Thiru Vikram, CEO

Re: Geotechnical Engineering Report
Proposed Elysium Apartment Complex
2160 North Forest Road
Town of Amherst, New York

Dear Mr. Vikram:

WMA Engineering DPC, dba Empire Geotechnical Engineering Services (Empire), is pleased to submit the enclosed Geotechnical Engineering Report for the above referenced project. We have also e-mailed you an electronic copy (pdf file format) of this report, for your use and for distribution. Please contact me should you have any questions or wish to discuss this report. Thank you for considering Empire for this work and we look forward to working with you through the completion of this project.

Sincerely,

WMA Engineering DPC, dba
Empire Geotechnical Engineering Services

Thomas R. Seider, P.E.
Geotechnical Engineer

RECEIVED
OCT 07 2020
TOWN OF AMHERST
PLANNING DEPT.

Enc.: Geotechnical Engineering Report

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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EMPIRE GEOTECHNICAL ENGINEERING SERVICES

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Fax: (585) 359-9668

Geotechnical Engineering Report
Proposed Elysium Apartment Complex
2160 North Forest Road
Town of Amherst, New York

Prepared For:

Postwork Capital

c/o Buffalo Automation
10236 Transit Road
East Amherst, New York
14051

Prepared By:

WMA Engineering, DPC
dba Empire Geotechnical Engineering Services
5167 South Park Avenue
Hamburg, New York, 14075



Project No. WB-20-105
(SJB Project No. BE-20-105)
September 2020

A Woman Owned Firm

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

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FIGURES

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APPENDIX A – SUBSURFACE EXPLORATION LOGS

Recently Completed Test Borings July 2020 (B-1 through B-5)

APPENDIX B – SUBSURFACE EXPLORATION LOGS

Previously Completed Test Borings February 2020 (B-1) June 2014 (B-1)

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APPENDIX C – GEOTECHNICAL REPORT LIMITATIONS

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1.00 INTRODUCTION

1.10 GENERAL

This report presents the results of a subsurface exploration program completed by SJB Services, Inc. (SJB), and a geotechnical engineering evaluation completed by WMA Engineering DPC, dba Empire Geotechnical Engineering Services (Empire), for the proposed Elysium Apartment Complex, planned off of North Forest Road, within the Town of Amherst, New York. Postwork Capital retained SJB and Empire to complete this work, which was done in general accordance with SJB's June 29th, 2020 proposal, that was authorized on July 2, 2020.

SJB, our affiliated subsurface exploration company, recently completed five test borings and installed a groundwater observation well at the site. Prior to this investigation, SJB and Empire completed two separate subsurface investigations and prepared geotechnical evaluation reports for projects that were planned at the site. These included a proposed house in July 2014 and a proposed garage type structure in March 2020. The previous investigations each included one test boring along with some geotechnical laboratory testing. Neither of the two projects were constructed. It is our understanding that Postwork Capital has received approval to use the data developed during the first two investigations, to supplement the findings from the recently completed investigation.

Based on the findings from the recent investigation, and the two previous investigations, Empire has prepared this report, which summarizes the subsurface conditions encountered, and presents geotechnical recommendations for design and construction of the foundations, slab-on-grade floor, and pavement areas, as well as the associated site preparation work for the proposed project.

1.20 SITE AND PROJECT DESCRIPTION

The project site is located along the south side of North Forest Road, immediately west of its intersection with Stahl Road (street address 2160 North Forest Road) within the Town of Amherst, New York. As shown on Figure 1, Ellicott Creek forms the southern boundary of the project site, resulting in an irregular triangular shaped parcel, with about 550 feet of frontage along North Forest Road. As shown on Figure 2, the ground surface at the site slopes downward towards Ellicott Creek, with surface elevations ranging from about 583 feet to 570 feet.

Based on a cursory review of older USGS mapping (www.historicaerials.com), it appears Ellicott Creek formerly extended farther to the north than its current location. As discussed in later sections of this report, the fill soils encountered within the test borings could be related to site filling within the limits of the former creek location.

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The proposed apartment building will be located within the northwest corner of the site, beyond the floodway boundary, and where the site grades are more gradual. Based on the information provided by Silvestri Architects, PC, the apartment building will consist of a three story wood framed structure with an at-grade floor near the current site grades. Other than an elevator pit, no below grade structures are planned. Asphalt pavement driveways and parking areas are planned around the building. Figure 2 provides additional details about the proposed development.

2.00 SUBSURFACE EXPLORATIONS

2.10 JULY 2020 INVESTIGATION

The most recent subsurface exploration program included:

- 3 test borings completed within the limits of the proposed apartment building, designated as B-1 through B-3;
- 1 test boring completed within the southwest portion of the site, within a proposed terraced seating area, designated as B-4; and
- 1 test boring to the east of the proposed apartment building, within a future sports court area, designated as B-5.

The test boring locations were staked in the field by SJB, using a hand held global positioning system (GPS) instrument. The approximate test boring locations are shown on Figure 2. Survey level measurements were used to determine the approximate ground surface elevation at the test boring locations, using the rim of a catch basin frame within North Forest Road as a benchmark. The approximate benchmark location is shown on Figure 2, and has a reported elevation of 580.70 feet.

The recent test borings B-1 through B-5 were completed by SJB between July 23rd and July 27th, 2020, using a Central Mine Equipment (CME) model 550x, all-terrain tire mounted drill rig. Hollow stem auger and split spoon sampling techniques were used to advance the test borings through the overburden soils. Split spoon samples and Standard Penetration Test (SPT) were taken continuously from the ground surface to a depth of 12 feet, and in intervals of five feet or less for the remaining depth of the test borings. The split spoon samples and SPTs were completed general accordance with *ASTM D1586 – "Standard Test Method for Penetration Test and Split-Barrel Sampling of Soils"*.

Test borings B-1 through B-4 were advanced through the overburden until encountering the top of apparent bedrock, as identified by auger refusal, at depths of about 22 feet to 27.2 feet. After encountering auger refusal within test borings B-1 and B-4, 8 to 9 feet of rock coring was completed using an NQ'2' size core barrel, in accordance with *ASTM D 2113 – "Standard Practice for Rock Core Drilling and Sampling of Rock for Site Investigation"*. Test boring B-5 was completed to a depth of 15 feet.

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A Geologist prepared the test boring logs based on visual observations of the recovered soil and rock core samples and a review of the driller's field notes. The soil samples were described based on a visual/manual estimation of the grain size distribution, along with characteristics such as color, relative density, consistency, moisture, etc. The rock cores were also described, including characteristics such as color, rock type, hardness, weathering, bedding thickness, core recovery and rock quality designation (RQD). The test boring logs for the recently completed test borings B-1 through B-5 are presented in Appendix A, along with general information and a key of terms and symbols used to prepare the logs.

A groundwater monitoring well was installed within completed test boring B-2. The well consists of two inch diameter PVC screen and riser pipe, extending from the bottom of the test boring to above the ground surface. The sand pack extends from the bottom of the test boring up to a depth of about 14 feet. A bentonite chip seal was installed above the sand pack, with the remainder of the test boring backfilled with soil cuttings. Additional details regarding the construction of the well are shown on the Monitoring Well Completion Record, included in Appendix A, following test boring log B-2.

2.20 PREVIOUS INVESTIGATIONS

As noted, two previous investigations were completed at the site by SJB and Empire, each including one test boring along with some geotechnical laboratory testing. Test boring B-1 completed in June 2014 was drilled within the limits of the proposed apartment building. Test boring B-1 completed in February 2020 was completed within the southwest corner of the site. The approximate location of these test borings are shown on Figure 2. The test boring logs from the previous investigations, with updated ground surface elevations, are included in Appendix B. Additional information regarding the previous investigations is included in: Empire's July 11, 2014 Subsurface Exploration and Geotechnical Evaluation Report, along with the August 15, 2014 Follow-Up Information letter; and the March 14, 2020 Subsurface Exploration and Geotechnical Evaluation Report.

3.00 SUBSURFACE CONDITIONS

3.10 GENERAL

The subsurface conditions described in the following sections are based on the recently completed test borings B-1 through B-5, and previously completed test borings from 2014 and early 2020. Beneath the topsoil, fill type soils were encountered which extended to depths of about 4 feet to 10 feet. Beneath the fill, the upper indigenous soils consisted of silty clay soils, often containing intermixed organics, which extended to depths of about 18 to 20 feet. The remaining soils consisted of compact to very compact gravels and sands, which extended to the top of Shale bedrock at depths of about 25 to 28 feet. The soil and bedrock stratigraphy encountered along with the groundwater conditions observed are described in more detail below and on the test boring logs in Appendix A and Appendix B.

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3.20 FILL SOILS

Beneath the topsoil, fill type soils were encountered which extended to depths of about 4 to 10 feet. It should be expected that the depth of the fill will vary between and away from the exploration locations, and will be dependent on the original site topography and former limits of Ellicott Creek, prior to site filling and grading. As noted, based on a review of older USGS mapping, it appears Ellicott Creek formerly extended farther to the north than its current location.

The fill soils generally consisted of a reworked mixture of silty clays and sands with varying amounts of gravel and trace to little amounts of organics. Exceptions include: a layer of organic clayey silts encountered from about 4 to 6 feet within the 2014 test boring B-1; a zone of concrete fragments and soils observed within the upper four feet at test boring B-2; and a zone of asphalt fragments and soils observed from about 2 feet to 6 feet within test boring B-5. Trace amounts of glass, slag, concrete, organics, and asphalt were often observed within the fill soils. The Standard Penetration Test (SPT) "N" values obtained within the fill soils ranged from of 5 to "sample spoon refusal" (i.e. more than 50 blows required to advance the sample spoon with six inches or less of penetration). The variable nature of the fill soils, along with the variable relative density/consistency as determined from the SPT "N" values, indicate the fill soils were likely installed in an uncontrolled, non-engineered manner.

3.30 INDIGENOUS SOILS

Beneath the fill soils, and extending to depths of about 18 to 20 feet, the upper indigenous soils consisted of a mixture of silty clays and sands, often containing trace to little amounts of organics. Exception include the 15 to 17 feet deep sample from test boring B-2 which consisted predominately of organics. The silty clays and sands with organic are classified as CL, SC-SM, and OL-CL group soils using the Unified Soil Classification System (USCS). These upper indigenous soils appear to be alluvial deposited soils from Ellicott Creek. The SPT "N" values obtained within these soils ranged from "weight of hammer" (i.e. only the weight of the hammer and rods required to advance the sample spoon) to 8, indicating these soils have a "very soft" to "medium" consistency. Laboratory testing from the first two investigations indicate these soils, at depths shallower than about 12 to 14 feet, had a medium to high plasticity, a moisture content ranging from about 40% to 55%, and an organic content of about 5% to 8%.

Beneath a depth of about 18 to 20 feet, and extending to the top of bedrock at about 25 to 28 feet, the remaining indigenous soils consisted of a mixture of gravels and sands with little to some amounts of silts and clays. These soils are classified as GC-GM and SM group soils using the USCS. The SPT "N" values obtained within these deeper soils ranged from 40 to "sample spoon refusal", indicting the deeper soils have a "compact" to "very compact" relative density.

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3.40 BEDROCK

Recently completed test borings B-1 through B-4, along with test boring B-1 from 2014 and test boring B-1 from early 2020 were drilled through the overburden soils until encountering the top of apparent bedrock, as identified by auger refusal conditions. Following auger refusal within recently completed test borings B-1 and B-4, 8 feet, and 9 feet of rock coring was completed, respectively. The following table summarizes the depth and elevation where the top of bedrock was encountered, as identified by rock coring (C) or auger refusal (AR). At test boring B-4, rock coring was started at 22.0 feet. However, the upper portion of the recovered core consisted of soil, with the top of shale rock starting at a depth of about 24.4 feet.

Approximate Depth and Elevation of Top of Bedrock

Test Boring	Approximate Ground Surface Elevation (feet)	Depth / Elevation of Top of Bedrock (feet)
B-1	582.3	25.2 / 557.1 (C)
B-2	581.1	26.0 / 555.1 (AR)
B-3	579.5	26.5 / 553.0 (AR)
B-4	578.1	24.4 / 553.7 (C)
B-1 (2014)	581 +/-	26.0 / 555.0 (AR)
B-1 (Feb. 2020)	580.0	27.7 / 552.3 (AR)

The bedrock recovered from test borings B-1 and B-4 consisted of brown, medium hard, sound, laminated to thickly bedded, Shale bedrock. The core recoveries ranged from 66% to 100%. The rock quality designation (RQD) values for the first core runs were 21% and 47%, indicating the near surface bedrock has a "very poor" to "poor" rock mass quality. The RQD values for the second core runs were 81% and 85%, indicating the deeper bedrock has a "good" rock mass quality.

3.50 GROUNDWATER

Based on the information summarized below, a general groundwater condition at the time of our investigation appears to exist near a depth of about 10 to 11 feet, or approximate elevation 570 to 571 feet, which is near the water level within Ellicott Creek.

Water level measurements were made in the test borings following the completion of overburden drilling and sampling, and are presented on the test boring logs in Appendix A and Appendix B. At test boring B-3, the depth to water was about 21.5 feet below the ground surface. Within the remaining test borings, no water was observed. Based on the water levels measured within the observation well, as described below, it appears that

groundwater did not have sufficient time to fully accumulate and stabilize in the test holes within the time that had elapsed from the completion of drilling operations and the time of the measurements.

A groundwater observation well was installed within completed test boring B-2. SJB visited the site on August 6th, 2020, at which time the depth to water within the well was about 10.0 feet below the ground surface, correlating to approximate elevation 571 feet. Following the initial measurement, about 5 gallons of water was removed from the well, lowering the water level. SJB returned to the site on September 15th, 2020, at which time the depth to water within the well was about 11.1 feet below the surface, correlating to approximate elevation 570 feet. These depths generally correspond to the depths where the collected soil samples were described as "moist to wet" or "wet".

Some of the shallower samples of fill soils within test borings B-1 and B-5, along with some shallower samples of sandier indigenous soils within test boring B-3 were described as "moist to wet". These conditions could be representative of some perched or trapped groundwater within the more granular or looser fill and indigenous soils, which overlie less permeable indigenous soils. Perched groundwater conditions can be more prevalent following heavy or extended periods of precipitation and during seasonally wet periods. It should be expected that both permanent and perched groundwater conditions could vary with location and with changes in soil conditions, precipitation, seasonal conditions, and fluctuations of the water level within Ellicott Creek.

4.00 GEOTECHNICAL RECOMMENDATIONS

4.10 GENERAL CONSIDERATIONS AND RECOMMENDATIONS

The following general geotechnical considerations and recommendations are provided to assist with planning for the design and construction of the proposed apartment complex. More detailed recommendations are presented in the subsequent sections of this report.

1. Design and construction of the proposed building will be primarily impacted by: the fill soils that extend to depths of 4 to 10 feet; the underlying soft silty clay indigenous soils which also contain organics; and the apparent perched groundwater condition within some of the fill soils and shallower indigenous soils.

2. The fill soils and the underlying silty clay and organic indigenous soils are not suitable for supporting the proposed apartment building using a conventional shallow spread foundation design. These soils are highly compressible and can also subside with time due to decomposition of the organics, resulting in excessive amounts of settlement beneath spread foundations. In addition, the softer silty clay soils are considered marginal for support of spread foundations.

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3. Considering the issues associated with spread foundations, a deep foundation system is recommended for use at this site, which will transfer the building loads through the fill and softer indigenous soils and into the "compact" to "very compact" indigenous soils, first encountered about 18 to 20 feet below the surface. Suitable deep foundation options include: driven pipe piles; helical piles; and drilled, cast-in-place pier foundations (i.e. caissons or drilled shafts).

4. The deep foundation support options will generally eliminate the settlement risks discussed above for spread foundations. However, settlement risks will still remain with regard to the ground level floor, if designed as a conventional slab-on-grade. In order to eliminate all risks associated with a ground level floor constructed over the fill soils and softer indigenous / organic soils, the floor should be constructed as a structural floor supported by a deep foundation system. We understand, however, it may not be economically practical to use a structural floor slab.

   The Owner, therefore, could consider an approach of removing a portion of the existing fill and provide some additional Subbase Stone, along with a heavy duty stabilization geotextile and geo-grid reinforcement beneath the slab-on-grade construction. This will provide for a stiffer subgrade and reduce some of the differential settlement effects, if it were to occur. There are some uncertainties with this approach, such as the potential for some long-term differential settlement, resulting from unidentified zones of unsuitable fill soils or buried organics.

   If the Owner is willing accept these risks, then we would recommend the following be implemented as minimum requirements for constructing the slab-on-grade over the existing fill soils.

   - The existing fill subgrades should be thoroughly compacted and properly proof rolled, evaluated, and prepared in accordance with our recommendations provided in Section 4.90.6.
   - Any deleterious materials, such as organics, very soft soils, construction debris, etc., which are present within the fill soils at the bottom of the subgrade excavation, should be further undercut, removed, and replaced with additional Subbase Stone.
   - The slab-on-grade floor should be constructed over a minimum 24-inch thick layer of compacted Subbase Stone / Structural Fill, that is separated from the fill soils with a suitable stabilization/separation geotextile. The Structural Fill layer should also be reinforced with two separate layers of geo-grid.
   - Additional steel reinforcing within the floor slab should be considered to help further bridge and reduce the risks of any differential subsidence effects, should they occur.

5. The installation of new fill, necessary to raise the site grades within the proposed building will result in some settlement within the fill soils and softer zones of indigenous soils, which could induce some drown drag forces on the deep foundations. Accordingly, the amount of new fill installation should be limited and be completed at least 2 to 3 months prior to the installation of the deep foundations.

6. Excavations to construct the pile caps and elevator pit could encounter some perched groundwater. Appropriate dewatering measures should be implemented to allow for construction to proceed in the dry. Undercutting the subgrade soils by about 12 to 18 inches and replacing them with Structural Fill should be considered, to provide a firm and stable working surface for construction of the pile caps, grade beams, and elevator pit.

7. Based on the subsurface conditions encountered, the site can be classified as Seismic Site Class "D" in accordance with the criteria in the New York State Building Code.

4.20 DRIVEN PIPE PILES

A driven, closed end pipe pile, is recommended for use at the site due to its lager end bearing area, compared to an H-pile. The steel pipe pile should have a yield strength of at least 50 ksi, and should have a minimum wall thickness of 0.25 inches. A steel cap plate should be used to close the end of the pile. The perimeter of the cap plate should be flush with the outer surface of the pipe pile. Driving the pipe piles open ended is not recommended. Following driving and acceptance, the pipe pile should be filled with concrete or be capped, as determined by the Structural Engineer.

The pile foundations should be driven to practical refusal, into the "compact" to "very compact" gravel and sand soils, first encountered about 18 to 20 feet below the surface. A pipe pile driven to practical refusal can be designed for an allowable axial capacity equal to 25% of the pile yield strength or 12.5 kips per square inch (ksi), whichever is less, times the cross sectional area of the pile.

Based on the above design criteria, an 8.625 inch diameter pipe pile section (Grade 50 steel), with a wall thickness of 0.25 inches and a cross sectional area of 6.6 in^2, would provide an allowable axial compressive capacity of about 41 tons per pile. The pile, however, should be driven and tested for an ultimate capacity of 82 tons. The ultimate test capacity assumes a Factor of Safety of 2.0, as required by the Building Code of New York State.

Other pipe pile sections could also be used, based on current product availability, to obtain different allowable axial capacities, provided the same design criteria as outlined above is used.

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Pile foundations driven to practical refusal within the "compact" to "very compact" gravel and sand soils, are expected to undergo insignificant total settlement, when designed and constructed in accordance with our recommendations. Driven piles should be spaced a minimum of 3 pile widths apart, or three feet, whichever is greater. At this spacing, no group reduction factor is considered necessary. All exterior pile caps and grade beams for driven pile foundations should be embedded a minimum of 4 feet below final exterior grades for frost protection.

At least 3 random piles should be dynamically tested to confirm that the pile capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater as required by the Building Code of New York State).

It is possible that obstructions could be encountered within the fill soils. Such obstructions will hinder and impact the installation of the driven piles, and therefore should be anticipated and addressed as appropriate by the pile driving contractor. Accordingly, some pre-excavation and removal of these materials may be necessary for the proper installation of the piles.

4.30 HELICAL PILES

Helical piles, often referred to as "screw piles", bearing within the "compact" to "very compact" gravel and sand soils, first encountered about 18 to 20 feet below the surface, can be used for supporting the proposed building. Helical piles consist of a steel plate formed into the shape of a helix (one pitch of a screw thread) attached to a steel shaft. Installation is accomplished by applying torque to the shaft and screwing the pile into the soil. During the installation, the torque is measured as a correlation to the design capacity.

We recommend a performance specification for the helical piles be developed (i.e. required compressive and uplift capacities). The helical pile installation contractor can then provide a suitable design and installation procedure. Variables will include the diameter of the helical plate, the use of multiple plates, embedment length, number of piles, grouting or no grouting, etc. A New York registered Professional Engineer should prepare the helical pile design.

Preliminarily, helical piles designed to bear at a depth of about 20 feet, can be designed based on an allowable end bearing capacity of 15 kips per square foot (psf). Accordingly, a 14 inch diameter helix (end area of 1.07 square feet) would be expected to develop an allowable axial capacity of about 16 kips per pile. The actual design, however, should be completed by the contractor based on the performance specification developed for the project. Exterior grade beams and pile caps should be embedded a minimum of 4 feet for frost protection.

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Due to the potential for the accumulation of perched or trapped groundwater within the fill soils, and the potential flooding events, we recommend the design groundwater elevation be assumed to exist at the ground surface.

At least one load test should be completed for each helical pile type to confirm the design capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater). The load test data should be correlated to the installation torque to provide acceptance criteria for the production piles. Based on the testing results, the actual production helical pile lengths may vary and therefore such contingencies should be planned for in the installation contracts.

4.40 DRILLED PIERS

Drilled pier foundations, if used, should bear within the "compact" to "very compact" gravel and sand soils, first encountered about 18 to 20 feet below the surface. We recommend the drilled piers bear at least 2 to 3 feet into the gravel and sand soils. Therefore, the drilled piers should bear at an elevation of about 559 to 560 feet, in order to develop adequate end bearing capacity. All drilled pier foundation construction should be monitored by qualified geotechnical personnel, to ensure the drilled piers are bearing on suitable indigenous soil bearing subgrades.

The drilled pier foundations can be sized based on a maximum net allowable end bearing capacity of 15 kips per square foot. In all cases, a minimum pier diameter of 30 inches is recommended. The piers will need to be sized based on the actual column and wall loads as determined by the designer.

Drilled piers should be spaced no closer than 3 pier diameters, center to center. Exterior grade beams and pier caps for a drilled pier foundation system should be embedded a minimum of 4 feet for frost protection. It is estimated that drilled pier foundations sized and properly constructed in accordance with our recommendations above will undergo a total settlement of less than ½ inch.

4.50 ELEVATOR PIT

As noted, a general groundwater condition is expected near elevation 570 feet to 571 feet, or about 10 to 11 feet below the existing surface. However, due to the potential for the accumulation of perched or trapped groundwater within the fill soils, and the potential flooding events, we recommend the groundwater conditions be assumed to exist at the ground surface. Accordingly, the below grade elevator pit walls, should be constructed with perimeter foundation drains to intercept any groundwater that may tend to collect against the walls, and the walls should be properly damp proofed. As an alternative, the walls could be designed to resist full hydrostatic pressures acting on the structure walls and bottom slab, and be designed as a fully waterproofed structure.

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The elevator pit walls should be designed to resist "at rest" lateral earth pressures generated by the earth backfill and any temporary or permanent surcharge loads, based on the soil parameters below. These parameters are based on the wall backfill consisting of Structural Fill, as described in Appendix C. In addition, perimeter exterior foundation drains should be incorporated in the design where the walls are designed for relieved hydrostatic pressures (i.e. drained conditions).

Where a foundation drainage system is not used, the walls should be designed to resist the hydrostatic pressures as well as the lateral earth pressures acting the walls. In this case, the lateral earth pressure should be computed based on a submerged soil unit weight. In addition, the floor / bottom slab must be designed to resist the hydrostatic uplift pressure acting on it, and the depressed structure should also be fully water proofed.

Recommended Soil Parameters for Elevator Pit Wall Design

- Coefficient of "At-Rest" Lateral Earth Pressure – 0.47
- Angle of Internal Friction – 32 Degrees
- Moist Unit Weight of Soil – 140 pcf
- Submerged or Buoyant Unit Weight of Soil – 80 pcf
- Surcharge Load Lateral Coefficient – 0.50

4.60 SLAB-ON-GRADE FLOOR

4.60.1 Floor Slab with Thickened Subbase

As discussed in Section 4.10, the ground level floor can be constructed as a slab-on-grade over the existing fill soils, provided the Owner is willing to accept the risks associated with this option. These risks include the potential for some on-going, long-term settlement, and unpredictable differential settlement, because of the variable composition and density of the fill, and potentially other undetected areas of unsuitable fill soils (i.e. organics, wood, etc.).

The existing fill soil subgrades should be thoroughly compacted and properly prepared and evaluated in accordance with our recommendations in Section 4.906 prior to placement of the geotextile and Subbase Stone material. A minimum of 24 inches of Subbase Stone should be placed beneath the slab-on-grade floor. A suitable stabilization/separation geotextile, such as Mirafi 600X, should be placed over the prepared subgrades and a geo-grid reinforcement such as a TriAx TX160, should be placed over the geotextile, prior to installation of the first lift of Subbase Stone. An additional layer of geo-grid should be installed after the first 12-inches of Structural Fill has been installed.

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The slab-on-grade floors can be designed using a modulus of subgrade reaction of 200 pounds per cubic inch at the top of the 24 inches of Subbase Stone. Additional steel reinforcing within the floor slab should be considered to help further bridge and reduce the risks of any differential subsidence effects, should they occur.

It is understood the finished floor grade will be established above the surrounding exterior grades. Therefore, the use of a moisture barrier does not appear warranted, unless otherwise recommended by the finished flooring manufacturer. It is recommended that the slab-on-grade be constructed such that it floats on the subbase and subgrades, and is not structurally connected to or resting directly on, perimeter walls or column footings, in order to limit differential settlement effects, unless the slab / wall or column interface is designed with sufficient reinforcement to bridge potential differential settlement effects at these interfaces.

4.60.2 Structural Floor Slab

As discussed in Section 4.10, the floor system could also be designed as a structural slab supported by the selected deep foundation system. Although potentially more costly, a structural floor slab will negate the settlement risks associated with constructing the floor over the fill soils.

If the floor is structurally supported, it is recommended a minimum of 6 inches Subbase Stone material be placed beneath the structural slab to provide a suitable working surface to construct the slab. It is understood the finished floor grade will be established above the surrounding exterior grades. Therefore, the use of a moisture barrier does not appear warranted, unless otherwise recommended by the finished flooring manufacturer.

We note that the above subbase stone thickness is not adequate for carrying construction vehicle loads. Therefore, it may be desirable for the Contractor to temporarily increase the Subbase Stone thickness within the building pad area to provide a suitable working surface to stage the construction, carry construction vehicle loads and protect the underlying subgrades. This will be particularly important if construction proceeds during seasonally wet periods. The additional subbase stone material could then be removed and re-graded in preparation for the actual floor construction and re-used as foundation backfill, pavement subbase, or as otherwise determined appropriate.

4.70 SEISMIC DESIGN CONSIDERATIONS

Based on the subsurface conditions encountered in the test borings, the project site can be classified as Seismic Site Class "D" in accordance with ASCE 7-16, Table 20.3-1, as referenced in the 2020 Building Code of New York State. Therefore, seismic design can be based on this seismic site classification.

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The spectral response accelerations at the project site were obtained by Empire using the SEAOC / OSHPD web site application https://seismicmaps.org/. Using the site location, the spectral response accelerations are 0.170g for the short period (0.2 second) response (S_S) and 0.045g for the one second response (S_1). For design purposes, these spectral response accelerations must be adjusted for the Seismic Site Class "D" soil profile determined for the project site.

Accordingly, the adjusted spectral response accelerations for Site Class "D" are as follows:

- Short Period Response (S_{MS}) - 0.272g
- 1 Second Period Response (S_{M1}) - 0.109g

The corresponding five percent damped design spectral response accelerations (S_{DS} and S_{D1}) are as follows:

- S_{DS} - 0.181g
- S_{D1} - 0.072g

4.80 PAVEMENT DESIGN AND CONSTRUCTION

4.80.1 Pavement Design

Pavement construction should include: removal of the existing topsoil and organic soils; excavation of the subgrade soils as necessary to establish the pavement profile grade; preparation of the exposed subgrades (i.e. drying, compaction and proof-rolling); installation of subgrade fill (i.e. Suitable Granular Fill), if necessary to raise site grades; and placement of the geotextile, pavement subbase course, and asphalt pavement.

Pavement design recommendations are provided for a Medium Duty Asphalt Concrete Pavement section. The pavement section recommended assumes that the subgrades will be prepared as described in Section 4.90.6.

Medium Duty Asphalt Concrete Pavement

- 1.5 inches - Top Course
- 3.0 inches - Binder Course
- 12 to 15 inches - Subbase Course*
- Geotextile

*It is recommended the subbase course thickness be increased to 15 inches in the entrance / exit areas, which will be subject to more frequent and heavier loads. Also, it may be necessary to increase the subbase thickness in some areas to improve subgrade conditions and to promote drainage to underdrains, as discussed below.

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Materials for the above pavement structure components should consist of the following:

A. Asphalt Concrete Top Course - NYSDOT Standard Specifications, Hot Mix Asphalt, 9.5 F3 Top Course.

B. Asphalt Concrete Binder Course - NYSDOT Standard Specifications, Hot Mix Asphalt, 19 F9 Binder Course.

C. Subbase Course – Should comply with NYSDOT Standard Specifications, Item No. 304.12 - Type 2 Subbase, as described in Appendix C.

D. Geotextile - Woven polypropylene stabilization/separation geotextile (i.e., Mirafi 600X or approved suitable equivalent).

4.80.2 Pavement Drainage

The installation of underdrains or edge drains are recommended to drain the pavement subbase course within any low points, in order to limit the potential for frost action and improve pavement structure performance and design life. Alternatively, the pavement subbase course can also be allowed to daylight/drain to an adjacent perimeter drainage swale. This could be accomplished by raising the pavement grade. Drainage of the pavement subgrades can be achieved by grading the subgrade to a slope of at least 2 percent to allow drainage to the underdrains or drainage swale.

Underdrains, if used, should include a geotextile (i.e. Mirafi 160N or suitable equivalent), selected considering drainage and filtration, installed around drainage stone surrounding a slotted or perforated drain pipe. The drainage stone should be sized in accordance with the pipe slotting or perforations. A crushed aggregate (½-inch washed gravel or stone) is generally acceptable for slotted underdrain pipe. The underdrain pipes should be set in the bottom of the subbase layer, or preferably below the top of the soil subgrade elevation. The drainage stone and surrounding geotextile should extend above the underdrain pipe and into the subbase layer. Underdrain pipes should be connected to the site storm water drainage system.

