

Telephone
(914) 277-3637
Fax
(914) 276-0082

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

RICK MORRISSEY
SUPERVISOR



**SOMERS TOWN BOARD
SPECIAL MEETING/WORK SESSION
THURSDAY DECEMBER 1, 2016 6:30pm**

www.somersny.com

6:30pm - Executive Session –Personnel

7:00PM – Special Meeting

A. PLEDGE OF ALLEGIANCE:

Public Hearing Re: 2017 Preliminary Budget

Work Session:

PUBLIC COMMENT

Please limit your comments to no more than 3 minutes.

B. PARKS & RECREATION: No additional business.

C. TOWN BOARD:

1. Michael Blum Energy & Environment Committee - Discussion.
2. Best Plumbing Resolution - Discussion.
3. IMDA with Westchester County, the Town of Somers and Kearney Realty.

**SOMERS TOWN BOARD
SPECIAL MEETING/WORK SESSION
THURSDAY, DECEMBER 1, 2016 6:30pm**

4. Town generator request proposals - Discussion.
 5. Requests to name a street or road – Discussion.
 6. Request from the Somers Historical Properties Board:
 - a. Lease for the use of the Wright Reis Homestead to include the house, outbuildings and site.
 - b. Transfer ownership of Caroline Wright Reis possessions (contents of the house and outbuildings, with the exception of two vehicles.
 - c. Authorize Town Attorney to meet with Margaret Nicholson.
 7. Permit police officers to donate comp time to a police officer out on medical leave.
- D. FINANCIAL:** - No additional business.
- E. HIGHWAY:** No additional business.
- F. PERSONNEL:**
1. Current Vacancies:
 - Somers Energy Environment Committee
 - Affordable Housing Board (3 – unexpired 2 year terms ending 7/11/2017)
 - Assessment board of Review (1 -5 year tem ending 9/30/2021.)
 2. Upcoming Vacancies:
 - Library Board of Trustees (2 – 5 year terms to 12/31/2021.)
 - Planning Board (1 - 7 year term ending 12/31/2023.)
 - Partners in Prevention (3- 3 year terms ending 12/31/2020.)
 - Zoning Board of Appeals (1 – 5 year term ending 12/31/2020.)
 3. Acknowledge the termination of Geraldine Gilmore as Deputy Town Clerk per November 10th, 2016 memo from Patricia Kalba, Town Clerk.
 4. Acknowledge resignation of Regina Murdock, Intermediate Clerk in Town Clerk’s office effective November 14, 2016.
 5. Authorize hiring of Mr. Frank Rende Road Maintenance at an hourly salary of \$21.7662, effective starting November 14, 2016 memo dated November 10, 2016 from Thomas Chiaverini, Superintendent of Highway.

**SOMERS TOWN BOARD
SPECIAL MEETING/WORK SESSION
THURSDAY, DECEMBER 1, 2016 6:30pm**

G. PLANNING & ENGINEERING: - No Additional business.

H. POLICE: - No Additional business.

I. PROPOSED CONSENSUS AGENDA:

1. Authorize Supervisor to execute negative declaration of Conservation Easement for Stuart's Farm.
2. Accept the following bond:
\$599.00 North County Homes. TM 16.05-1-1.
3. Return the following bond:
\$500 Fabry Wetland permit TM:47.20-1-12.
4. Accept bids for 2017 Highway Materials per memo dated November 16th from Thomas Chiaverini, Superintendent of Highways and Robert Kehoe, Director of Finance.
5. Authorize Supervisor to execute RDM Computer Consultants Agreement.
6. Authorize the Transfer of Funds & Budget Modifications per November 23, 2016 memo from Supervisor, Rick Morrissey.

**SOMERS TOWN BOARD
SPECIAL MEETING/WORK SESSION
THURSDAY, DECEMBER 1, 2016 6:30pm**

2016 CALENDAR

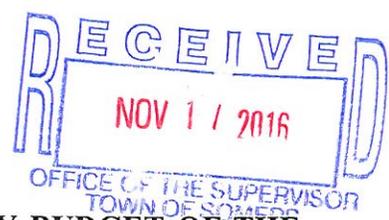
December 1, 2016	7:00pm	Town Board Regular Meeting
December 8, 2016	7:00pm	Town Board Regular Meeting Public Hearing for Somers Crossing A. To extend Special Districts for Water. B. To extend Special Districts for Sewer.

2017 CALENDAR

January 5, 2017	7:00pm	Town Board Organizational Meeting Town Board Work Session
January 12, 2017	7:00pm	Town Board Regular Meeting
February 2, 2017	7:00pm	Town Board Work Session
February 9, 2017	7:00pm	Town Board Regular Meeting

11/23/2016 12:31 PMR
Z:\Supervisor\bditieri\Agendas\2016\November 10, 2016 Regular Meeting.docx

EC
TB/TA
11/17/16



PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, THAT THE PRELIMINARY BUDGET OF THE TOWN OF SOMERS FOR THE FISCAL YEAR BEGINNING, JANUARY 1, 2017

has been approved by the Town Board of the Town of Somers and filed in the office of the Town Clerk at the Town House, Somers, New York where said budget is available for inspection by any interested person during regular office hours.

FURTHER NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Somers will meet and hold a public hearing on said Preliminary Budget at the Town House, 335 Route 202, Somers, New York on Thursday evening, December 1, 2016 at 7:00 P.M. and that at such public hearing any person may be heard in favor or against any item or items contained therein.

Pursuant to Section 108 of Town Law, the proposed salaries of the following Town

Officers are hereby specified as follows:

COUNCILMAN (4) each	\$ 12,395.00
SUPERVISOR	\$102,243.00
TOWN CLERK	\$ 72,978.00
SUPERINTENDENT OF HIGHWAYS	\$105,121.00

BY ORDER OF THE TOWN BOARD
OF THE TOWN OF SOMERS

Patricia Kalba
Town Clerk – Town of Somers

Dated: November 18, 2016

**TOWN BOARD TOWN OF SOMERS
RESOLUTION**



Action: Amended Special Use Permit
Application Name: Best Plumbing Supply, Inc.
Owner/Applicant: Best Plumbing Supply, Inc.
Designation: Tax Lot 28.15, Block 1, Lots 2 and 4
Zone: R80 Residence Zoning District
Location: 49 Route 138 (Goldens Bridge Road)
Date of Approval: December 1, 2016

WHEREAS, Best Plumbing Supply, Inc., a pre-existing non-conforming use in an R80 residential district, has made application to the Town Board of the Town of Somers for an amendment to its existing Special Use Permit in connection with its use of the above subject property; and

WHEREAS, such modifications relate to its Special Exception Use Permit of June 10, 2004 as modified in September 3, 2010 and seek to further modify restrictions pertaining to days and hours of operation; and

WHEREAS, the proposed modifications seek the following:

1. To conduct Showroom Sales activities on Sundays from 11:00 am to 5:00pm
2. To conduct Supply Sales and Pick-Ups on Saturdays from 8:00am to 5:00pm
3. To remove the trucking activity restriction from 7:40am to 8:15 am on Mondays to Fridays

WHEREAS, the application consists of the following:

- Letter Application from Best Plumbing dated July 13, 2016 requesting special permit modification and requesting to be added to the Town Board agenda of August 4, 2016
- Short Form EAF
- Property Survey

WHEREAS, the Town Board considered the application and declared its intent to be Lead Agency under SEQRA at its meeting of August 4, 2016, identified the project as an Unlisted Action and determined to conduct a coordinated SEQRA review; and

WHEREAS, at its meeting of August 4, 2016, the Town Board also referred the application to the Planning Board for its review and recommendation; and

WHEREAS, the Director of Planning received correspondence on August 10, 2016 from Rev. Mark G. Vaillancourt, President/Principal of Kennedy Catholic High School objecting to the

proposed removal of trucking restrictions from 7:40 to 8:15 AM Mondays to Friday due to high volumes of traffic into and out of the main school entrance and such correspondence was circulated to the Planning Board and Town Board and consulting Town Engineer; and

WHEREAS, the Planning Board discussed the proposed action at its meeting of August 10, 2016 and was in receipt of the above correspondence and heard testimony from Rev. Vaillancourt regarding his objection to removal of the requested trucking restrictions; and

WHEREAS, after consideration and discussion, the Planning Board made a recommendation of approval to the Town Board of all the applicant's requested modifications to the special permit due to its determination that the changes to the site and entrances to the High School since the last request for modifications to the special permit were significant improvements that mitigated future impacts and that the projected three 24 foot box trucks that would leave the site during Kennedy morning peak arrival times were minor and would have no traffic impact; and

WHEREAS, the Planning Board expressed it had no problem with the Town board granting the requested special exception use permit modifications in correspondence to the Town Board of August 30, 2016;

WHEREAS, at its meeting of September 8, 2016, the Town Board scheduled a public hearing for October 13, 2016 at which time the public hearing was opened but not held due to noticing issues and at which time a public hearing was scheduled for November 10, 2016; and

WHEREAS, by letter of September 19, 2016 to the Director of Planning, NYS DOT after review of the EAF and Site Plan, sent as part of the SEQR coordinated review, determined that the proposed special permit modifications have minimal impact on the existing State Highway System; and

WHEREAS, the Town Board conducted a duly noticed Public Hearing on the subject application on November 10, 2016, and all those wishing to be heard were heard, at which time the public hearing was closed and a comment period was left open for ten days; and

WHEREAS, during the ten day comment period, the Town Board received correspondence from surrounding residential neighbors as well as from Kennedy Catholic High School officials and parents, all objecting to a modification of the existing special permit on the grounds of disturbance to neighborhood character and traffic safety impacts; and

NOW, THEREFORE, BE IT RESOLVED, that in accordance with Article 8 of the State Environmental Quality Review Law and 6 NYCRR Part 617, and Town Law Chapter 92 Environmental Quality Review, the Town Board hereby made a determination that the proposed development would potentially have a significant negative adverse impact on the environment by affecting neighborhood character as a pre-existing nonconforming use whose non-conformity would be increased and that there was the potential to affect traffic safety;

RESOLVED that the application for an Amended Special Use Permit with all requested permit modifications be denied.

State Environmental Quality Review
POSITIVE DECLARATION
Notice of Determination of Significance and Denial of Application



Date of Adoption: December 1, 2016

Name of Action: Best Plumbing Supply, Inc. Application for Modifications to Special Exception Use Permit

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Somers Town Board, as Lead Agency, has determined that the Proposed Action described below will have a potentially large or significant adverse effect on the environment and denies the request for Modifications to the Special Exception Use Permit.

SEQR Status: The Proposed Action is an Unlisted Action under SEQRA as per Chapter 92 of the *Code of the Town of Somers* in conjunction with Article 24 of the *NYS Environmental Conservation Law*.

Description of Action: The proposed action is a modification to restriction on the days and hours of operation of the site facility. The proposed modifications seek the following:

1. To conduct Showroom Sales activities on Sundays from 11:00 am to 5:00pm
2. To conduct Supply Sales and Pick-Ups on Saturdays from 8:00am to 5:00pm
3. To remove the trucking activity restriction from 7:40am to 8:15 am on Mondays to Fridays

This use is a pre-existing non-conforming use in an R-120 residential district. A coordinated review is required.

Location: 49 Route 138 (Tax Lot 28.15-25-4)Town of Somers,Westchester County, NY

Reasons Supporting This Determination:

Based upon a review of Parts 1, 2 and 3 of the Short Environmental Assessment Form (EAF) and all other application materials that were submitted in support of the Proposed Action, and oral and written testimony at the public hearing and during the comment period that opposed the granting of the modification to restrictions on the days and hours of operation of the facility due to potential adverse impacts on surrounding residential neighborhood character and to safety of students at Kennedy Catholic High School across Route 138 due to increases in traffic, the Town Board finds that the proposed modifications to the existing restrictions on operations may result in one or more

SEQR DISTRIBUTION LIST – Best Plumbing Supply, Inc. Modifications to Special Exception Use Permit 2016
Involved Agencies

Somers Town Board (Lead Agency)
Somers Town House
335 Route 202
Somers, New York 10589

Interested Agencies

Somers Planning Board
Somers Town House
335 Route 202
Somers, New York 10589

New York City Department of Environmental Protection
465 Columbus Avenue
Valhalla, New York 10595
Attn.: Cynthia Garcia

Westchester County Planning Board
432 Michaelian Office Building
White Plains, New York 10601

Town of Somers Open Space Committee
Somers Town House
335 Route 202
Somers, New York 10589

Somers Bureau of Fire Prevention
Somers Town House
335 Route 202
Somers, New York 10589

Town of Somers Highway Department
Somers Town House
335 Route 202
Somers, New York 10589

New York State Department of Transportation
Region 8 Office
4 Burnett Boulevard
Poughkeepsie, NY 12603
Attn.: William Gorton, P.E., Acting Regional Director – 1 Copy

John F. Kennedy Catholic High School
54 Route 138
Somers, NY 10589
Attention: Administration

Other- Lead Agency Representatives

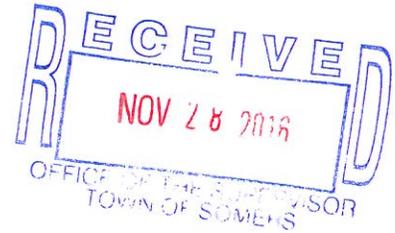
Syrette Dym, Director of Planning
Somers Town House
335 Route 202
Somers, New York 10589

Woodard & Curran Engineering P.A P.C.
709 Westchester Avenue Suite L2
White Plains, NY 10604
Attn: Joseph Barbagallo, Senior Vice President

Stephens, Baroni Reilly & Lewis LLP
175 Main Street
White Plains, NY 10601
Attn: Roland A. Baroni, Esq.