4.80.3 Pavement Construction

Placement of the pavement Subbase course can proceed, following proper subgrade preparation and subgrade filling. Installation of adjacent geotextile panels should have minimum overlap of 12 to 18 inches. The Subbase Stone should be placed and compacted in accordance with the recommendations in Appendix C. Construction of the Asphalt Concrete Pavement should be performed in accordance with NYSDOT Standard Specification Section 400. The Binder and Top Course compaction / evaluation should comply with NYSDOT Standard Specifications – 80 Series Compaction procedures, as a minimum, or as otherwise required by the jurisdictional agency. In addition, placement of asphalt concrete courses should not be permitted on wet or snow covered surfaces or when the subgrade surface is less than 40° F.

4.90 SITE PREPARATION AND CONSTRUCTION

4.90.1 Construction Dewatering

Construction dewatering will be required for surface water control and for excavations which encounter groundwater conditions. A general groundwater condition is expected near the water level within Ellicott Creek, which will not likely be encountered within the relatively shallow pile cap excavations, but will be encountered within any drilled pier excavations. As noted, there appears to be some shallower zones of perched or trapped groundwater within some of the fill soils and shallower zones of sandier indigenous soils, which could be encountered within the pile cap excavations, or excavations to construct the elevator pit.

Water should be diverted away from the work areas and should be prevented from accumulating on exposed subgrades. Exposed soil subgrades will be susceptible to strength degradation in the presence of excess moisture. It is anticipated that diversion berms and proper site grading will be sufficient to control surface water.

Groundwater conditions, when encountered, should be depressed at least 1 to 2 feet below the excavation bottom. It is anticipated that sump and pump methods of dewatering will be sufficient to control perched groundwater conditions, should it be encountered within the fill soils or sandier indigenous soils. Surface water and groundwater dewatering plans should include implementation of measures to control erosion, sedimentation and the migration of soil fines.

4.90.2 Driven Pile Construction and Testing

The pipe piles should be driven using a hammer producing a suitable energy to obtain the desired ultimate capacity, yet not overstress the pile. Pile stresses should not exceed 85% of the pile yield stress. The appropriate hammer and driving criteria should be determined by the pile installation contractor through the use of the wave equation, based on the actual pile hammer and cushions that will be used for the project. If the wave equation analysis indicates that the pile may be overstressed during driving then the contractor should select an alternate hammer/cushion arrangement, which will not overstress the pile.

At least three random piles, across the limits of the site, should be dynamically tested in accordance with *ASTM D 4945 – Standard Test Method for High Strain Dynamic Testing of Piles* to confirm the driving criteria and to evaluate that the allowable pile capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater). The dynamic testing should be performed prior to installation of the production piles. The test piles may be used as production piles provided the test data is acceptable. The results of the dynamic testing should include an evaluation to simulate static load testing.

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The wave equation results, pile installation records and the results of the dynamic testing should be evaluated to confirm the design capacity and to possibly refine the driving criteria and pile lengths if determined necessary. It should be understood that the pile capacity provided was estimated using conventional static analyses based on engineering interpretation of the conditions disclosed by the test borings. Variations in soil conditions may occur, which can impact the actual pile installation requirements. Therefore, it is recommended that the contract documents contain provisions to make adjustments in the actual pile lengths required, should the installation conditions and field testing dictate such changes.

A qualified individual should observe all pile driving and should prepare an individual pile driving report for each pile installed. The report should include, pile number and location, hammer and cushion types, pile size and material, installed length, blows per foot, unusual conditions encountered during driving, top of pile elevation following driving and notes on any necessary re-striking.

Installed piles should be monitored for potential heaving during installation of adjacent piles. Any piles which heave should be re-driven and reseated as appropriate. Plumbness of the piles should be maintained within 1% of the total length. Any misaligned or damaged piles should be replaced. Following driving the inside of the pipe pile should be inspected, before concreting or capping, to assure that no damage occurred during driving. Any damaged piles should be removed and replaced.

4.90.3 Helical Pile Construction

Helical piles should be installed by a qualified and experienced contractor. The helical piles should be installed in a smooth continuous manner, with sufficient pressure to advance the helical piles. Alignment of the helical piles should be maintained within 1% of the total length. At least one load test should be completed to determine the helical pile capacity has been obtained with an adequate factor of safety (i.e. Factor of Safety of 2.0 or greater).

A correlation, using the torque during installation and the load testing data should be used to confirm subsequent helical piles are installed to two times the allowable design load. A qualified individual should observe the helical pile installation and prepare a report summarizing the installation process, load testing results, torque during installation, length of pile, etc.

4.90.4 Drilled Pier Foundation Construction

The drilled pier foundation construction is expected to encounter groundwater conditions near a depth of about 10 feet. Shallower zones of perched groundwater within the fill soils could also be encountered. Dewatering should be implemented as necessary to lower the groundwater within the drilled pier excavation casing in order to observe the pier excavation bottom and evaluate the bearing subgrade surface, and to allow construction in-the-dry.

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Alternatively, procedures for constructing the drilled piers below the groundwater elevation, can be implemented. However, there is less control during construction in-the-wet, and therefore, there may be greater risk associated with this construction procedure. If this method is used, the hole must be stabilized and the concrete must be placed in a manner that displaces slurry/water from the hole, such as a tremie method. It is recommended that the drilled piers be constructed only by a Contractor, who is qualified and experienced in such construction methods. In both cases the installation of temporary casing during drilling will be necessary to prevent the sloughing of the softer fill soils and indigenous soils into the excavations.

Initially, the excavation should extend to the proposed bearing grade. Loose soil should be removed from the bearing surface. The final bearing surface should be level or near level. Plumbness of the pier should be maintained within 1% of the total length. Casing removal during concrete placement should proceed in a manner that prevents or reduces to the extent possible, surrounding soil and water from protruding into the space that will be occupied by concrete. Qualified and experienced geotechnical personnel should monitor the drilled pier construction.

4.90.5 Excavation for Grade Beams and Pile Caps

Excavation for the pile caps and grade beams should be performed using a method, which reduces disturbance to the subgrade soils, such as a backhoe equipped with a smooth blade bucket. As noted, consideration should be given to undercutting the subgrade soils by about 12 to 18 inches and replacing them with Structural Fill, as described in Appendix C, to provide a firm and stable working surface.

Subgrades should be protected from precipitation and surface water. Water should not be allowed to accumulate on the soil subgrades and the subgrades should not be allowed to freeze, either prior to or after construction of foundations. If subgrades are not protected and degrade, they must be undercut/removed accordingly.

Excavations should be backfilled as soon as possible and prior to construction of the superstructure. It is recommended that the excavations be backfilled with a Structural Fill, as described in Appendix C.

4.90.6 Subgrade Preparation for Slab-on-Grade and Pavement Areas

The site preparation work should be performed during seasonally dry periods to minimize potential degradation of the subgrade soils and undercuts which may be required to establish a stable base for construction. It should be understood that the silty clay fill soils encountered at the site are sensitive and can degrade and lose strength when they are wet and disturbed by construction equipment traffic. Accordingly, efforts should be made to

maintain the subgrades in a dry and stable condition at all times, and minimize construction traffic directly over these soils. These efforts could include:

- Installation of drainage swales and underdrains (i.e. "French drains") to intercept and divert surface runoff and groundwater away from the construction areas;
- Proper grading and sloping of the subgrade and "sealing" of the surface with a smooth drum roller, at the end of each day or when rain is anticipated to promote runoff; and
- Restricting construction equipment traffic from traveling directly over the subgrade surfaces, especially when they are wet. Any subgrades, which become damaged, rutted or unstable should be undercut and repaired as necessary prior to placement of the overlying fill courses.

Existing trees, stumps, vegetation, topsoil, organic soils, soft or loose soils, and any other deleterious materials within the proposed slab-on-grade and pavement areas should be removed. Following stripping of the surface materials and any required excavation to the proposed subgrades, the exposed subgrades should be allowed to dry, as necessary, and then be thoroughly compacted/densified and then proof-rolled.

The subgrade compaction and proof-rolling should be performed prior to any required fill placement, using a vibratory smooth drum roller weighing at least 10 tons. The roller should be operated in the vibratory mode for compacting the subgrades and in the static mode for proof rolling. The roller should complete at least four passes over the exposed subgrades for the compaction/densification operation and at least two passes for the proof rolling evaluation.

The subgrade compaction and proof-rolling should be done under the guidance of, and observed by, a representative of Empire. Any areas, which appear wet, loose, soft, unstable or otherwise unsuitable, should be undercut. Over excavation, which may be required as the result of the proof-rolling, should be performed based on evaluation of the conditions by Empire. Resulting over-excavations should be backfilled with controlled Structural Fill. The placement of an initial lift of oversized stone fill material (i.e. "surge stone", "shot rock", etc.) encased in stabilization geotextile top and bottom, may be necessary in some cases to help stabilize the subgrades.

During construction, the Contractor should take precautions to limit construction traffic over the soil subgrades. Any subgrades, including existing soil subgrades or fill subgrades, which become damaged, rutted or unstable should be undercut and repaired as necessary prior to placement of the Subbase Stone.

Suitable Granular Fill, as described in Appendix C, can be used to raise the site grades beneath the Subbase Stone course for the slab-on-grade and pavement construction. The use of the on-site soils to raise site grades is not recommended as it is expected to be more difficult to obtain acceptable compaction and maintain stable fill subgrades (i.e. free of rutting and pumping conditions), due to its inherent finer grained composition and organic

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content. Placement of subgrade fill (Suitable Granular Fill), to raise site grades, should be observed and tested by a construction materials testing company. It is recommended that utility trenches located within pavement areas be backfilled with controlled Structural Fill.

5.00 CONCLUDING REMARKS

This report was prepared to assist in the design and construction of the proposed Elysium Apartment Complex, planned at 2160 North Forest Road, within the Town of Amherst, New York. The report has been prepared for the exclusive use of Postwork Capital, Buffalo Automation, Silvestri Architects, PC, and other members of the project design team, for specific application to this site and this project only.

The site information and recommendations were prepared based on Empire's understanding of the proposed project, as described herein, and through the application of generally accepted soils and foundation engineering practices. Empire should be consulted with any questions regarding the interpretation of the findings of our work, and/or the geotechnical considerations and recommendations presented. In addition, the recommendations presented are provided as guidance to the designer and should not be considered a project specification. No warranties, expressed or implied are made by the conclusions, opinions, recommendations or services provided.

Empire should be informed of any changes to the planned project so that it may be determined if any modifications to the information presented in this report are necessary. Empire and / or its designated representative should also be retained to review final plans and specifications and to monitor the foundation and site work construction to verify that the recommendations were properly interpreted and implemented.

Additional information regarding the use and interpretation of this report is presented in Appendix D.

Respectfully Submitted:

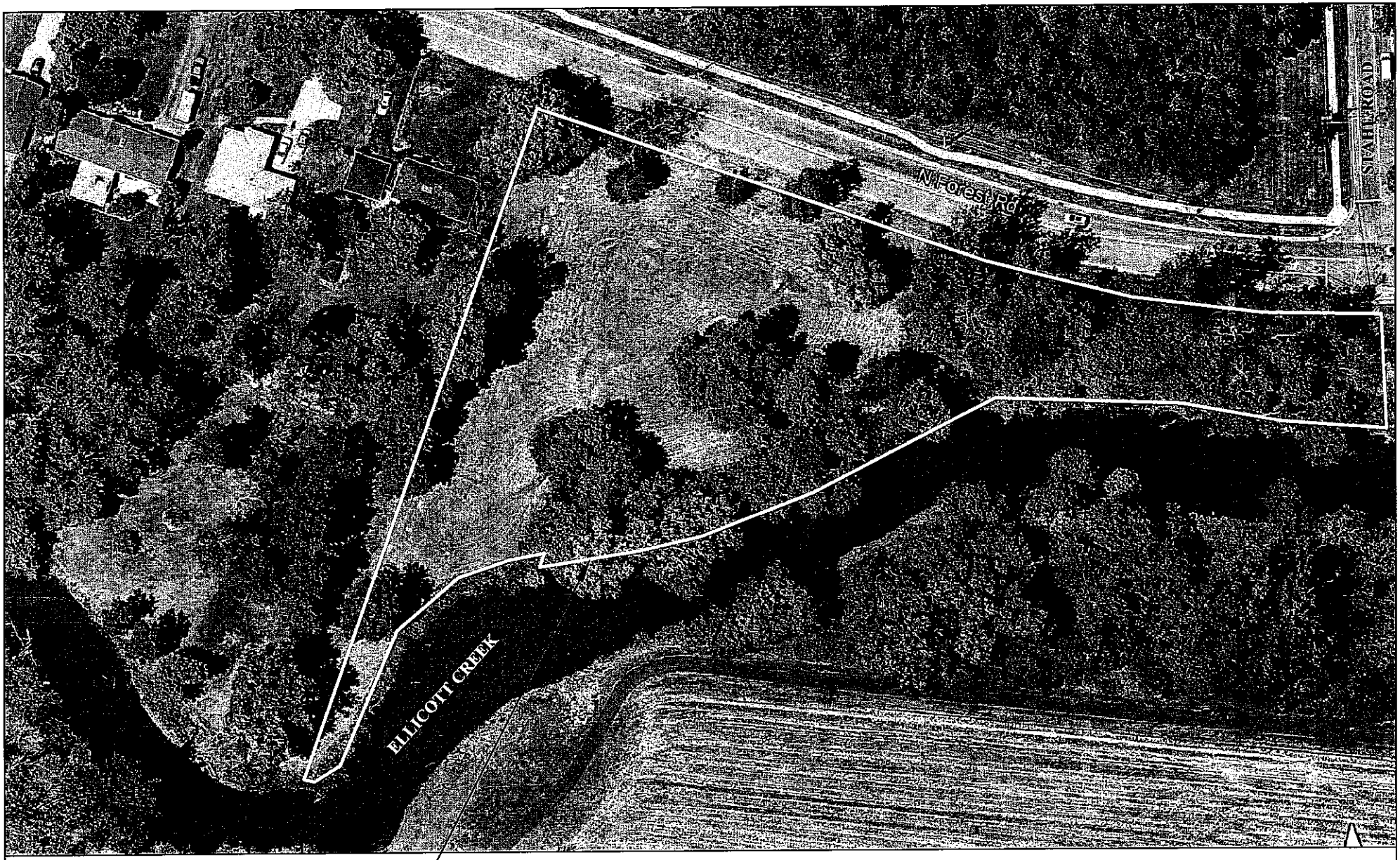
WMA Engineering DPC
dba Empire Geotechnical Engineering Services

Thomas R. Seider, P.E.
Senior Geotechnical Engineer

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

FIGURES

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)



WMA ENGINEERING DPC|DBA
EMPIRE GEOTECHNICAL ENGINEERING SERVICES

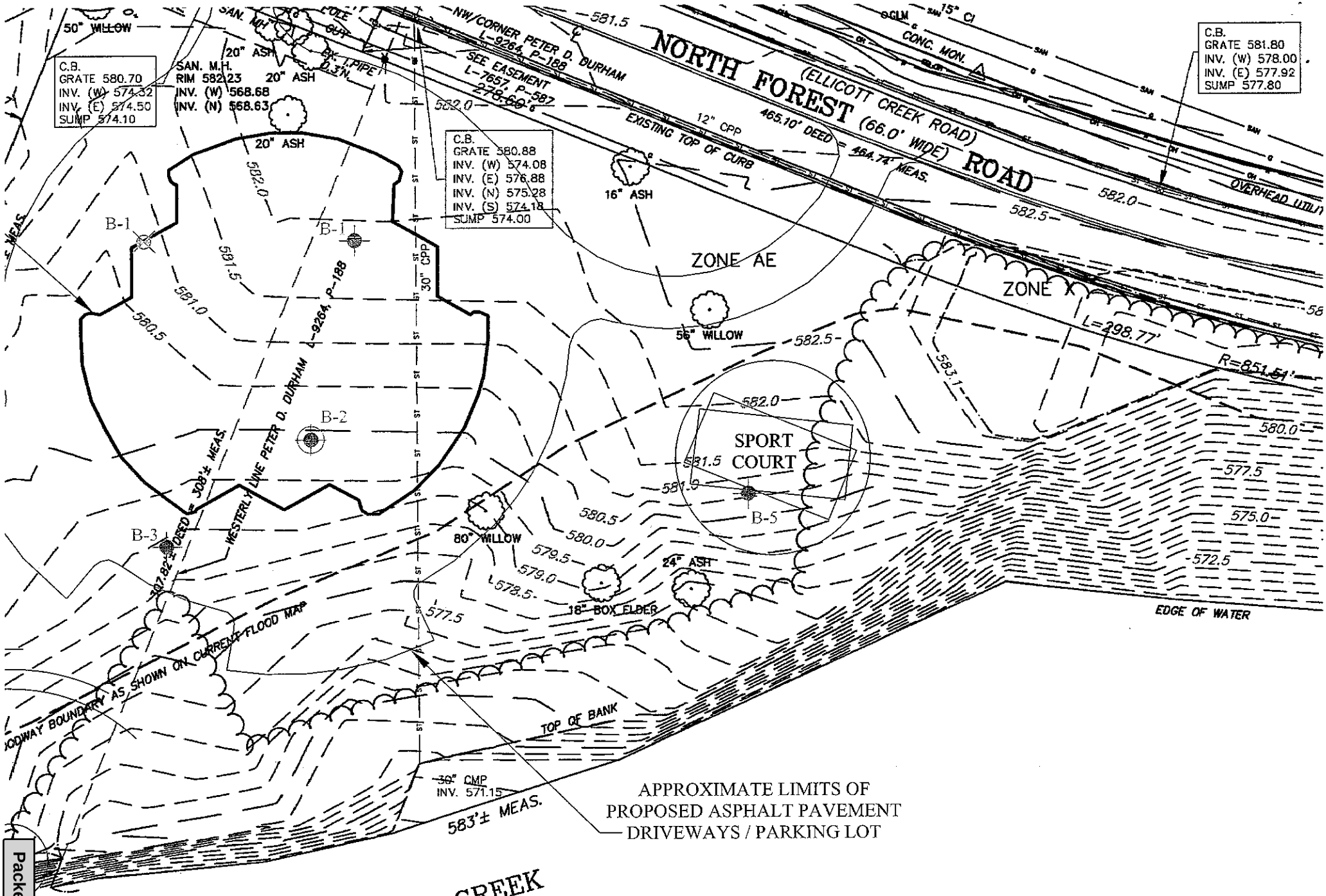
PROPOSED ELYSIUM APARTMENT COMPLEX
2160 NORTH FOREST ROAD
TOWN OF AMHERST, NEW YORK

DR BY: WMA	SCALE: NTS	PROJECT NO.: WB-20-105

NOTE:

SI

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NOTE:

B-1 INDICATES APPROXIMATE LOCATION AND DESIGNATION OF TEST BORING

FIGURE DEVELOPED FROM JUNE 24, 2014

N

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APPENDIX A

SUBSURFACE EXPLORATION LOGS

Recently Completed Test Borings
July 2020 (B-1 through B-5)

GENERAL INFORMATION & KEY TO SUBSURFACE LOGS

The Subsurface Logs attached to this report present the observations and mechanical data collected by the driller at the site, supplemented by classification of the material removed from the borings as determined through visual identification by technicians in the laboratory. It is cautioned that the materials removed from the borings represent only a fraction of the total volume of the deposits at the site and may not necessarily be representative of the subsurface condition between adjacent borings or between the sampled intervals. The data presented of the Subsurface Logs together with the recovered samples provide a basi for evaluating the character of the subsurface conditions relative to the project. The evaluation must consider all the recorded details and their procedures to more accurately evaluate the subsurface conditions. Any evaluation of the contents of this report and recovered samples must be performed by qualified professionals. The following information defines some of the procedures and terms used of the Subsurface Logs to describe the conditions encountered, consistent with the numbered identifiers shown o the Key opposite this page.

1. The figures in the Depth column define the scale of the Subsurface Log.
2. The Samples column shows, graphically, the depth range from which a sample was recovered. See Table I for descriptions of the symbols used to represent the various types of samples.
3. The Sample No. is used for identification on sample containers and/or Laboratory Test Reports.
4. Blows on Sampler – shows the results of the "Penetration Test", recording the number of blows required to drive a split spoon sampler into the soil. The number of blows required for each six inches is recorded. The first 6 inches of penetration is considered seating drive. The number of blows required for the second and third 6 inches of penetration is termed the penetration resistance,
5. Blows on Casing – Shows the number of blows required to advance the casing a distance of 12 inches. The casing size, hammer weight, and length of drop are noted at the bottom of the Subsurface Log. If the casing is advanced by means other than driving, t method of advancement will be indicated in the Notes column or under the Method of Investigation at the bottom of the Subsurfac Log. Alternatively, sample recovery may be shown in this column or other data consistent with the column heading.
6. All recovered soil samples are reviewed in the laboratory by an engineering technician, geologist, or geotechnical engineer, unless noted otherwise. Visual descriptions are made on the basis of a combination of the driller's field descriptions and noted observatio together with the sample as received in the laboratory. The method of visual classification is based primarily on the Unified Soil Classification System (ASTM D 2487) with regard to the particle size and plasticity (See Table No. II), and the Unified Soil Classification System group symbols for the soil types are sometimes included with the soil classification. Additionally, the relative portion, by weight, of two or more soil types is described for granular soils in accordance with "Suggested Methods of Test for Identification of Soils" by D.M. Burmister, ASTM Special Technical Publication 479, June 1970. (See Table No. III). Description o the relative soil density or consistency is based upon the penetration records as defined in Table No. IV. The description of the soil moisture is based upon the relative wetness of the soil as recovered and is described as dry, moist, wet, and saturated. Water introduced into the boring either naturally or during drilling may have affected the moisture condition of the recovered sample. Special terms are used as required to describe soil deposition in greater detail; several such terms are listed in Table V. When sampling gravelly soils with a standard two inch diameter split spoon, the true percentage of gravel is often not recovered due to t relatively small sampler diameter. The presence of boulders and large gravel is sometimes, but not necessarily, detected by an evaluation of the casing and sampler blows or through the "action" of the drill rig as reported by the driller.
7. Rock description is based on review of the recovered rock core and the driller's notes. Frequently used rock classification terms a included in Table VI.
8. The stratification lines represent the approximate boundary between soil types and the transition may be gradual. Solid stratification lines delineate apparent changes in soil type, based upon review of recovered soil samples and the driller's notes. Dashed lines convey a lesser degree of certainty with respect to either a change in soil type or where such change may occur.
9. Miscellaneous observations and procedures noted by the driller are shown in this column, including water level observations. It is important to realize the reliability of the water level observations depends upon the soil type (water does not readily stabilize in a hole through fine grained soils), and that any drill water used to advance the boring may have influenced the observations. The ground water level will fluctuate seasonally, typically. One or more perched or trapped water levels may exist in the ground seasonally. All the available readings should be evaluated. If definite conclusions cannot be made, it is often prudent to examine th conditions more thoroughly through test pit excavations or groundwater observation wells.
10. The length of core run is defined as the length of penetration of the core barrel. Core recovery is the length of core recovered divided by the core run. The RQD (Rock Quality Designation) is the total length of pieces of NX core exceeding 4 inches divided b the core run. The size core barrel used is also noted in the Method of Investigation at the bottom of the Subsurface Log.

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DATE

STARTED _____

FINISHED _____

SHEET ____ OF ____

SJB SERVICES, INC. SUBSURFACE LOG

PROJ. No. _____

HOLE No. _____

SURF. ELEV. _____

G.W. DEPTH _____

PROJECT _____ LOCATION _____

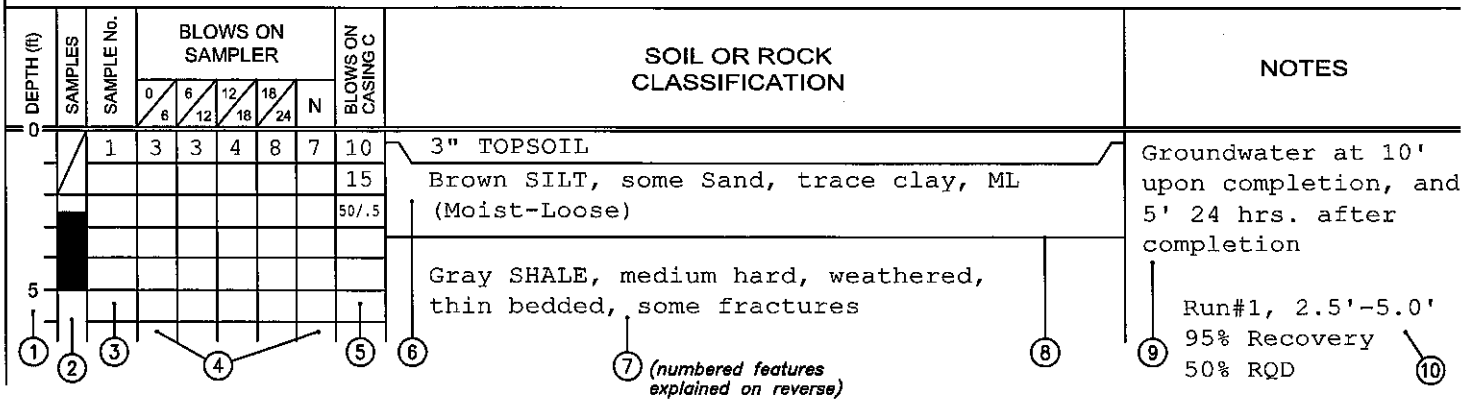


TABLE I

⁄	Split Spoon Sample
▮	Shelby Tube Sample
⊠	Geoprobe Macro-Core
▯	Auger or Test Pit Sample
■	Rock Core

TABLE II

Identification of soil type is made on basis of an estimate of particle sizes, and in the case of fine grained soils also on basis of plasticity.

Soil Type	Soil Particle Size	
Boulder	>12"	Coarse Grained (Granular)
Cobble	3" - 12"	
Gravel - Coarse	3" - 3/4"	
- Fine	3/4" - #4	
Sand - Coarse	#4 - #10	
- Medium	#10 - #40	
- Fine	#40 - #200	
Silt - Non Plastic (Granular) Clay - Plastic (Cohesive)	<#200	Fine Grained

TABLE III

The following terms are used in classifying soils consisting of mixtures of two or more soil types. The estimate is based on weight of total sample.

Term	Percent of Total Sample
"and"	35 - 50
"some"	20 - 35
"little"	10 - 20
"trace"	less than 10

(When sampling gravelly soils with a standard split spoon, the true percentage of gravel is often not recovered due to the relatively small sampler diameter.)

TABLE IV

The relative compactness or consistency is described in accordance with the following terms:

Granular Soils		Cohesive Soils	
Term	**Blows per Foot, N**	**Term**	**Blows per Foot, N**
Very Loose	0 - 4	Very Soft	0 - 2
Loose	4 - 10	Soft	2 - 4
Firm	10 - 30	Medium	4 - 8
Compact	30 - 50	Stiff	8 - 15
Very Compact	>50	Very Stiff	15 - 30
		Hard	>30

(Large particles in the soils will often significantly influence the blows per foot recorded during the penetration test)

TABLE V

Varved	Horizontal uniform layers or seams of soil(s).
Layer	Soil deposit more than 6" thick.
Seam	Soil deposit less than 6" thick.
Parting	Soil deposit less than 1/8" thick.
Laminated	Irregular, horizontal and angled seam and partings of soil(s).

TABLE VI

Rock Classification Term		Meaning
Hardness	- Soft	Scratched by fingernail
	- Medium Hard	Scratched easily by penknife
	- Hard	Scratched with difficulty by penknife
	- Very Hard	Cannot be scratched by penknife
Weathering	- Very Weathered	Judged from the relative amounts of disintegration, iron staining, core recovery, clay seams, etc.
	- Weathered	
	- Sound	

Rock Classification Term		Meaning	
Bedding	- Laminated	(<1")	Natural breaks in Rock Layers
	- Thin Bedded	(1" - 4")	
	- Bedded	(4" - 12")	
	- Thick Bedded	(12" - 36")	
	- Massive	(>36")	

(Fracturing refers to natural breaks in the rock oriented at some angle to the rock layers)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/23/2020
FINISH 7/23/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-1
SURF. ELEV 582.3'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	2	4			TOPSOIL	Driller noted topsoil at the surface
		6	8		10	Brown Silty CLAY, some fine Gravel, little f-c Sand, tr.organics (moist, FILL)	
	2	8	7			One piece of coarse GRAVEL (moist, FILL)	WOH = Weight of Hammer and Rods
		6	5		13		
5	3	3	3			Brown Silty CLAY, some f-c Sand, little fine Gravel, tr.slag, tr.organics (moist-wet, FILL)	
		3	2		6		
	4	3	3			Contains tr.gravel, tr.glass, no slag	Sample #4: Contains wood
		4	3		7		
	5	WOH	2			Dark Brown Silty CLAY, little f-m Sand, tr.organics (moist, medium, CL)	Sample #5: Exhibits an organic odor
10		2	3		4		
	6	1	1			Contains tr.sand (moist-wet, soft)	
		1	1		2		Sample #6: Contains wood
15	7	WOH	1			Contains little f-m Sand, little Organics	Sample #7: Exhibits an organic odor, contains wood
		2	1		3		
20	8	6	21			Brown fine GRAVEL, some f-c Sand, little Silty Clay (moist, v.compact, GC-GM)	REF = Sample Spoon Refusal
		35	50/0.2		56		Driller noted hard augering at 20' to 25'
25	9	50/0.2			REF		NQ '2' Size Rock Core
						Brown SHALE Rock, medium hard, sound, thickly bedded, both natural and mechanical fractures	RUN #1: 25.2' - 30.2' REC = 72% RQD = 47%
30						Becomes laminated to thickly bedded	RUN #2: 30.2' - 33.2' REC = 100% RQD = 81%
35						Boring Complete at 33.0'	No Free Standing Water encountered before coring
							Free Standing Water recorded at 1' after coring
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: A. KOSKE
DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/27/2020
FINISH 7/27/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-2
SURF. ELEV 581.1'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	4	15			TOPSOIL	Driller noted topsoil at the surface
		21	19		36	Brown CONCRETE fragments, some Silty Clay, little f-c Sand (moist, FILL)	
	2	15	8				
		5	6		13	Contains little Silty Clay	Sample #1: Poor Recovery
5	3	2	2			Brown Silty CLAY, some f-c Sand, little fine Gravel,	Sample #2: Poor Recovery
		3	6		5	tr.organics (moist, FILL)	
	4	4	50/0.2		REF	Contains some fine Gravel, little f-c Sand, tr.concrete (moist-wet)	
	5	50/0			REF		Sample #5: No Recovery
10							
	6	2	2			Dark Brown Silty CLAY, little Organics, tr.sand	REF = Sample Spoon Refusal
		3	3		5	(moist-wet, medium, CL)	
15							
	7	1	2			Brown Organics, tr.sand (wet)	Sample #7: Poor Recovery, contains wood
		1	6		3		
20							
	8	31	40			Brown fine GRAVEL, some f-c Sand, little Silty Clay	
		45	50/0.4		85	(wet, v.compact, GC-GM)	
25							
	9	50	50/0.2		REF		
						Boring Complete with Auger Refusal at 26.0'	No Free Standing Water reading obtained at boring completion
30							2" PVC groundwater observation well installed within completed test boring. Refer to completion record for details.
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: R. STEINER

DRILL RIG TYPE : CME-550X

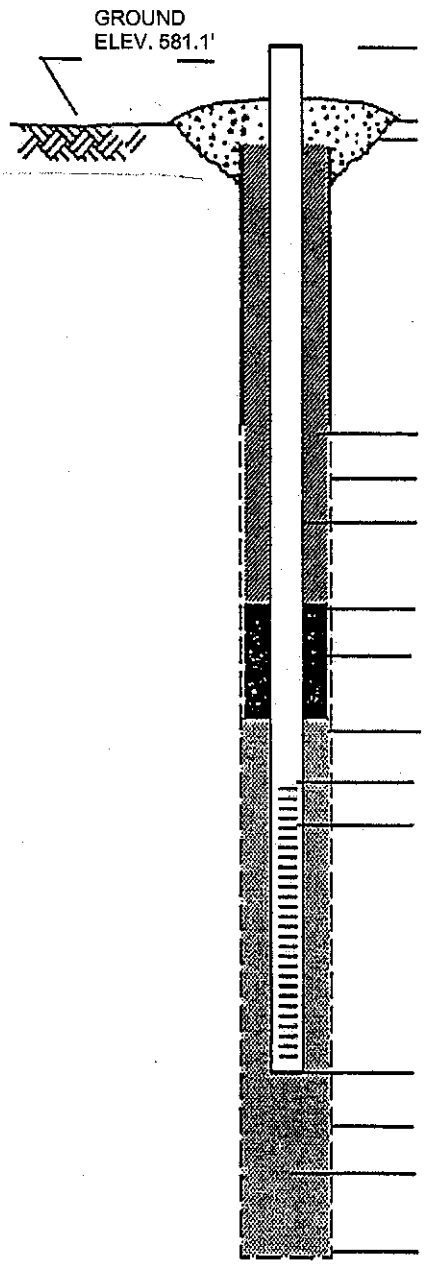
METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

MONITORING WELL COMPLETION RECORD

SJB SERVICES, INC.

WELL NUMBER: B-2	
PROJECT: Elysium Apartments	**DRILLING METHOD:** ASTM D-1586 USING HSA
PROJECT NUMBER: BE-20-105	**GEOLOGIST:** N/A
DRILLER: R. Steiner	**INSTALLATION DATE(S):** 7/27/2020



TYPE OF SURFACE SEAL:	SOIL
TYPE OF BACKFILL:	SOIL AUGER CUTTINGS
BOREHOLE DIAMETER:	7" ±
I.D. OF RISER PIPE:	2"
TYPE OF RISER PIPE:	PVC
DEPTH OF SEAL:	12'
TYPE OF SEAL:	BENTONITE CHIPS
DEPTH OF SAND PACK:	14'
DEPTH OF TOP OF SCREEN:	15.6'
TYPE OF SCREEN:	PVC
SLOT SIZE X LENGTH:	0.01' x 10'
I.D. OF SCREEN:	2"
TYPE OF SAND PACK:	No. 0 Silica Sand
DEPTH BOTTOM OF SCREEN:	25.6'
DEPTH BOTTOM OF SAND PACK:	26.0'
TYPE OF BACKFILL BELOW OBSERVATION WELL:	N/A
ELEVATION/ DEPTH OF HOLE:	26.0'

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/24/2020
FINISH 7/24/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-3
SURF. ELEV 579.5'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	5	6			TOPSOIL	Driller noted topsoil at the surface
		15	10		21	Brown Silty CLAY, some f-c Sand, tr.organics (moist, FILL)	
	2	8	8			Contains little fine Gravel	
		10	11		18		Sample #2: Poor Recovery
5	3	2	2			Dark Gray f-c SAND, little Silty Clay, tr.organics	
		3	4		5	(moist-wet, loose, SC-SM)	
	4	3	2			(wet)	Sample #4: Contains wood
		3	2		5		
	5	2	2			Contains some Silty Clay (v.loose)	Sample #5: Contains wood
10		1	1		3		
	6	WOH/1.0				Contains little Organics, little Silty Clay	WOH = Weight of Hammer and Rods
		WOH/1.0			WOH		
15	7	WOH/1.0				Brown Silty CLAY, some f-c Sand, little fine Gravel	
		3	5		3	(wet, soft, CL)	
							Driller noted hard augering at 18' to 26.5'
20	8	28	47			Brown fine Gravel, some f-c Sand, little Silty Clay	
		50/0.4			REF	(moist, v.compact, GC-GM)	REF = Sample Spoon Refusal
25	9	50/0.2			REF		Sample #9: No Recovery
						Boring Complete with Auger Refusal at 26.5'	Free Standing Water recorded at 21.5' at boring completion
30							
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW
CLASSIFIED BY: Geologist
DRILLER: R. STEINER
DRILL RIG TYPE : CME-550X
METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/23/2020
FINISH 7/23/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-4
SURF. ELEV 578.1'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	1	2			TOPSOIL	Driller noted topsoil at the surface
		3	3		5	Brown Silty CLAY, some fine Gravel, little f-c Sand, tr.organics (moist, FILL)	
	2	2	5				
		10	50/0.2		15	Brown fine GRAVEL, some f-c Sand, little Concrete, little Silty Clay (moist, FILL)	
5	3	21	5				Sample #3: Contains wood
		3	3		8	Dark Brown Silty CLAY, tr.sand, tr.organics (moist, medium, CL)	
	4	4	2				Sample #4: Contains wood
		3	2		5	Contains little Organics, little f-c Sand (moist-wet) (soft)	
	5	1	1				Sample #5: Contains wood, Exhibits an organic odor
10		1	1		2		
	6	2	1			Brown Silty CLAY, little f-c Sand, tr.gravel (moist-wet, soft, CL)	
		1	2		2		
15							
	7	2	2			Contains some fine Gravel (moist, medium)	Driller noted hard augering at 18' to 22'
		4	7		6		
20							REF = Sample Spoon Refusal
	8	20	19			Brown fine GRAVEL, some f-c Sand, little Silty Clay (moist, compact, GC-GM)	
		21	25		40		NQ '2' Size Rock Core
	9	50/0			REF	22.0' to 24.4': Brown f-c GRAVEL, some f-c Sand, little Silty Clay (moist, GC-GM)	RUN #1: 22.0' - 27.0' REC = 66% RQD = 21%
25						Brown SHALE Rock, medium hard, sound, laminated to thickly bedded, both natural and mechanical fractures	
							RUN #2: 27.0' - 31.0' REC = 90% RQD = 85%
30							
						Boring Complete at 31.0'	No Free Standing Water encountered before coring
35							Free Standing Water recorded at 1' after coring
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: A. KOSKE
DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE:
START 7/24/2020
FINISH 7/24/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-5
SURF. ELEV 582.0'
G.W. DEPTH See Notes

PROJECT: PROPOSED ELYSIUM APARTMENT COMPLEX
PROJ. NO.: BE-20-105
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	1	4			TOPSOIL	Driller noted topsoil at the surface
		7	10		11	Brown Silty CLAY, some fine Gravel, little f-c Sand, tr.organics (moist-wet, FILL)	
	2	8	9				
		10	12		19	Brown-Black ASPHALT fragments, little Silty Clay, little fine Gravel, tr.sand (moist, FILL)	
5	3	7	10				
		15	16		25	Contains some fine Gravel, little f-c Sand, tr.silty clay tr.organics	
	4	5	5				
		6	6		11	Dark Brown Silty CLAY, tr.sand, tr.organics (moist, stiff, CL)	
	5	1	2			Contains little f-m Sand (moist-wet, medium)	Sample #5: Contains wood
10		2	2		4		
	6	1	1			Brown-Gray f-m SAND, little Silty Clay, tr.organics (moist-wet, v.loose, SC-SM)	Samples #6 & #7: Contains wood
		2	1		3		
	7	1	2			Contains tr.gravel, tr.shells	
15		2	3		4		
						Boring Complete at 15.0'	No Free Standing Water recorded at boring completion
20							
25							
30							
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: R. STEINER
DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

APPENDIX B

SUBSURFACE EXPLORATION LOGS

Previously Completed Test Borings
February 2020 (B-1)
June 2014 (B-1)

DATE:
START 2/20/2020
FINISH 2/20/2020
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-1
SURF. ELEV 580.0'
G.W. DEPTH See Notes

PROJECT: PROPOSED NEW HOME
PROJ. NO.: BE-20-010
LOCATION: 2160-2170 NORTH FOREST
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	WOH	2			TOPSOIL	Driller noted Topsoil at the surface
		3	5		5	Brown Silty CLAY, tr.sand, tr.organics (moist, FILL)	
	2	6	3			Becomes Dark Brown to Brown, Contains tr.asphalt,	
		2	3		5	tr.brick	
5	3	2	2			Brown Silty CLAY, tr.gravel, tr.sand (moist-wet, FILL)	
		3	3		5		
	4	4	4			Brown Silty CLAY, tr.gravel, tr.sand, tr.organics	
		3	3		7	(moist-wet, medium, CL / Possible FILL)	
	5	1	1			Dark Brown Silty CLAY, tr.sand, tr.organics	
10		1	1		2	(moist, v.soft, CL)	
	6	WOH	WOH			Becomes Dark Brown to Dark Gray, occasional	WOH = Weight of Hammer and Rods
		WOH	WOH		WOH	moist-wet partings	
	7	WOH	WOH			Red Brown Silty CLAY, some f-c Sand	
		WOH	WOH		WOH	(moist-wet, v.soft, CL)	
15	8	WOH	WOH			Contains some f-c Gravel	
		2	3		2		
	9	7	8			Contains little f-c Gravel (v.stiff)	
		8	8		16		
	10	8	12			Contains some f-c Gravel (moist)	
20		12	13		24		
	11	15	24			Contains little f-c Sand (hard)	
		17	19		41		
							REF = Sample Spoon Refusal
25							
	12	27	50/0.4		REF	Brown f-c SAND, some Silt, little f-c Gravel	Sample #13: Poor Recovery, possible weathered bedrock
						(moist, v.compact, SM)	
	13	50/0.2			REF	Brown fine GRAVEL, tr.sand (moist, v.compact, GP)	
30						Boring Complete with Auger Refusal at 27.7'	No Free Standing Water encountered at boring completion
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: S. WOLKIEWICZ JR.

DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

DATE
START 6/30/2014
FINISH 6/30/2014
SHEET 1 OF 1

SJB SERVICES, INC.
SUBSURFACE LOG

HOLE NO. B-1
SURF. ELEV 581' +/-
G.W. DEPTH See Notes

PROJECT: PROPOSED RESIDENTIAL HOME
PROJ. NO.: BE-14-109
LOCATION: 2160 NORTH FOREST ROAD
AMHERST, NY

DEPTH FT.	SMPL NO.	BLOWS ON SAMPLER 0/6	6/12	12/18	N	SOIL OR ROCK CLASSIFICATION	NOTES
	1	3	4			TOPSOIL	Driller notes approx. 6" Topsoil
		5	7		9	Red-Brown and Black Silty CLAY, tr.sand, tr.gravel (moist, FILL)	
	2	5	8				
		7	10		15	Brown-Gray and Black f-m SAND, some Silt, tr.gravel (moist, FILL)	
5	3	3	3				
		4	4		7	Black Organic Clayey SILT, little f-c Sand (moist, FILL)	
	4	2	2			Gray and Black Organic Silty CLAY, tr.peat (moist, medium, OL-CL)	
		3	4		5		
	5	2	3				
10		3	3		6		
	6	2	2				
		2	2		4		
	7	3	2				
		3	4		5		
15	8	WOH/1.5				Becomes Red-Brown (wet, v.soft)	WOH = Weight of Hammer and Rods
			1		WOH		
	9	1	1				
		1	1		2	Contains little f-c Sand, tr.gravel	REF = Sample Spoon Refusal
	10	31	50/0.3		REF	Red-Brown f-m SAND and Silt, tr.gravel (moist, SM)	
20							
	11	19	23				
		21	22		44	(compact)	
25							
	12	19	50/0.4		REF		
						Boring Complete with Sample Spoon Refusal at 25.9' and Auger Refusal at 26.0'	No Free Standing Water encountered at Boring Completion
30							
35							
40							

N = NO. BLOWS TO DRIVE 2-INCH SPOON 12-INCHES WITH A 140 LB. PIN WT. FALLING 30-INCHES PER BLOW

CLASSIFIED BY: Geologist

DRILLER: A. JAKUBCZAK

DRILL RIG TYPE : CME-550X

METHOD OF INVESTIGATION ASTM D-1586 USING HOLLOW STEM AUGERS

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

APPENDIX C

FILL MATERIAL AND EARTHWORK RECOMMENDATIONS

APPENDIX C

FILL MATERIAL AND EARTHWORK RECOMMENDATIONS

I. Material Recommendations

A. Structural Fill

Structural Fill should consist of a crusher run stone, free of clay, organics and friable or deleterious particles. As a minimum, the crusher run stone should meet the requirements of New York State Department of Transportation, Standard Specifications, Item 304.12 – Type 2 Subbase, with the following gradation requirements.

Sieve Size Distribution	Percent Finer by Weight
2 inch	100
¼ inch	25-60
No. 40	5-40
No. 200	0-10

B. Subbase Stone

The subbase stone course placed as the aggregate course beneath slab-on-grade and pavement construction should conform to the same material requirements as Structural Fill as stated above.

C. Suitable Granular Fill

Suitable soil material, well graded from coarse to fine and classified as GW, GP, GM, SW, SP or SM type soil using the Unified Soil Classification System (ASTM D-2487) and having no more than 85 percent by weight material passing the No. 4 sieve, no more than 20 percent by weight material passing the No. 200 sieve and which is generally free of particles greater than 6 inches, will be acceptable as Suitable Granular Fill. It should also be free of topsoil, asphalt, concrete rubble, wood, debris, clay and other deleterious materials.

Suitable Granular Fill can be used as foundation backfill and as subgrade fill to raise site grades beneath slab-on-grade and pavement construction. Material meeting the requirements of New York State Department of Transportation, Standard Specifications, Item 203.07 – Select Granular Fill, or Item 203.20 Select Granular Subgrade is acceptable for use as Suitable Granular Fill.

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

II. Placement and Compaction Requirements

All controlled fill placed beneath foundations, slab-on-grade construction and pavement construction should be compacted to a minimum of 95 percent of the maximum dry density as measured by the modified Proctor test (ASTM D1557). Fill placed in non-loaded grass areas can be compacted to a minimum of 90 percent of the maximum dry density (ASTM D1557).

Placement of fill should not exceed a maximum loose lift thickness of 6 to 9 inches with the exception of subbase courses beneath slab on grade and pavement construction, which can be placed in a single lift not exceeding 15 inches. The loose lift thickness should be reduced in conjunction with the compaction equipment used so that the required density is attained.

Fill should have a moisture content within two percent of the optimum moisture content at the time of compaction. Subgrades should be properly drained and protected from moisture and frost. Placement of fill on frozen subgrades is not acceptable. It is recommended that all fill placement and compaction be monitored and tested on a full-time basis by a representative of Empire Geo-Services, Inc.

III. Quality Assurance Testing

The following minimum laboratory and field quality assurance testing frequencies are recommended to confirm fill material quality and post placement and compaction conditions. These minimum frequencies are based on generally uniform material properties and placement conditions. Should material properties vary or conditions at the time of placement vary (i.e. moisture content, placement and compaction, procedures or equipment, etc.) Then additional testing is recommended. Additional testing, which may be necessary, should be determined by qualified geotechnical personnel, based on evaluation of the actual fill material and construction conditions.

A. Laboratory Testing of Material Properties

- Moisture content (ASTM D-2216) - 1 test per 4,000 cubic yards or no less than 2 tests per each material type.
- Grain Size Analysis (ASTM D-422) - 1 test per 4,000 cubic yards or no less than 2 tests per each material type.
- Liquid and Plastic Limits (ASTM D-4318) 1 test per 4,000 cubic yards or no less than 2 tests per each material type. Liquid and Plastic Limit testing is necessary only if appropriate, based on material composition (i.e. clayey or silty soils).

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

- Modified Proctor Moisture Density Relationship (ASTM D-1557) 1 test per 4,000 cubic yards or no less than 1 test per each material type. A maximum/minimum density relationship (ASTM D-4253 and ASTM D-4254) may be an appropriate substitute for ASTM D-1557 depending on material gradation.

B. Field In-Place Moisture/Density Testing (ASTM D-3017 and ASTM D-2922)

- Backfilling along trenches and foundation walls - 1 test per 50 lineal feet per lift.
- Backfilling Isolated Excavations (i.e. column foundations, manholes, etc.) 1 test per lift.
- Filling in open areas for slab-on-grade construction - 1 test per 2,500 square feet per lift.

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

APPENDIX D

GEOTECHNICAL REPORT LIMITATIONS

GEOTECHNICAL REPORT LIMITATIONS

WMA Engineering DPC / DBA Empire Geotechnical Engineering Services (Empire) has endeavored to meet the generally accepted standard of care for the services completed, and in doing so is obliged to advise the geotechnical report user of our report limitations. Empire believes that providing information about the report preparation and limitations is essential to help the user reduce geotechnical-related delays, cost over-runs, and other problems that can develop during the design and construction process. Empire would be pleased to answer any questions regarding the following limitations and use of our report to assist the user in assessing risks and planning for site development and construction.

PROJECT SPECIFIC FACTORS: The conclusions and recommendations provided in our geotechnical report were prepared based on project specific factors described in the report, such as size, loading, and intended use of structures; general configuration of structures, roadways, and parking lots; existing and proposed site grading; and any other pertinent project information. Changes to the project details may alter the factors considered in development of the report conclusions and recommendations. *Accordingly, Empire cannot accept responsibility for problems which may develop if we are not consulted regarding any changes to the project specific factors that were assumed during the report preparation.*

SUBSURFACE CONDITIONS: The site exploration investigated subsurface conditions only at discrete test locations. Empire has used judgement to infer subsurface conditions between the discrete test locations, and on this basis the conclusions and recommendations in our geotechnical report were developed. It should be understood that the overall subsurface conditions inferred by Empire may vary from those revealed during construction, and these variations may impact on the assumptions made in developing the report conclusions and recommendations. *For this reason, Empire should be retained during construction to confirm that conditions are as expected, and to refine our conclusions and recommendations in the event that conditions are encountered that were not disclosed during the site exploration program.*

USE OF GEOTECHNICAL REPORT: Unless indicated otherwise, our geotechnical report has been prepared for the use of our client for specific application to the site and project conditions described in the report. *Without consulting with Empire, our geotechnical report should not be applied by any party to other sites or for any uses other than those originally intended.*

CHANGES IN SITE CONDITIONS: Surface and subsurface conditions are subject to change at a project site subsequent to preparation of the geotechnical report. Changes may include, but are not limited to, floods, earthquakes, groundwater fluctuations, and construction activities at the site and/or adjoining properties. *Empire should be informed of any such changes to determine if additional investigative and/or evaluation work is warranted.*

MISINTERPRETATION OF REPORT: The conclusions and recommendations contained in our geotechnical report are subject to misinterpretation. *To limit this possibility, Empire should review project plans and specifications relative to geotechnical issues to confirm that the recommendations contained in our report have been properly interpreted and applied.*

Subsurface exploration logs and other report data are also subject to misinterpretation by others if they are separated from the geotechnical report. This often occurs when copies of logs are given to contractors during the bid preparation process. *To minimize the potential for misinterpretation, the subsurface logs should not be separated from our geotechnical report and the use of excerpted or incomplete portions of the report should be avoided.*

OTHER LIMITATIONS: Geotechnical engineering is less exact than other design disciplines, as it is based partly on judgement and opinion. For this reason, our geotechnical report may include clauses that identify the limits of Empire's responsibility, or that may describe other limitations specific to a project. These clauses are intended to help all parties recognize their responsibilities and to assist them in assessing risks and decision making. Empire would be pleased to discuss these clauses and to answer any questions that may arise.

Attachment: GeoTech report_2160 & 2170 N For (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon Development Plan)

March 3, 2021

Brian J. Kulpa, Supervisor
Town of Amherst Town Board
5583 Main Street
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from
NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Supervisor Kulpa and Councilmembers:

This letter is being submitted on behalf of Applicant for the purpose of submitting an updated Concept Site Plan incorporating modifications to the project layout made based on input received during the public hearing held by the Town Board on February 22nd as well as additional modifications made for the purpose of improving the layout of the proposed residential project.

Attached as Exhibit "1" is the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] prepared by Christina Barmosz of Silvestri Architects PC incorporating the following modifications to the project layout:

1. The previously proposed stormwater basin on the western portion of the Project Site adjacent to the property at 2180 North Forest Road has been eliminated;

2. The dumpster enclosure has been relocated from the western portion of the Project Site to the eastern portion of Project Site. Additionally, screening has been added on the exterior edges of the dumpster enclosure;

3. The previously proposed two-story eight-unit building has been replaced with 2 two-story four-unit buildings;

4. The proposed covered patio with a fire pit has been relocated so that it will between the 2 two-story four-unit buildings;

5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road;

6. Landscaping has been added along the North Forest Road frontage of the Project Site;

7. The parking to be provided on the Project Site has been increased from 17 spaces to 23 spaces (2.88 parking spaces per unit) consistent with the zoning condition recommended by the Planning Board on January 21st in connection with its issuance of a favorable

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

recommendation to the Town Board stating: "That the petitioner include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.[1]"

Attached as Exhibit "2" are copies of the project update letters to interested property owners dated March 2nd that included an 11" x 17" size copy of the updated Concept Site Plan. The updated Concept Plan demonstrates the concerted effort that has been made by the project team to incorporate input received from the public during the public hearing held on February 22nd.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on Monday, March 8th at 7:00 p.m. The Applicant is requesting that the Town Board adopt a resolution during its upcoming meeting for the purpose of issuing a negative declaration pursuant to the State Environmental Quality Review Act ("SEQRA") and approving the requested reclassification of the Project Site from NCD-SA to NCD-ND and an amendment of the Audubon New Community Development Plan.

If you have any questions regarding this letter or the attached documentation, please feel free to contact me at 510-4338 or via e-mail at shopkins@hsr-legal.com.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

cc: Jacqualine Berger, Deputy Supervisor
Deborah Bruch Bucki RN PhD, Councilmember
Shawn Lavin, Councilmember
Michael Szukala, Councilmember
Francina J. Spoth, Town Clerk
Kathy Cooper, Deputy Town Clerk
Stanley J. Sliwa, Esq., Town Attorney
Ellen Kost, AICP, Assistant Planning Director
Thiru Vikram, Coromandel Estates Amherst LLC
Christina Barmosz, Silvestri Architects PC
Christopher Wood, P.E., Carmina Wood Morris DPC

[1] During its meeting on January 21st, the Planning Board adopted a resolution by a unanimous 7-0 vote recommending that the Town Board: 1. Issue a negative declaration pursuant to SEQRA; 2. Approve the reclassification of the Project Site from NCD-SA to NCD-ND; and, 3. Approve Amendment #73 to the Audubon New Community District Development Plan. The Planning Board findings in support of its favorable recommendation were as follows: A. The proposed Revision to the Development Plan meets the intent and objectives of a New Community District as expressed in Subsection 1-1.1; B. The proposed Revision to the Development Plan meets all the requirements of Section 5-2-3 through 5-2-6; C. The proposed Revision to the Development Plan is conceptually sound in that it meets present and future community needs; D. There are or will be adequate services and utilities available or proposed to be made available in the construction of the development; and, E. The proposed Amendment to the Development Plan is consistent with the Town Comprehensive Plan.

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Exhibit 1 – Updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] Prepared by Christina Barmosz of Silvestri Architects PC

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S. Hunt DRAFTER W. Manhardt
JOB CAPT. _____ INTERIORS K. Hamann

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS · PC
1321 MILLERSPORT HWY PH. 716.691.0300
AMHERST, NY 14221 FAX. 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

Exhibit 2 – Project Update Letters to Residents dated March 2, 2021

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

HSM

March 2, 2021

Joan Amico
1936 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Ms. Amico:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

An 11" x 17" size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] is enclosed depicting the following modifications to the project layout:

1. The previously proposed stormwater basin on the western portion of the Project Site adjacent to the property at 2180 North Forest Road has been eliminated;

2. The dumpster enclosure has been relocated from the western portion of the Project Site to the eastern portion of Project Site. Additionally, screening has been added on the exterior edges of the dumpster enclosure;

3. The previously proposed two-story eight-unit building has been replaced with 2 two-story four-unit buildings;

4. The proposed covered patio with a fire pit has been relocated so that it will between the 2 two-story four-unit buildings;

5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road; and

6. Landscaping has been added along the North Forest Road frontage of the Project Site.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on **Monday, March 8th at 7:00 p.m.**

If the Town Board approves the pending application, then the next step in the project review process will be to seek Site Plan approval from the Planning Board once the fully engineered plans

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsr-legal.com • www.hsr-legal.com

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

Please feel free to contact me with any questions at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the enclosed updated Concept Site Plan.

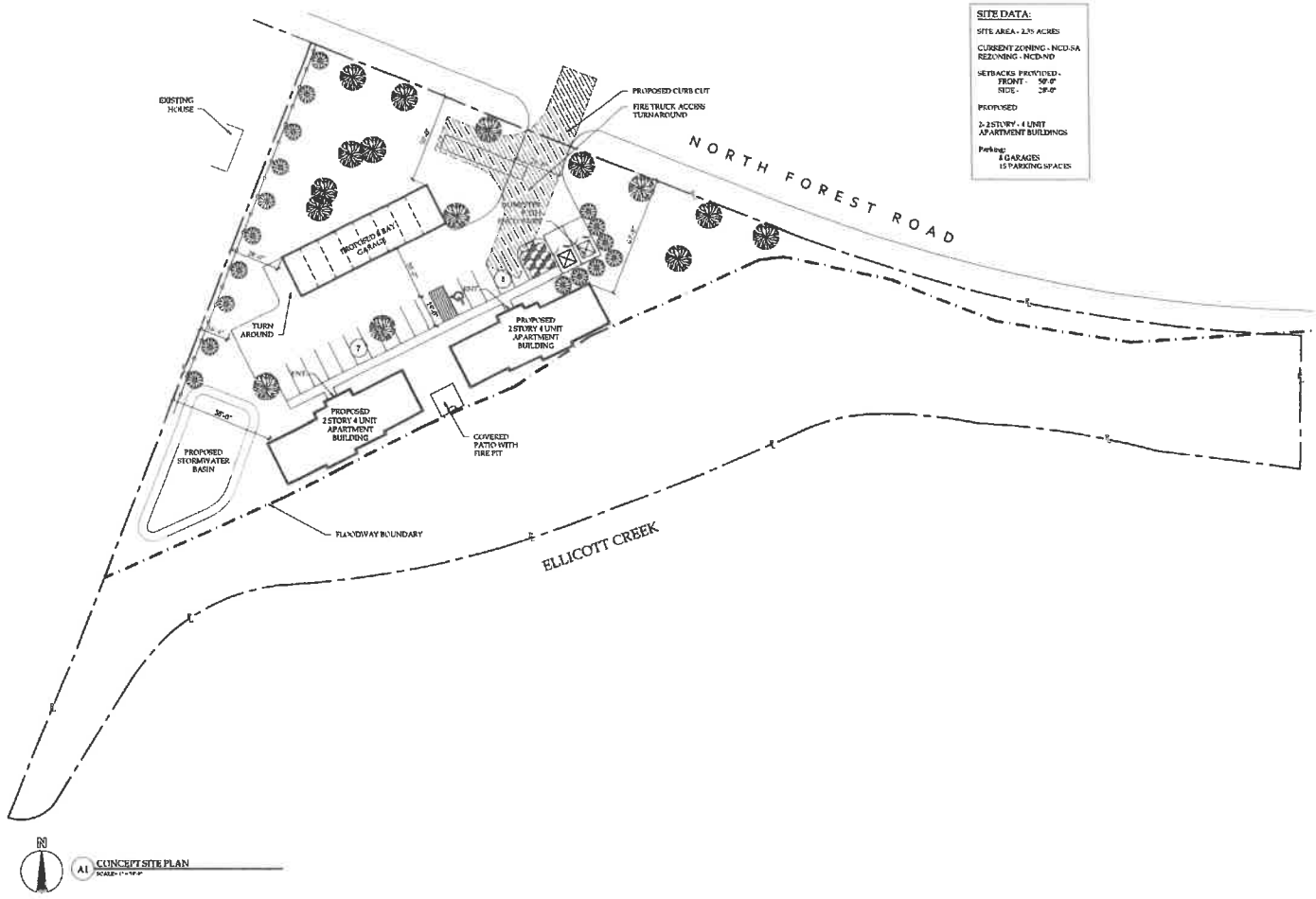
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc. 11" x 17" copy updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21]

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S.Hurd DRAFTER W.Masharoff
FOR CAPT. _____ INTERIORS K.Hansen

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS · PC
1291 MILITARY RD PH. 716.691.0900
AMHERST NY 14221 FAX 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

HSM

March 2, 2021

Joseph Hausbeck
2180 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Mr. Hausbeck:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

An 11" x 17" size copy of the updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21] is enclosed depicting the following modifications to the project layout:

1. The previously proposed stormwater basin on the western portion of the Project Site adjacent to the property at 2180 North Forest Road has been eliminated;

2. The dumpster enclosure has been relocated from the western portion of the Project Site to the eastern portion of Project Site. Additionally, screening has been added on the exterior edges of the dumpster enclosure;

3. The previously proposed two-story eight-unit building has been replaced with 2 two-story four-unit buildings;

4. The proposed covered patio with a fire pit has been relocated so that it will between the 2 two-story four-unit buildings;

5. Landscaping and a fence has been added along the western boundary of the Project that is contiguous to 2180 North Forest Road; and

6. Landscaping has been added along the North Forest Road frontage of the Project Site.

The Town Board will be holding continuation of the virtual public hearing in connection with the pending request to reclassify the Project Site from NCD-SA to NCD-ND and to amend the Audubon Development Plan during its meeting on **Monday, March 8th at 7:00 p.m.**

If the Town Board approves the pending application, then the next step in the project review process will be to seek Site Plan approval from the Planning Board once the fully engineered plans

HOPKINS SORGI & MCCARTHY PLLC
Attorneys at Law
5500 Main Street, Suite 343 • Williamsville, New York 14221
Direct: 716-510-4338 • E-mail: shopkins@hsr-legal.com • www.hsr-legal.com

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

Please feel free to contact me with any questions at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the enclosed updated Concept Site Plan.