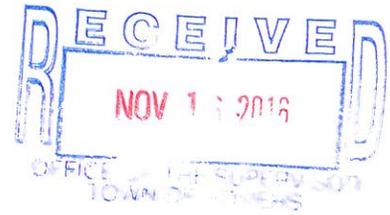
Other- Project Sponsor Representatives

Jonas Weiner, President
Best Plumbing Supply, Inc.
49 Route 138
Somers, NY 10589



Belinda DiTieri

From: Patricia Kalba
Sent: Wednesday, November 16, 2016 1:20 PM
To: Belinda DiTieri
Cc: Barbara Sherry
Subject: Public hearing
Attachments: PUBLICHEARINGNOTICEbudget120116.docx



Attached please find the documentation for the December 1, 2016 Public Hearing with regard to the 2017 Budget

Patricia Kalba, RMC
Town Clerk

Town of Somers
335 Route 202
Somers, New York 10589

914-277-3323
914-277-3960 (fax)
pkalba@somersny.com

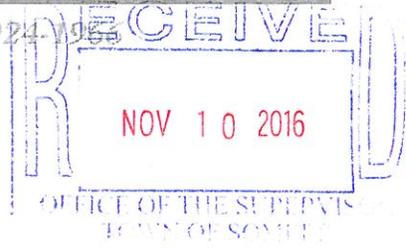
Note: This e-mail message is intended only for the use of the individual or entity to whom it is addressed, and may contain information that is privileged or confidential. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering this message to the identified addressee, you are hereby notified that any unauthorized use, disclosure, reproduction, dissemination or disruption of this communication is strictly prohibited. Please note that it is your responsibility to scan this e-mail for viruses. If you receive this e-mail message in error, please delete all copies of this message and notify the sender immediately by telephone at (914) 277-3323. Thank you.



C-TB
TC
TA
11/10/16

KENNEDY CATHOLIC HIGH SCHOOL

Founded as St. Mary's High School 1924-1966



November 10, 2016

To Whom It May Concern:

We understand that the Somers Town Board is having a hearing to consider amending the Special Exception Use Permit for Best Plumbing, Inc. which will remove current restrictions for truck activity from 7:40 am to 8:15 pm.

The entrance to Best Plumbing, Inc. is located directly opposite the entrance to Kennedy Catholic High School.

Please be advised that our school has strong objections to removal of any such restrictions placed on Best Plumbing during that period of operation. The period of time stipulated in the restrictions is one that has the highest volume of commuter traffic in and out of the school entrance. Kennedy currently services 40 school districts, 18 of which bus children to or school every day. Other students arrive either by way of our shuttle service or drop off from parents. A significant portion of the student population also drives to the school. With such a diverse commuter population entering and exiting an already dangerous intersection, the removal of trucking restrictions would only further aggravate the problem and increase the likelihood of pedestrian and automotive accidents.

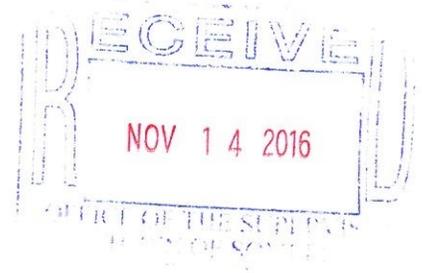
It is our understanding that the DOT is expected to install a traffic signal at this intersection some time in 2018 or 2019. We would like to ask that you consider delaying the lifting of the restriction until such time that the signal is installed and functioning.
Thank you for the opportunity to voice my concern to the Board.

Sincerely,

Rev. Mark G. Vaillancourt, PhD
President/Principal

Kathleen T. McManus

EC -
TB TC TA
11/14/16 BJD



November 10, 2016

**Via Facsimile
To (914)**

Town Board
c/o Patricia Kalba, Town Clerk
Somers Town House
335 Route 202
Somers, New York 10589

**Re: Statement for Public Hearing of November 10, 2016
Best Plumbing Supply, Inc. – Application for Modifications
to Special Exception Use Permit of June 10, 2004**

Dear Town Board Members:

Since I am unable to attend tonight's public hearing, I hereby submit my statement in writing, via facsimile. I am a parent of a graduate and a current student at Kennedy Catholic High School. I also am a daily commuter who travels Route 138, from Route 100 to the I-684 entrance ramp, practically on a daily basis, as I travel from my home in Carmel to my office in Mount Kisco.

What constitutes minimal impact when you are dealing with children? We're talking a mere 35 minutes of restricted truck activity. The applicant, Best Plumbing, wants to allow nine trucks to have access during this short time period, which equates to about every 3-1/2 minutes there will be a box truck trying to get in or out of the mix of commuter cars and local residents traversing Route 138, buses, parents and guardians driving students in personal cars, and student drivers themselves who, for the most part, are fairly newly licensed and/or inexperienced drivers. For an inexperienced driver, throwing a box truck into a traffic pattern of traffic coming and going in essentially what can be a four-way intersection, during peak commuting hours, is enough of an impact.

The improvements made at the intersection of Route 138 and Route 100, while are greatly appreciated and were long overdue, are irrelevant to this specific matter of truck restriction on weekdays from 7:40 am to 8:15 am.

Any other improvements that the Applicant states has been made to their site has no correlation or regard to the amount of cars which enter and exit Kennedy's property, nor has any bearing on the amount of cars that traverse Route 138 between Route 100 and Route 22, nor the speed at which they travel.

Instead of the Planning Board "supporting healthy business activity in the town" and speculating that the addition of nine box trucks to the traffic pattern during peak school/commuter hours would not have "a significant impact on the Route 138 corridor or on surrounding uses", perhaps it would be wiser to consider the impact if an accident occurred involving a student and/or parent. Is the value of 35 minutes more valuable the safety of our children?

I don't think it is an unreasonable request to continue the restricted truck activity for a mere 35 minutes to for safety's sake. I beseech the Town Board to reject the recommendations of the Planning Board, to deny any motion to approve the Amended Special Permit, and to keep the restrictions as stated in Condition 11 of the Town Board Resolution dated June 10, 2004.

Thank you for your consideration.

Sincerely,

Kathleen T. McManus

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TR, TC, TA
TR, TC, TA
PP

Hold until
11/10

AMDA - Hidden Meadows

INTER-MUNICIPAL/DEVELOPER AGREEMENT

THIS AGREEMENT made this day of, 20165, by and among:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Marine Avenue, White Plains, New York 10601 ("County"), and

THE TOWN OF SOMERS, a municipal corporation of the State of New York, having an office and place of business at Somers Town House, 395 Route 202 Somers, New York 10589, (the "Municipality" and/or the "Town"), and

KEARNEY REAL ESTATE DEVELOPMENT GROUP, INC., and/or its designee, organized and existing under the laws of the State of New York (the "Developer")

WHEREAS, the County executed a stipulation and order of settlement and dismissal in connection with United States of America, ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, No. 06 Civ. 2860 (DLC) (the "Settlement Agreement"; and

WHEREAS, pursuant to the Settlement Agreement the County is required to develop seven hundred fifty (750) affordable AFFH units in eligible municipalities; and

WHEREAS, pursuant to the Settlement Agreement the Town is an eligible municipality; and

WHEREAS, in an effort to encourage the development of fair and affordable housing in Westchester County, the County has established a Housing Implementation Fund ("HIF") to provide funds to assist in the construction of water facilities, sewer facilities, road improvements, and other infrastructure improvements necessary for the development of fair and affordable housing in Westchester County; and

WHEREAS, the County desires to enter into agreements with municipalities and developers pursuant to which the municipalities will construct public improvements in support of the development of affordable housing; and

WHEREAS, in furtherance of the foregoing, the County desires to enter into Intermunicipal and Intermunicipal-Developer Agreements with municipalities and developers in the County in support of affordable AFFH developments; and

WHEREAS, the Developer has agreed to construct certain affordable AFFH housing on the property more particularly described on Schedule "A," attached hereto and made a part hereof (the "Affordable Housing Property"); and

WHEREAS, the Developer is the owner of the Affordable Housing Property and has agreed to construct eight (8) affordable AFFH ownership units and eight (8) affordable AFFH rental units (the "Development") on the Affordable Housing Property; and

WHEREAS, WHEREAS, the Municipality and the Developer desire that the County shall fund the Infrastructure Improvements (defined below) which support the Development and, in consideration thereof, acknowledge that the Affordable Housing Property shall be subject to that certain declaration of restrictive covenants (the "Declaration of Restrictive Covenants") dated _____, which has been recorded by the Developer against the Affordable Housing Property in the Office of the Westchester County Clerk under control No. _____ and the Affordability Restrictions as defined in Schedule "B" thereto ("Schedule B") all of which is incorporated herein by reference; and

WHEREAS, following construction of the Affordable Units (as defined in Schedule "B"), the sale and re-sale and rental and re-rental of the Units will adhere to the provisions set forth in Schedule "B," including but not limited to the Affordability Requirements for the Period of Affordability set forth therein; and

The Municipality shall implement the construction of the Infrastructure Improvements on the Infrastructure Improvements Property in accordance with the provisions as set forth in this Agreement, including but not limited to, Schedule "D," attached hereto and made a part hereof. The Infrastructure Improvements shall be constructed in accordance with the Plans (as defined in Schedule "D"). Modification of the Plans or change orders, if any, shall require the prior written approval of the Commissioner of the County Department of Planning or his duly authorized designee (the "Commissioner").

The Developer shall adhere to all provisions set forth in Schedule "B", including but not limited to meeting the Affordability Requirements for the Affordable AFFH Units in the Development until the expiration of the Period of Affordability. The Municipality and the Developer shall comply with Chapter 298 of the Westchester County Administrative Code as applicable to the Affordable AFFH Units ("Chapter 298").

It is understood and agreed that the Municipality represents that the construction of the Infrastructure Improvements to be performed hereunder have been or will be (within one hundred twenty (120) days of the date hereof) awarded by means of public competitive bidding pursuant to section 103 of the General Municipal Law. In no event shall the retention of a contractor to perform work on the Infrastructure Improvements relieve or otherwise discharge the Municipality or Developer, from their respective obligations hereunder or create a third party beneficiary relationship between the County and any such contractors and the parties hereto expressly disclaim any intention to create such a relationship.

The County shall not advance any HIF Funds (as defined in Section "4" hereof) to the Municipality and work will not be required to commence on the Infrastructure Improvements until:

(i) evidence has been provided to the County that the Developer owns the Affordable Housing Property (shown on Schedule "A") free of liens, encumbrances, easements and agreements unless such liens, encumbrances, easements and agreements, if any, shall be subordinate to the Declaration of Restrictive Covenants in a manner acceptable to the County and;

2. The Town Engineer shall be informed (914-277-5366) at least 48 hours prior to the commencement of the work.
3. Work shall be undertaken consistent with Town of Somers regulations to the satisfaction of the Town Engineer.
4. Amawalk Point Road must be completed prior to the issuance of a building permit for the work on lot #3.

BE IT FURTHER RESOLVED, that the Steep Slope and Tree Preservation Permits shall be valid for a period of one year from the date of issuance of the permits.

This resolution shall have an effective date of September 21, 2005.

**BY ORDER OF THE PLANNING BOARD
TOWN OF SOMERS**

Fedora C. DeLucia
Fedora C. DeLucia, Chairman

Dated: *October 20, 2005*

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WHEREAS, the Infrastructure Improvements shall be constructed on the Town's right of way and on the Affordable Housing Property (the Infrastructure Improvements Property); and

WHEREAS, it is anticipated that the State of New York Department of Transportation shall grant the parties a work permit to construct certain of the Infrastructure Improvements on Route 6; and

WHEREAS, the Infrastructure Improvements include but are not limited to, paving, installation of stormwater basins, a portion of the expansion of the public water and sewer connections, onsite stormwater management and other related work, all as more fully set forth in Schedule "D" annexed hereto and forming a part hereof; and

WHEREAS, the County proposes to fund the cost of the construction of the Infrastructure Improvements and will use the proceeds of tax exempt general obligation bonds issued by the County for such funding (as defined in Section 5 below); and

WHEREAS, the Municipality desires to implement the construction of the Infrastructure Improvements; and

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. **RECITALS:**

The above recitals are hereby incorporated by reference into the body of this Inter-Municipal Developer Agreement (the "Agreement" and or "IMDA").