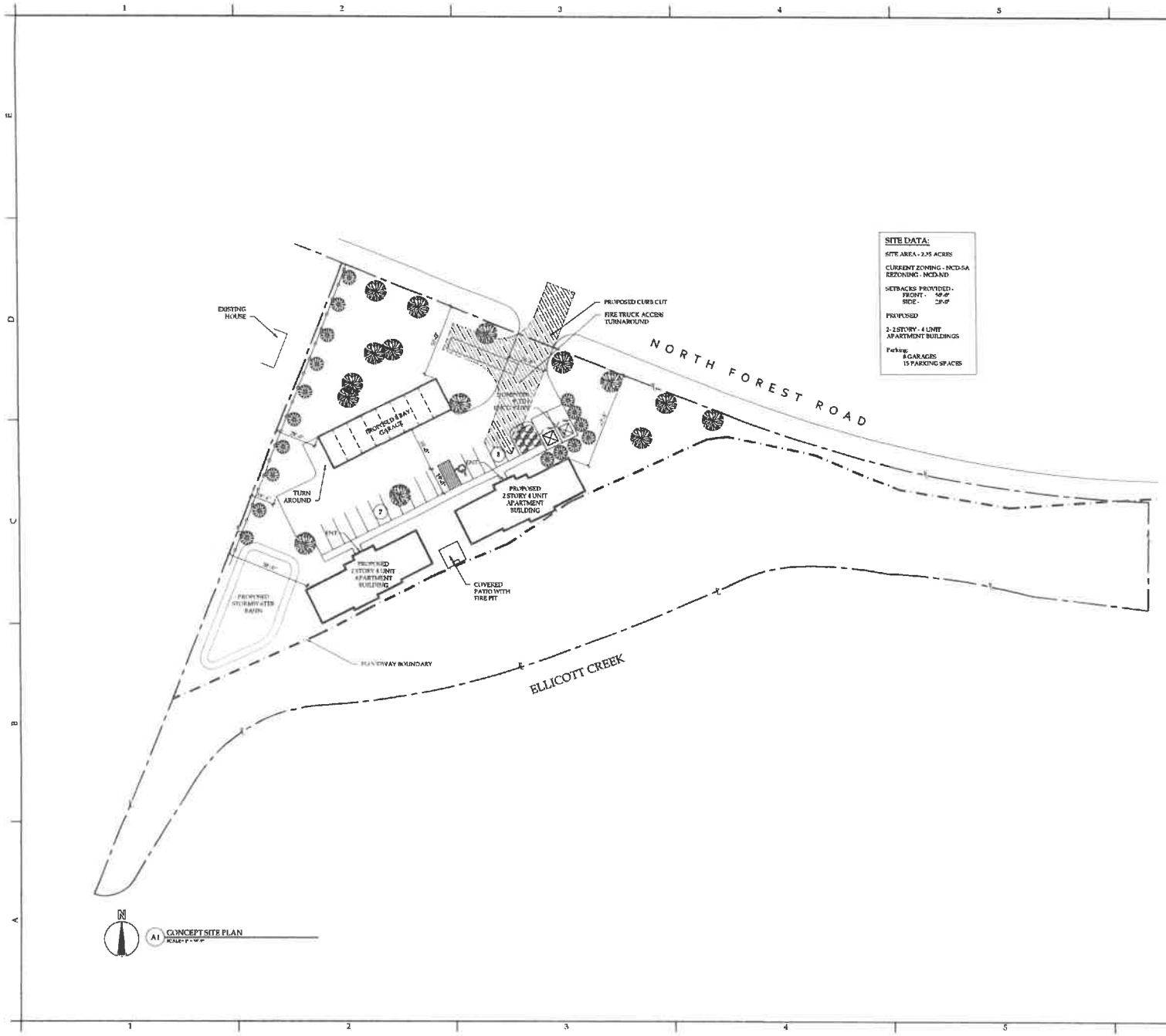
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc. 11" x 17" copy updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21]

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S.Hunt DRAFTER W.Manhardt
JOB CAPT. _____ INTERIORS K.Hermann

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS · PC
1301 MILLERSPORT HWY PH. 716.691.0800
AMHERST NY 14221 FAX 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

HSM

March 2, 2021

Fran Cummings
2200 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Ms. Cummings:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

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and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

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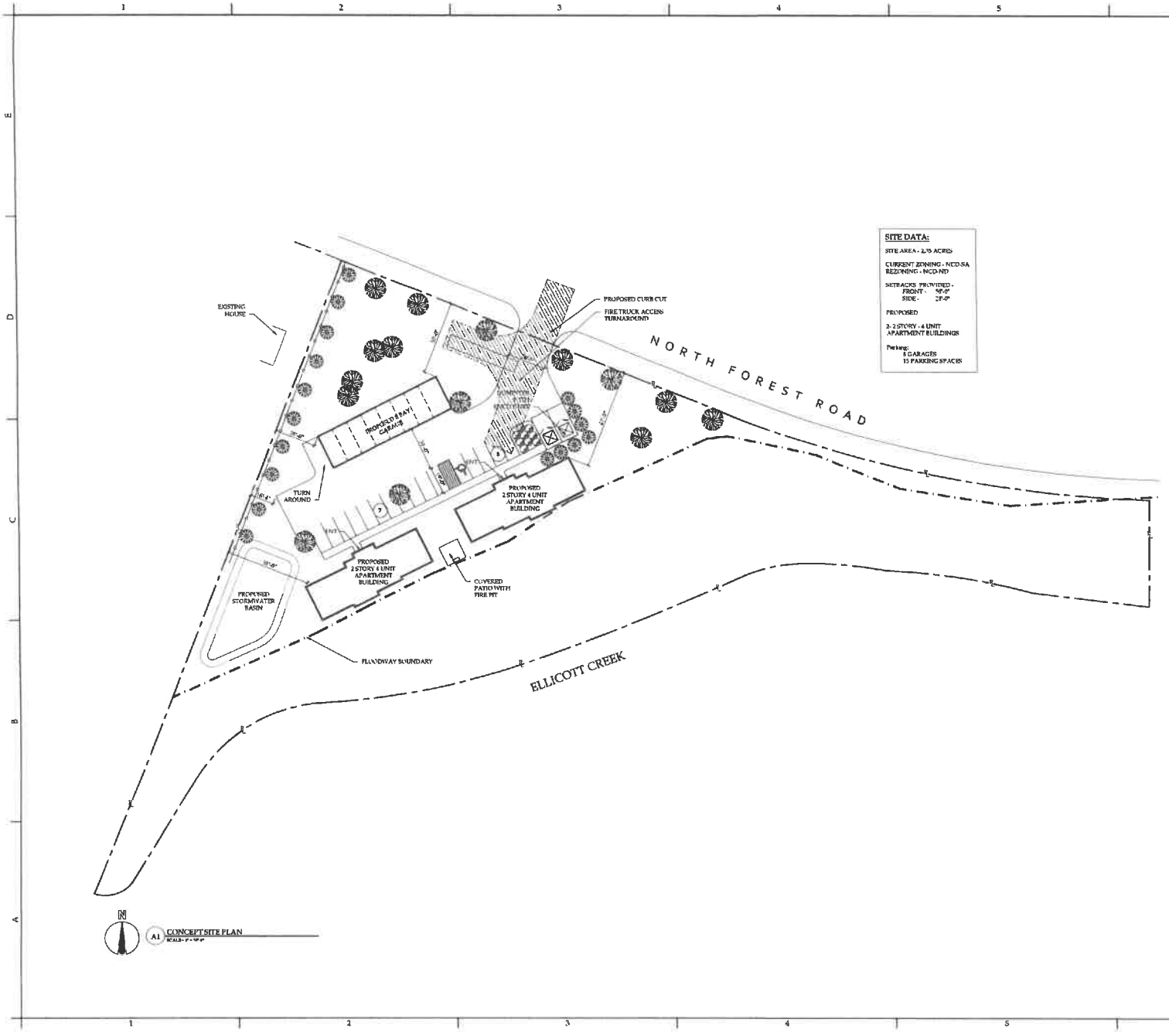
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

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Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P.Silvestri
PROJ. ARCH. S. Hunt DRAFTER W. Manhardt
JOB CAPT. _____ INTERIORS K. Hamann

SEAL:

TITLE:

CONCEPT SITE PLAN

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AMHERST NY 14221 FAX 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

HSM

March 2, 2021

Karen Macris
2230 North Forest Road
Williamsville, NY 14221

Re: Application to Reclassify 2160 and 2170 North Forest Road from NCD-SA to NCD-ND and to Amend the Audubon Development Plan [Z-2020-06]
Applicant/Project Sponsor: Coromandel Estates Amherst LLC
File 10181.1

Dear Karen:

This letter is being sent to you to provide you with a project update. Based on the input received during the virtual public hearing held by the Town Board on February 22nd, the layout of the proposed project has been updated.

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and related technical documentation have been prepared by Carmina Wood Morris DPC, the project engineering firm.

Please feel free to contact me with any questions at 510-4338 or via e-mail at shopkins@hsr-legal.com if you have any questions regarding this letter or the enclosed updated Concept Site Plan.

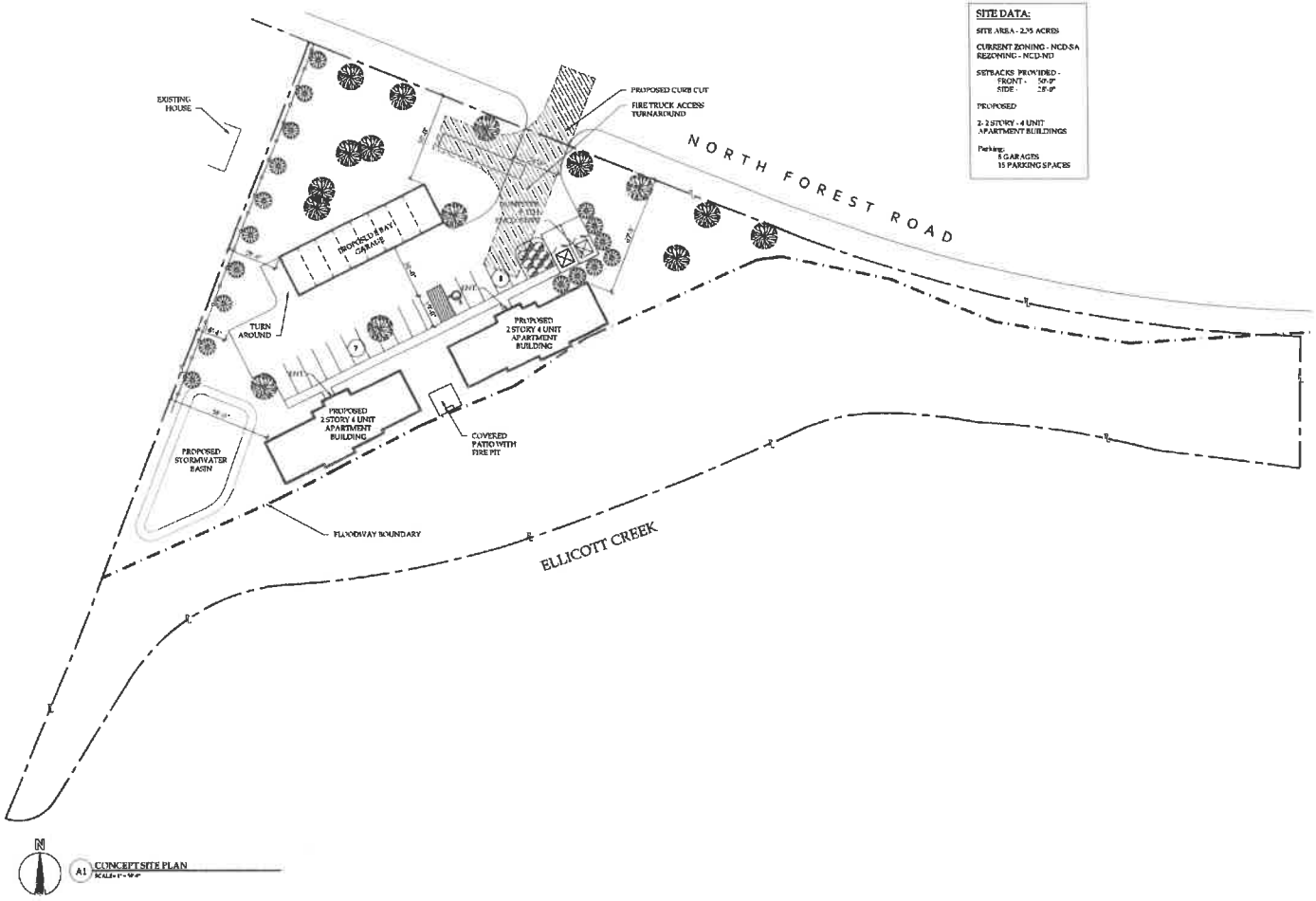
Sincerely,

HOPKINS SORGI & MCCARTHY PLLC

Sean W. Hopkins, Esq.

Enc. 11" x 17" copy updated Concept Site Plan [Drawing AS-101 – Date: 03/01/21]

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon



A1 CONCEPT SITE PLAN

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NORTH FOREST APARTMENTS

2160-2170 North Forest Rd
Amherst, ny

ISSUE:

SA PROJECT TEAM: PRINCIPAL P. Silvestri
PROJ. ARCH. S. Hynd DRAFTER W. Manhardt
JOB CAPT. _____ INTERIORS K. Hamann

SEAL:

TITLE:

CONCEPT SITE PLAN

SILVESTRI
ARCHITECTS - PC
1321 AIRLEPSPORT HWY PH. 716.691.0000
AMHERST NY 14221 FAX 716.691.4773

SA JOB #: 20060.02
DATE: 03/01/21
DRAWING #: AS-101

Attachment: Kulpa-Ltr-Updated Concept Site Plan-03-03-21 (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

Public Hearing – Town of Amherst Town Board

Request to Approve Amendment #73 of the Audubon New Community Development Plan to Reclassify 2.35 acres of Land from NCD-SA to NCD-ND

Address: 2160 & 2170 North French Road

Petitioner: Coromandel Estates Amherst, LLC

(Z-2020-06)

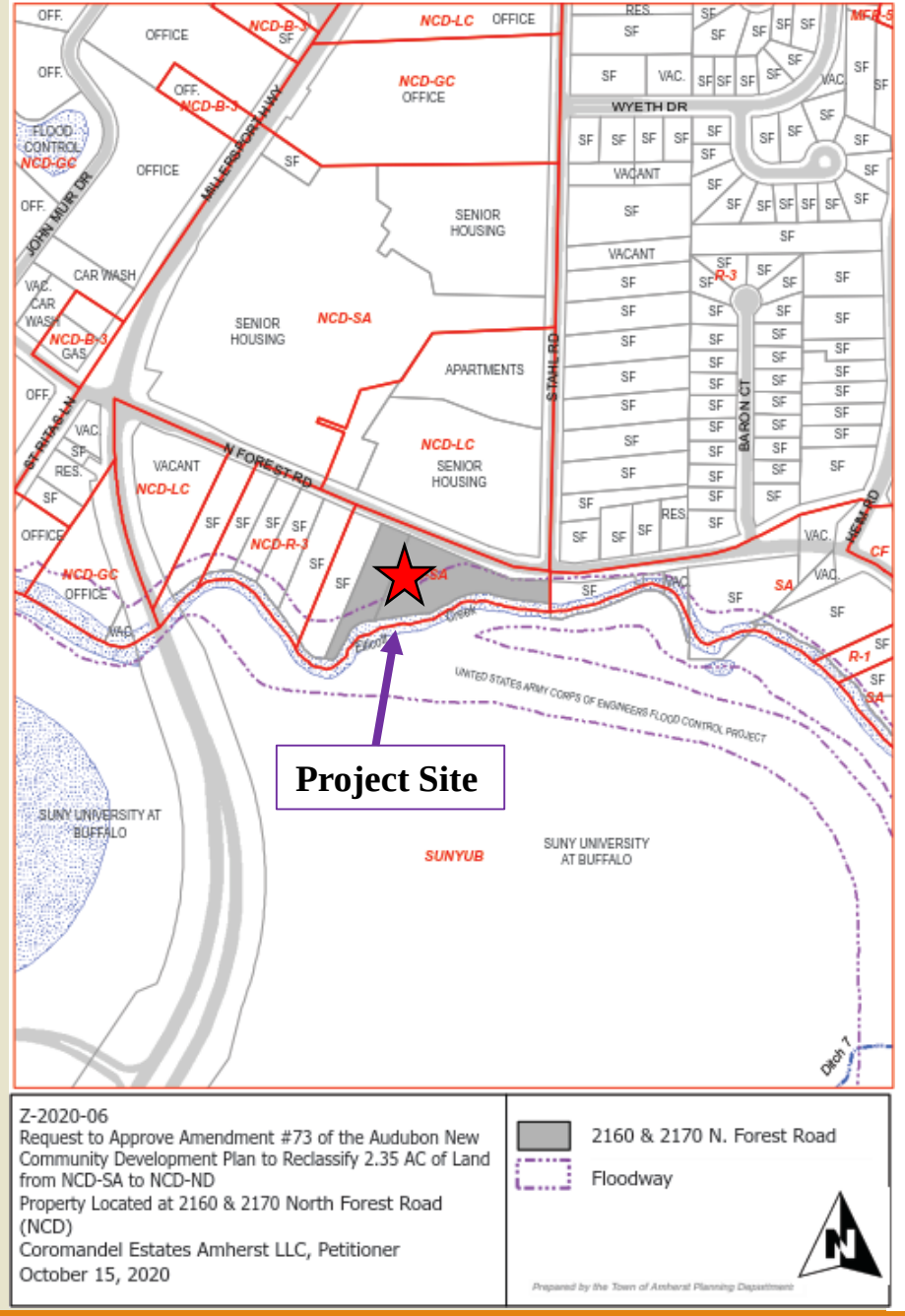
Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

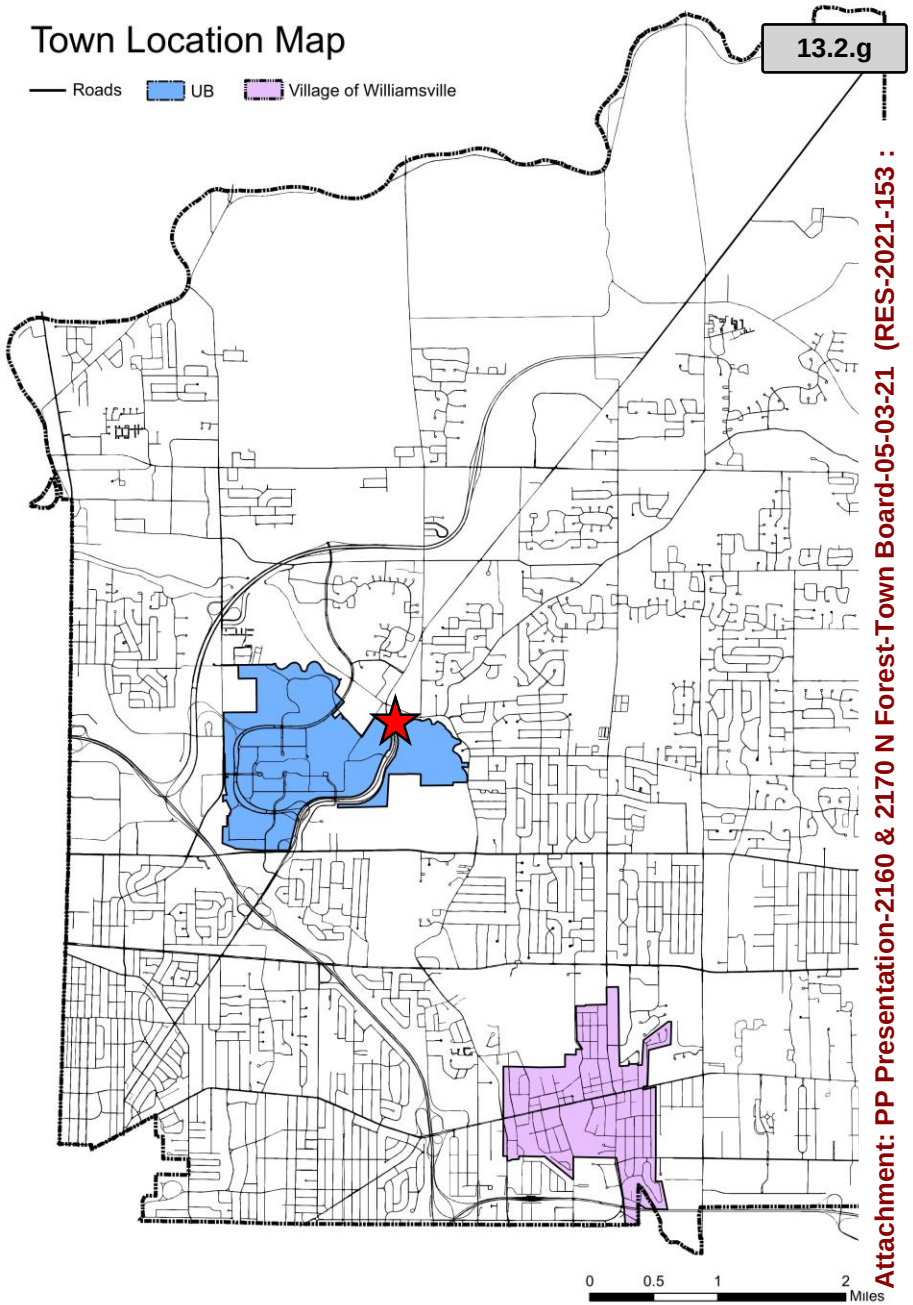
Location:

- South side of N Forest Road, approximately 900± feet southeast of the intersection of Millersport Hwy and N Forest Road; and located at the southwest corner of Stahl Road and N Forest Road intersection

Zoning: New Community District – Suburban Agriculture ("NCD-SA")

Proposed Reclassification: New Community District – Neighborhood District ("NCD-ND"





13.2.g

Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

Continuation of the Public Hearings held on February 22nd and April 5th [Not requesting issuance of a decision this evening]

Parcel Size:
2.35± acres

Neighboring Uses:

- Vacant land zoned NCD-SA adjacent to the east
- Single Family residential zoned NCD-R3 to the west and north east
- Asbury Pointe Retirement Community – Zoned NCD-LC to the North
- Vacant land owned by SUNY to the south on the opposite side of Ellicott Creek



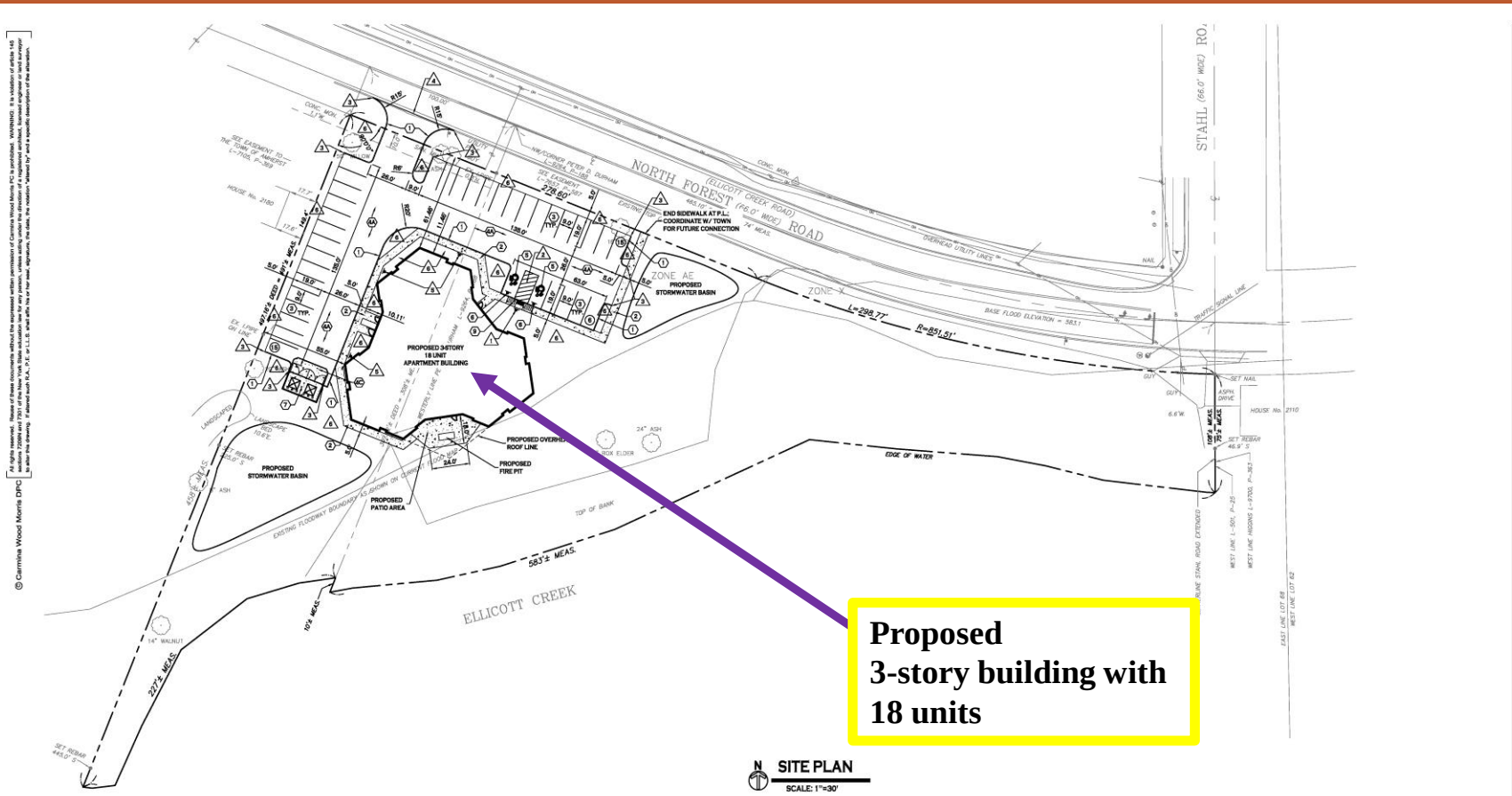
Project Description:

- Request to reclassify 2.35 acres of land from NCD-SA to NCD-ND, and a request to approve Amendment #73 of the Audubon New Community Development Plan
- Two 2-story multi-family building consisting of 8 attached residential units for lease and related site improvements.
- One driveway onto North Forest Road, access aisles, water and sanitary sewer lines and other necessary utility connections are included on the updated Concept Plan.
- The project is a Type I Action due to the proximity of the project site to Ellicott Creek, which is a flowing watercourse-any project within 100 ft. of a flowing watercourse is to be classified as Type I action per Town Local Law adopted in 1982.
- Letters with updated copy of the Concept Plan send to the individuals who spoke during the virtual public hearing held by the Town Board on February 22nd.

Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

Original Concept Plan:

- 3-story building with 18 units and 36 parking spaces
- The originally proposed project layout updated based on input received regarding the original Concept Plan



GENERAL NOTES:

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

SITE NOTES:

1. ALL RADII SHALL BE 3'-0" UNLESS OTHERWISE NOTED.
2. ALL DISTURBED AREAS SHALL HAVE 4" MIN. OF TOPSOIL AND SEED.
3. ALL DIMENSIONS FROM PROPERTY LINES SHALL BE MEASURED PERPENDICULAR TO THE PROPERTY LINE.
4. CENTER ENTRANCE SIDEWALKS ON DOOR OPENINGS.
5. BUILDING DIMENSIONS ARE APPROXIMATE, REFER TO ARCHITECTURAL DRAWINGS FOR LAYOUT DIMENSIONS.

DETAIL LEGEND SEE SITE DETAIL SHEET

1. CONCRETE CURB
2. CONCRETE SIDEWALK, 5' WIDE UNLESS OTHERWISE NOTED
3. 90° PARKING STALL
4A. STANDARD DUTY ASPHALT
4C. EXTERIOR CONCRETE SLAB ON GRADE
5. HANDICAP PAVEMENT MARKINGS
6. HANDICAPPED PARKING SIGN
7. DUMPSTER ENCLOSURE
8. LIGHT POLE FOUNDATION
9. HANDICAP PAVEMENT RAMP

NOTE LEGEND

1. INSTALL "NO PARKING" SIGN, M.U.T.C.D. SIGN NO. R7-1C
2. 4" WIDE YELLOW PAINT STRIPE @ 45° & 2' O.C., INFILL AREA AS SHOWN
3. RUNOUT CURB IN 2' OR MATCH EXISTING CURB
4. MATCH EX. EDGE OF PAVEMENT, SAWCUT AS REQ'D TO ACHIEVE SQUARE EDGE TO MATCH
5. INSTALL "NO PARKING - FIRE LANE" SIGN, M.U.T.C.D. SIGN NO. R8-3
6. LANDSCAPED AREA - SEE LANDSCAPE PLAN, IF NO PLANTINGS, INSTALL TOPSOIL & SEED

SITE DATA

TOTAL SITE: 2.35 ACRES
ZONED: NC/HA-1(CURRENT) TO BE REZONED TO NC/ND
USE: PROPOSED 3-STORY 18 UNIT APARTMENT BUILDING

PARKING REQ'D: 2 SPACE PER UNIT,
18 UNITS x2 = 36 SPACES REQ'D,
36 SPACES PROVIDED.

SITE LEGEND

- PROPERTY LINE
- PROPOSED CONCRETE CURB
- PROPOSED CONCRETE SIDEWALK
- PROPOSED ASPHALT PAVEMENT
- PROPOSED SIGN
- PROPOSED PARKING NUMBER (37)
- PROPOSED LIGHT POLE
- PROPOSED WALL MOUNTED LIGHT

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

30' 30 0 30 60FT.

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Carmina Wood Morris DPC
487 Main Street Suite 800
Buffalo, New York 14203
P 716.842.3155
F 716.842.0263

REVISIONS:
No. Description Date

PROJECT NAME:
Site Development Plans for:
Proposed 3-Story Apartment bldg
2160 - 2170 North Forest Road
Amherst, New York

Date: 08/2020
Drawn by: C. Wood
Scale: As Noted

DRAWING NAME:
Concept
Site Plan

DRAWING NO.
C-100
Project no.: 20.143

Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :)

Concept Plan Presented on February 22nd:

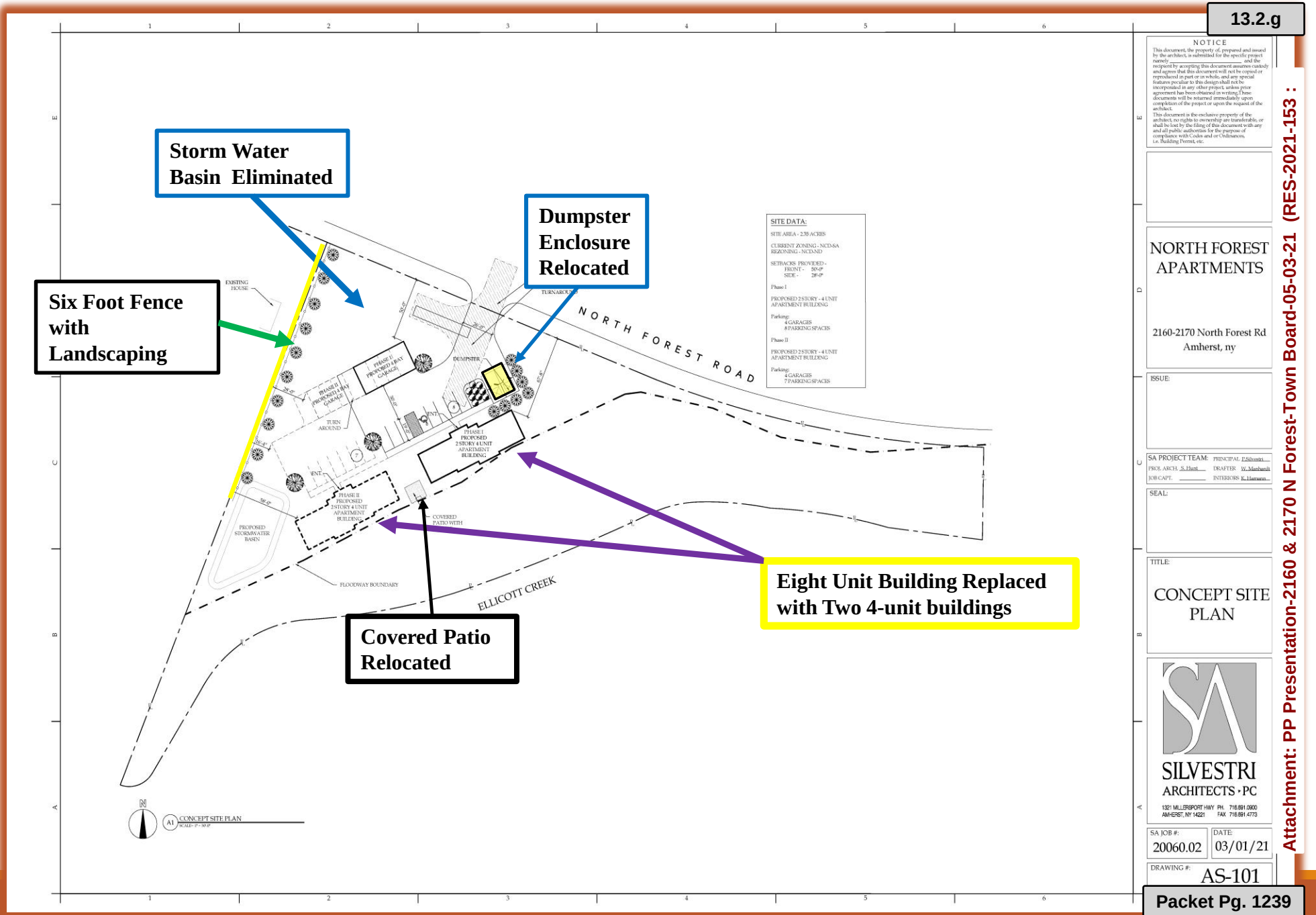
- Project layout had been updated based on input received regarding the original Concept Plan
- 2-story building with 8 units and 16 parking spaces [Density reduced by 56%]
- Low Density: 3.4 units per acre
- No impact to the regulated floodway



Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

Updated Concept Plan presented during the Public Hearing on April 5th:

- Two 2-story buildings with 23 parking spaces [8 garage spaces] – 2.87 spaces per unit
- Stormwater basin eliminated along North Forest Road frontage
- Covered patio relocated
- Dumpster enclosure relocated
- 6 foot fence with landscaping added along property line with 2180 North Forest Road
- No impact on the regulated floodway



Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

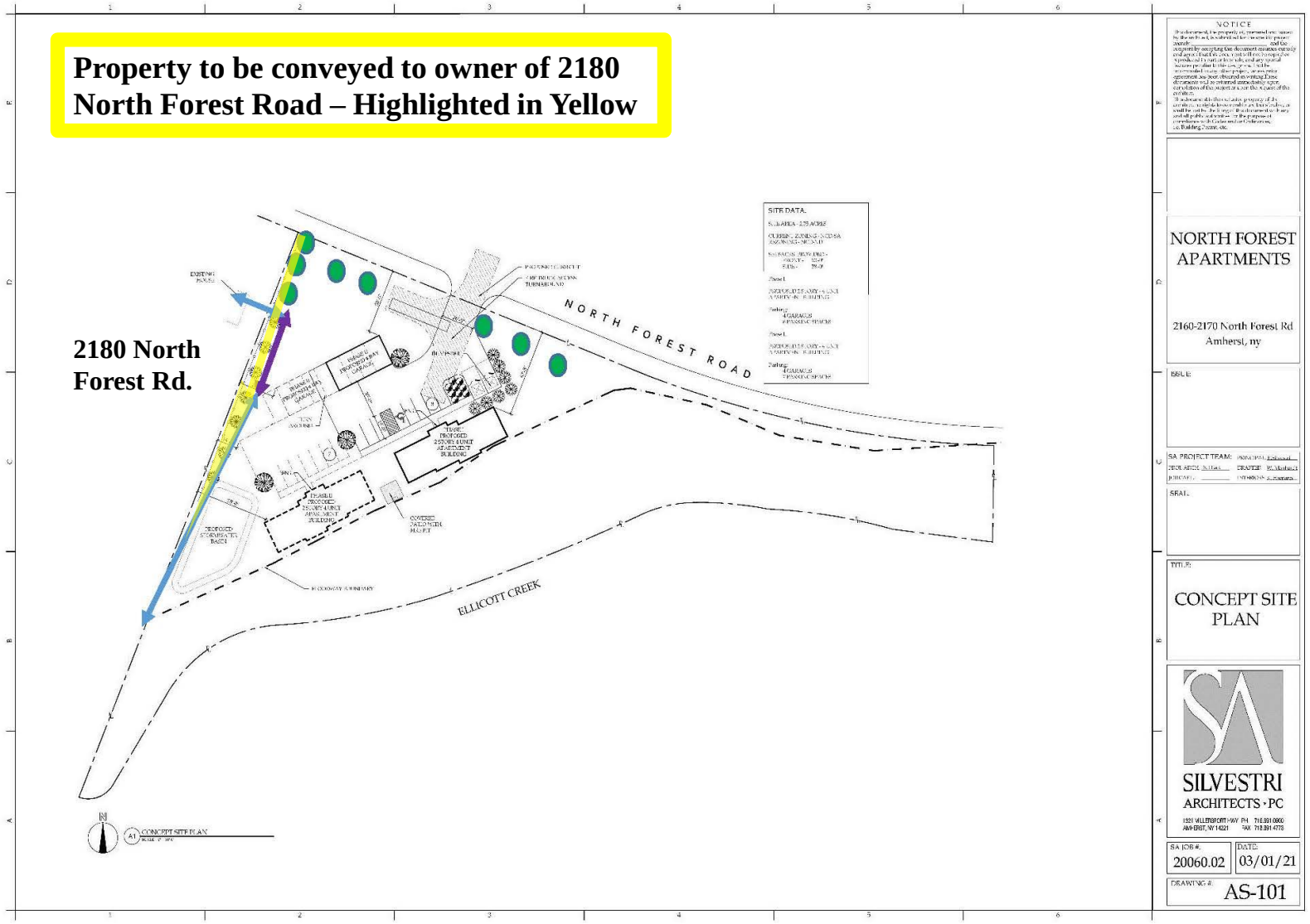
Updated Concept Plan:

Green: Landscaping along frontage of shared property line with 2180 North Forest Road and along North Forest Road frontage of the Project Site

Purple: 6 ft. fence beginning at front of home on 2180 North Forest Road located 15 ft. from existing property line

Blue: Ranch style open fence with height of approx. 3 ft. [same fence to be attached to existing home on adjacent property]

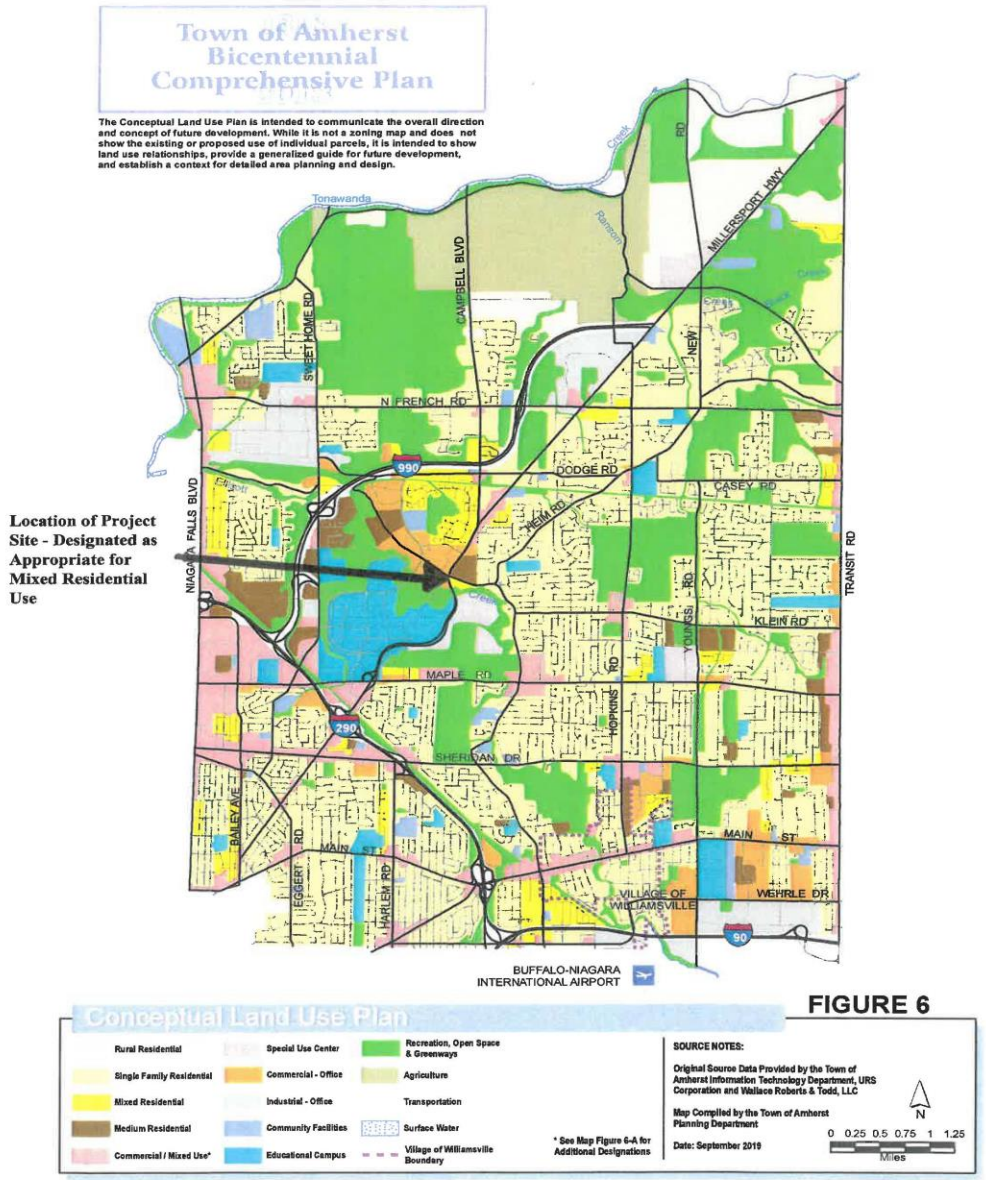
Yellow: 15 ft. of property to be conveyed to owner of 2180 North Forest Road upon the Applicant obtaining site plan approval and closing on the purchase of the Project Site.



Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

Reclassification of Project Site from NCD-SA to NCD-ND:

- Recommended land use per Figure 6 of the Comprehensive Plan is Mixed Residential Use
- Mixed-Residential land use category is described in Chapter 3 of the Comprehensive Plan as being appropriate for a residential density of 4-12 units per acre - The density of the proposed project is only 3.4 units per acre.
- "Although longstanding policy has tended to favor low-density, single-family residential use, recent development trends have seen a substantial increase in the amount of new multi-family housing. The need for higher density housing will grow along with the component of the population that will increasingly choose smaller housing types, including retirees, empty nesters, singles, and other smaller household types."
- Current NCD-SA zoning is not consistent with the adopted Comprehensive Plan
- NCD-SA zoning only allow for agricultural uses and single-family dwellings on large lots.



Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

State Environmental Quality Review Act ("SEQRA"):

- SEQRA's substantive requirements:
  - Identify the potential environmental impacts,
  - Hard Look at the identified impacts, and
  - Issue SEQRA determination supported by a reasoned elaboration
- Type I action due to proximity to Ellicott Creek
- Density reduced from 18 unit to 8 units [3.4 unit per acre – Density of 3.5 units per acre allowed in the R-3 zoning district]
- **No development in the regulated floodway – A floodplain development permit will be required from the Building Department**
- **No lighting spillover onto adjacent properties [Photometric Plan will be submitted with the Site Plan Application]**
- **The project is not a student housing project nor a short-term rental project**
- No wetlands per the Wetland Investigation Letter of Scott Livingstone of Earth Dimensions dated July 7, 2020
- Traffic: Single driveway onto North Forest Road - The trip generation rate for the peak weekday hour for the 8 proposed apartments per the ITE Trip Generation Report is 4.48 trips

Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

State Environmental Quality Review Act ("SEQRA"):

- No impact determination letter issued by the NYS Office of Parks, Recreation and Historic Preservation on October 30, 2020
- On-site stormwater management system will comply with the stringent stormwater water quality and quantity standards of the New York State Dept. of Environmental Conservation including handling of a 100 yr. storm event
- Fully engineered plans, Engineer's Report and SWPPP will be required with future submission of a Site Plan Application
- Geotechnical Report prepared by Empire Geo Engineering Services dated September 17, 2020 – foundation design and site improvement based on soil conditions per NYS Building Code requirements

Approximate Depth and Elevation of Top of Bedrock		
Test Boring	Approximate GroundSurface Elevation (feet)	Depth / Elevation ofTop of Bedrock (feet)
B-1	582.3	25.2 / 557.1 (C)
B-2	581.1	26.0 / 555.1 (AR)
B-3	579.5	26.5 / 553.0 (AR)
B-4	578.1	24.4 / 553.7 (C)
B-1 (2014)	581 +/-	26.0 / 555.0 (AR)
B-1 (Feb. 2020)	580.0	27.7 / 552.3 (AR)

WMA ENGINEERING DPC|DBA
EMPIRE GEO TECHNICAL ENGINEERING SERVICES

CORPORATE/ BUFFALO OFFICE
5167 South Park Avenue
Hamburg, NY 14075
Phone: (716) 649-8110
Fax: (716) 649-8051

ALBANY OFFICE
PO Box 2199
Ballston Spa, NY 12020

5 Knabner Road
Mechanicville, NY 12118
Phone: (518) 899-7491
Fax: (518) 899-7496

CORTLAND OFFICE
60 Miller Street
Cortland, NY 13045
Phone: (607) 758-7182
Fax: (607) 758-7188

ROCHESTER OFFICE
535 Summit Point Drive
Henrietta, NY 14467
Phone: (585) 359-2730
Fax: (585) 359-9668

September 17, 2020
Project No. WB-20-105
(SJB Project No. BE-20-105)

Postwork Capital
c/o Buffalo Automation
10236 Transit Road
East Amherst, New York
14051

Attn. Mr. Thiru Vikram, CEO

Re: Geotechnical Engineering Report
Proposed Elysium Apartment Complex
2160 North Forest Road
Town of Amherst, New York

Dear Mr. Vikram:

WMA Engineering DPC, dba Empire Geotechnical Engineering Services (Empire), is pleased to submit the enclosed Geotechnical Engineering Report for the above referenced project. We have also e-mailed you an electronic copy (pdf file format) of this report, for your use and for distribution. Please contact me should you have any questions or wish to discuss this report. Thank you for considering Empire for this work and we look forward to working with you through the completion of this project.

Sincerely,

WMA Engineering DPC, dba
Empire Geotechnical Engineering Services

Thomas R. Seider, P.E.
Geotechnical Engineer

Enc.: Geotechnical Engineering Report

A Woman Owned Firm

Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

Planning Board's Recommendation:

- Planning Board held a public hearing on January 21st
- The Planning Board adopted a resolution by a unanimous 7-0 vote recommending that the Town Board:
  - Issue a negative declaration pursuant to SEQRA,
  - Approve the reclassification of the Project Site from NCD-SA to NCD-ND, and
  - Approve Amendment #73 to the Audubon New Community District Development Plan
- The Planning Board recommended the following condition: "That the petition include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage."
- Planning Board's findings in support of its favorable recommendation were as follows:
  - A. The proposed Revision to the Development Plan meets the intent and objectives of a New Community District as expressed in Subsection 1-1.1.
  - B. The proposed Revision to the Development Plan meets all the requirements of Section 5-2-3 through 5-2-6.
  - C. The proposed Revision to the Development Plan is conceptually sound in that it meets present and future community needs.
  - D. There are or will be adequate services and utilities available or proposed to be made available in the construction of the development.
  - E. **The proposed Amendment to the Development Plan is consistent with the Town Comprehensive Plan.**

Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

Conclusion:

- Requesting that the Town Board:
  - 1. Issue a negative declaration pursuant to SEQRA,
  - 2. Approve the reclassification of the Project Site from NCD-SA to NCD-ND subject to appropriate conditions, and
  - 3. Approve Amendment #73 to the Audubon New Community District Development Plan subject to the condition recommended by the Planning Board as follows: “That the petition include additional parking spaces beyond the 17 spaces shown on the concept plan at the site plan stage.” [The updated Concept Plan depicts 23 parking spaces]
- Questions…

Attachment: PP Presentation-2160 & 2170 N Forest-Town Board-05-03-21 (RES-2021-153 :

3 May 2021

Francina J. Spoth, Town Clerk
Town of Amherst
5583 Main Street
Williamsville, New York 14221

Via email to: fspoth@amherst.ny.us

Re: Public Hearing of the Town Board held on May 3, 2021
Request to Amend the Land Use Classification of 2160 and 2170 North Forest Road

To: MEMBERS of the TOWN BOARD:

Kindly accept my apology for my inability to communicate via zoom last evening. I was able to hear portions of the proceedings, but whether "muted" or "unmuted", was simply unable to be heard. This particular problem was a first for me and was extremely frustrating. I did hear that the hearing was being closed, but I ask your indulgence in considering the following comments I intended to make last evening.

I did meet at the property with Mr. Hopkins to discuss some issues my wife and I had specific to our ownership of the adjoining property. Mr. Hopkins was extremely professional and concessions were made regarding those issues. However, the resolution of the matter was complicated further by the Petitioner's new proposal to do the development in phases. We strongly object to that process. The dust, dirt, noise and inconvenience of construction would be unbearable if it had to be endured twice. I note that the developer wishes to avail itself of all hours of construction operations allowable under law, including Sundays, if needed. Under the circumstances, two phases of construction would be one too many. It should also be noted that the Petitioner's prior concept plans for more units did not require more than one phase. Why two phases should be necessary for a smaller project is perplexing.

That being said, my neighbors and I remain opposed to this project as it is simply too big and the intended use is simply incompatible with the character of the neighborhood as a single family development. I believe we have provided ample justification for this Board to deny the proposed petition. Please consider the following points:

- This is an apartment complex which belongs on the West side of Millersport Highway – not the East side. The West side is inundated with similar projects. The East side is fully developed with single family homes, with the sole exception of this one vacant parcel which sits in the middle of single family homes.

- A similar proposal for the corner of North Forest and Millersport (a commercial highway) was not approved. It is inconsistent to allow the same type of project further up North Forest.

Attachment: Town of AMHERST BOARD LTR - Hausbeck (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

- The majority of the site (more than 50%) is in a floodway and cannot be developed even if the petition was to be approved.

- If 8 units were to be approved for the remaining 1.1 acres, the project would have a de facto density of 7.3, well in excess of the maximum density of 5 allowable under the Town Zoning Ordinance 5-2-6.

- The Petitioner's repeated assertion that the proposal is "consistent" with the Town's Comprehensive Plan is simply **not** binding on this Board. The Plan clearly states that it is intended to be **"flexible".** The Plan is **not** a zoning map and it is **not** meant to dictate land use.

In addition to the above, we have raised a number of issues about whether the site itself is suitable for this type of development due to documented flooding, documented erosion issues, and documented uncontrolled and un-engineered filling of portions of the site which were at one time part of Ellicott Creek.

The Board is certainly within its rights to reject the petition and I urge it to do so.

Thank you for your consideration.

Sincerely,

Joseph Hausbeck

Attachment: Town of AMHERST BOARD LTR - Hausbeck (RES-2021-153 : 2160 & 2170 Request to Rezone and Amend the Audubon

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Planning
DOC ID: 24742

COMMUNICATION 2021-93 **REFERRED**

Presentation to the Town Board on Recommendations from the LISC Zombie Grant Report on September 27, 2021

The Task Force would like to present a report to the Town Board at their work session of September 27, 2021. Attached is a letter and the Zombie & Vacant Property Initiative Procedural Report.

9/13/2021
Referred to Planning, Building and Town Clerk for 9/27 Town Board Work Session

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

Amherst

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

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

September 8, 2021

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

Subject: Presentation to the Town Board on recommendations from the LISC Zombie 2.0 Grant report

Honorable Board Members:

The Town's Zombie & Vacant Property Task Force has been working over the past two years on furthering the Town's efforts to address "zombie" and vacant nuisance homes in Town. This work was funded by the LISC Zombie 2.0 Grant awarded in 2019. As part of this grant work the Task Force has prepared a report with recommended actions and toolkit enhancing the Town's capacity in preventing vacant and zombie properties, while also improving swift remediation of properties that become a hazard.

The Task Force is now pleased to present this report to the Town Board, which is a requirement of the grant. Staff respectfully requests that a presentation time be allotted for this purpose on the Town Board Meeting for September 27, 2021, preferably at the work session. The Zombie & Vacant Property Initiative Procedural Report is attached for your reference.

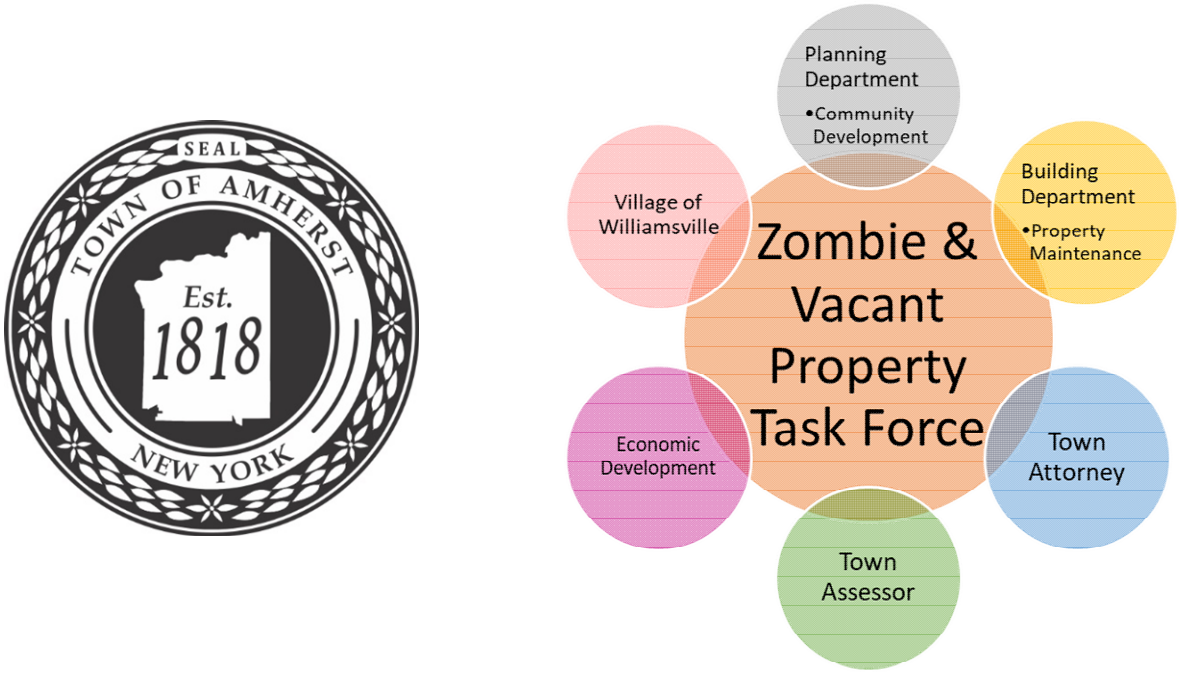
Thank you for your assistance with this matter.

Very truly yours,

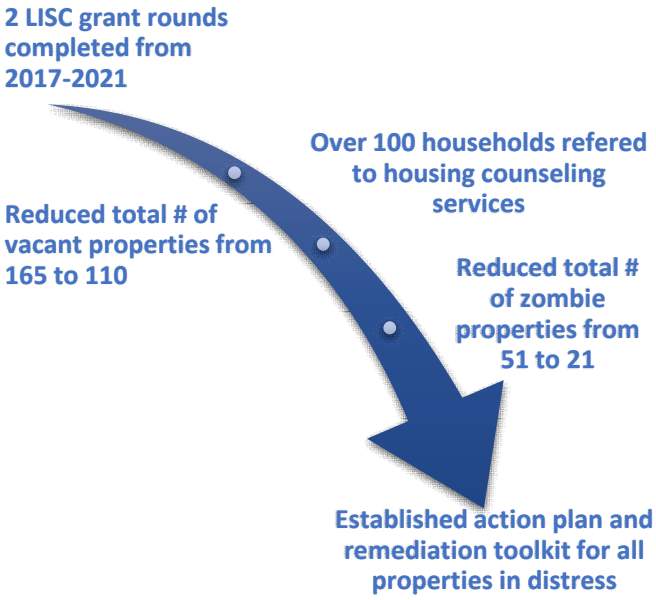
Daniel J. Ulatowski, AICP
Assistant Planning Director

Att.

Attachment: zombie1-09082021104124 (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)



ZOMBIE & VACANT PROPERTY REMEDEIATION INITIATIVE: 2021 PROCEDURAL REPORT



Town of Amherst, NY

LISC WNY

Quinn, James
jquinn@amherst.ny.us

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

Acknowledgements

This initiative, its programming, and the proposed action plan was made possible through the efforts and contributions of the following:

Town of Amherst Zombie and Vacant Property Task Force

Richard Chudy, Assistant Code Enforcement Officer

James Quinn, Assistant Planner

Laurie Stillwell, Director of Community Development

Mark Berke, Commissioner of Building

Joe Frese, Code Enforcement Officer

Ann Demopoulos, Deputy Town Attorney

Emily Melski, Coordinator of Federal and State Aid

Maggie Hamilton Winship, Economic Development Director

Liz Fickhesen, Real Property Appraiser

Linda Juul, Director of Finance

Erie County Task Force

Michael Kearns, Erie County Clerk

Kate Lockhart, WNY Law Center

Gail Londner, Belmont Housing

Jocelyn Gordon, BENLIC

Town of Amherst Planning Department

Dan Howard, Director of Planning

Dan Ulatowski, Assistant Director of Planning

Tom Voigt, Assistant Planner

Town of Amherst Community Development

Susan Fitzpatrick, Community Development Assistant

Jeff Klein, Code Enforcement Officer

Rachel Boerschig, Clerk Typist

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

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TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

Background

After the 2008 housing crisis and the resulting 2016 bank settlement, funds were made available to municipalities in New York State to take stock of and address the unprecedented number of zombie and vacant properties in their jurisdictions. As defined by LISC, zombie properties are vacant properties, with a mortgage lien that is stuck in the foreclosure process. The unprecedented foreclosure crisis highlighted the weaknesses and disconnect between the mortgage industry and local government. In response, the Town of Amherst adopted a resolution on May 8, 2017 to establish a Zombie & Vacant Property Task Force. This Task Force consists of members from town offices including, Building Department, Village of Williamsville representation, Planning Department, Town Attorney, and Assessor's Office. The Task Force requested the additional assistance of two members within the Town to represent the community, one of which has vast experience as an Attorney and the other as a Real estate agent.

The Town was awarded two separate rounds of grant funds from LISC between 2017 and 2021 to first gain an accurate scope of the issue within the Town and to then develop and implement an action-oriented foreclosure prevention protocol to serve the residents who are or neighbors of those going through the foreclosure process. By establishing a database and registering all distressed and foreclosure properties, the Task Force was able to study what indicators led to specific issues and what neighborhoods they would occur in. With this information, the Task Force was able to prevent zombie properties from being vacant and distressed all together in most cases. The Task Force met quarterly and developed a formalized procedure for zombie and vacant property remediation including a centralizing data source for strategized decision making. Over the course of the two grant cycles, the Task Force learned that the most effective approach to property remediation is to maintain a proactive procedure. In other words, the earlier a property is addressed in the foreclosure process and informed of the services and options available, the more likely the occupant will be able to stay in their home and remediate any code violations. This report takes this lesson as the basis of a proactive strategy and has been effectively put into practice.

Purpose

The Task Force was formed to assist and coordinate action among all town department and the residents of the Town of Amherst in an effort to prevent neighborhood blight caused by vacant and zombie properties. The Task Force worked to develop and implement creative ways to better serve the residents who are or neighbors of those going through the foreclosure process using legal interventions, organizational partnerships, zoning tools, Geographic Information Systems (GIS), and workflow software. Ultimately, the goal was to collaborate interdepartmentally to streamline a procedure of remediation so that these properties are handled efficiently and ethically with respect to the neighborhood.

This report compiles a specific *Action Plan* and strategy formulated through the execution of the LISC Zombie Property Grant between 2017 and 2021. Over the duration of the first and second round of the LISC Zombie Grant, the Task Force has researched and tracked over 600 foreclosures and has

coordinated with over 100 households to receive counseling and or financial assistance from one of our nonprofit partners. A majority of these households were successfully able to keep their home. Using the procedure and Property Toolkit described in this report, the Task Force has reduced the number of zombie properties in the Town from 51 in 2017 to 21 in 2021 and reduced vacant properties from 165 to 110 in the same time.

Leadership & Collaboration

The success of this initiative is due in large part because of the cross-municipal collaboration with LISC which helped communities share knowledge, best practices, and data to support better decision making. With institutional guidance from LISC, the Town of Amherst Zombie & Vacant Property Task Force was able to emerge as a regional leader in New York State in this effort to remediate zombie and vacant properties with its contributing lessons and insights. For instance, by collaborating with the Erie County Zombie Task Force, the Erie County Clerk began listing the loan servicer on the mortgage documents in addition to the bank that owned the mortgage. The Amherst Zombie & Vacant Property Task Force found that in most cases, the loan servicers are more responsible to the loan and the property than the bank owner and is therefore, the more efficient contact for when there are issues at the property or there is evidence of abandonment. By sharing this insight with Erie County, this policy created an additional layer of accountability saved valuable time.

Another example of Amherst Zombie & Vacant Property Task Force's contribution to this issue was the unexpected discovery that probate court barriers were found to be a common bottle-neck in the zombie property crisis. Whereas much of the focus was on delinquent mortgages, the Task Force found that isolated elderly populations needed legal services to establish a proper Will. These residents would pass leaving no one to maintain the property or establish the estate creating a new category of zombie property within Probate. By utilizing this procedure and collaborating within departments, the Task Force discovered a crucial service gap that was able to be addressed throughout the State.

Unfortunately, during the second round of the Zombie Grant, the entire world was hit with the COVID-19 Pandemic. Lockdowns and social distance requirements quickly became the new daily reality. This created a number of challenges both from a human and economic perspective. One challenge was how to adjust Town governance into response and recovery under the essential lockdown. At a critical moment, questions were being asked nationally about how to assist homeowners about unpaid mortgages due to the Pandemic. However, the Town of Amherst already had an outreach mechanism and decision-making procedure in place, based in the most comprehensive data sources to address this problem in the Zombie & Vacant Property Task Force. The Task Force when called upon by the Emergency Operations Center was able to quickly and accurately scope the problem and set a strategic outreach strategy for residents in forbearance due to the Pandemic.