2. **PERFORMANCE OF WORK:**

All of the provisions of this Section "2" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability as defined in Schedule "B".

3. LIENS:

Except as provided in the title policy, the Municipality and the Developer will not enter into any mortgage or other financing documents that place a lien on the Infrastructure Improvements, which will be owned by the County, or the Infrastructure Improvements Property, which conflict with or diminish the terms of the Restrictive Covenants recorded against the Affordable Housing Property. In the event any lien is placed on the Infrastructure Improvements or the Infrastructure Improvements Property by a contractor or subcontractor, the Municipality or the Developer that engaged such contractor or subcontractor shall take immediate action to discharge such liens.

(ii) the Municipality has awarded the bids and contracted for construction of the Infrastructure Improvements, provided, however, that in the event the lowest acceptable bid exceeds the amount of the County HIF Funds or the actual cost of completion of the Infrastructure Improvements, the Developer shall contribute said excess;

(iii) the Municipality has received either a; (a.) performance and payment bond, including without limitation materials and labor, covering one hundred percent (100%) of the work to be performed in connection with the Infrastructure Improvements, in form and content and issued by a surety reasonably satisfactory to the Municipality; or (b.); an instrument of credit or guarantee which is acceptable to the City and the County;

(iv) the Declaration of Restrictive Covenants placed on the Affordable Housing Property has been executed and has been submitted for recording, as more fully set forth below;

(v) the Developer has obtained a firm, unconditional commitment for construction financing for the Development;

(vi) indenture from the Developer to the Municipality and to the County granting an easement in the Affordable Housing Property for the construction of any infrastructure improvements to, constructed thereon has been executed in substantially the form attached hereto and forming a part hereof as more particularly described in Schedule "G" (the "Required Easement") and such Required Easement will be submitted for recording, as more fully set forth below;

(vii) the Municipality has verified that the Infrastructure Improvements not constructed on the Affordable Housing Property will be constructed in the public right-of-way or pursuant to a work permit to be issued the State of New York Department of Transportation to construct certain of the Infrastructure Improvements on Route 6;

(viii) the Developer has obtained any approvals necessary in connection herewith, including but not limited to receipt of the site plan and State Environmental Quality Review Act ("SEQRA") approvals by the Municipality's governing body; and

(ix) the Developer has obtained any and all approvals necessary in connection herewith, including without limitation, from its members.

The requirements contained in clauses (i), (iv), (v), (vi), (vii), (viii) and (ix) above must be satisfied prior to or concurrent with execution of this Agreement. The requirements contained in clauses (ii) and (iii) above must be satisfied within 120 days following execution of this Agreement.

Timothy
H. Jones

County for audit and inspection. The County shall not be restricted from withholding payment for cause found in the course of such audit or because of failure of the Municipality or the Developer to cooperate with such audit. The County shall, in addition, have the right to audit such books and records subsequent to payment during the period that such books and records are required to be maintained under any applicable law.

The Municipality will furnish the County, whenever requested to do so, satisfactory evidence showing that all monies already paid hereunder have been applied by the Municipality toward the costs of the Infrastructure Improvements. Until such evidence, which shall consist of an affidavit certified by the respective contractor(s) acknowledging receipt of payment from the Municipality, is produced, at the option of the County, no further payments need be made by the County hereunder.

Payments hereunder to the Municipality by the County will operate to release the County from any and all obligations or liabilities to the Municipality, the Developer, and their respective agent(s), contractor(s) or sub-contractor(s) in connection herewith. Notwithstanding the foregoing, the County expressly disclaims the existence of any third party beneficiary relationship between the County and any such parties.

Whenever requested to do so, the Municipality shall furnish the County satisfactory evidence showing that all monies theretofore advanced here have been paid for and applied toward the Infrastructure Improvements by the Municipality, the Developer and/or its contractors or third parties. Until such evidence, which shall consist of an affidavit certified by the respective contractor(s) acknowledging receipt of payment from the Municipality is produced, at the option of the County, no additional or further advances need be made by the County hereunder.

Notwithstanding anything herein contained to the contrary, should the Infrastructure Improvements and the Affordable AFFH Units in the Development fail to be fully constructed within three (3) years from execution of this Agreement then the County shall have the right, at its option, to require repayment from: (1) the Municipality of all County FAH Funds paid to the

How do we
control this?

Indemnity
from
Developer?

4. PAYMENT:

The County's sole obligation under this IMDA is to pay the Municipality an amount not to exceed ONE MILLION SIX HUNDRED THOUSAND (\$1,600,000) DOLLARS (the "County HIF Funds") to the Municipality to fund the construction of the Infrastructure Improvements necessary for the Development, pursuant to the terms hereof. The Developer expressly acknowledges and agrees that its only recourse will be against the Municipality. The County HIF Funds will be paid with the proceeds of the Bonds in accordance with the payment provisions of Schedule "D". The County will make such payment to the Municipality only after submission by the Municipality of all requested documentation concerning construction of the Infrastructure Improvements and after audit and approval by the County for expenses properly incurred in the performance of this Agreement. The County will not be liable for any costs or expenses in excess of the HIF Funds incurred in connection herewith. The Municipality will promptly pay for work performed. In the event the cost of constructing the Infrastructure Improvements exceeds the amount of the HIF Funds, the Developer will pay said excess.

Notwithstanding the foregoing it is acknowledged and agreed that the County-provided project management services as specified in Schedule "D" (the "Project Manager") will be paid from the HIF Funds. The Project Manager shall report directly to the Municipality's engineer and County staff on all services performed relating to the construction of the Infrastructure Improvements. Any costs incurred by the County in connection with such Project Manager shall be deducted from the County HIF Funds otherwise payable to the Municipality.

County HIF Funds shall be expended solely and exclusively for the purchase of materials and performance of labor used in the construction of the Infrastructure Improvements, including the retention of a Project Manager, in accordance with this Agreement.

Prior to the making of any payments hereunder, the County, may, at its option, audit such books and records of the Municipality and Developer as are reasonably pertinent to this Agreement to substantiate the basis for payment. The Municipality and Developer will, and will require any contractor(s) or sub-contractor(s) to make their books and records available to the

Municipality under this Agreement; and/or (2) the Developer of all County FAH Funds, if any, received in accordance herewith. The County's right of repayment from the Municipality and/or Developer of County HIF Funds paid hereunder shall terminate upon the completion of the construction of the Infrastructure Improvements and the issuance of a temporary certificate of occupancy for the Development (as more fully described in Schedule "D").

All of the terms of the Section "4" shall survive the expiration or other termination of this Agreement.

5. TAX RESTRICTIONS:

A. The Bonds. The Municipality and the Developer acknowledge and understand that the funds available for the Infrastructure Improvements hereunder are expected to be made available from tax exempt general obligation bonds issued by the County (the "Bonds"), which have been, or shall be, issued to fund construction of the Infrastructure Improvements in accordance with the provisions of this Agreement. The Municipality and Developer further acknowledge and understand that in connection with the issuance of the Bonds, the Commissioner of Finance of the County of Westchester has or will execute an "Arbitrage and Use of Proceeds Certificate," in compliance with the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"). The Municipality and the Developer agree that each will do all acts and things, or refrain from taking action, as necessary in order to assure that interest paid on the Bonds shall not be included in gross income of the owners of the Bonds for the purpose of Federal income taxation.

B. Commencement of Construction. The Municipality and Developer expect that the construction of the Infrastructure Improvements will commence as set forth in Schedule "D" and that the County HIF Funds made available hereunder will be expended for costs of the Infrastructure Improvements in accordance with the budget contained in Schedule "D" and the construction of the Infrastructure Improvements will proceed in accordance with said Schedule.

The Municipality and Developer agree to notify the County in the event of changes in the expected schedule for completion of the Infrastructure Improvements.

C. Failure to Complete. The Municipality and Developer agree that should the Infrastructure Improvements fail to be completed in accordance with Schedule "D," which completion date shall be extended for unavoidable delays, *force majeure* and other causes beyond the control of the Municipality or the Developer, the County, without limiting any other right or remedy to which it may be entitled, shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Municipality and Developer and/or to deduct from any remaining payments due hereunder an amount equal to the penalties required by the Code for failure to expend the bond proceeds allocable to the Infrastructure Improvements in a timely manner.

D. Termination. Should the County terminate this Agreement pursuant to the terms hereof or should the remaining payments due the Municipality be insufficient to cover the amount of the aforementioned penalty, the Municipality and the Developer, to the extent any funds have been disbursed to Developer, shall be obligated to immediately pay the County the full amount of any such penalty though the Developer agrees to indemnify the Municipality for any such penalties that are not due to the fault of the Municipality.

E. Extensions. Notwithstanding anything to the contrary contained in this Agreement, the Municipality and Developer shall use best efforts and good faith to meet any and all time periods provided for in this Agreement and in any schedule annexed hereto in connection with any obligation hereunder. If, despite the use of best efforts and good faith, the Municipality and the Developer are unable to meet any stated time period, then the Municipality or Developer can request an extension of such time period and all subsequent time periods affected thereby, subject to the consent of the County which consent shall not be unreasonably withheld. Any such extension, if granted, shall not constitute waiver by the County of any terms or requirements herein.

F. No Loan. The parties hereto acknowledge and agree that the HIF Funds do not constitute a loan. The HIF Funds are to be paid to the Municipality in consideration for causing construction of the Infrastructure Improvements in support of the fair and affordable Development.

All of the provisions of this Section "5" shall survive the expiration or other termination of this Agreement.

6. OWNERSHIP OF INFRASTRUCTURE IMPROVEMENTS:

The Municipality and the Developer acknowledge and agree that the Infrastructure Improvements shall be owned by the County for so long as the Bonds are outstanding. The Municipality and the Developer agree to execute or cause to be executed any and all such documents as are necessary and appropriate to effectuate County ownership. Upon maturity or redemption of the Bonds, the County's ownership interest in the Infrastructure Improvements will automatically terminate. Upon request the County will provide notification of such maturity or redemption in recordable form.

Notwithstanding the foregoing the Municipality and the Developer have the right to utilize the Infrastructure Improvements in such manner as they may deem necessary or desirable in support of the Development, subject to the Declaration of Restrictive Covenants.

All of the provisions of this Section "6" shall survive the expiration or other termination of this Agreement until and for so long as the Bonds are outstanding provided that the County has paid the HIF Funds to the Municipality.

7. MAINTENANCE AND REPAIRS:

The Infrastructure Improvements located in the Town's right of way or constructed pursuant to a State of New York work permit shall be kept in good order and repair by the Municipality at the Municipality's sole cost and expense, and the Municipality shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, which may be necessary or required so that at all times the Infrastructure Improvements shall be in thorough good order, condition and repair.

The Infrastructure Improvements located in the Affordable Housing Property shall be kept in good order and repair by the Developer at the Developer's sole cost and expense, and the Developer shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, that may be necessary or required so that at all times the Infrastructure Improvements shall be in thorough good order, condition and repair.

All of the provisions of this Section "7" will survive the expiration or other termination of this Agreement for so long as the Bonds are outstanding provided that the County has paid the HIF Funds to the Municipality.

8. REPORTS:

To the extent that the parties have performed work hereunder, the Municipality and/or Developer shall furnish the County with progress reports as may be requested detailing the progress of the construction of the Infrastructure Improvements. The Municipality and/or Developer shall prepare a final report describing the work performed by the Municipality and Developer in implementing the construction of the Infrastructure Improvements together with such supporting information and documentation in such form and at such times as the County may reasonably require.

9. MAINTENANCE OF RECORDS:

The parties will, each at their sole cost and expense, keep, maintain, and preserve at their respective principal offices throughout the term of this Agreement, full and detailed books, accounts, and records pertaining to its performance pursuant to this Agreement. Such books, accounts and records will include, without limitation, all bills, invoices, payrolls and other data evidencing, or in any material way relating to, the direct and indirect costs and expenses incurred in connection herewith. The County will have the right to inspect and audit, at reasonable times and upon reasonable notice, any and all such books, accounts and records at the office or offices where they are then being kept, maintained and preserved.

All of the provisions of this Section "9" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability provided that the County has paid the HIF Funds to the Municipality.

10. COUNTY'S RIGHT TO WITHHOLD PAYMENTS:

If at any time the Municipality or the Developer neglect or fail to perform properly any of their respective obligations under this Agreement, including without limitation, failure to complete the Development or the Infrastructure Improvements in accordance herewith, as more fully set forth in Schedule "B" hereto, then the County, in addition to any other rights hereunder, including without limitation to terminate the Agreement, will have the right, in its sole discretion subject to the Cure Period (defined in Section 22), to withhold, in whole or in part, any payments otherwise due or to become due to the Municipality hereunder until such neglect or failure will have been remedied to the satisfaction of the County.

11. REPRESENTATIONS, WARRANTIES AND GUARANTEES:

A. The Municipality expressly represents, warrants and guarantees to the County that:

(a) it is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of New York; the execution and performance of this Agreement by the Municipality has been duly authorized by its governing body; this Agreement, and any other documents required in connection herewith, including without limitation, the Required Easement to the County on the Reversion date, when so delivered, will constitute legal, valid and binding obligations of the Municipality enforceable against the Municipality in accordance with their

respective terms; and the Municipality will deliver to the County at the time of execution of this Agreement a resolution adopted by its governing body authorizing the execution of this Agreement, and any other documents required to be delivered by the Municipality, including without limitation the Required Easement;

(b) the person signing this Agreement on behalf of the Municipality has full authority to bind the Municipality to all of the terms and conditions of this Agreement;

(c) it is financially and technically qualified to perform its obligations hereunder, including construction of the Infrastructure Improvements;

(d) it has received no information or documentation indicating that the Developer is not otherwise financially capable of completing the Development;

(e) it is familiar and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(f) the design, supervision and workmanship furnished with respect to the construction of the Infrastructure Improvements will be in accordance with sound and currently accepted scientific standards and best engineering practices;

(g) it will use its best efforts to assure and shall require in any contract documents with its Contractor(s) that all materials, equipment and workmanship furnished by Contractor(s) of the Municipality in performance of the work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and best engineering practices;

(h) to the best of the Municipality's current knowledge and information the budget proposal attached in Schedule "D" lists the anticipated true and correct costs for the Infrastructure Improvements;

(i) the consummation of the transactions contemplated by this Agreement and the performance of the Municipality's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Municipality is a party or by which it may be bound or affected; and

(j) construction of the Infrastructure Improvements is necessary to support the Project.

The Municipality expressly acknowledges that the County is materially relying on the above representations.

B. The Developer expressly represents, warrants and guarantees to the County and the Municipality that:

(a) It is duly organized, validly existing and in good standing under the laws of the State of New York. The Developer is duly qualified to do business and is in good standing in each jurisdiction where the conduct of its business requires it to be so qualified. The Developer

has the corporate power, authority and legal right to execute and perform this transaction and to execute this Agreement; the execution and performance of this Agreement by the Developer have been duly authorized by its members; this Agreement constitutes, and any other documents required to be delivered by the Developer, when so delivered will constitute, the legal, valid and binding obligations of the Developer enforceable against the Developer in accordance with their respective terms; the Developer has all requisite power and authority to enter into this Agreement; and the Developer will deliver to the County at the time of execution of this Agreement a resolution adopted by its members authorizing the execution of this Agreement, and any other documents required to be delivered by the Developer; and

(b) the person signing this Agreement on behalf of the Developer has full authority to bind the Developer to all of the terms and conditions of this Agreement pursuant to the authority granted by the Developer's governing board, as noted above; and

(c) The Developer is not on the low income housing debarred list with either the U.S. Department of Housing and Urban Development ("HUD") or the State of New York, and it is not in default under any contract with the County; and

(d) It is financially and technically qualified to perform its obligations hereunder including construction of the Development; and

(e) It is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement; and

(f) Consummation of the transactions contemplated by this Agreement and the performance of the Developer's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Developer is a party or by which it may be bound or affected; and

(g) Construction of the Infrastructure Improvements is necessary to support the Development.

The Developer expressly acknowledges that the County is materially relying on the above representations.

12. INSURANCE; INDEMNIFICATION:

A. In addition to, and not in limitation of the insurance requirements contained in Schedule "E)" entitled "Standard Insurance Provisions, Municipality," attached hereto and made a part hereof, the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Municipality 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, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Municipality, the Developer, contractors or third parties under the direction or control of the Municipality or the Developer; and

(b) 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.

B. In addition, Developer shall provide defense for and defend, indemnify and hold harmless the Municipality, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly under this Agreement as a result of any cause whatsoever other than the acts or omissions hereunder by the Municipality or contractors or third parties under the direction or control of the Municipality. Notwithstanding anything to the contrary, nothing herein shall relieve the Municipality of its obligation to indemnify and hold harmless the County pursuant to Section 12A, above; and

C. In addition to, and not in limitation of the County's insurance requirements contained in Schedule "E(ii)" entitled "Standard Insurance Provisions, Developer," attached hereto and made a part hereof, the Developer agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Developer 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, attorneys fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Developer or the Municipality, contractors or third parties under the direction or control of the Developer or Municipality; and

(b) to the extent arising directly or indirectly out of the acts or omissions hereunder by the Developer, contractors or third parties under the direction or control of the Developer 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.

13. ENVIRONMENTAL INDEMNIFICATION:

A. The Municipality represents and warrants and guarantees to the County as follows:

(1) The Municipality has no knowledge of, and has not received any notice of any condition at, on, under or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property which may have a material effect on the value of the Infrastructure Improvements Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements (as defined below); and

(2) The Municipality has no knowledge of, has and has not received any notice of any condition at, on, under, or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as "Hazardous Materials" below; and

(3) Definitions. For the purposes of this Agreement and this Section "13", the following definitions will apply:

(a) "Hazardous Materials" or "Hazardous Waste" will mean any substance:

(i) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or

(ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC §9601 (14) 42 USC §9602, and any "hazardous waste" as defined in or listed under the United States Solid Waste Disposal Act, as amended, 42 USC §5901(5), 42 USC §5921; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or

(iv) the presence of which, on the Infrastructure Improvements Property, causes or threatens to cause a nuisance on the Infrastructure Improvements Property or to nearby properties, or poses or threatens to pose a hazard to the health and safety of persons on, about or nearby the Infrastructure Improvements Property; or

(v) the presence of which on nearby properties would constitute a trespass by the owner of the Infrastructure Improvements Property; or

(vi) which contains, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; or

(vii) which contains, without limitation, polychlorinated biphenols (PCBs), asbestos, or urea formaldehyde foam insulation.

(b) "Environmental Requirements" will mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all

government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

of which it had actual notice

(c) The Municipality hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages (as defined below), whether or not disclosed in the Environmental Reports, arising out of or in any way connected with the Infrastructure Improvements Property. Environmental Damages will mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" or "Hazardous Waste" at, on, under or related to the Infrastructure Improvements Property (or ground or surface water associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property, or the existence of a violation of Environmental Requirements pertaining to the Infrastructure Improvements Property, regardless of when the existence of such Hazardous Materials or "Hazardous Waste" or the violation of Environmental Requirements arose, including without limitation:

(i) damages for personal injury, death or injury to property or natural resources occurring on or off the Infrastructure Improvements Property, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;

(ii) fees incurred for the service of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such "Hazardous Materials" or "Hazardous Waste" or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the Infrastructure Improvements Property or any other property or otherwise expended in connection with such conditions;

(iii) liability to any third person or governmental agency to indemnify such person or agency for the costs expended in connection with the items referenced in subsection (ii) herein; and

(iv) diminution in the value of the Infrastructure Improvements Property and damages for loss of business from restriction on the use of the Infrastructure Improvements Property or any part thereof.

B. The Developer represents and warrants and guarantees to the County and the Municipality as follows

(1) The Developer has no knowledge of, and has not received any notice of any condition at, on under or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property which may have a material effect on the value of the Infrastructure Improvements Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements as defined herein; and

(2) The Developer has no knowledge, and has not received any notice of any Hazardous Materials on under or related to the Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property which may have a material effect on the value of the Infrastructure Improvements Property or subject the owner thereof to potential liabilities; and

(3) The Developer hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages, arising out of or in any way connected with the Infrastructure Improvements Property. Environmental Damages shall mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees.

All of the provisions of this Section "13" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability.

14. ASSIGNMENT OF RIGHTS:

Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void. The Municipality shall not subcontract any part of the work to be performed hereunder without the written consent of the County, provided, however, that the foregoing shall not be deemed to apply to contracts entered into by the Municipality to implement construction of the Infrastructure Improvements. All subcontracts shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. All work performed by a subcontractor shall be deemed work performed by the Municipality.

The County's consent to the assignment of the responsibility for or delegation of the duty hereunder shall not release the Municipality or Developer from their respective obligations under this Agreement. The Municipality and Developer shall remain liable to the County for the performance of all respective obligations under this Agreement.

15. ENTIRE AGREEMENT; AMENDMENT:

This Agreement including without limitation all Schedules and attachments constitute the entire Agreement between the parties with respect to the funding of the Infrastructure Improvements and shall supersede all previous negotiations, commitments and writings. This Agreement 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.

16. INDEPENDENT CONTRACTOR:

The status of each of the Municipality and the Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Municipality, the subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the County nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

17. COMPLIANCE WITH LAW:

Each of the Municipality and the Developer shall perform the work hereunder in good workmanlike manner and shall obtain each, at its sole cost and expense, all permits, approvals and consents necessary for the proper conduct of its activities in connection with this Agreement. In addition to, and not in limitation of the foregoing, the Municipality and the Developer shall comply at their sole cost and expense with all applicable federal, state and local laws, rules and regulations, ordinances and requirements affecting the conduct of activities in connection with this Agreement.

All of the provisions of this Section "17" shall the expiration of other termination of this Agreement until the expiration of the Period of Affordability provided the County has paid the HIF Funds to the Municipality.

18. NOTICES:

All notices of any nature, requests, approvals and other communications which may be given by either party to the other under this Agreement shall be in writing and sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier to the respective addresses 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:

To the County

Commissioner of Planning
148 Martine Avenue
White Plains, New York 10601

with a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Municipality:

Town Supervisor
Town of Somers
Somers Town House
335 Route 202
Somers, New York 10589

with a copy to:

[Handwritten signature]
Village Attorney
[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

To the Developer:

Kearney Realty and Development Group, Inc
1777 Route 6
Carmel, New York 10512

with a copy to:

Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207

19. TERM OF AGREEMENT:

The term of this Agreement shall commence upon execution of this Agreement, and shall continue for fifteen (15) years, or until the County has retired the bonds funding the construction of the Infrastructure Improvements, whichever comes first, unless the Agreement is terminated sooner in accordance with the terms of this Agreement.

(a) The County, upon ten (10) days' notice to the Parties, may terminate this Agreement in whole or in part when the County deems it to be in its best interest. In such event, the Parties shall be compensated and the County shall be liable only for payment for services already rendered under this Agreement prior to the effective date of termination specified in Schedule "D". Upon receipt of notice that the County is terminating this Agreement in its best interests, the Parties shall stop work immediately and incur no further costs in furtherance of this Agreement without the express approval of the Commissioner, and the Parties shall direct any approved subcontractors to do the same.

In the event of a dispute as to the value of the Work rendered by the Parties prior to the date of termination, it is understood and agreed that the Commissioner shall determine the value of such Work rendered by the Parties. The Parties shall accept such reasonable and good faith determination as final.

(b) In the event the County determines that there has been a material breach by either of the Parties of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Party of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion shall be

charged to and paid by the Parties. Without limiting the foregoing, upon written notice to the Parties, repeated breaches by either of the Parties of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

20. NON-DISCRIMINATION:

The Municipality and the Developer expressly agree that neither they nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality and the Developer acknowledge and understand that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Under this IMDA it is recognized and understood that the County encourages the Municipality and the Developer to do similarly.

21. VALIDITY:

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement will in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision will be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the parties prior to determination of such invalidity or unenforceability.

22. LEGAL AND EQUITABLE RELIEF:

The injury to the County arising from noncompliance with any of the material terms of this Agreement and the Schedules hereto, including without limitation failure to complete the Development or the Infrastructure Improvements in accordance herewith or noncompliance with the Affordability Requirements until expiration of the Period of Affordability, as more fully set forth in Schedule "E" hereto, would be great and the amount of consequential damage would be difficult to ascertain and may not be compensable by money alone. Therefore, in the event of any such noncompliance, which remains uncured for thirty (30) days after service on the Municipality and Developer of written notice thereof (the "Cure Period"), the County, at its option, may terminate this Agreement and/or apply to any state or federal court for: (A) specific performance of this Agreement and the Schedules hereto; (B) an injunctive relief against any noncompliance; and/or (C) seek any and all appropriate legal and/or equitable remedies, including, but not limited to, damages, reasonable attorney's fees, disbursements and court costs in such amounts as shall be allowed by the court.

The Commissioner, in his sole discretion, may agree to stay any such enforcement beyond the Cure Period, provided however that the County determines that the Municipality and the Developer is diligently and continuously acting to cure said noncompliance. Without limiting the foregoing, upon written notice to the Municipality and Developer, repeated non-compliance by the Municipality and/or the Developer of any particular duty or obligation under this IMDA

shall be deemed a material breach of this IMDA justifying termination for cause hereunder without requirement for further opportunity to cure. Notice shall be effective as set forth below.

All of the provisions of this Section "22" will survive the Closing or other cancellation or termination of this Agreement.

23. COUNTY APPROVALS:

The parties hereby acknowledge and agree that any request by the Municipality and/or the Developer for an extension or other modification of the terms hereof which requires consent of the County will be subject to the receipt of any and all necessary County approvals. It is further acknowledged that in no event, shall any delay or failure of the Westchester County Board of Legislators and/or Westchester County Board of Acquisition and Contract to appoint or approve any action be deemed to be unreasonable.