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Action Plan

I. The **Planning Department** will assign a **Property Database Manager** who will update the Property Database quarterly and utilize available public records to monitor foreclosures
II. The **Property Database Manager** will identify perform historical title and legal research to determine risk of vacancy
III. The **Property Database Manager** will identify Moderate to High risk properties and enter complaints into the IPS system
IV. The Building Department will assign a **Code Enforcement Officer** from the Property Maintenance Division to respond to complaints entered into IPS by performing a basic property inspection for occupancy and code violations
    a. In doing so, the **Code Enforcement Officer** will A. confirm vacancy or occupancy while providing a photo on IPS via the complaint B. Cite any visible code violations C. post information on foreclosures and available counseling services to the front door of the property
V. The **Code Enforcement Officer** and the **Property Database Manager** will collaborate in regards to findings and potential for foreclosure while assigning an updated property status based on the inspection.
    a. Confirmed vacant properties that are not confirmed by NYS Department of Financial Services (DFS) in the vacant property database must be reported to DFS by the **Town Attorney**
VI. The **Task Force** will meet quarterly to discuss zombie and distressed property matters as well as update the zombie list and provide procedural guidance to the **Property Database Manager**, **Code Enforcement Officer**, and **Town Attorney** with new properties and housing or supreme court cases
VII. The **Town Attorney** will follow through with housing court cases as necessary and provide updates to the Task Force
VIII. The **Property Database Manager** will periodically (at least once every quarter) for new lis pendens filings and other public records to find potential Moderate to High risk vacant properties

Part I-II: Database Management & Property Research

Building the Property Database was the first step for the Task Force to understand and quantify the Zombie/vacant issue, as well as outline contributing factors, and develop a proactive procedure. A core collection of resources was used to build the Database, including the DFS Vacant Property Database, Erie County's Lis Pendens, neighbor/code enforcement complaints, and field verification. Database development allowed staff to reach out to other departments and learn how they might play a role in remediation. The proactive approach allowed for a more concise understanding in critical moments so that an expedited and comprehensive remediation process can be set with the most accurate and up to date information. The core resources and departmental referrals are reviewed monthly to update the current Database for legal status, property transfers, and code violations. Along with regular updates to the Database, risk assessments are done with regard to their respective neighborhood, legal status, and

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

physical condition. As a result, the Database has a prioritized list of zombie properties that can be addressed by the Task Force in a specific workflow based on property risk. This step should be a periodic task for a member of the Planning Department as a *Property Database Manager* so that the database is updated and contains the most accurate foreclosure information.

Part III-V: Inspections & Assistance Outreach

Once properties are identified and researched, properties going through a foreclosure or are suspected of being vacant are inspected by a *Code Enforcement Officer* within the Property Maintenance division of the Building Department. Indicators of vacancy may be property maintenance violations, death certificates of the owner, or a lingering active foreclosure case. To do so, the *Property Database Manager* within the Planning Department will enter the complaints in IPS for the Code Enforcement Officer to document the inspection for vacancy and or code violations. If possible, the CEO will direct the owner to contact Community Development within Planning for direct assistance or contacts for housing counseling and assistance.

The Town of Amherst Planning Department has contracts with two community non-profit housing counseling agencies. The Town of Amherst has a strong working relationship with Belmont Housing Resources and Buffalo Urban League. These strategic partners have HUD certified Foreclosure counselors who assist in educating the homeowner as to the foreclosure process and what services can assist them. These agencies attempt to reach out to all potential foreclosure candidates through mailings. Under this grant we have also implemented a process to mail a letter when the Lis Pendens is filed with the County Clerk. This letter reiterates that if you are in risk of foreclosure you should seek assistance.

In some cases, properties may be vacant with code violations that put the property and the neighborhood at risk. It is important to report these properties to the NYS Department of Financial Services. If there is a property that is found to be vacant and is not in the NYS DFS vacant property database, it needs to be reported to them through their complaint system. The Town Attorney's office can file the complaint but the directive should come after the Building Department confirms vacancy. The DFS registry has proven to be successful. This has reduced the amount of time it takes to locate a property servicer and potential service company. By getting in touch with the servicer and service company at the same time we have reduced the amount of time it takes for the service company to get approval from the servicer to complete work related to code violations on the property.

Part VI-VII: Task Force Property Intervention Toolkit

Most properties in the Town of Amherst will self-remediate with a strong housing market; however, some neighborhoods don't have the market dynamics that promote owner occupied home ownership. In fact, some neighborhoods struggle with foreign investors, property wealth extraction, and neglect due to adverse market dynamics. Therefore, other intervention procedures are required. Outreach and service coordination however, is the most effective and lowest risk item.

During the Task Force quarterly meetings, a review of the Zombie Property is conducted and each property is given a recommended action using the Property Toolkit developed by the Task Force during

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

the second round of the LISC Zombie Grant. The Property Toolkit is comprised of outreach & assistance, legal remediation, and zoning tools. Something to be considered when utilizing the Toolkit is that each item is designed to both keep owner occupants in their home and encourage absentee owners of all kinds to sell to an owner occupant. Having owner occupied housing, even in a rental situation, is supremely beneficial from a neighborhood blight and code enforcement perspective. Owner occupants have a greater stake in the property and ultimately the neighborhood which means they will be more likely to invest in the property and maintain it resulting in more stable neighborhoods.

A) Outreach & Assistance

Legal Services

Description:

Town contracts with Belmont and Buffalo Urban League is a free service for all residents

Contextual Use:

Properties that have an indication of a legal crisis such as tax delinquency or a Lis Pendens filed with the County.

CDBG

Description:

If a property is found to be vacant, abandoned, and or distressed, The Planning Dept can utilize CDBG program to purchase properties in foreclosure to rehab and put back on the market as an affordable housing option for the community.

Contextual Use:

Good to moderate condition in HUD designated neighborhoods. Properties that are not necessarily distressed but in neighborhoods that need revitalization and affordable housing options.

HOME

Description:

HOME funds provide home purchase or rehabilitation financing assistance to eligible homeowners and new homebuyers; build or rehabilitate housing for rent or ownership; or for "other reasonable and necessary expenses related to the development of non-luxury housing," including site acquisition or improvement, demolition of dilapidated housing to make way for HOME-assisted development, and payment of relocation expenses.

Contextual Use:

Good to moderate condition. Properties that are not necessarily distressed but in neighborhoods that need revitalization and affordable housing options. There are no neighborhoods that this funding can't be used in, but beneficiaries must be income qualified by HUD.

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

B) Acquisition Rehab & New Home Construction

BENLIC

Description:

The Land Bank of Erie and Niagara County is another resource for property remediation and aquisition. BENLIC and their mission is to support municipalities and regional revitalization efforts by acquiring, improving, assembling, and selling distressed, vacant, abandoned, and/or tax-delinquent properties.

Contextual Use:

Where properties have been abandoned and vacant and the legal owner is unavailable or unwilling to fix, occupy, or turnover the property.

Habitat for Humanity

Description:

If a property is found to be vacant, abandoned, and or distressed, the Town can collaborate with Habitat Humanity to acquire, rehab, and sell the property as an affordable housing option for the community. Keep in mind that Habitat for Humanity does not income qualify and should not be used as a HUD related projects.

Contextual Use:

Where properties have been abandoned and vacant and the legal owner is unavailable or unwilling to fix, occupy, or turnover the property.

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

C) Legal Remediation

Receivership NYS RPA Article 19-A

Description:

Article 19-A is a tool for municipalities to obtain title to an abandoned building and either cleanup the property, sell the property, work with a local land bank to improve the property or demolish the property. Please note that Article 19-A applies only to residential properties and shall not apply to a one-family or two-family dwelling occupied by the owner.

Contextual Use:

Moderate to highly distressed properties where the legal owner is unavailable or is unwilling to fix or turnover the property.

Zombie Property Remediation Act

Description:

Once the municipality has proven vacancy, contacted the attorneys and the overseeing judge, the mortgagee will then be legally responsible to maintain the property and complete the foreclosure. If the note is in default, the mortgagee shall commence a foreclosure procedure within three months and shall meet all deadlines to ensure the case is ready to be moved to judgment within a reasonable time period but not to exceed one year.

Contextual Use:

Good to moderate condition in HUD designated neighborhoods. Properties that are not necessarily distressed but in neighborhoods that need revitalization and affordable housing options.

Breach of Fiduciary Duty

Desciption:

A breach of fiduciary duty occurs when a principal fails to act responsibly in the best interests of a client. Under this law, the Bank, Loan Servicer, and Property Servicer have a fiduciary duty to the owner of the property. If the property is not maintained or managed under the best interest of the owner and the property, the Town may pursue legal action which proves that there was a breach of fiduciary duty and that the Bank, Loan Servicer, and Property Servicer are legally responsible.

Contextual Use:

Moderate to highly distressed properties where the legal owner is unable to remediate the issues and is not living in the house currently.

Demolition

Description:

When a property is highly distressed and is neglected by the legally responsible entity, the Municipality will leverage the vacant status and unsafe building classification to threaten the demolition of the asset unless rehabbed and sold back to a responsible owner.

Contextual Use:

Highly distressed properties where the legal owner is showing no intent to fix the property. The threat should only be used if there is market confidence in the lot.

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

D) Zoning Tools

Incentive Zoning

Description:

Incentive zoning is a planning tool that local governments use to entice developers to provide a public good (e.g. affordable housing, open space, community amenities) by offering incentives (e.g. increased density, expedited approvals). The incentives seek to offset the cost to developers of the public goods. Often times, distressed properties and or older homes have significant challenges to rehab. Therefore, projects may take years to complete. There are some incentives that can be implemented to expedite these projects however, including but not limited to expedited permit reviews, density bonuses, floor area allowances, and payments in lieu.

Contextual Use:

This tool in particular is required to be vetted by the Planning Department and Town Board through proper zoning review. To gain a scope of potential uses, please refer to the Incentive Zoning Research in the appendix of this report which was compiled by the Task Force which outlines potential uses and considerations. Ideal for properties where an owner is known and willing to invest in the property and neighborhood.

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Action Plan: Procedural Flowchart

Database Update

- The **Planning Department** will assign a **Property Database Manager** who will update the Property Database quarterly and utilize available public records to monitor foreclosures

Property Research

- The **Property Database Manager** will identify perform historical title and legal research to determine risk of vacancy

Property Risk Analysis

- The **Property Database Manager** will identify Moderate to High risk properties and enter complaints into the IPS system

Property Inspections

- The Building Department will assign a **Code Enforcement Officer** from the Property Maintenance Division to respond to complaints
- The **Code Enforcement Officer** will confirm vacancy or occupancy, cite any visible code violations, and post information on foreclosures and available counseling services to the front door of the property

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Outreach

- Emphasize and advertise for utilizing the housing counselors from Belmont and Buffalo Urban League that visit with the Town. This is a free legal service to residents.
- CDBG or HOME funds may be available for home rehab depending on qualifications.

Toolkit Assessment

- The ultimate goal is to keep owners in their home and financially stable before we consider an intervention.
- If an intervention is necessary, the **Task Force** will make formal recommendations at quarterly Task Force meetings utilizing the Toolkit.

Toolkit Action

- After the Task Force recommendations are made, formal decisions on a pathway from the toolkit are collectively made by the **Task Force** and where necessary, with **Town Board** input.
- Under the direction of the **Task Force**, Town staff from all relevant departments will utilize their abilities and expertise to pursue the agreed upon action for each property

Quarterly Reassessment

- The **Database Manager** will perform historical title research to identify points of contact and assign a legal status for properties in the database

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Discussion

Prior to the work of the Task Force, the Town did not have centralized data, a monitoring protocol, or decision-making mechanism that centralized data and enabled efficient identification and planning for action. Departments functioned independently and their actions were often disjointed and the information was difficult to find when required. Typically, by the time the Town was fully aware of a vacant or zombie property, it was too late to make any meaningful actions that would save the home or expedite the foreclosure. The procedure described above is designed to centralize foreclosure data from the County Clerk records and NYS Department of Financial Services foreclosure registry so that it can be used in tandem with the Town's Integrated Property System (IPS) and property maintenance procedures for an expedited response using the most accurate essential data.

A municipality's greatest tool in this housing issue is proactive and persistent documentation. Keeping an accurate timeline of vacancy, property violations, and legal actions are essential to keeping courts moving and holding financial institutions responsible for the properties they foreclose on. Additionally, consistent property research provides an easy mechanism for the Town to survey who may need assistance before a crisis arises. Timely outreach was found to be a significant factor in keeping people in their homes during a foreclosure. This not only increased the likelihood of the individual or household receiving counseling but also ensured that the property was maintained during the counseling period. This procedure is collaborative and interdepartmental with Planning and Building Departments as project leaders whereas the Community Development and Property Maintenance divisions work in tandem with the Attorney's Office to remediate properties.

Ultimately, the Task Force has established a proactive service-based procedure so that the Town has greater control of neighborhood stability and preventing blight. However, going forward more can be done to enhance and improve this process. For instance, establishing a stronger relationship with the Town Housing Court so that property maintenance and Task Force cases have more impactful timeframes. Prior to this work, housing court cases would have little remediation impact due to the uncertainty of the cases and therefore, lenient remediation timeframes. Placing Town Housing Court officials into this procedure will only ensure that the knowledge and insights from the Task Force are properly channeled to Court Judges who can have a greater impact on neighborhood blight and stability.

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

Appendix

Incentive Zoning Research

As part of the Zombie Property Remediation Initiative LISC Grant, the Zombie & Vacant Property Task Force has researched incentive zoning tools that Town of Amherst neighborhoods could potentially benefit from. Incentive zoning was system developed as late as the 1950's (Morris, 2000). Today, incentive zoning is considered an effective tool to manage the neighborhood growth and meet community objectives (Morris, 2000). The Zombie & Vacant Property Task Force's objective is to remediate vacant and zombie properties within the Town while supporting market stability of the overall housing stock. Incentive zoning is of particular interest to the Task Force because it has been successfully utilized by municipalities to encourage neighborhood improvements and investment within a market-based approach, all while increasing municipal capacity & control over development. Ultimately, incentive zoning is a degree of code flexibility such as additional allowable floor area or accessory space in return for public goods such as a parks or affordable housing (Homsy & Abrams, 2015). Incentive zoning is not a new concept to municipalities and is used even within New York State (2015). However, there are many different applications to incentive zoning and there are implications to how and where it is practiced. As part of the LISC Grant activities, the Task Force has investigated various forms of this practice to be considered by the Town in their current planning procedures. This investigative report provides case studies of specific examples of incentive zoning that match needs of the Town and ultimately a recommendation of ways in which the Town can use the market-driven zoning tool.

The Town of Amherst is currently in a critical stage of growth where development build-out is nearing capacity and the housing supply is aging without being replaced. Additionally, the real estate market continues to be of extremely limited supply creating a massive regional affordability issue. On the other hand, major developments are on the horizon, both public and private, such as Amherst Central Park and the Boulevard Mall that require significant private investment. If the Town of Amherst is interested in boosting its economic base, it has no choice but to redevelop from within and leverage the development that will occur to maximize public return. Unfortunately, the real estate market still favors suburban sprawl (Clark, 2008). In other words, it is cheaper to build and easier to find land in the outer urban periphery than it is to find an affordable and suitable home in the core and inner ring suburbs such as Amherst. In order to counter this free market trend, the Town should consider using incentive zoning to enhance public return on residential and commercial development. In doing so, the Town should consider what kinds of public goods should be supported and what neighborhoods should be targeted for redevelopment incentives. This report cannot speak to these questions, as it should be a larger discussion, but the Town of Amherst Zombie & Vacant Property Task Force has researched several case studies of incentive zoning that could be considered by the Town in the future.

Case Studies

In essence, this report is a recommendation of incentive zoning practices that could potentially be adopted by the Town of Amherst Planning Board in conjunction with the Comprehensive Plan. These case studies were chosen specifically because they provide potential models for implementation that enhance municipal capacity and incentivize economic growth within a market-based approach to development.

Affordable Housing

The City of Ann Arbor, Michigan wanted to build more affordable units (Hosey & Abrams, 2015). However, the current zoning laws limited their ability to incorporate more affordable units in their developments. Affordable housing is a major concern for the City and residents alike, but the market would not correct this problem on its own. Rent control and inclusionary zoning have been made illegal by the state (Fanzeres, 2019), making incentive zoning the only market-driven pathway to encourage public benefiting developments. In this instance, the Ann Arbor incentive zoning would allow a developer to gain a 100%-150% (district dependent) Floor Area Ratio so long as they dedicated 15%-30% (depending on district) of the building dedicated to affordable housing (Moran, 2019). The concern from the City and from the residents was that requiring affordable housing was politically risky and had the potential to stop development all together (Moran, 2019). The incentive zoning legislation was a subtle market-driven encouragement to developers to introduce more affordable housing in targeted neighborhoods.

In a similar practice, Seattle Washington used incentive zoning to leverage developers to build affordable housing within their development plans (Hosey & Abrams, 2015). Interestingly, if developers wouldn't or simply couldn't accomplish the affordable housing desired, they would have to contribute to a fund for the City to be able to build their own (2015). In this situation, the City is not impeding development, but providing a minimum requirement for developers to contribute to the public good. In this case, the strong market gave the City enhanced leverage in demanding that developers contribute to the public good in a meaningful and tangible way.

Public Good

Another use of incentive zoning is to leverage development into a funding mechanism for specific municipal needs or projects. For instance, Hartfield Pennsylvania had difficulties purchasing land at market rate to dedicate for community facilities (Hosey & Abrams, 2015). As a means of enhancing their municipalities capacity in the real estate market, Hartfield provided a density bonus in exchange for free open space so that the municipality could develop their own public facilities and space. This legislation successfully helped the Township develop an interlinked trail network utilizing their newly acquired open space which was part of the incentive zoning policy (Montgomery County, 2005).

While the City of Ann Arbor, Michigan used incentive zoning to leverage more downtown affordable housing, they also provided an incentive to support pedestrian improvements (Moran, 2019). Ann Arbor also offers 10 extra square feet of FAR for each square foot of pedestrian improvements up to a

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

maximum of 8,000 square feet of additional FAR. Ultimately, this policy enhanced the City's development capacity to improve streetscapes and pedestrian access through the City (Moran, 2019). Utilizing the market-driven zoning tool provided a mechanism for more amenities that ultimately reinforce the existing economy.

Strong Market: Strong Position

In real estate, more often than not, developers argue that they simply cannot financially work out how to build enough units to rent them at the rates that are considered affordable. However, in strong real estate markets development seems to proceed despite the legislation. For instance, the Village of Ossining New York, which not only requires affordable housing development with any residential development more than six units, but also provides an incentive to leverage public goods in the process (Hosey & Abrams, 2015). Specifically, the Village considered waterfront access, public parks, historic preservation, and public artwork. The Ossining Planning Board would allow a density bonus of 10% for all development of 10% of developments be affordable. An additional 5% would be added if the developer included housing for residents making less than 60 percent of Westchester County Average Median Income (Ossining E-code, 2021). This led to an increase in development of affordable units filling a need within the Village. Ossining also utilized incentive zoning density bonuses to leverage public goods such as parkland & trails, historic preservation, and pedestrian amenities (Hosey & Abrams, 2015). Again, the success of this policy is due to the presence of a strong real estate market. The strong market ultimately provides the municipality with more leverage over the developer in negotiating major developments. Ossining, NY was successful in introducing more affordable housing and creating more public goods within their municipality as a direct result of the incentive zoning program.

Discussion

Although incentive zoning has a wide variety of uses and in some cases can be seen as "spot zoning," the Tasks Forces recommendation is that there are some specific practices such as density bonuses, floor area allowances, or payment in lieu that can enhance the Town's leverage to push developers to contribute to the public good in the strong real estate market without conflicting with the goals of the Town Comprehensive Plan. Internally, the Task Force is aware that the Town needs affordable housing, enhanced real estate acquisition capacity without HUD limits, and the preservation of open space for public facilities. The Town's real estate market is strong and the Town could Incentive zoning practices provide a practical market-driven mechanism which leverages development demand in exchange for public necessities.

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

TOWN OF AMHERST
ZOMBIE & VACANT PROPERTY REMEDIATION INITIATIVE
Procedural Report

Citations

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Clark, Spencer J., “Rocking the Suburbs: Incentive Zoning as a Tool to Eliminate Sprawl” (2008). BYU Journal of Public Law 22: 255-287. http://www.growsmartri.org/training/Law%20review%20Paper%20on%20Incentive%20zoning.pdf

Fanzeras, Julia, Council Passes ordinance for affordable housing initiatives and resolution to achieve carbon neutrality by year 2030. (November 5, 2019). The Michigan Daily. https://www.michigandaily.com/ann-arbor/council-passes-ordinance-affordable-housing-initiatives-and-resolution-achieve/

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Morris, Marya FAICP. “Incentive Zoning: Meeting Urban Design and Affordable Housing Objectives” (Nov. 1, 2000) American Planning Association: Planning Advisory Service Report #494. ISBN: 978-1-884829-47-5. https://www.planning.org/publications/report/9026835/

Village of Ossining. Village Code Chapter 62 Affordable Housing. (June 1, 2021). https://ecode360.com/14056320

Attachment: Procedural Report (COM-2021-93 : Request to Present a Report to the Town Board on 9/27/2021)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
DOC ID: 24711

COMMUNICATION 2021-94 **REFERRED**

Resident Concerns - Open Government Advisory Board

Email from Don Smith regarding questions about the Open Government Advisory Board.

9/13/2021
Referred to Town Attorney & Chairman of the Open Government Advisory Board

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

From: Don
Sent: Friday, August 27, 2021 2:07 PM
To: Spoth, Francina <fspoth@amherst.ny.us>
Cc: Bucki, Debbie <dbucki@amherst.ny.us>; Szukala, Michael <mszukala@amherst.ny.us>
Subject: Request to place this Email in Communications Section of the Agenda of the next Town Board meeting

CAUTION: This email originated from outside of the organization.
Please do not click links or open attachments unless you recognize the sender and know the content is safe.

To: Fran Spoth, Amherst Town Clerk

CC: Deborah Bruch Bucki RN, PhD, Councilmember & Michael Szukala, Councilmember - Liaison to Amherst Open Government Advisory Board

Subject: ***Request to place this Email in Communications Section of the Agenda of the next Town Board meeting***

Concern #1: Meeting requirements of Amherst Open Government Advisory Board in Town Code not enforced

§ 8-3.
Establishment of Open Government Advisory Board; membership; terms; meetings.
A.
"The Open Government Advisory Board shall select its own Chair, establish its own rules of operation and procedure and meeting times, except that such Board will regularly meet in the Town of Amherst Municipal Building, and ***shall meet no less than once in every two (2) calendar months. "***

Link:
https://ecode360.com/13276779?highlight=open%20government%20advisory&searchId=32976503940640 77#13276779

► 2020 Meeting History:
Met only ***3 times*** with only ***one instance of "once in every two (2) calendar months"***

Link: https://amherstny.iqm2.com/Citizens/Calendar.aspx?From=1/1/2020&To=12/31/2020

► 2021 Meeting History: Met ***only once this year*** with ***NO instance of "once in every two (2) calendar months***"

Link: https://amherstny.iqm2.com/Citizens/Calendar.aspx?From=1/1/2021&To=12/31/2021

Concern #2: Unfilled Amherst Open Government Advisory Board vacances (4) and possible invalid appointment term staggering

Attachment: D Smith 9-13 (COM-2021-94 : Resident Concern - Don Smith)

► With only six current members of a ten member Open Government Advisory Board, it is difficult to form a quorum if only one member of the existing membership is absent.

Link: https://www.amherst.ny.us/content/bandc.php?board_id=brds_22

► § **8-3.**
"The terms of the members are to be staggered to prevent the entire Board from overturning at one time."

Concern #3: Town Board referral of Resolution RES-2021-728 Waiver of Attorney-Client/Attorney-Work Product Privileges to Amherst Open Government Advisory Board for an opinion prior to taking action of the resolution.

► Given Concern #1 and Concern #2 (above) it appears HIGHLY UNLIKELY any meeting of the Amherst Open Government Advisory Board ***is likely to occur ANY TIME SOON***, making the intent of the resolution appear suspicious.

In my opinion this is not the proper use of what I presume was intended to be an ideologically neutral and unbiased board.

Link:
https://amherstny.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=3960&MediaPosition=&ID=24684&CssClass=

Thank you.
Don Smith

Attachment: D Smith 9-13 (COM-2021-94 : Resident Concern - Don Smith)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Councilmembers
DOC ID: 24722

COMMUNICATION 2021-95 **REFERRED**

Street Name to Honor Melvin J. Spoth

The attached letter is requesting a street to be named in honor of longtime resident Melvin J. Spoth.

9/13/2021
Referred to Planning & Highway

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

8-24-21

To Deborah Bruch Bucki RN, Ph.D.,

I am writing in behalf of our stellar father, Melvin J. Spoth. Dad is the youngest of 3 children of the late Victor & Lauretta Spoth, who owned "Vic Spoth Electric" back years ago.

The reason for this letter is I wish to leave his legacy by naming a near future new street in the Amherst area after his name.

Dad dedicated endless hours to his community all his life. He was a very active member of the East Amherst Fire Dept. for 56 years holding positions of Chief, Ass. Chief, on the Board of Directors, was President, Vice President and Safety Police in his later years. He also provided electrical services for the dept. as needed. Sadly, in 1985, Dad lost his middle son, Mitchel, who assisted Dad and Mitch's brother Gary, fight a arson fire, of whom the dept's baseball field is now named after in Mitchel's memory.

Dad was also a member of the Clarence/ Newstead Chief Assoc., Amherst Fire Chief's Assoc,

Attachment: COMMUNICATION Spoth street naming 20210902 (COM-2021-95 : Street Name to Honor Melvin J. Spoth)

served 21 years on the Amherst Town Planning Board, was on the Erie County Fire Advisory Board and worked 9 years for the Town of Amherst Central Fire Alarm Office.

Dad also coached for the St. Mary's School (of Swormville) Mens base ball team, and also wired countless homes for friends and neighbors. Dad was a fair and honest man who always thought of others fiest. He was an outstanding father to the four of us children, and very dedicated and loving husband to the love of his life, the late Arlene Bergee Spoth for 57 years.

I so appreciate your busy time and consideration for this request as it would mean so very much to the family.

Very Sincerely,

Karen T. Klee-Spoth
daughter

Attachment: COMMUNICATION Spoth street naming 20210902 (COM-2021-95 : Street Name to Honor Melvin J. Spoth)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
DOC ID: 24713

COMMUNICATION 2021-96 **REFERRED**

Summons and Complaint & Order to Show Cause: LG 70 DOE Vs. Town of Amherst Et Al.

9/13/2021
Referred to Town Attorney

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

14.4.a

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

LG 70 DOE,

Plaintiff,

vs. **SUMMONS**

TOWN OF AMHERST
5583 Main Street
Williamsville, New York 14221

TOWN OF AMHERST
POLICE DEPARTMENT
500 John James Audubon Parkway
Amherst, New York 14228

BABE RUTH LEAGUE, INC.
1670 Whitehorse Mercerville Road
Hamilton, New Jersey 08619

MATHEWSON-MCCARTHY BASEBALL, INC.,
Individually and as Successor in Interest to
Christy Mathewson Little League
17 Beresford Court
Williamsville, New York 14221

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiff's Attorneys within TWENTY (20) DAYS after the service of this Summons, exclusive of the day of service (or within THIRTY (30) DAYS after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Erie County is designated as the place of trial on the basis of the Defendant's place of business is located in Williamsville, New York.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

DATED: Buffalo, New York
August 6, 2021

LIPSITZ GREEN SCIME CAMBRIA LLP

By: _____
AMY C. KELLER, ESQ.
CHRISTINA M. CROGLIO, ESQ.
Attorneys for Plaintiff
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333
[ACK : # 067686.0001]

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

14.4.a

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

LG 70 DOE,

Plaintiff,

vs.

TOWN OF AMHERST, TOWN OF AMHERST POLICE DEPARTMENT, BABE RUTH LEAGUE, INC., and MATHEWSON-MCCARTHY BASEBALL, INC., Individually and as Successor in Interest to Christy Mathewson Little League,

Defendants.

COMPLAINT

Index No.:

Plaintiff, above named, by his attorneys, LIPSITZ GREEN SCIME CAMBRIA LLP, for his Complaint against Defendants herein, allege:

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN, PLAINTIFF, LG 70 DOE, ALLEGES AS FOLLOWS:

1. Plaintiff, LG 70 DOE, is a resident of the County [redacted]

2. This action is commenced pursuant to the provisions of the Child Victims Act.

3. At the time of the incidents set forth herein, Plaintiff, LG 70 DOE, (hereinafter referred to as "THE CHILD") was an infant having been born in [redacted]

4. Upon information and belief, at all times herein mentioned, Defendant, TOWN OF AMHERST was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

5. Upon information and belief, at all times hereinafter mentioned, Defendant, TOWN OF AMHERST POLICE DEPARTMENT was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

6. Defendants, TOWN OF AMHERST and TOWN OF AMHERST POLICE DEPARTMENT are hereinafter collectively referred to as "TOWN OF AMHERST".

7. Upon information and belief, at all times hereinafter mentioned, the Defendant, BABE RUTH LEAGUE, INC., was and still is a foreign not-for-profit corporation not authorized to do business in the State of New York; jurisdiction over the Defendant is asserted under New York Civil Practice Law and Rules § 302.

8. Upon information and belief, at all times hereinafter mentioned, Defendant, MATHEWSON-MCCARTHY BASEBALL, INC., is a domestic not-for-profit corporation duly organized and existing under and by virtue of the laws of the State of New York and maintains an office for the transaction of business located within the County of Erie and State of New York, and a successor in interest to Christy Mathewson Little League, an unincorporated association of people. Defendant MATHEWSON-MCCARTHY BASEBALL, INC., Individually and as Successor in Interest to Christy Mathewson Little League, is hereinafter referred to herein as "MATHEWSON LITTLE LEAGUE".

9. Upon information and belief, Larry Walter (hereinafter referred to as "THE CHILD MOLESTER") resides in the County of Hanover and State of Virginia.

10. Upon information and belief, at all times herein mentioned, Larry Walters was a Police Officer within Defendant, TOWN OF AMHERST, and was hired and employed by Defendant, TOWN OF AMHERST.

11. Upon information and belief, at all times herein mentioned, Defendant TOWN OF AMHERST was responsible for the hiring, training, supervision, discipline, retention and promotion of its police officers, sergeants, detectives, agents, employees and/or representatives, including THE CHILD MOLESTER. The Defendant TOWN OF AMHERST also created,

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

14.4.a

instituted, and oversaw enforcement of the policies and procedures at issue in this case.

12. Upon information and belief, at all times herein mentioned, law enforcement officers, agents, employees and/or representatives of Defendant, TOWN OF AMHERST were acting within the scope of employment and incidental to their otherwise lawful duties and functions as employees, servants, agents and police officers of the Defendant, TOWN OF AMHERST.

13. Upon information and belief, at all times herein mentioned, THE CHILD MOLESTER, was acting as an agent, employee or representative of TOWN OF AMHERST.

14. Upon information and belief, at all times herein mentioned, THE CHILD MOLESTER was under the direction, supervision and control of Defendant, TOWN OF AMHERST.

15. Upon information and belief, THE CHILD MOLESTER used his police authority and Defendant TOWN OF AMHERST provided tools to engage in inappropriate contact with, groom, molest, and sexually assault THE CHILD who was a resident of the Town of Amherst and had contact with THE CHILD MOLESTER in his capacity as a Police Officer with the Defendant, TOWN OF AMHERST.

16. Upon information and belief, at all times herein mentioned, THE CHILD MOLESTER was acting under color of state law.

17. Upon information and belief, at all times herein mentioned, Defendant, TOWN OF AMHERST, was acting under color of state law.

18. Upon information and belief, at all times herein mentioned, THE CHILD MOLESTER was selected and appointed by BABE RUTH LEAGUE, INC., and MATHEWSON LITTLE LEAGUE and they conferred upon THE CHILD MOLESTER the title "Coach" and/or "Assistant Coach".

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

19. Upon information and belief, at all times herein mentioned, the CHILD MOLESTER was assigned to MATHEWSON LITTLE LEAGUE, as a Coach and/or Assistant Coach by Defendants, BABE RUTH LEAGUE, INC., and MATHEWSON LITTLE LEAGUE, and was acting as their agent, employee and/or representative.

20. Upon information and belief, at all times herein mentioned, THE CHILD MOLESTER was under the direction, supervision and control of Defendants, BABE RUTH LEAGUE, INC., and MATHEWSON LITTLE LEAGUE.

21. At times hereinafter mentioned, THE CHILD, was a player and member of Defendant, MATHEWSON LITTLE LEAGUE.

22. Occurring from approximately 1977 to 1981, the CHILD MOLESTER sexually assaulted and committed battery upon THE CHILD, at various locations, including the then residence of THE CHILD MOLESTER, and the then residence of THE CHILD, and said assault and battery constituted sexual offenses as defined in Article 130 of the Penal Law.

23. Upon information and belief, THE CHILD MOLESTER was acting in his official capacity as a Police Officer within Defendant, TOWN OF AMHERST, at times he committed sexual offenses as defined in Article 130 of the Penal Law against THE CHILD.

24. The actions by THE CHILD MOLESTER herein were willful, malicious and intentional and resulted in injury to THE CHILD.

25. As a direct result of the conduct, consisting of molestation, sexual assault and battery, by THE CHILD MOLESTER as described herein, THE CHILD has suffered, and continues to suffer great physical and emotional pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, flashbacks, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life, was prevented and will continue to be prevented from performing daily activities and obtaining full enjoyment of life, and has incurred

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

and will continue to incur expenses for medical, psychological treatment, therapy and counseling.

26. This action falls within one or more of the exceptions set forth in CPLR §1602.

27. As a result of the foregoing, THE CHILD, has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

28. As a result of the foregoing, THE CHILD, claims punitive damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

29. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "28" of this Complaint with the same force and effect as if fully set forth herein.

30. Upon information and belief, Defendant, TOWN OF AMHERST trained, hired, selected and approved THE CHILD MOLESTER as a Police Officer for Defendant, TOWN OF AMHERST, placing him in a position with authority and power over THE CHILD.

31. Upon information and belief, Defendant, TOWN OF AMHERST, knew or reasonably should have known of the propensities of THE CHILD MOLESTER to commit acts of sexual assault, battery, rape and other sexual offenses against THE CHILD and other children.

32. Upon information and belief, prior to the incidents set forth herein, Defendant, TOWN OF AMHERST, was aware and was otherwise on actual notice that its agents, employees and/or representatives, including THE CHILD MOLESTER, was sexually abusing and/or sexually assaulting and/or molesting children.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

33. Upon information and belief, Defendants, BABE RUTH LEAGUE, INC. and MATHEWSON LITTLE LEAGUE, trained, hired, selected and approved THE CHILD MOLESTER as a Coach and/or Assistant Coach for Defendant, MATHEWSON LITTLE LEAGUE, placing him in a position with authority and power over THE CHILD.

34. Upon information and belief, Defendants, BABE RUTH LEAGUE, INC., and MATHEWSON LITTLE LEAGUE, knew or reasonably should have known of the propensities of THE CHILD MOLESTER to commit acts of sexual assault, battery, rape and other sexual crimes against THE CHILD and other children.

35. Upon information and belief, prior to the incidents set forth herein, Defendants, BABE RUTH LEAGUE, INC., and MATHEWSON LITTLE LEAGUE, were aware and were otherwise on actual notice that its volunteers, agents, employees and/or representatives, including THE CHILD MOLESTER, was sexually abusing and/or sexually assaulting and/or molesting children.

36. Upon information and belief, the aforesaid incidents and resultant injury and damages to THE CHILD were caused as a result of the negligence, carelessness and recklessness of Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, in the training, hiring, selecting and assignment of THE CHILD MOLESTER.

37. The acts and/or omissions of Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, constitutes reckless disregard for the safety of THE CHILD and other children.

38. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

14.4.a

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

39. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "38" of this Complaint with the same force and effect as if fully set forth herein.

40. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the negligence, carelessness and recklessness of Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, in retaining THE CHILD MOLESTER.

41. The acts and/or omissions of the Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, constitutes reckless disregard for the safety of THE CHILD and other children.

42. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

43. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "42" of this Complaint with the same force and effect as if fully set forth herein.

44. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the negligence, carelessness and recklessness of Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, in supervising THE CHILD MOLESTER.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

45. The acts and/or omissions of the Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, constitutes reckless disregard for the safety of THE CHILD and other children.

46. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

47. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "46" of this Complaint with the same force and effect as if fully set forth herein.

48. Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, are vicariously liable for the damages sustained by THE CHILD because THE CHILD MOLESTER was aided by his positions with Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, in committing the sexual assaults and battery upon THE CHILD.

49. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

14.4.a

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

50. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "49" of this Complaint with the same force and effect as if fully set forth herein.

51. Defendant, TOWN OF AMHERST, is vicariously liable for the actions of THE CHILD MOLESTER because Defendant, TOWN OF AMHERST, materially increased the risk of sexual assault or sexual crimes upon THE CHILD and other children by conferring power or authority on its police officers/law enforcement personnel over THE CHILD and other infant children.

52. Defendant, TOWN OF AMHERST, is vicariously liable for the sexual assault and battery committed upon THE CHILD by THE CHILD MOLESTER because Defendant, TOWN OF AMHERST, regularly placed THE CHILD MOLESTER and other police officers/law enforcement personnel in situations of intimate or personal contact with THE CHILD and other children.

53. Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, are vicariously liable for the actions of THE CHILD MOLESTER because Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, materially increased the risk of sexual assault or sexual crimes upon THE CHILD and other children by conferring power or authority on its coaches/assistant coaches over THE CHILD and other infant children.

54. Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, are vicariously liable for the sexual assault and battery committed upon THE CHILD by THE CHILD MOLESTER because Defendant, BABE RUTH LEAGUE, INC.,

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

Packet Pg. 1285

14.4.a

and Defendant, MATHEWSON LITTLE LEAGUE, regularly placed THE CHILD MOLESTER and other coaches/assistant coaches in situations of intimate or personal contact with THE CHILD and other children.

55. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

56. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "55" of this Complaint with the same force and effect as if fully set forth herein.

57. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the negligence, carelessness and recklessness of Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, in supervising THE CHILD.

58. The acts and/or omissions of Defendant TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, constitutes reckless disregard for the safety of THE CHILD and other children.

59. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

Packet Pg. 1286

14.4.a

AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

60. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "59" of this Complaint with the same force and effect as if fully set forth herein.

61. Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, failed to warn and/or disclose and/or educate THE CHILD and/or the parents of THE CHILD of the danger of sexual assault THE CHILD MOLESTER posed to THE CHILD.

62. Defendant, TOWN OF AMHERST, failed to warn and/or disclose and/or educate THE CHILD and/or the parents of THE CHILD of the danger of sexual assault its police officers/law enforcement officers posed to THE CHILD and other children.

63. Defendant, TOWN OF AMHERST, failed to warn and/or disclose and/or educate all employees, agents and/or representatives of the danger of sexual assault its police officers/law enforcement officers posed to THE CHILD and other children.

64. Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, failed to warn and/or disclose and/or educate THE CHILD and/or the parents of THE CHILD of the danger of sexual assault its coaches/assistant coaches posed to THE CHILD and other children.

65. Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, failed to warn and/or disclose and/or educate all employees, agents and/or representatives of the danger of sexual assault its coaches/assistant coaches posed to THE CHILD and other children.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

14.4.a

66. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the failure by Defendant, TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, to warn, disclose and/or educate as set forth herein.

67. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A NINTH CAUSE OF ACTION AGAINST DEFENDANTS, ABOVE NAMED, HEREIN:

68. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "67" of this Complaint with the same force and effect as if fully set forth herein.

69. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the negligence, carelessness and recklessness of Defendant, TOWN OF AMHERST, for failing to have in place adequate policies and procedures to protect THE CHILD and other children from child molesters operating within Defendant, TOWN OF AMHERST.

70. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the negligence, carelessness and recklessness of Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, for failing to have in place adequate policies and procedures to protect THE CHILD and other children from child molesters operating within Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

71. The acts and/or omissions of Defendant TOWN OF AMHERST, Defendant, BABE RUTH LEAGUE, INC., and Defendant, MATHEWSON LITTLE LEAGUE, constitutes reckless disregard for the safety of THE CHILD and other children.

72. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A TENTH CAUSE OF ACTION AGAINST DEFENDANT, TOWN OF AMHERST, ABOVE NAMED, HEREIN:

73. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "72" of this Complaint with the same force and effect as if fully set forth herein.

74. Pursuant to New York Social Services Law Sections 413 and 420 Defendant, TOWN OF AMHERST, had a statutory duty to report reasonable suspicion of sexual assault and/or abuse of children.

75. Upon information and belief, Defendant, TOWN OF AMHERST, breached that duty by knowingly and willfully failing to report reasonable suspicion of sexual assault and/or abuse by THE CHILD MOLESTER of child(ren), specifically including, THE CHILD.

76. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the failure by Defendant, TOWN OF AMHERST, to report the sexual assault and battery of THE CHILD herein.

77. The acts and/or omissions of Defendant, TOWN OF AMHERST, constitutes reckless disregard for the safety of THE CHILD and other children.

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14.4.a

78. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR AN ELEVENTH CAUSE OF ACTION AGAINST DEFENDANT, TOWN OF AMHERST ABOVE NAMED, HEREIN:

79. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "78" of this Complaint with the same force and effect as if fully set forth herein.

80. Upon information and belief, Defendant, TOWN OF AMHERST, acting under color of law, engaged in a course of conduct that deprived THE CHILD of his Fourteenth Amendment due process rights, specifically his protected liberty interest to be free from sexual assaults and bodily intrusions by state actors, and including the right to be free from unjustified and excessive force utilized by police; and his Fourth Amendment right to be free from unlawful seizure of his person – all as provided for by the United States Constitution and 42 U.S.C. §1983.

81. Upon information and belief, at all relevant times, Defendant, TOWN OF AMHERST, acted unreasonably, recklessly, and with deliberate indifference and disregard for the constitutional civil rights and personal needs of THE CHILD.

82. Upon information and belief, the actions by Defendant, TOWN OF AMHERST were reckless, willful, wanton, and malicious.

83. Upon information and belief, the aforementioned acts of sexual misconduct perpetuated by Defendant, TOWN OF AMHERST, constitutes a gross breach and abuse of its official police authority.

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84. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the acts alleged herein.

85. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A TWELFTH CAUSE OF ACTION AGAINST DEFENDANT, TOWN OF AMHERST, ABOVE NAMED, HEREIN:

86. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "85" of this Complaint with the same force and effect as if fully set forth herein.

87. A municipality, such as the Defendant, TOWN OF AMHERST, may be held liable under 42 U.S.C. § 1983 when its official policies or customs violate the Constitution. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690–91 (1978).

88. Upon information and belief, Defendant, TOWN OF AMHERST, established, condoned, ratified, authorized, and encouraged customs, policies, patterns and practices that directly and proximately caused the deprivation of the civil and constitutional rights of THE CHILD and the damages and injuries described herein. It did so with deliberate indifference to the rights of THE CHILD. See Bd. of County Comm'rs of Bryan County v. Brown, 520 U.S. 397, 405 (1997).

89. Upon information and belief, these written and unwritten policies, customs, patterns, and practices included:

- Failing to evaluate and investigate all allegations, complaints and/or reports of child abuse and/or neglect;
- Failing to ensure that incidents of abuse, misconduct and/or violations may

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

be reported without fear of repercussion or disbelief;

- Failing to report, or to ensure that complaints of child abuse and/or neglect were reported to the proper agencies and authorities;
- Inadequately training its employees, agents and/or representatives to report or recognize activities involving grooming and sexual abuse of children;
- Failing to adequately staff their department with sufficient female law enforcement officers, victim advocates and detectives;
- Failing to properly supervise and monitor officers interacting with children unsupervised;
- Failing to investigate and properly screen, during the hiring process, and supervise and monitor thereafter, male officers to eliminate sexually predatory and abusive behavior towards vulnerable populations;
- Failing to have an outside agency evaluate Defendant, TOWN OF AMHERST, sexual abuse policies and procedures, including the implementation and monitoring for compliance of said policies and procedures;
- Failing to have in place, or failing to follow, a policy or procedure to prohibit law enforcement officers from being alone with a child while on duty;
- Failing to have in place, or failing to follow, a policy or procedure to make children and their parents aware of the risk of sexual assault Defendant, TOWN OF AMHERST, law enforcement officers, and what to do in the event sexual assault occurs or is suspected to have occurred, how to report sexual assault when it occurs or is suspected to have occurred, and

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

monitoring the implementation of said policy or procedure;

- Failing to warn and/or disclose and/or educate THE CHILD and/or the parents of THE CHILD of the danger of sexual assault THE CHILD MOLESTER posed to THE CHILD;
- Failing to properly hire, train, and supervise THE CHILD MOLESTER;
- Failing to ensure that its children residents are adequately supervised;
- Failing to ensure that its children residents interacting with Defendant, TOWN OF AMHERST, law enforcement officers are safe and not subjected to sexual abuse;
- Inadequately training officers to report or recognize other officers' activities involving grooming and sexual abuse of children;
- Failing to have in place, or failing to follow, a policy or procedure to prevent police officers from grooming and sexually abusing children; and
- Retaining THE CHILD MOLESTER, when they knew or should have known of his propensity to abuse his position of authority as a Defendant, TOWN OF AMHERST law enforcement officer to interact with children for sexual gratification.

90. Upon information and belief, at all relevant times, Defendant TOWN OF AMHERST acted unreasonably and with deliberate indifference and disregard for the constitutional and civil rights of THE CHILD. The actions of Defendant TOWN OF AMHERST were malicious, willful, wanton and reckless.

91. Upon information and belief, Defendant TOWN OF AMHERST's failure to supervise, train, or discipline personnel was so obvious that the failure to do so amounted to a policy of "deliberate indifference."

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92. Upon information and belief, the aforesaid incidents and resultant injury to THE CHILD, were caused as a result of the acts alleged herein.

93. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRTEENTH CAUSE OF ACTION AGAINST DEFENDANT, TOWN OF AMHERST, ABOVE NAMED, HEREIN:

94. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "93" of this Complaint with the same force and effect as if fully set forth herein.

95. The sexual assaults of THE CHILD by THE CHILD MOLESTER at times, occurred while THE CHILD MOLESTER was, upon information and belief, on duty, and facilitated by his possession of Defendant TOWN OF AMHERST tools.

96. Upon information and belief, Defendant TOWN OF AMHERST is liable to THE CHILD for the constitutional violations as well as the negligent and intentional acts and omissions of those under its direction and control, pursuant to the doctrine of respondeat superior.

97. As a result of the foregoing, THE CHILD has sustained general and special damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

WHEREFORE, Plaintiff demands judgment against Defendants, either jointly or severally, in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Causes of Action in compensatory and punitive damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction, and for such other, further or different relief as the Court may deem just and proper, together with the costs and disbursements of the action.

DATED: Buffalo, New York
August 6, 2021

LIPSITZ GREEN SCIME CAMBRIA LLP

By: _____
AMY C. KELLER, ESQ.
CHRISTINA M. CROGLIO, ESQ.
Attorneys for Plaintiff
42 Delaware Avenue, Suite 120
Buffalo, New York 14202-3924
(716) 849-1333
[ACK : # 067686.0001]

Attachment: DOC083121-08312021101835 (COM-2021-96 : Summons & Complaint: LG 70 Vs TOA)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
DOC ID: 24715

COMMUNICATION 2021-97

REFERRED

Notice of Claim: Allstate Vs. Town of Amherst

9/13/2021
Referred to Town Attorney

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

Allstate. PO BOX 660636
DALLAS TX 75266
You're in good hands.

RECEIVED
AUG 24 2021
TOWN ATTORNEY

TOWN OF AMHERST
1042 N FOREST RD
BUFFALO NY 142214499

August 12, 2021

INSURED: LYNN DOMBROWSKI
DATE OF LOSS: May 03, 2021
CLAIM NUMBER: 0624909172 ART
LOCATION OF LOSS: North Forrest, Amherst, NY
AMOUNT OF DAMAGES: $16,290.41

PHONE NUMBER: 800-374-4246
FAX NUMBER: 866-447-4293
OFFICE HOURS: Mon - Fri 7:00 am - 6:00 pm

Re: Results of Our Loss Investigation

Dear TOWN OF AMHERST,

We are writing to let you know that after investigating our insured's loss (which is listed above), we concluded that you are legally responsible for the damages. We have settled the claim with our insured, and we will now seek reimbursement from you for this claim and for our insured's deductible, if applicable.
Please make all checks payable to Allstate Insurance Company and send your payment to:

Allstate Payment Processing Center
P.O. Box 650271
Dallas, TX 75265-0271

Please feel free to call me if you want to discuss any aspect of this case including this letter. Be sure to refer to the claim number listed below when you call.

AUG31'21 PM 3:34 RCVD

0624909172 ART

20000202108135F00200010400105300

Attachment: DOC090121-09012021085738 (COM-2021-97 : NOC: Allstate Vs TOA)

If corresponding by e-mail, please send to claims@claims.allstate.com and refer to the Allstate claim number on the subject line. Thank you.

Sincerely,

Your Claim Team

Your Claim Team
800-374-4246
Allstate Insurance Company

Attachment: DOC090121-09012021085738 (COM-2021-97 : NOC: Allstate Vs TOA)

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Clerk
Initiated by: **Timothy Koller**
Co-Sponsored by:

DOC ID: 24770 **RESOLUTION 2021-815** **ADOPTED**

Downtown Revitalization Initiative Application 2021

Suspension to Town Board Agenda Item September 13, 2021

To: Town Board
From: Economic Development Department
Date: September 13, 2021
RE: Downtown Revitalization Initiative Application 2021

Purpose: Town Board approval of the submittal of a Downtown Revitalization Initiative application to Empire State Development and the Regional Economic Development Council

WHEREAS New York State's Downtown Revitalization Initiative (DRI) is a cornerstone of the State's economic development program; and

WHERAS the goals of the DRI is to transform downtown neighborhoods into vibrant centers that offer a high quality of life and are magnets for redevelopment, business, job creation, and economic and housing diversity; and

WHEREAS In its fifth year, the program will invest $200 million in up to 20 additional downtowns statewide; and

WHEREAS two locations have been identified in the Town of Amherst, with support of the Village of Williamsville, to submit an application for the areas around Main Street that are West of the Village and East of the Village.

NOW, THEREFORE, BE IT RESOLVED that the Town Board authorizes the Supervisor to submit two DRI application on behalf of the Town of Amherst.

9/13/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Supervisor Kulpa and unanimously approved 5-0.

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

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 24764 **RESOLUTION 2021-816** **ADOPTED**

Addendum to Municipal Cooperation Agreement for Shared Assessor Services Between the Town of Amherst and City of Tonawanda (CRS #2893)

SUSPENSION AGENDA ITEM : SEPTEMBER 13th, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **September 10, 2021**

RE: **Addendum To Municipal Cooperation Agreement For Shared Assessor Services Between the Town of Amherst and City of Tonawanda (CRS#2893)**

Kindly adopt a resolution authorizing the Supervisor to execute the attached addendum relative to shared Assessor services between the Town of Amherst and City of Tonawanda pursuant to General Municipal Law §119-0 pending successful completion of the Contract Routing System.

Thank you.

SJS:nmb
Attachment
c: Kathleen Cooper, Deputy Town Clerk
(*w/attachment,* **Suspension Agenda Item : September 13th, 2021**)
David Marrano, Town Assessor (*w/attachment)*

9/13/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Bucki and unanimously approved 5-0.

FINANCIAL IMPACT:

.

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

Addendum to Municipal Corporation Agreement
For Shared Assessor Services

The TOWN OF AMHERST (hereinafter referred to as "Town") being a municipal cooperation as defined by General Municipal Law §119-N (a) of the State of New York, located at 5583 Main Street, Williamsville, New York 14221, and the CITY OF TONAWANDA (hereinafter referred to as "City") a municipal cooperation as defined by General Municipal Law §119-N (a) of the State of New York, located at 200 Niagara Street, Tonawanda, New York 14150, hereby agree to make the following modifications to the Municipal Cooperation Agreement (hereinafter "Agreement") dated February 3, 2020 (ATTACHED). The changes are based on the upcoming retirement of Assessor David C. Marrano SCA effective September 17, 2021. The changes are summarized as follows:

1. The current agreement referenced above will now end in its entirety effective December 31, 2021.
2. A revision to the agreement referenced above will cover the period from September 1, 2021 through December 31, 2021. This will cover the partial time worked by Assessor David Marrano in September, along with the remaining time worked from September- December by Senior Real Property Appraiser Cheryl Walfrand.
3. The financials of the agreement is listed in Schedule "A."

This Agreement is made and executed pursuant to a Resolution of the Amherst Town Board adopted on September ____, 2021 and a Resolution of the City's Common Council adopted on September ___, 2021.

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

In Witness whereof, the parties hereto to have executed this Agreement the day and year first above written.

TOWN OF AMHERST

By: _____
Brian J. Kulpa, Supervisor

Dated: _____

CITY OF TONAWANDA

By: _____
Rick Davis, Mayor

Dated: _____

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

MUNICIPAL COOPERATION AGREEMENT
FOR
SHARED ASSESSOR SERVICES

THIS SHARED SERVICES AGREEMENT is made and entered into this 3RD day of February ~~January~~ 2020 by and between **THE TOWN OF AMHERST**, a municipal corporation as defined by General Municipal Law Section 119-N (a) of the State of New York, party of the first part, (hereinafter referred to as "TOWN) located at 5583 Main Street, Williamsville, New York 14221, and **THE CITY OF TONAWANDA**, a municipal corporation as defined by the aforesaid statute, party of the second part (hereinafter referred to as "CITY") located at 200 Niagara Street Tonawanda, New York 14150.

WITNESSETH:

WHEREAS, the TOWN and CITY are empowered and required to have an Assessor and presently each has an office of the Assessor with a single appointed Assessor; and,

WHEREAS, the CITY is empowered to enter into a shared services agreement on a contractual basis with TOWN for the provision of Assessor services provided by the TOWN to the CITY pursuant to §119-0 of the General Municipal Law of the State of New York, subject to approval by both the TOWN'S Board and the CITY'S Common Council; and,

WHEREAS, the CITY and TOWN are empowered to enter into a municipal cooperative shared services agreement for Assessor services provided by the Assessor

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

appointed by the TOWN pursuant to §576 of the Real Property Tax Law and Article 5-G of the General Municipal Law; and,

WHEREAS, the following provisions have been duly approved by a majority vote of the TOWN Board and by majority vote of the CITY Common Council, the parties hereto agree as follows:

ARTICLE I. STATEMENT OF AGREEMENT.

The TOWN agrees to provide its Assessor and the assessing services of a Senior Real Property Appraiser to the CITY during the term of this Agreement, and the CITY agrees to engage the TOWN, by and through its Assessor and the Senior Real Property Appraiser to provide such services in accordance with the terms of this Agreement.

ARTICLE II. DELIVERY OF SERVICES.

The TOWN shall provide an Assessor and a Senior Real Property Appraiser (SRPA) to assess all real property located within the CITY.

ARTICLE III. ASSESSING RESPONSIBILITIES.

The TOWN Assessor shall manage the CITY assessment roll in accordance with the provisions of New York State Real Property Tax Law. As part of his duties, the TOWN Assessor shall supervise all TOWN and CITY valuation work, reviews and advise the TOWN Board, Town Attorney, CITY Mayor, CITY Attorney and CITY Common Council concerning any tax certiorari suits commenced against the TOWN and CITY, and furnish a monthly written report on the activities and status of matters in the Assessor's office.

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

Additionally, the TOWN Assessor shall attend any and all meetings of the Board of Assessment Review of the TOWN and CITY, as necessary, and at such meetings submit all such information as may be necessary to support any assessment or assessments. The TOWN Assessor shall attend CITY Common Council official meetings when requested by the CITY.

ARTICLE IV. TASKS TO BE PERFORMED.

(A) The TOWN Assessor shall perform the following scope of work on behalf of the CITY: Planning, organization, scheduling, directing, and supervision of the CITY assessment office, and any and all other matters related to the delivery of assessing services to CITY as articulated in Exhibit A.

(B) The Senior Real Property Appraiser shall perform the work on behalf of the CITY as articulated in Exhibit A.

ARTICLE V. DEDICATION OF TIME.

(A) It is agreed that the Assessor shall be permitted flexibility in the scheduling of his time between the TOWN and the CITY and it is understood that the Assessor may spend more or less time in either municipality during any particular week to accommodate the particular needs of each municipality. However, it is anticipated that the Assessor will normally spend four (4) days per week in the TOWN and one (1) full work day per week (7 hours on site) in the CITY Assessor's Office.

(B) It is agreed that the SRPA shall be permitted flexibility in the scheduling of his/her time between the TOWN and the CITY and it is understood that he/she may spend more or less time in either municipality during any particular week to accommodate the

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

particular needs of each municipality. However, it is anticipated that the SRPA will normally spend four (4) days per week in the TOWN and will not spend more than one full work day per week (5 hours on site) in the CITY Assessor's Office.

ARTICLE VI. RESOURCES.

(A) Unless otherwise set out herein, the CITY shall furnish all other required personnel, office equipment, office space, utilities, postage, and supplies required to provide assessing services for work activity on behalf of the CITY.

(B) Individual Ownership: the TOWN, and CITY, shall retain respective title to all property which it has acquired in the operation of their respective assessing departments, and which it hereafter acquires during the term of this Agreement, to fulfill its obligations under this Agreement.

ARTICLE VII. FEES TO BE PAID BY THE CITY.

The City shall pay the Town the sum of $45,400 for calendar year 2020 for the services provided; 20% of the Town Assessor's and Senior Areal Property Appraisal salaries for calendar year 2021 capped at $47,670 for the services provided; and, 20% of the Town Assessor's and Senior Areal Property Appraisal salaries for calendar year 2022 capped at $50,053.50 for the services provided. These payments shall be made in twelve (12) equal monthly installments commencing on the 1st day of March 2020 with three payments due by then.

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

ARTICLE VIII. LIABILITIES OF CITY AND TOWN.

Each municipality will continue to be liable for any erroneous, illegal or inappropriate assessments made by the Assessor in performing his functions on behalf of each municipality.

ARTICLE IX. AMENDMENTS.

Amendments to this Agreement must be made in writing and approved by resolution of both the TOWN and the CITY.

ARTICLE X. RECORDS OF THE CITY.

Assessing records for the CITY shall be maintained, and all assessing functions of the CITY, shall be conducted by the TOWN Assessor at the City of Tonawanda City Hall facilities.

ARTICLE XI. DESIGNATION OF ASSESSOR.

The Assessor of TOWN shall by resolution of CITY Common Council be designated as CITY Assessor.

ARTICLE XII. DISPUTE RESOLUTION.

Any disputes between the parties concerning the extent or manner of the performance of assessing service delivered to the CITY under this Agreement, shall be resolved by the majority vote of the combined membership of the Town Board and the City's common council whose decision shall be final and conclusive.

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

ARTICLE XIII. NOTICE.

The parties agree that any notices or submissions required to be given pursuant to this Agreement, shall be in writing and shall be deemed given when made by personal delivery, by certified mail, return receipt requested, or by facsimile transmission at a fax number provided by the parties. The names, addresses, telephone numbers and fax numbers of the parties are as follows:

TOWN: SUPERVISOR, TOWN OF AMHERST
5583 Main Street
Amherst, New York 14221

CITY: MAYOR CITY OF TONAWANDA
200 Niagara Street
Tonawanda, New York 14150

ARTICLE XIV. DELINQUENCY.

In the event the CITY does not make payment within thirty (30) days after the date due, the TOWN may terminate this Agreement by sending a written notice to the CITY pursuant to Article XII hereof. The CITY shall be liable for assessing services rendered to the time of termination on prorated basis.

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

ARTICLE XV. TERM.

The term of this Agreement shall for a period commencing on January 1, 2020, until December 31, 2022 unless terminated sooner upon mutual consent of the parties. This Agreement may be extended for an additional two (2) year term upon mutual consent of the parties. The term of the shared service agreement will be based on the appointment dates of the Assessor as dictated by Real Property Tax Law Section 310.

ARTICLE XVI. AUTHORIZATION.

This Agreement is made and executed pursuant to a resolution of the Town Board adopted on Febnary 3rd 2020, and a resolution of the CITY Common Council adopted on January 21, 2020.

In Witness Whereof, the parties hereto have executed this Agreement the day and year first above written.