24. EXECUTION:

This Agreement may be executed simultaneously in several identical copies, each of which shall be an original and all of which shall constitute but one and the same Agreement.

25. GOVERNING LAW:

This Agreement 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 Agreement will be brought in the County of Westchester.

26. NO WAIVER:

Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect.

27. THIRD PARTIES:

Nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

28. REQUIRED SCHEDULES:

Attached hereto and forming a part hereof as Schedule "H" is a questionnaire entitled "Required Disclosure of Relationships to County." The Municipality and the Developer agree to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the term of this Agreement, Municipality and the Developer agree to notify County in writing within ten (10) business days of such event.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as Schedule "J" is a questionnaire entitled "Business Enterprises Owned and Controlled by Persons of Color or Women" which the Developer agrees to complete.

29. FORCE MAJEURE:

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war or terrorism, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, in each case if due to a cause beyond the reasonable control of the party obligated to perform, and other causes beyond the reasonable control of the party obligated to perform (collectively, "Force Majeure") shall, notwithstanding anything to the contrary contained herein, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure. For purposes of this Section, a cause shall not be deemed beyond a party's control if it is within the control of such party's agents, employees or contractors.

30. LIABILITY:

The parties hereby acknowledge and agree that the Municipality and the Developer shall be jointly and severally liable for all obligations hereunder and for any breach of the terms of this Agreement.

The provisions of this Section "30" will survive the Closing or other cancellation or termination of this Agreement.

31. CONFLICT OF INTEREST:

The Municipality and the Developer shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The aforementioned parties shall also use all reasonable means to avoid any appearance of impropriety.

32. ELECTRONIC FUNDS TRANSFER:

All payments made by the County to the Municipality will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct program. Contractors doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form in order to receive payment. The EFT Authorization Form and related information are annexed hereto as Schedule "P". The completed Authorization Form must be returned by the Municipality to the Commissioner prior to execution of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Westchester County Finance Department.

33. ENFORCEMENT:

This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

IN WITNESS WHEREOF, the County of Westchester and the Municipality have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By: _____
Name: Edward Buroughs
Title: Commissioner of Planning

TOWN OF SOMERS

By: _____
Name: Rick Morrissey
Title: Supervisor

KEARNEY REALTY AND DEVELOPMENT GROUP, INC

By: _____
Name:

Title:

Approved by the Board of Legislators by Act No. ____ - 2015 on _____, 2015.

Approved by the Westchester County Board of Acquisition & Contract on _____, 2015.

Approved by Town of Somers on _____, 2015 .

Approved as to form and manner of execution:

Assistant County Attorney
County of Westchester

MUNICIPALITY'S ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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/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; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgment

MUNICIPAL CERTIFICATE OF AUTHORITY

I, _____,
(Officer other than officer signing contract)
certify that I am the _____ of
(Title)
the _____
(the "Municipality")

a municipal corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporate Law)

named in the foregoing agreement;
that _____
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution

(Title of such person)

of the Municipality and that said agreement was duly signed for and on behalf of said
Municipality by authority of its Board of _____, thereunto duly
authorized and that such authority is in full force and effect at the date hereof.

(Signature)

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

On this _____ day of _____, 20____, before me personally came
_____, whose signature appears above, to me
known, and known to me to be the _____ of

(Title)

_____, the Municipality described in and
which executed the above certificate, who being by me duly sworn did depose and say that
he/she, the said _____ of said Municipality resides at

_____, and that he/she signed his/her
name hereto by order of the Board of _____ of said Municipality.

Notary Public County

DEVELOPER ACKNOWLEDGMENT

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

On the _____ day of _____ in the year 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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/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; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgment

200 2-58

SCHEDULE "C"
Intentionally Omitted

SCHEDULE "D"

INFRASTRUCTURE IMPROVEMENTS PROJECT

A. SCOPE OF SERVICES

The infrastructure improvements include, but are not limited to, paving, installation of stormwater basins, a portion of the expansion of the public water and sewer connections and onsite stormwater management (the "Infrastructure Improvements"). The Infrastructure Improvements shall be constructed in accordance with the following plans: _____ as prepared by _____, dated _____ and last revised _____ (the "Plans").

Project Manager

The County will retain and/or utilize in-house staff to perform the construction management associated with the HIF / FAH funded infrastructure improvements. The construction management will include:

- the review and approvals of shop drawings,
- review and approval request for payments,
- perform inspections and provide certifications associated with any County Health department requirements (if applicable),
- conduct site inspection to confirm compliance with the approved construction drawings.

The professional retained to perform the said inspection shall report directly to the municipal engineer and County staff on all services performed relating to the construction of the municipal infrastructure project.

B. PAYMENT

The County of Westchester will make progress payments to the Municipality for expenses incurred in constructing the Infrastructure Improvements associated with the construction of 16 units of affordable AFFH housing in the Town of Somers, in an amount not to exceed \$1,600,000, as set forth pursuant to the below Budget. All quantities are approximate, and the total amount shall not be exceeded.

Any and all requests for payments to be made, including any partial payment made in proportion to the work completed, shall be submitted on properly executed payment vouchers of the County and paid within 30 days after approval by the Commissioner of Planning of the County of Westchester or his or her duly authorized designee (hereinafter the "Commissioner"), which approval shall not be unreasonably withheld and subject to the terms of the IMDA. The Municipality acknowledges and agrees that the New York State prevailing wage shall be paid. In the event prevailing wage is not paid the County's Department of Planning shall recalculate and reduce the below Budget. All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize sequential numbering and be non-repeating.

Payment shall substantially follow the following procedures, but the County reserves the right to require

additional documentation and approval:

1. Documentation for the payment of work completed shall include verification from the Architect or Engineer responsible for the work to a) verify that the work was done, and b) that it was done properly;
2. if approved, a signed AIA form approving the work, materials and workmanship and the amount to be invoiced by the contractor shall be included along with a County voucher and lien release from the Contractor.
3. the municipality submits the invoice, AIA form and a county voucher to the County for payment;
4. The County reviews the request, if approved submits it for payment & prepares a check to the municipality provided however that the County shall retain not more than five per centum of each payment which amount shall be held until final payment upon the issuance of a Certificate of Completion for the Infrastructure Improvements.

It is also understood that the County's Division of Housing may visit the site during construction and will inspect and approve the project for substantial completion and that the County shall be permitted such access.

C. BUDGET (County HIF Funds): To be inserted

All quantities are approximate and the total amount shall not be exceeded

The Developer is responsible for funding the costs of construction of the infrastructure Improvements not funded through the County HIF Funds.

D. CONSTRUCTION SCHEDULE FOR INFRASTRUCTURE IMPROVEMENTS

Commencement Date for Construction of Infrastructure Improvements: On or Before

Completion Date for Infrastructure Improvements :

SCHEDULE "E (i)"

STANDARD INSURANCE PROVISIONS (MUNICIPALITY)

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law.

NOTE: Other generally recognized forms/certificates may be substituted for the above at the sole discretion of the Director of Risk Management.

State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be

"All locations in Westchester County, New York."

(Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits' Policy, or both, a temporary permit may be issued if the employer completes form WC/DB-100 or, if applicable, form WC/DB-101. PLEASE NOTE THESE FORMS REPLACE FORM C-105.21. THE APPROPRIATE REPLACEMENT FORM MUST BE NOTARIZED PRIOR TO BEING SUBMITTED TO THE WORKERS' COMPENSATION BOARD, INFORMATION UNIT FOR INVESTIGATION AND REPORT).

If the employer is self-insured for Worker's Compensation, he should present a certificate from the New York State Worker's Compensation Board evidencing that fact.

(b) Employer's Liability with minimum limit of \$100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or a combined single limit of \$1,000,000 (c.s.l), naming the County of Westchester as an additional insured. This insurance shall include the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-Contractor.
- (iv) Products and Completed Operations.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester or the Town of Somers (including either of their employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester or the Town of Somers is named as an insured, shall not apply to the County of Westchester or the Town of Somers.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester or the Town of Somers (including either of their agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Developer.

As per the attached written agreement, and where indicated with a check mark below, the following insurance(s) will also be required:

X	(e) Environmental Liability with a minimum limit of liability per occurrence of \$1,000,000.00. Policy shall be kept in full force and effect for three (3) years from the date of Closing and the County and Village shall be provided with the endorsement naming the County of Westchester and Town of Somers as an additional insured.
	(f) Property Insurance - Replacement Cost basis with County of Westchester named as loss payee as its interest may appear
	(g) Builder's Risk --Municipality at their own cost and expense shall provide and maintain a Builder's Risk Form, All Risk Insurance Contract. The coverage shall be written for 100% of the completed value, with the County of Westchester named as loss payee as its interest may appear.

SCHEDULE "H"
REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

A potential County contractor must complete this form as part of the proposed County contract.

1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

3.) Do any County officers or employees have an interest¹¹ in the Contractor or in any approved subcontractor that will be used for this contract?

Yes _____ No _____

If yes, please provide details (attach extra pages, if necessary): _____

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

Name: _____

Title: _____

Date: _____

¹¹"Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

GENERAL INSTRUCTIONS

Please complete both sections of the Vendor Direct Payment Authorization Form and forward the completed form (along with a voided check for the account to which you want your payments credited) to: Westchester County Department of Finance, 148 Martine Ave. Room 720 White Plains, NY 10601. Attention: Vendor Direct. Please see item 14 below regarding attachment of a voided check.

Section I - VENDOR INFORMATION

1. Provide the name of the vendor as it appears on the W-9 form.
2. Enter the vendor's Taxpayer ID number or Social Security Number as it appears on the W-9 form.
3. Enter the vendor's complete primary address (not a P.O. Box).
4. Provide the name and telephone number of the vendor's contact person.
5. Enter the business e-mail address for the remittance notification. **THIS IS VERY IMPORTANT!** This is the e-mail address that we will use to send you notification and remittance information two days prior to the payments being credited to your bank account. We suggest that you provide a group mailbox (if applicable) for your e-mail address. You may also designate multiple e-mail addresses.
6. Please have an authorized Payee/Company officer sign and date the form and include a letter title.

Section II - FINANCIAL INSTITUTION INFORMATION

7. Provide bank's name.
8. Provide the complete address of your bank.
9. Enter your bank's 9 digit routing/transit number.
10. Indicate the type of account (check one box only).
11. Enter the vendor's bank account number.
12. Enter the type of the vendor's account.
13. Provide the name and telephone number of your bank contact person.
14. If you are directing your payments to a Savings Account OR you can not attach a voided check for your checking account, then the check to be deposited must be signed by an authorized bank official. **IF YOU DO NOT HAVE A VOIDED CHECK FOR A CHECKING ACCOUNT YOU MAY LEAVE THIS LINE BLANK.**

Westchester County Department of Finance

SCHEDULE "J"

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
 - a. is at least 51% owned by one or more persons of color or women;
 - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
 - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
 - d. is an enterprise authorized to do business in this state which is independently owned and operated.

- 2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WBE") pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., OR

- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____ Women

_____ Persons of Color (*please check off below all that apply*)

- _____ Black persons having origins in any of the Black African racial groups
- _____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race
- _____ Native American or Alaskan native persons having origins in any of the original peoples of North America
- _____ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

Name and Title of person completing questionnaire: _____

Signature: _____

Notary Public

Date

cc TB also agenda P/B

TEL: 914-277-3323
FAX: 914-277-3960

TOWN CLERK'S OFFICE

Town of Somers

WESTCHESTER COUNTY, N.Y.

Town House
335 Route 202
Somers, N.Y. 10589

PATRICIA KALBA
TOWN CLERK



November 21, 2016

To: Supervisor
Town Board

From: Patricia Kalba
Town Clerk

Re: Generator Request for Proposal

Proposals received for the installation of a Generac Generator at the Town House are as follows:

	<u>Option A</u>	<u>Option B</u>
LKM LTD.	\$32,250.00	\$30,400.00
A-Amp Electric Corp.	\$28,350.12	\$22,663.67
North County Electric	\$26,652.52	\$22,121.53
Light Electric	\$20,335.00	\$15,956.00

Option A:

Install and supply Generac Protector 48kW Automatic Standby Diesel Generator.

Excludes setting generator on pad and concrete pad.

Option B:

Install and supply Generac Protector QS 38kW Automatic Standby Generator (Premium Grade) (Fuel Propane).

Excludes setting generator on pad, concrete pad and propane tanks.

Efrem Citarella, Building Inspector is recommending that the Diesel Unit be installed over the Propane Unit. We are requesting that the work be awarded to Light Electric and authorization for Supervisor Morrissey execute the attached agreement.

Cc: Building Inspector
Director of Finance
Town Attorney

Telephone
(914) 277-3539

FAX
(914) 277-3790

BUILDING DEPARTMENT
Town of Somers
WESTCHESTER COUNTY, N.Y.

TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

Efrem Citarella
Building Inspector

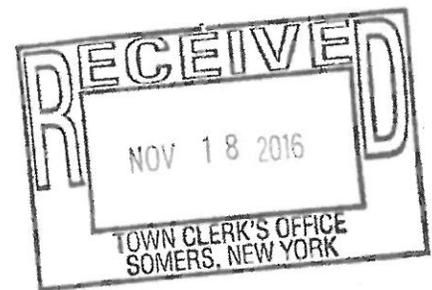


MEMO TO: Patty Kalba, Town Clerk

FROM: Efrem Citarella, Building Inspector *EC*

RE: Town House Generator

DATE: November 18, 2016



On November 17, 2016, I met with Larry Light, owner of Light Electric regarding the RFP he submitted for the Town House generator. He reassured me that he can complete the project as per the proposal submitted.

I recommend that a diesel generator be installed as indicated by Option A on the RFP.

AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2016, by and between
the

TOWN OF SOMERS, a municipal corporation of the State of New York, having
offices at the Town House, 335 Route 202, Somers, New York 10589 (hereinafter
referred to as the "Town"),

and

Light Electric
PO Box 745
Mahopac, New York 10541
(hereinafter referred to as the "Contractor").

WHEREAS, the Town has received a proposal from the Contractor to perform certain
work, generally consisting of **installation of Generac Generator at the Town House;**

NOW, THEREFORE, the Town of Somers and **Light Electric** the Contractor, by and for the
considerations hereinafter set forth, agree as follows:

1. The Contractor shall provide, furnish and perform all of the work specified above including all labor, materials, tools and equipment to satisfactorily complete the work in accordance with this Agreement. All work shall be performed by competent and skilled workers and in accordance with good trade practices and all applicable codes. All materials and articles furnished shall be new unless otherwise specified, and shall be of the appropriate grade for the particular purpose. The Contractor warrants that it is experienced in, is capable of, and is fully familiar with the work to be performed and the work site.
2. For the performance of all of the work in accordance with the provisions of this Agreement, the Town will pay the Contractor a sum not to exceed: **Twenty Thousand Three Hundred Thirty-Five dollars (\$20,335.00)** Payment will be made by the Town to the Contractor after the completion of all of the work and the acceptance of the work by the Town, unless a different payment schedule is required by Section 106-b of the General Municipal Law. Payment shall be made after the submission of a properly itemized claim by the Contractor (including all supporting documentation) to the Town. All claims submitted by the Contractor for payment shall be subject to audit and approval by the Town.
3. The Contractor shall promptly commence work after the full execution of this Agreement, upon the written directions of the Town and complete the work under this Agreement within four (4) day of commencement weather permitting. The time for completion of the work may be extended, in the discretion of the Town, upon the request of the Contractor, for good cause shown, with the grant of any extension by the Town to be in writing. The Contractor shall issue progress reports concerning the performance of the work, and will meet with representatives of the Town, as the Town may, from time to time, direct. The Contractor shall promptly inform the Town in writing of any cause for delay in the performance of the Contractor's obligations under this Agreement.

4. The Contractor shall prosecute the work without undue interference with the operations of the Town or the comfort, repose, health, safety and welfare of the inhabitants of the Town. Unless otherwise authorized by the Town in writing, the Contractor's use or operation of construction equipment in performing the work shall be limited to the hours between 7:00 a.m. in the morning and 6:00 p.m. in the evening. All work shall be performed during regular business days and hours of operation of the Town, unless otherwise directed by the Town.
5. The Contractor shall be responsible for the proper care and protection of the work and for all materials and articles delivered to the site where the work will be performed, until completion and final acceptance of the work by the Town. The Contractor shall exercise proper precautions and safety measures in performing the work, which precautions and safety measures shall be in accordance with all applicable laws, rules and regulations. The Contractor shall be responsible for the protection of persons and/or property, and shall be responsible for all injuries and/or damages to all persons and/or property, either on or off the site, which may occur in connection with the prosecution of the work hereunder. The Contractor shall exercise such additional safety measures as the Town may determine to be reasonably necessary, in the Town's discretion. The Contractor shall procure and pay for all permits and licenses necessary for the performance of the work hereunder.
6. The Contractor shall keep the site of the work free from unnecessary accumulations of waste materials. Upon the completion of all of the work, the Contractor shall remove all of its tools, equipment and surplus materials, as well as all rubbish and waste resulting from the work. Upon the completion of the work, the site of the work shall be left "broom clean" or its equivalent, to the reasonable satisfaction of the Town. The Town will not be responsible for the Contractor's tools and equipment, including any loss, theft or damage thereto.
7. The Contractor shall be subject to the provisions of Schedule A, attached hereto and made a part hereof, which Schedule A contains insurance and indemnification requirements.
8. The Contractor shall, at its own expense, comply with all the provisions of all applicable federal, State, County and municipal laws, rules, regulations and requirements applicable to the Contractor as an employer of labor, the performance of the work, or otherwise.
9. The Town may terminate this Agreement, in whole or in part, upon ten (10) days notice in writing to the Contractor whenever the Town deems such termination to be in its best interests. In the event of such termination, the Contractor shall be paid and the Town shall be liable only for payment for the work performed hereunder prior to the effective date of termination.
10. The Town may terminate this Agreement for cause upon five (5) days notice in writing in the event of a material breach of this Agreement by the Contractor, which shall include, but not be limited to any of the following: (a) failure by the Contractor to provide properly skilled workers or proper materials or to complete the work in accordance with the applicable schedule; (b) failure by the Contractor to pay for materials or labor in accordance with applicable agreements or requirements; (c) non-compliance with laws, rules and regulations or directions of the Town applicable to the performance of the work; (d) failure to defend and indemnify the Town in accordance with this Agreement; or (f) failure by the Contractor to cure any breach of this Agreement not listed above within 20 days after written notice thereof from the Town. Without limiting any other rights or remedies of the Town, in the event of termination for cause, the Town may take

possession of the site and all tools, equipment, materials, and machinery thereon, and complete the work by such means and methods as it may deem appropriate.

11. All clauses required by law to be inserted in this Agreement shall be deemed to have been inserted herein. The Contractor shall comply and ensure compliance with the following to the extent they are applicable to the work hereunder: (a) minimum wages and supplements for laborers, workers and mechanics as provided in Labor Law Article 8; (b) non-discrimination and equal opportunity as provided in Labor Law Section 220-e; (c) prevention of dust hazard as provided in Labor Law Section 222-a; (d) prohibition from participating in certain international boycotts as provided in Labor Law Section 220-f; (e) eight-hour maximum workday and five-day maximum workweek, except in an emergency, as provided by Labor Law Section 220.
12. The Contractor represents and warrants that it has not employed or retained any person, other than a bona fide full-time salaried employee working solely for the Contractor to solicit or secure this Agreement, and that it has not paid for or agreed to pay any person (other than payments of fixed salary to a bona fide full-time, salaried employee working solely for the Contractor) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, without limiting any other rights or remedies to which the Town may be entitled, or any civil or criminal penalty to which any violator may be liable, the Town shall have the right, in its discretion, to terminate this Agreement without liability, and to deduct from the contract price, or otherwise to recover, the full amount of such fee, commission, percentage, gift or consideration.
13. No waiver of any breach of this Agreement 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 of this Agreement.
14. All plans and other like records compiled by the Contractor in completing the work under this Agreement shall become the property of the Town. The Contractor may retain copies of each such plan or record for its own use. If the work includes any article or equipment for which there is a manufacturer's warranty, the Contractor shall ensure that the Town will receive the benefit thereof by transfer or otherwise.
15. The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement, or any right, title or interest therein, or the power to execute this Agreement, without the prior written consent of the Town. The Contractor shall not sub-contract any part of the work without the prior written consent of the Town. In the event any part of the work is subcontracted, the Contractor shall remain responsible for its obligations hereunder and for the proper performance of the sub-contracted work in compliance with this Agreement.
16. The Contractor agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission to act of the Town, or any of its boards, officers, employees or representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.
17. Nothing in this Agreement, express or implied, is intended to confer upon any third party any right or remedy under or by virtue of this Agreement.
18. This Agreement shall constitute the entire Agreement between the parties regarding the subject matter hereof, shall supersede all prior understandings, whether oral or written,

and shall not be amended or modified, except by a written document signed by both parties hereto stating the intent to amend or modify this Agreement.

- 19. This Agreement shall be construed and enforced in accordance with the Laws of the State of New York. Any action or proceeding commenced by the Contractor in relation to this Agreement or the work hereunder, in which the Town is joined as a party, shall be commenced in the Courts of the State of New York and venue shall be in Westchester County.
- 20. All materials and articles furnished shall be new unless otherwise specified, and shall be of the appropriate grade for the particular purpose. The work will be free from defects and will conform to the requirements of the specifications. Work not conforming to these requirements, including substitutions not properly approved or authorized by the Owner, may be considered defective.

The Contractor warrants to the Owner that their work will be free from any defects for duration of not less than three years from the date of completion. Should any failure to conform to any of the warranties occur within the applicable warranty period the contractor manufacturer shall upon notification in writing of the defect, correct such nonconformity by repairing any defective part or parts part within thirty (30) days of the written notification, this shall be the owner's exclusive remedy. The contractor shall deliver and install or replace the part or parts free of charge. Replacement part shall be guaranteed for the balance of the original warranty period.

IN WITNESS WHEREOF, the Town and the Contractor have executed this Agreement on the day and year above first written.

TOWN OF SOMERS

By: _____
Rick Morrissey, Supervisor (signed)-

By: _____
Rick Morrissey, Supervisor (printed)-

The CONTRACTOR

By: _____
Signed

By: _____
Printed

Town Acknowledgment

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

On the _____ day of _____ in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Rick Morrissey, Supervisor of the Town of Somers, on behalf of the Town of Somers, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Contractor Acknowledgment

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

On the _____ day of _____ in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

Schedule A
Insurance and Indemnification

1. Prior to commencing work, the Contractor shall obtain, at its own cost and expense, the required insurance from insurance companies licensed and admitted in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the Town of Somers ("Town"), subject to the approval of the Town. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Supervisor, Town of Somers by registered mail, return receipt requested, for all of the following stated insurance policies. Any adjustments in the coverage's set forth below will require the prior written approval of the Town. All notices shall name the Contractor and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Town, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Town, the Contractor shall upon notice to that effect from the Town, promptly obtain a new policy, submit the same to the Town for approval and submit a certificate thereof. Upon failure of the Contractor to furnish, deliver and maintain such insurance, the Agreement, at the election of the Town, may be declared suspended, discontinued or terminated. Failure of the Contractor to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Contractor concerning defense and indemnification. All property losses shall be made payable to and adjusted with the Town.

In the event that claims, for which the Town may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Contractor until such time as the Contractor shall furnish such additional security covering such claims in form satisfactory to the Town of Somers.

2. The Contractor shall provide proof of the following insurance coverage:

(a) **Workers' Compensation.** Certificate form C-105.2 or State Fund Insurance Company form U-26.3 or accord certificate is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof compliance with the **New York State Disability Benefits Law**. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits' Policy, or both, a temporary permit may be issued if the employer completes form C-105.2 in duplicate. A copy of form C-105.2 is sent to the Workers' Compensation Board, Information Unit for investigation and report.)

If the employer is self-insured for Worker's Compensation, he should present a certificate from the New York State Worker's Compensation Board evidencing that fact.

(b) **Employer's Liability Insurance** with a minimum limit of \$100,000.

(c) **General Liability Insurance** with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$1,000,000 for property damage or a combined single limit of \$2,000,000. **The General Liability Insurance policy shall name the Town of Somers as an additional insured.** This insurance shall indicate on the certificate of insurance the following coverages:

- (i) Premises - Operations.
- (ii) Broad Form Contractual.
- (iii) Independent Contractor and Sub-contractor.
- (iv) Products and Completed Operations.

All contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) **Automobile Liability Insurance** with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$1,000,000 per occurrence for property damage or a combined single limit of \$2,000,000. This insurance shall include a bodily injury and property damage the following coverages.

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

3. All policies and certificates of insurance of the Contractor shall be subject to and shall contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the Town of Somers (including its employees and their agents and agencies) it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the Town of Somers is named as an insured, shall not apply to the Town of Somers.

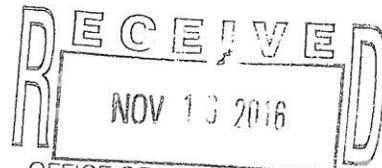
(c) The insurance companies issuing the policy or policies shall have no recourse against the Town of Somers (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor.

4. The Contractor shall protect, defend, indemnify and hold the Town of Somers, its boards, officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof; without limiting the

generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto, even if it (claims, etc.), is groundless, false or fraudulent. In any case in which such indemnification would violate Section 5-322.1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify the Town for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Town, or its employees. This paragraph shall survive any termination or completion of performance of this Agreement.

ec:
7B 11/21/16
DCC
aganda



Eugene J. Comilloni

OFFICE OF THE SUPERVISOR
TOWN OF SOMERS

November 18, 2016

Supervisor Rick Morrissey
335 Route 302
Somers, New York 10589

Re: Recognition of Contributions to Town of Somers

Dear Supervisor Morrissey:

Attached is a copy of my proposal that was hand delivered to your secretary on or about May 13, 2016. At that time copies were to be distributed to you and members of the Town Board.