TOWN OF AMHERST

Brian J. Kulpa, Supervisor

CITY OF TONAWANDA

Rick Davis, Mayor

Lisa M Kleiner
Notary Public, State of New York
01KI6021510
Qualified in Erie County
Commission Expire March 15, 20

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

STATE OF NEW YORK)

COUNTY OF ERIE) ss:

On the 10th day of February, in the year 2020, before me, the undersigned, personally appeared **Brian J. Kulpa** , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, as Supervisor for the Town of Amherst and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Lisa M. Kletner
Notary Public

Lisa M Kletner
Notary Public, State of New York
01KI6021510
Qualified in Erie County
Commission Expire March 15, 2023

STATE OF NEW YORK)

COUNTY OF ERIE) ss:

On the 21st day of January, in the year 2020, before me, the undersigned, personally appeared **Rick Davis,** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Mayor of the City of Tonawanda, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

James P. Kossow
Notary Public

JAMES P. KOSSOW
Notary Public, State Of New York
Qualified In Erie County
My Commission Expires 1/31/2023

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

SCHEDULE A

NAME	SPECIFIC RESPONSIBILITIES
[redacted]	All aspects of Commercial permits
DM	Comm update work- all aspects-Z's/In Rem/Cond/RPS/Inv issues etc
	Article 7 work
	Informal Assessment reviews- comm.
	Completes and does tax rate cheat sheet-including any web updates
	Web Updates with IT/SDG
	Exemption Manager-SPECIFIC FOCUS ON AGED SENIOR, ENHANCED STAR EXEMPTIONS & IVP PROCESS
	Manage New Mandatory IVP process
	All rps reports/monthky updates/patches sql
	manage conversion to ACES in 202
	Ida-485 B work
	sales entering
	Not- For profit exemptions
	Sales Transmittals-Monthly
	All Purchasing/Budget work
	Vets exemption
	Processes Petitions/works with TC on Tax Bills to change
	Fully manages all COE's-does petitions-maintains spreadsheets & hardships
	fire ambulance exemptions
	Disability Exemptions-all aspects
	Enters Spec Franchise & utility numbers
	Clergy Exemptions
	updates to web/SDG site
	any public information/education/training etc
[redacted]	All field review of Z permits
CW	All rezone requests
	Splits and Merges-also from FTP site
	All site plan review
	Bar involvement
	Custom Reports
	All aspects of residential permits-TOV
	Resl update work- all aspects-Z's/Cond/In Rem/Inv issues/RPS
	All PIP to her for street updates etc
	Scar prep-Lead position
	Informal Assessment reviews- Res
	Batch Load bank codes
	Omitted Tax tracking
	All permit work -decks/garages/pool
	MLS Review Team
	Runs Top 10 Taxpayers report

Key:
CW = Cheryl Walfrand, Senior Real Property Appraiser
DM = David Marrano, Town of Amherst Assessor

Attachment: Suspension #3 Attachment SharedAssessorAmendment (RES-2021-816 : Addendum to Municipal Cooperation Agreement for

SCHEDULE A

2021 Finacials Assessing for COT/TOA- Dave Marrano &Cheryl Walfrand
Addendum /Revision to Agreement

2021 Shared Service Payment	$47,039.76	
Monthly	$3,919.98	
per person		$2424.88 Assessor
		$1495.10 SR RPA
DUE thru August	$31,359.84	
Available-Sept. to December	$15,679.92	

Dave M works thru 9/17	See notes below
Dave M starts on COT Payroll 9/20/21	See notes below
Agreement Modification includes 4 full months for Cheryl (Sept-Dec) , and 1/2 Month for DM	
Financials are	
CW 4 Months at $1495.10	$5,980.40
DM .5 Months at $2424.88	$1,212.44
REVISED PAYMENT SEPT-DEC 21-COT TO TOA	**$7,192.84**

$2,707.54	Sept.
$1,495.10	Oct.
$1,495.10	Nov.
$1,495.10	Dec.

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

Francina J. Spoth
Town Clerk

Meeting: 09/13/21 07:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 24765 **RESOLUTION 2021-817** **ADOPTED**

Lease Agreement with American Campus Communities (ACC) (CRS #2894)

SUSPENSION AGENDA ITEM : SEPTEMBER 13th, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **September 10, 2021**

RE: **Lease Agreement With American Campus Communities (ACC) (CRS#2894)**

Kindly adopt a resolution authorizing the Supervisor to a lease Agreement with American Campus Communities (ACC) for land located at 330 Maple Road, identified as approximately 10.14 acres of said property more fully detailed in the attached Lease Agreement, subject to the following:

1.) Review and final approval by the Town Attorney;

2.) Review and final approval by counsel for American Campus Communities; and

3.) Pending successful routing of the CRS.

Thank you.

SJS:nmb
Attachments
c: Kathy Cooper, Deputy Town Clerk
(*w/attachments,* **Suspension Agenda Item : September 13th, 2021**)

9/13/2021
A motion to approve was made by Deputy Supervisor Berger, seconded by Councilmember Lavin and unanimously approved 5-0.

FINANCIAL IMPACT:

n/a

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

Attachment: Lease Agreement American Campus (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

LEASE AGREEMENT

THIS AGREEMENT, is made as of , 2021, between ACC OP (Maple Road LLC) (Lessor) with principal place of business located at 12700 Hill Country Road, Suite 200, Austin, Texas, 78738 and the Town of Amherst (Lessee) a municipal corporation located at 5583 Main Street, Williamsville, New York 14221. In consideration of their mutual covenants, conditions, agreements, obligations assumed and other considerations contained herein, the parties hereto agree as follows:

1) Lessor has agreed to let, and hereby lets, and the Lessee agrees to lease, certain premises situated in the Town of Amherst, New York, located at 330 Maple Road, Williamsville, NY 14221 bearing SBL 55.03-1-1.0, approximately 10.14 acres of said property (demised premises), which is more particularly described in the diagram attached hereto as **Exhibit "A",** for a term commencing on September ____, 2021 and ending on December 31, 2026.

2) Lease Payment: The Lessee agrees to pay one dollar ($1.00) to Lessor as rent for the entire term of this Agreement.

3) Payment for Expenses: The Lessee shall pay for all expenses normally incurred in the routine management, maintenance and operation of the fields, facilities and the equipment covered by this Agreement. The facility, equipment and services for which the Lessee shall be financially responsible shall include, but not be limited to, charges for law enforcement officers or private security officers; charges for providing appropriate trash receptacles; charges for the removal of trash and debris arising from or resulting from the use of the premises by the Lessee; charges for providing portable toilets: extra custodial and ground maintenance; charges for phone lines and services; charges for providing bases, the home plate(s) and pitching plate(s).

4) Prevention of Waste. The Lessee agrees to use all reasonable precautions to prevent waste and to prevent said premises from being destroyed or injured by fire or flooding and agrees not to throw or deposit any dirt or any objectionable matter in the areas on or about the said premises. It is specifically understood that premises leased are to be kept as clean and healthful as possible.

5) Right to Permit Uses by Others. The Lessee will have the right without written consent of the Lessor to permit other entities to use the fields located at the premises to conduct recreational leagues operating within the Lessee's geographic jurisdiction. Lessee shall notify Lessor of the names of these users no later than thirty (30) days prior to commencement of the use provided further that these users agree to be bound by the Indemnification obligations that the Lessee owes to the Lessor as defined in paragraph 12 of this Lease. Said users shall maintain at all times during the term of their use of the fields Commercial General Liability insurance in the amount of $2,000,000 per occurrence for personal injury and advertising injury, $4,000,000 aggregate, with umbrella coverage of $5,000,000 with Lessor added as an additional insured on a primary and non-contributory basis to protect Lessor from against any and all claims, demands and cause of actions, arising

by reason of any activities engaged in by said user and said activities shall not commence under this Lease until an appropriate certificate of insurance has been provided to Lessor by the Lessee.

6) Field Construction: The Lessee will have the ability to construct at its sole cost and expense at the premises up to four (4) softball fields and related facilities, including but not limited to temporary structure such as back stops, fencing, toilet facilities (port-a-potties), concession stands, dugouts, spectator seating, storage facilities and any other temporary structures deemed necessary to the operation of the softball fields located at the demise premise and other improvements such as storm drainage necessary for the operation of the softball fields. Lessor shall also have the ability to permit food trucks to have temporary access to the demised premises only when sporting events are occurring said trucks to have access one (1) hour prior to the sporting event and one (1) hour after conclusion of the sporting event. The Lessor shall have the ability to approve and consent to the plans for the construction of said fields and fencing, etc., said approval or consent will not be unreasonably withheld delayed.

7) Removal of Improvements: At the termination of the Lease, or its extension, Lessee will, at its own expense, remove all such fields, fencing, toilet facilities, concession stands, dugouts, spectator seating, storage facilities and any other temporary structures deemed necessary to the operation of the softball fields located at the demise premise and all other improvements made to the premises and restore the premises to the condition as existed prior to commencement of the Lease pursuant to a schedule to be mutually agreed upon by the parties.

8) Ability to Bring Fill: Lessee shall, at its sole cost and expense, be permitted to bring clean fill onto the premises, the same meeting the requirements contained in the specification annexed hereto as **Exhibit "B".** The fill will be utilized as part of the field construction.

9) Field Maintenance: The Lessee will maintain the playing fields in a proper playing condition which will include maintenance such as lining and dragging on a regular basis according to game schedules, mowing grass, trimming along all fences, back stops, bleachers and lawn areas associated with the site on a minimum of a weekly basis. The Lessee will also perform sod cutting and fill in the infield as needed to keep the fields in a safe and proper playing condition.

10) Abatement of Nuisance: The Lessee agrees that it will not during the term of this Lease suffer or create any nuisance on or about the premises. The Lessee shall not commit any waste upon the premises or disturb nearby privately owned or publicly owned property. Further, during such times as the premises are used under this Lease, the Lessee and its officers, representatives, and members shall endeavor to restrain persons not affiliated with the Lessee, or affiliated with those leagues authorized by the Lessee, from committing any waste or damages upon the premises utilized by the Lessee on any property which is adjacent to the same. In the event Lessor's property or properties owned by others are damaged or destroyed as a result of abuse under this Agreement, the Lessee shall

Attachment: Lease Agreement American Campus (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

immediately reimburse Lessor for such cost as shall be incurred in repairing said damages and restoring the property to its condition prior to said use and damage. It being specifically understood that instead of reimbursing Lessor for such costs the Lessee reserves the right to perform such repair or restoration by the use of its employees.

11) Supervision of Use: Whenever the Lessee shall use the demised premises, the Lessee shall assure that all activities conducted therein are supervised by responsible adults who shall be familiar with the recreational programs of the Lessee and the arrangements which have been made by the Lessee and Lessor for the use of the demised premises.

12) Use of Portable Equipment: Portable equipment, such as storage bins, cargo containers, backstops, toilet, concession stands, bleachers and batting cages shall be permitted under this Lease. Prior to placing portable equipment on the premises the Lessee shall submit to the Lessor plans and specifications describing, in detail, the specific portable equipment to be used and the planned locations of said portable equipment. If the use of said portable equipment is approved by the Lessor, which permission shall not be unreasonably withheld, the Lessee may use such portable equipment on the premises designated. At the termination of this lease, Lessee shall remove at its sole cost and expense all such portable equipment pursuant to a schedule mutually agreed upon by the parties.

13) Non-Liability for Loss: This Lease is made upon the express condition that Lessor shall be free from any and all liability and claim for damages because of any injury to persons or property, including death, resulting from or associated with the use and maintenance of the premises by the Lessee. The Lessee hereby assumes all risk of damage to persons and property in or upon the premises, from any cause or source whatsoever connected to the negligence of the Lessee, and to this extent the Lessee hereby waives all claims against Lessor for damages to persons or property in or about said premises.

14) Indemnification: To the fullest extent permitted by New York law, Lessee shall indemnify and hold harmless Lessor from and against any and all claims, demands, causes of actions, suits, damages, counsel fees, and all other reasonable costs and expenses associated with the defense of Lessor, including costs of investigation, arising out of or incurred in defense of any claim, proceeding, or action brought for personal injury, wrongful death or property damage arising from Lessee's use of the demised premises, or from the conduct of Lessee's activities or from any activity, work or things done, permitted or suffered by Lessee in or about the demised premises or elsewhere. Lessee shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In case any action or proceeding be brought against Lessor by reason of any such claim, Lessee, upon receipt of written notice from Lessor, said notice to be forwarded to Lessee within ten (10) business days of receipt by Lessor of notice of such claim/suit/proceeding, shall defend the same at Lessee's sole cost and expense by counsel

Attachment: Lease Agreement American Campus (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

of its choice provided selection of counsel is approved in writing by Lessor, said approval shall not be unreasonably withheld, denied or delayed. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to persons, in, upon or about the demised premises arising from any cause and Lessee hereby waives all claims in respect thereof against Lessor. Lessee shall further save and hold harmless the Lessor from and indemnify Lessor against any and all orders, judgments and decrees which may be entered into in any suit or action related to such injuries.

15) Insurance: The Town shall maintain at all times during the term of this Lease adequate liability insurance, which may be provided through proof of self-insurance acceptable to Lessor (Attached as **Exhibit C** is the Town Board Resolution of September 29 1986, evidencing the Town's self-insurance status) and provide proof of excess insurance in the amount of at least $2,000,000 per occurrence for personal injury and advertising injury, $4,000,000 aggregate (Attached as **Exhibit D** is proof of such excess coverage) with Lessor added as an additional insured on a primary and non-contributory basis to protect Lessor from against any and all claims, demands and cause of actions, arising by reason of any activities of the Lessee said work shall not commence under this Lease until an appropriate certificate of insurance has been provided to Lessor.

16) Intoxicating Beverages, Smoking, Vaping and Drugs: The Lessee shall not use, or permit to be used, in connection with its use of these premises, the smoking of cigarettes and/or cigars, use of e-cigarettes, vaping, and the use or possession of any intoxicating beverages or drugs without the specific written approval of the Lessor.

17) Notices: All notices to be given under this Lease shall be in writing and shall be effective either upon personal delivery, or being sent by e-mail, delivery and read receipt requested, addressed to the party to whom that such notice is given. Notice sent as above shall be deemed served 24 hours after transmission by e-mail.

Notice to Lessor shall be given to:

Notice shall be given to the Town at the following address:

Town Attorney
5583 Main Street
Williamsville, New York 14221
E-mail: ssliwa@amherst.ny.us

Attachment: Lease Agreement American Campus (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Town Supervisor
5583 Main Street
Williamsville, New York 14221
E-mail: bkulpa@amherst.ny.us

Director of Youth and Recreation
Northtown Center at Amherst
1615 Amherst Manor Drive
Williamsville, New York 14221
E-mail: mpouli@amherst.ny.us

18) Renewal of Lease: If both parties agree, then this lease will be renewed upon the terms and conditions to be mutually agreed upon by both parties and upon approval by the Town Board for an additional period to be agreed upon by the parties.

By: _____
ACC OP (Maple Road LLC)

By: _____
Brian J. Kulpa, Supervisor
Town of Amherst

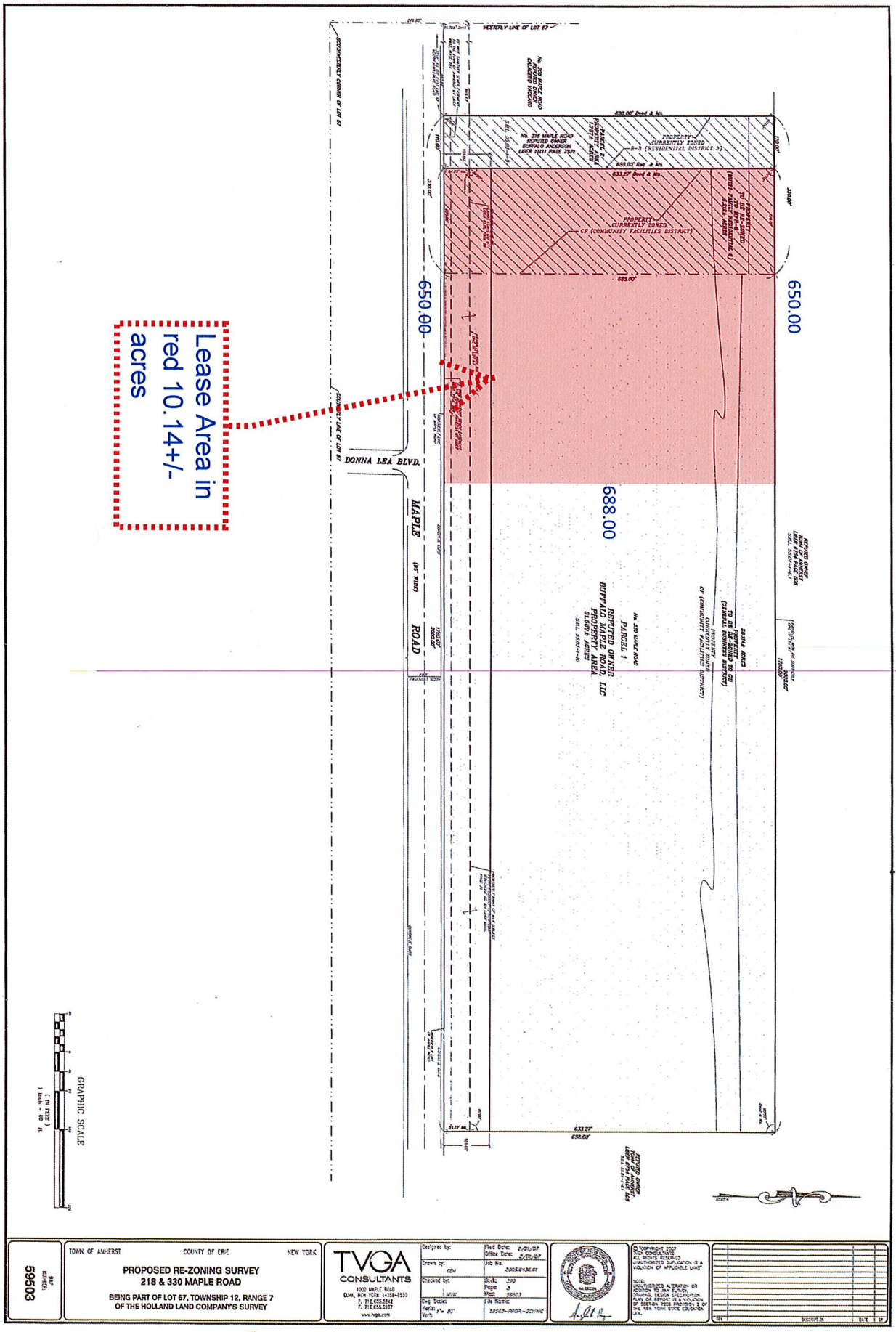
DATED: _____

DATED:_____

Attachment: Lease Agreement American Campus (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Attachment: Exhibit A.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

EXHIBIT “A”



Z-2014-05
330 MAPLE RD

Z-2014-05

Attachment: Exhibit A.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

EXHIBIT "B"

Table 5.4(e)10 Recommended Number of Soil Samples for Soil Imported To or Exported From a Site			
Contaminant	**VOCs**	**SVOCs, Inorganics & PCBs/Pesticides**	
Soil Quantity (cubic yards)	**Discrete Samples**	**Composite**	**Discrete Samples/Composite**
0-50	1	1	3-5 discrete samples from different locations in the fill being provided will comprise a composite sample for analysis
50-100	2	1	
100-200	3	1	
200-300	4	1	
300-400	4	2	
400-500	5	2	
500-800	6	2	
800-1000	7	2	
➢ 1000	Add an additional 2 VOC and 1 composite for each additional 1000 Cubic yards or consult with DER		

(f) Compliance for soil exported from a site for reuse. For soil that is being exported from a site to locations other than permitted disposal facilities, the handling requirements are set forth in this subdivision and in paragraph 5.4(e)4.

1. Levels of contamination must not exceed the lower of the groundwater and residential use levels as shown in Appendix 5, absent a beneficial use determination issued by DEC. DER will coordinate with the Division of Solid & Hazardous Materials (DSHM), prior to the start of the remedial action, relative to whether the exported soil can be used beneficially in accordance with 6 NYCRR 360-1. The sampling and analysis requirements are set forth in paragraph 5.4(e)10.

2. The number of required samples are specified in Table 5.4(e)10 and paragraph (e)10 above, which may be modified by the DER project manager based on various factors, including the location of the site receiving the soil.

(g) Compliance for the decommissioning of monitoring wells. All monitoring wells not required for site management should be decommissioned in accordance with paragraph (d)6 above prior to DER approval of the FER.

5.5 Underground Storage Tank Closure

(a) The first step for underground storage tank (UST) closure is the identification, removal, treatment, containment and/or stabilization of the contents to prevent contaminant exposure to receptors and to prevent further movement of contaminants through any pathway as set forth herein.

1. A health and safety plan for the site is developed, as described in section 1.9, by a qualified individual in accordance with subparagraph 1.5(a)3.i.

2. Underground tank closures not performed in accordance with this section will require a certification of the closure report by a professional engineer, as described in section 1.5.

Attachment: Exhibit B.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Constituent	Unrestricted Use	Residential Use	Restricted Residential Use	Commercial or Industrial Use	If Ecological Resources are Present
Semi-volatile Organic Compounds					
Acenaphthene	20	98	98	98	20
Acenaphthylene	100	100	100	107	NS
Anthracene	100	100	100	500	NS
Benzo(a)anthracene	1	1	1	1	NS
Benzo(a)pyrene	1	1	1	1	2.6
Benzo(b)fluoranthene	1	1	1	1.7	NS
Benzo(g,h,i)perylene	100	100	100	500	NS
Benzo(k)fluoranthene	0.8	1	1.7	1.7	NS
Chrysene	1	1	1	1	NS
Dibenz(a,h)anthracene	0.33 [3]	0.33 [3]	0.33 [3]	0.56	NS
Fluoranthene	100	100	100	500	NS
Fluorene	30	100	100	386	30
Indeno(1,2,3-cd)pyrene	0.5	0.5	0.5	5.6	NS
m-Cresol(s)	0.33 [3]	0.33 [3]	0.33 [3]	0.33 [3]	NS
Naphthalene	12	12	12	12	NS
o-Cresol(s)	0.33 [3]	0.33 [3]	0.33 [3]	0.33 [3]	NS
p-Cresol(s)	0.33	0.33	0.33	0.33	NS
Pentachlorophenol	0.8 [3]	0.8 [3]	0.8 [3]	0.8 [3]	0.8 [3]
Phenanthrene	100	100	100	500	NS
Phenol	0.33 [3]	0.33 [3]	0.33 [3]	0.33 [3]	30
Pyrene	100	100	100	500	NS
Volatile Organic Compounds					
1,1,1-Trichloroethane	0.68	0.68	0.68	0.68	NS
1,1-Dichloroethane	0.27	0.27	0.27	0.27	NS
1,1-Dichloroethene	0.33	0.33	0.33	0.33	NS
1,2-Dichlorobenzene	1.1	1.1	1.1	1.1	NS
1,2-Dichloroethane	0.02	0.02	0.02	0.02	10
1,2-Dichloroethene(cis)	0.25	0.25	0.25	0.25	NS
1,2-Dichloroethene(trans)	0.19	0.19	0.19	0.19	NS
1,3-Dichlorobenzene	2.4	2.4	2.4	2.4	NS
1,4-Dichlorobenzene	1.8	1.8	1.8	1.8	20
1,4-Dioxane	0.1 [3]	0.1 [3]	0.1 [3]	0.1 [3]	0.1
Acetone	0.05	0.05	0.05	0.05	2.2
Benzene	0.06	0.06	0.06	0.06	70
Butylbenzene	12	12	12	12	NS
Carbon tetrachloride	0.76	0.76	0.76	0.76	NS
Chlorobenzene	1.1	1.1	1.1	1.1	40
Chloroform	0.37	0.37	0.37	0.37	12
Ethylbenzene	1	1	1	1	NS
Hexachlorobenzene	0.33 [3]	0.33 [3]	1.2	3.2	NS
Methyl ethyl ketone	0.12	0.12	0.12	0.12	100
Methyl tert-butyl ether	0.93	0.93	0.93	0.93	NS
Methylene chloride	0.05	0.05	0.05	0.05	12

Attachment: Exhibit B.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Volatile Organic Compounds (continued)					
Propylbenzene-n	3.9	3.9	3.9	3.9	NS
Sec-Butylbenzene	11	11	11	11	NS
Tert-Butylbenzene	5.9	5.9	5.9	5.9	NS
Tetrachloroethene	1.3	1.3	1.3	1.3	2
Toluene	0.7	0.7	0.7	0.7	36
Trichloroethene	0.47	0.47	0.47	0.47	2
Trimethylbenzene-1,2,4	3.6	3.6	3.6	3.6	NS
Trimethylbenzene-1,3,5	8.4	8.4	8.4	8.4	NS
Vinyl chloride	0.02	0.02	0.02	0.02	NS
Xylene (mixed)	0.26	1.6	1.6	1.6	0.26

All concentrations are in parts per million (ppm)
NS = Not Specified

Footnotes:
[1] The SCO for Hexavalent or Trivalent Chromium is considered to be met if the analysis for the total species of this contaminant is below the specific SCO for Hexavalent Chromium.
[2] The SCO is the sum of endosulfan I, endosulfan II and endosulfan sulfate.
[3] For constituents where the calculated SCO was lower than the contract required quantitation limit (CRQL), the CRQL is used as the Track 1 SCO value.
[4] This SCO is derived from data on mixed isomers of BHC.

Attachment: Exhibit B.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Attachment: Exhibit C.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Exhibit “C”

SEPTEMBER 29, 1986

A special meeting of the Amherst Town Board, 5583 Main Street, Williamsville. New York 14221 on Monday , September 29, 1986 at 3:30 P.M.,

Roll call: John R. Sharpe, Supervisor; Richard C. Barton, Councilman; Charles W. Moses, Councilman; Harold J. Collier, Councilman; William L Kindel, Councilman; Lynn Millane, Councilman; Lawrence Southwick. Councilman

Also present: Dolores B. Shearer. Deputy Town Clerk; James M. Nesper, Town Attorney

A motion was made by Councilman Southwick, seconded by Supervisor Sharpe to approve the following resolution:

WHEREAS, the Hartford Insurance Co. has proposed a renewal of the Town's insurance policies at an annual premium of from $1.2 million to $1.8 million and,

WHEREAS, the expected cost of a self insurance program for the Town is substantially less than the price charged by Hartford and

WHEREAS, certain insurance coverages formerly available to the Town are no longer available at any price and,

WHEREAS, the limits on coverage have been reduced and,

WHEREAS, the Town Board wishes to save the taxpayers' money and believes that the risks are acceptable in accord with the September 13 memorandum from Councilman Southwick,

NOW, THEREFORE, BE IT RESOLVED that the basic liability insurance coverages from the Hartford be canceled as of the earliest feasible date and,

BE IT FURTHER RESOLVED that the umbrella policies be canceled as of October 3, 1986 and,

BE IT FURTHER RESOLVED that the workers' compensation policies be transfered to the State Insurance Fund as soon as is feasible and,

BE IT FURTHER RESOLVED that the Supervisor be authorized to sign a contract with the Gallagher-Bassett organization, or with another firm should the Gallagher-Bassett price be too high, for claims handling and

BE IT FURTHER RESOLVED that the Town retain, where feasible, insurance coverage for buildings and contents, boilers, crime, electronic data processing equipment, papers and public officials' liability and

BE IT FURTHER RESOLVED that a fund for claims be set up in the maximum allowable amount and,

BE IT FURTHER RESOLVED that the Town Attorney be authorized to engage outside counsel to defend against actions brought against the Town where such actions would have formerly been defended by the insurance company and,

BE IT FURTHER RESOLVED that the Supervisor be authorized to seek a consulting firm specializing in loss control and prevention services to be contracted for such services.

Roll call: Southwick, aye; Sharpe, aye; Kindel, no; Millane, aye; Collier, aye; Moses, no; Barton, no. Ayes, 4 Noes, 3.

Approved.

A motion was made by Supervisor Sharpe, seconded by Councilman Kindel to approve the following reso lution:

WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town of Amherst to purchase Automobile and General liability insurance coverage, and

WHEREAS, AS OF THE 3rd day of October 1986 the Town of Amherst will no longer be insured and thus be uninsured for Automobile liability and General liability, and

WHEREAS, there are numerous individuals, agencies, associations, partnerships and corporations servicing the

Attachment: Exhibit C.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Town of Amherst, and/or its Special Improvement District as volunteers, and

WHEREAS, it is desirable and necessary in order to maintain the present level of services to the residents of the Town to continue to utilize the services of said volunteers,

NOW, THEREFORE, BE IT RESOLVED, that the Town of Amherst hereby holds harmless any and all individuals, associations, partnerships and corporations from any claim, action or proceeding arising out of said volunteers' services to the Town of Amherst and/or its Special Improvement District, and

BE IT FURTHER RESOLVED that the Town Attorney be authorized and directed to defend any and all said actions and proceedings as may be commenced by a third party against said volunteers, and

BE IT FURTHER RESOLVED, that the officers of the Town of Amherst be authorized and directed to take all steps necessary to carry out the intent and purpose of this resolution.

Roll call: Sharpe, aye; Kindel, aye; Moses, aye; Barton, aye; Millane, aye; Southwick, aye; Collier, aye. Ayes, 7; Noes, 0. Approved.

A motion was made by Councilman Southwick, unanimously seconded to approve the following resolution:

WHEREAS, the Town Board of the Town of Amherst on the 29th day of September, 1986 by Resolution duly adopted, determined that it is no longer in the public interest for the Town to purchase Automobile and General liability insurance coverage, and

WHEREAS, the Town of Amherst has utilized from time to time facilities, real property and assets of other municipalities, corporations partnerships, associations, and individuals in order to carry out various Town of Amherst functions and programs and

WHEREAS, it is necessary to continue to utilize said real and personal property of said entities so as to maintain the present level of services to the residents of the Town of Amherst, and

WHEREAS, as part of the consideration for the use of said real and/or personal property it has been necessary to provide a certificate of insurance naming said entities as a party insured

NOW, THEREFORE, BE IT RESOLVED, that the Supervisor with the assistance of the Town Attorney be authorized and directed to enter into "save harmless" agreements with said municipalities, corporations Partnerships, associations and individuals for the purpose of continuing to utilize said entities real or personal property for various functions and programs sponsored and administered by the Town of Amherst and/or its Special Improvement Districts. and

BE IT FURTHER RESOLVED, that the Supervisor and Town Attorney take all other necessary steps to carry out the intent and purpose of this Resolution.

Roll call: Southwick, aye; Sharpe. aye, Moses, aye; Barton, aye; Collier. aye, Millane, aye; Kindel, aye. Ayes, 7; Noes, 0. Approved.

Adjourn: 4:30 P.M.

Dolores B. Schearer
Deputy Town Clerk
Town of Amherst,
Erie County New York

Attachment: Exhibit C.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Attachment: Exhibit D.ACC (RES-2021-817 : Lease Agreement with American Campus Communities (ACC) (CRS#2894))

Exhibit “D”

TOWNOFA-01

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 7/30/2021

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 License # 1009544 Lawley, LLC 361 Delaware Avenue Buffalo, NY 14202	CONTACT NAME: PHONE (A/C, No, Ext): (716) 849-8618 FAX (A/C, No): (716) 849-8291 E-MAIL ADDRESS:
INSURED Town of Amherst 5583 Main Street Williamsville, NY 14221	INSURER(S) AFFORDING COVERAGE / NAIC # INSURER A : Argonaut Insurance Company 19801 INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	[ ] CLAIMS-MADE [ ] OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	[ ] POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$
	[ ] OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	[ ] ANY AUTO						BODILY INJURY (Per person)	$
	[ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	[ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
A	[ ] UMBRELLA LIAB [X] OCCUR						EACH OCCURRENCE	$ 10,000,0
	[X] EXCESS LIAB [ ] CLAIMS-MADE	X		4623365-10	1/1/2021	1/1/2022	AGGREGATE	$ 10,000,0
	[ ] DED [X] RETENTION $ 2,000,000							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						[ ] PER STATUTE [ ] OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N [ ] (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
ACC OC (Maple Road LLC) is listed as an Additional Insured with regards to Excess Liability as required by written contract or agreement.

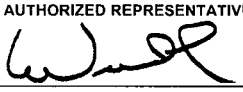
CERTIFICATE HOLDER

ACC OC (Maple Road LLC)
12700 Hill Country Road
Suite 200
Austin, TX 78738

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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