After a number of inquiries to confirm the distribution and status of my proposal, it appears that my request has been misplaced.

I apologize that, at this time, only one copy of my proposal, in its original form, can be submitted for your review and consideration.

Looking forward to your response, I remain

Very truly yours,

Eugene J. Comilloni
Eugene J. Comilloni

cc: Councilman Richard Clinchy, William Faulkner, Thomas Garrity and Anthony Cirioco

Eugene J. Comilloni

May 13, 2016

Supervisor Rick Morrissey
335 Route 302
Somers, New York 10589

Re: Recognition of Contributions to Town of Somers

Dear Supervisor Morrissey:

I am Eugene J. Comilloni, a resident of Granite Springs for over 60 years. My grandfather was employed by the Somers Highway Department and my father, Eugenio John Comilloni was co-founder of the Somers Fire District. John, as most called him, joined the Somers Volunteer Fire Department on April 5, 1938. He served two terms as Chief and realized that the Town of Somers needed modern fire facilities and equipment. However, depending on contributions from local fund raising activities was not going to bring sufficient fire protection for the future needs of the Town of Somers. With guidance from volunteer fire department in Long Island, New York, the Somers Fire District was established.

My father served as the first active Chairman of the Board of Fire Commissioners for approximately 36 years. It was during his tenure that the Somers Volunteer Fire Department evolved into what it is today (note the dedication plaques on all fire houses).

My purpose for writing this abbreviated history of the Somers Fire District is to request that for my father's dedication, sacrifice, and vision, the Somers Town Board consider, in memory of Eugenio John Comilloni, to name a street/road in honor of his memory and contribution to the Town of Somers.

Thank you for your attention to this request.


Eugene J. Comilloni

Enclosed are a number of documents recognizing my father's contributions and impact with regard to fire protection for the Town of Somers.

Cc: Councilmen Richard G. Clinchy, William Faulkner, Thomas A. Garrity, Jr. and Anthony J. Ciriaco



THE WHITE HOUSE

WASHINGTON

November 23, 1987

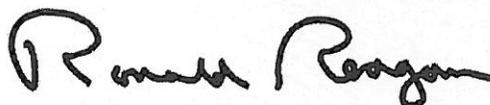
Dear Mr. Comilloni:

It is a great pleasure to commend you for your 50 years of dedicated service as a fire fighter for the Somers Volunteer Fire Department.

From our nation's earliest days to the present, Americans have been known for their willingness to contribute generously of their time and talents to help others. You can be especially proud of the unselfish manner in which you have served your fellow citizens, giving so much of yourself to protect those who live in your community. We all owe a debt of gratitude to men and women like you who daily place the safety and well-being of others before their own.

Nancy and I send our appreciation and congratulations for your humanitarian and civic-minded service.

Sincerely,

A handwritten signature in dark ink, reading "Ronald Reagan". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Mr. John Comilloni
Somers Volunteer Fire
Department, Inc.
Post Office Box 272
Somers, New York

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY, NEW YORK

Certificate of Appreciation

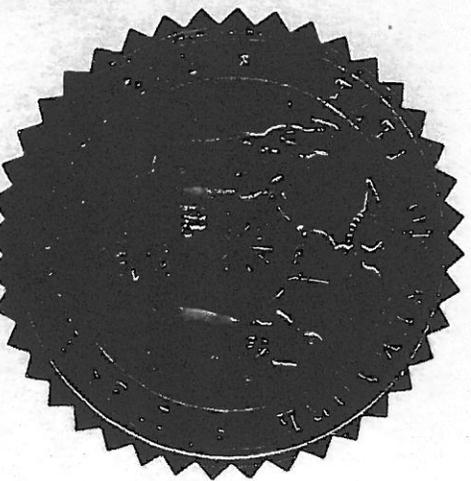
Presented to:

JOHN COMILLONI

*In recognition of and appreciation for his 50 years
of dedicated service with the Somers Volunteer Fire Department.*

Awarded this *twenty-sixth*
day of *November*, 19*87*

Maurice H. Evans
GOVERNOR





ANDREW P. O'ROURKE
County Executive

August 10, 1989

Mr. Eugenio John Comilloni
Somers Volunteer Fire Department
Drawer B
Lincolndale, New York 10540

Dear Mr. Comilloni:

I wanted to take the time and write to you personally, to thank you for your 51 years of service to your community and Westchester County. For over half a century, you have helped the people of this great county sleep better at night, knowing that if the alarm sounded, you would answer it no matter what the time or weather.

There are few things people fear more than loss of life and property. Through your dedication and spirit of volunteerism, countless Westchester residents have had the peace of mind that someone is looking out for their interests.

May you always be proud of your service as a volunteer fireman!
My best wishes to you!

Sincerely,


Andrew P. O'Rourke
County Executive

AOR/dks

ALFONSE D'AMATO
NEW YORK

United States Senate

WASHINGTON, DC 20510

November 18, 1987

Mr. John Comilloni
Somers Volunteer Fire Department, Inc.

Somers, New York 10589

Dear John,

Much to my regret, my schedule will not permit me to attend the Golden Anniversary party in honor of your fifty years of service to the Somers Volunteer Fire Department.

Having served as a volunteer fireman in the ranks of the Island Park Fire Department, I can speak first hand of the dedication and commitment to service found in fifty year veterans such as yourself.

Your service to your community typifies the professionalism found in the Somers Volunteer Fire Department where a tradition of service is found from the first-week rookie to the fifty-year veteran.

No anniversary party, no letter of congratulations, no plaque on the wall can do you justice for fifty years of being on the fire line in Somers. A grateful community can only say "thank you" John Comilloni for a job well done.

Sincerely,



Alfonse D'Amato
United States Senator

AD:md



THE SENATE
STATE OF NEW YORK

MARY B GOODHUE
SENATOR 37TH DISTRICT
CHAIRMAN
COMMITTEE ON CHILD CARE

VICE-CHAIRMAN
LEGISLATIVE COMMISSION ON THE
MODERNIZATION AND SIMPLIFICATION
OF TAX ADMINISTRATION AND TAX LAW

PLEASE REPLY TO:
 ROOM 803, LOB
ALBANY, NEW YORK 12247
518-455-3111
 DISTRICT OFFICE
226 EAST MAIN STREET
MT KISCO, NEW YORK 10549
914-241-2541

December 5, 1987

COMMITTEES
AGING
CODES
ENERGY
INVESTIGATIONS, TAXATION AND
GOVERNMENT OPERATIONS
JUDICIARY
MENTAL HYGIENE AND
ADDICTION CONTROL

Mr. John Comilloni
Somers Volunteer Fire Department, Inc.

Dear John:

I regret that I cannot be with you on this special occasion when you are being honored for fifty years of active service to the Somers Volunteer Fire Department.

I join with your many friends who have come together this evening to give special thanks for your dedication and willingness to give your neighbors peace of mind in knowing that they are being protected by the Somers Volunteer Fire Department.

My very best wishes and congratulations for your unselfish service over the years.

Sincerely,

MARY B. GOODHUE
Senator, 37th S. D.

MBG:jmb

FIREMEN'S ASSOCIATION OF THE STATE OF NEW YORK



To All Who See These Presents, Greetings:

Whereas,

EUGENIO JOHN COMILLONI

Has dedicated 51 years of his life to the Volunteer Fire Service in this the State of New York. He has faithfully and diligently carried out all of his duties and is indeed a credit to all Volunteer Firemen.

Now, Therefore, Be It Resolved,

That this the Firemen's Association of the State of New York extend to him its thanks and appreciation for his many years of loyalty to the Volunteer Fire Service.

Be It Further Resolved,

That the members of this Association wish him many more years of good health and happiness and further trust that his interest in the volunteer fire service will continue during all these many years.

Given this 51..... day of February.....

in the year of our Lord, 1989.....

Carlo T. Merisano
President

Thomas Kowatz
Secretary

Post Personality Of The Week

By CONCETTA RIGANO

John Comilloni, Chief of the Somers Volunteer Fire Department is our POST Personality of the Week.

Born in Olive, N. Y. on October 11, 1911 Mr. Comilloni attended the Gilboy Grammer School, Yorktown Central School and later graduated from St. Mary's School in Kingston, N. Y.

His first job was with a road construction firm. At the present time he is employed as an equipment operator on road construction in White Plains. During the Second World War he served with the Seabees for three years.

Mr. Comilloni has been with the Somers Fire Department for over twelve years. He even goes so far as to state that the fire department is his hobby. He originated the idea of having the two-way radio system for the apparatus.

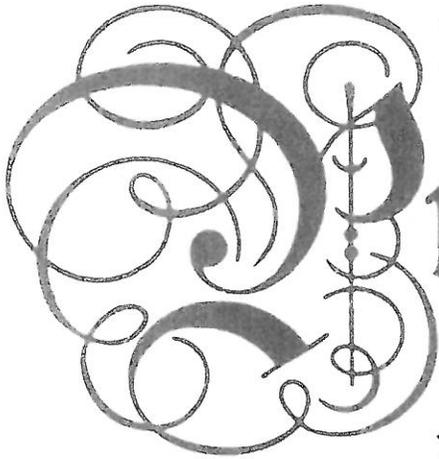
He is now serving his second term as chief of the department. He and the other officers of the organization among them: Ernest Olsen, Ted Voris, Walter Tompkins, John Kohnken and Martin Bley, Sr., have been primarily responsible for the maintenance and continual improvement of all equipment, for the



high moral among the department members and for the fund raising activities to finance the work of the department.

On October 25, 1942 he married the former Antoinette Falzrerano. The couple have three children, Eugene, seven, Louisa, five and Joseph, two and one half.

Westchester County
Board of Legislators



Proclamation

Whereas

THE RESIDENTS OF SOMERS ARE HONORING TWO OF THEIR MOST DISTINGUISHED CITIZENS, EMIL MAESTRY AND JOHN COMILLONI, FOR THEIR FIFTY YEARS OF ACTIVE SERVICE TO THE SOMERS VOLUNTEER FIRE DEPARTMENT, AND

WHEREAS, THE ACCOMPLISHMENTS OF THESE TWO DEDICATED AND RESOURCEFUL CITIZENS APPEAR LIMITLESS AND EVER BOUNDLESS, HAVING BUILT FOUR FIRE HOUSES FOR THEIR DEPARTMENT, A FEAT UNEQUALED IN THE FIREMATIC HISTORY OF WESTCHESTER COUNTY, AND

WHEREAS, BOTH WERE CHIEFS OF THE DEPARTMENT, EMIL WAS COMMISSIONER FOR 25 YEARS AND PRESIDENT OF THE DEPARTMENT; AND JOHN WAS COMMISSIONER FOR 35 YEARS AND A FOUNDER OF THE FIRE DISTRICT, NOW THEREFORE BE IT

RESOLVED, THAT JOHN HAND JOINS WITH THE WESTCHESTER COUNTY BOARD OF LEGISLATORS, AND THE MANY FRIENDS, NEIGHBORS AND ASSOCIATES OF EMIL MAESTRY AND JOHN COMILLONI IN COMMENDING AND CONGRATULATING THESE OUTSTANDING AND TRULY TIRELESS WORKERS FOR THE PEOPLE OF SOMERS, AND BE IT FURTHER

RESOLVED, THAT SATURDAY, DECEMBER 5, 1987, BE AND IS HEREBY DECLARED "EMIL MAESTRY AND JOHN COMILLONI DAY" IN WESTCHESTER COUNTY, AND THAT THIS PROCLAMATION BE CARRIED THROUGHOUT THE LAND FOR ALL PEOPLE TO FOREVER KNOW.



Given Under My Hand and Seal this 5TH Day of DECEMBER, 1987

Eward J. Brady *John E. Hand*
Chairman Legislator

HISTORIC PROPERTIES BOARD

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

EC:
TA, TPTC, Re: [unclear] 11/18/16
Telephone
(914) 277-5582
Fax
(914) 277-3790

EMIL ANTONACCIO
CHAIRMAN



MEMO TO: Town Board

FROM: Historic Properties Board

RE: Request from Somers Historical Society

DATE: November 18, 2016

The Somers Historical Society sent the Somers Historic Properties Board a letter requesting that:

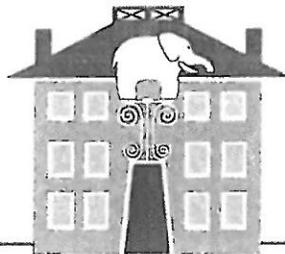
- a) The Town of Somers grant a lease for use of the Wright-Reis Homestead (house, outbuildings and site) to the Somers Historical Society similar to that for the use of the Third Floor of the Elephant Hotel.
- b) The Town of Somers transfer ownership of Caroline Wright Reis' possessions (contents of the house and outbuildings, with the exception of the two vehicles, 1917 Model T Ford and 1941 Nash, which are licensed and insured by the Town).

The Historic Properties Board requests that the Town Board authorize the Town Attorney to meet with Margaret Nicholson, Somers Historical Society's Attorney to prepare the necessary documents.

enclosure

cc: TP, TC
TAI, P, O, W, R
C, W, R, I, S, R, E, I, S

The Elephant Hotel
P. O. Box 336
Somers, New York 10589
914-277-4977



Somers Historical Society

Town of Somers Historic Properties Board

November 10, 2016

RE: Caroline Wright Reis Homestead

The Board of Trustees of the Somers Historical Society requests:

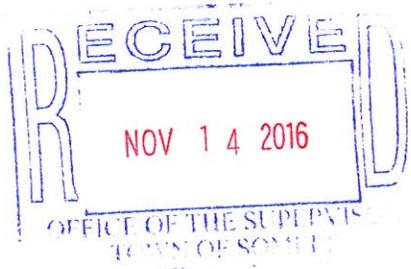
- a) The Town of Somers grant a lease for use of the Homestead (house, outbuildings and site) to the Somers Historical Society similar to that for use of the Third Floor of the Elephant Hotel.
- b) The Town of Somers transfer ownership of Caroline Wright Reis possessions (contents of the house and outbuildings, with the exception of the two vehicles, 1917 Model T Ford and 1941 Nash, that are licensed and insured by the Town).

Please request that the Town Board authorize the Town Attorney to meet with our attorney to prepare the necessary documents.

A handwritten signature in black ink, appearing to read 'Emil Antonaccio', written over a horizontal line.

Emil Antonaccio, President

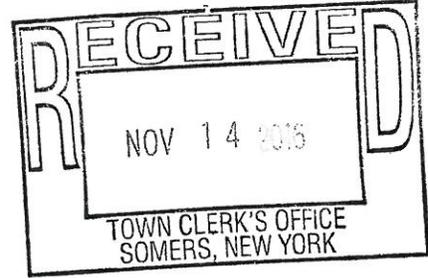
Dec Agenda
EC - TB TC TA
11/16/16 DJK



November 14, 2016

Ms. Kalba,

I am resigning, effective immediately.



Sincerely,

Regina Murdock

Regina Murdock

cc: Payroll

TEL: 914-277-3323
FAX: 914-277-3960

TOWN CLERK'S OFFICE

Town House
335 Route 202
Somers, N.Y. 10589

Town of Somers

WESTCHESTER COUNTY, N.Y.

PATRICIA KALBA
TOWN CLERK

Dec Agenda
EC-TB/TA
11/16/16
dp



November 10, 2016

Geraldine Gilmore

Dear Geraldine:

Please be advised that your probationary appointment as Deputy Town Clerk will be terminated.

Your employment ends November 18, 2016 and is taken in accordance with the Westchester County Civil Service rules.

Sincerely,

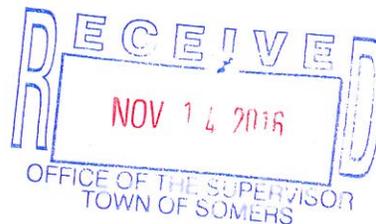
Patricia Kalba
Town Clerk

PK/

cc: Supervisor
Westchester County Department of Human Resources

Belinda DiTieri

From: Cathy Disisto
Sent: Thursday, November 10, 2016 8:23 AM
To: Maria Tierney; Bob Kehoe
Cc: Belinda DiTieri; Barbara Sherry
Subject: Frank Rende - Full Time Employee
Attachments: Frank Rende - Full Time.pdf



Good Morning Maria,

Please see attached memo from Tommy on the hiring of Frank Rende as a full time employee starting November 14,2016

On this pay period for #23 you will see that he will have two days at the full time employee rate of \$21.7662 and 48 hours as seasonal employee rate of \$15.00

If you should have any questions please feel free to contact me.

Thank you
Cathy

Highway Department

TELEPHONE
(914) 232-4848
FAX
(914) 232-0150

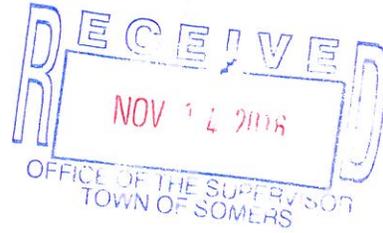
Town of Somers

250 RT. 100
P.O. BOX 281

WESTCHESTER COUNTY, N.Y.

THOMAS E. CHIAVERINI
Superintendent of Highways

LOUIS N. NOTO, JR.
Deputy Supt. of Highways



Memo To: Supervisor
Town Board

From: Thomas E. Chiaverini
Supt. of Highways

Date: November 10, 2016

Re: Frank Rende – Full Time

Please be advised that I hired Frank Rende Full Time as a Road Maintainer effective November 14, 2016 at an annual salary of \$50,304.00 which he will receive 90% of it for the first six months at an hourly rate of (21.7662). Then after the 26 week 95%, upon completion of one year of service the employee shall receive the full salary rate of pay.

If you should have any questions please feel free to contact me at any time.

Yours truly,

Thomas E. Chiaverini
Supt. of Highways

Cc: Finance Dept
Town Clerk

cc: TC
TD, SD - sent
TA BDP/MS

State Environmental Quality Review
NEGATIVE DECLARATION
Notice of Determination of Non-Significance



Date of Adoption: December 1, 2016

Name of Action: Stuart Farm Conservation Easement

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law and Chapter 92 (Environmental Quality Review) of the *Code of the Town of Somers, New York*.

The Town of Somers Town Board, as Lead Agency, has determined that the Proposed Action described below will not have a significant adverse effect on the environment and a Draft Environmental Impact Statement will not be prepared.

SEQR Status: The Proposed Action is an Unlisted Action under SEQRA as per Chapter 92 of the *Code of the Town of Somers* in conjunction with Article 24 of the *NYS Environmental Conservation Law*.

Conditioned Negative Declaration: No

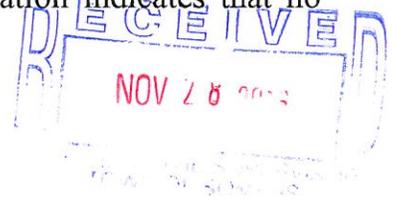
Description of Action: The proposed action is the execution of a Conservation Easement to apply to approximately 75 acres of Stuart Farm, in conjunction with the Westchester Land Trust, Inc., the County of Westchester and Scenic Hudson Land Trust, Inc. Creation of the Conservation Easement is consistent with the "Town of Somers Comprehensive Plan Update" of February 2016 that recommends partnerships with the Westchester Land Trust and Westchester County to purchase development rights to the Stuart Farm property to maintain the low density character of the western quadrant of the town and to preserve farmland. The conservation easement shall run with the property in perpetuity and the property shall be utilized in accordance with the covenants and restrictions contained in the conservation easement, mainly to prevent the conversion of the property to non-farm uses, except for those uses identified in the conservation easement.

Location: Granite Springs Road, Town of Somers, Westchester County, NY (Tax Lots 26.11-1-2 and 26.11-1-1)

Reasons Supporting This Determination:

Based upon a review of the conservation easement, the Town Board finds that the conservation easement will conserve viable agricultural land consisting of approximately 33

acres of prime soils and approximately 32 acres of soils of statewide importance as defined by the U.S. Department of Agriculture Natural Resources Conservation Service; preserve approximately ½ acre of Resource Protection Area of wooded wetland and a stream connected hydrologically to a small pond on the adjacent farmland parcel being preserved simultaneously, such stream draining into the Croton Reservoir. The conservation easement will not have any significant adverse impacts upon the environment and, in fact, will have positive environmental impacts. This Negative Declaration indicates that no environmental impact statement need be prepared.



Involved and Interested Agencies:

See Attached

For Further Information Contact: Syrette Dym, Director of Planning, Somers Town House, 335 Route 202, Somers, New York 10589, (914) 277-5366

SEQR DISTRIBUTION LIST – Stuart Farm Conservation Easement

Involved Agencies

Town of Somers Town Board
Somers Town House
335 Route 202
Somers, New York 10589
Attn.: Rick Morrissey, Supervisor

Interested Agencies

Town of Somers Town Clerk
Somers Town House
335 Route 202
Somers, New York 10589
Attn.: Patricia Kalba

Town of Somers Assessor
Somers Town House
335 Route 202
Somers, New York 10589
Attn.: Teresa Stegner

Town of Somers Open Space Committee
Somers Town House
335 Route 202
Somers, New York 10589
Attn: Denise Shirmer

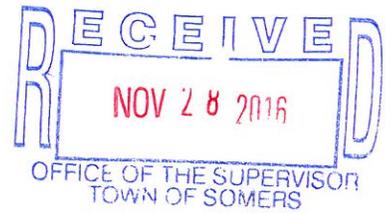
Westchester Land Trust, Inc.
403 Harris Road
Bedford Hills, NY 10507
Attn: Lori Ensinger

Scenic Hudson Land Trust, Inc.
One Civic Center Plaza
Suite 200
Poughkeepsie, NY 12601

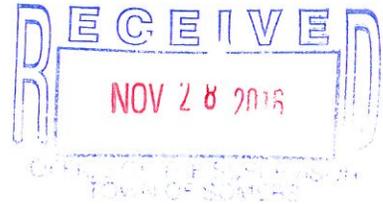
Westchester County
148 Martine Avenue
White Plains, NY 10601
Attn: Office of the County Executive
Westchester County Board of Legislators

Westchester County
148 Martine Avenue
White Plains, NY 10601
Attn: Westchester County Board of Legislators

Pyramid Network Services, LLC
11 River Road
Glenmont, NY 12077
Attn: Krissy Grugan Donohue



New York City Department of Environmental Protection
465 Columbus Avenue 1st Floor
Valhalla, New York 10595
Attn.: Cynthia Garcia



New York State Department of Environmental Conservation
Division of Environmental Permits--Region 3
21 South Putt Corners Road
New Paltz, New York 12561-1696
Attn.: Daniel T. Whitehead, Regional Permit Administrator

Others – Lead Agency Representatives

Syrette Dym, AICP, Director of Planning
Somers Town House
335 Route 202
Somers, New York 10589

Stephans, Baroni, Reilly & Lewis LLP
175 Main Street
White Plains, NY 10601
Attn.: Roland A. Baroni, Esq.

EC, TB, TC, Dec, sign, 11/15, BO

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5366
Fax
(914) 277-4093

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoeffle@somersny.com



Syrette Dym, AICP
Town Planner
sdym@somersny.com

Date: November 10, 2016
To: Director of Finance T10(914)
From: Wendy Getting *WG*
Senior Office Assistant
RE: Erosion Control Bond
Jonathan Villani and Somers Development LLC Wetland Permit
TM: 16.05-1-1

Attached is a check in the amount of \$599.00 posted by North County Homes Inc., 156 Tomahawk Street, Yorktown Heights, NY 10598 Somers Development LLC, 125 King Street, Chappaqua, NY 10514 in payment of an Erosion Control Bond for Villani/Somers Development LLC.

Att.
cc: Town Board
Town Clerk

EP
TA, TE
PC agenda
PP #17

PLANNING AND ENGINEERING DEPARTMENTS

Town of Somers

WESTCHESTER COUNTY, N.Y.

Telephone
(914) 277-5366
Fax
(914) 277-4098

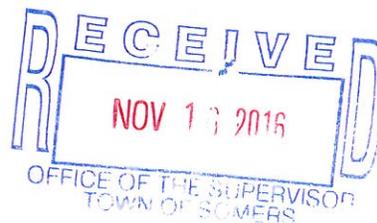
SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfe@somersny.com



Syrette Dym, AICP
Town Planner
sdym@somersny.com

Date: November 16, 2016
To: Town Board
From: Steven Woelfle *SW*
Principal Engineering Technician
RE: Fabry Wetland Permit #W2014-31
TM: 47.20-1-12
Release of Erosion Control Bond
Check Received October 21, 2014



This office has no objection to the return of the Erosion Control Bond in the amount of \$500.

Please return to:

Dina Marie Fabry
135 Pines Bridge Road
Katonah, NY 10536

SW/wg

cc: Town Clerk
Director of Finance
Dina Marie Fabry

CC TO: TA
Dec
Agenda
11/22
BD

Belinda DiTieri

From: Belinda DiTieri
Sent: Tuesday, November 22, 2016 12:17 PM
To: Patricia Kalba; Roland Baroni ; 'Anthony Ciriecio'; 'Bill Faulkner'; 'Richard Clinchy'; 'Rick Morrissey'; 'Tom Garrity '
Subject: 2017 Highway Material Bids
Attachments: Highway Mateial Bids 2017.pdf; Highway Material Bids.pdf; Highway Material Bids signs.pdf

This for the consensus agenda. The first attachment is the letter, the second Highway Material and the third one is the highway material bids. I will print the last two attachment for drop box.

Belinda Di Tieri
Confidential Secretary to the Supervisor
Office of Supervisor Rick Morrissey
Town of Somers
335 Route 202
Somers, NY 10589
Phone (914) 277-3637
Fac (914) 276-0082
Website: www.somersny.com

EC: TC, ETA
1/51
PAC
CAG
11/17/16

Highway Department

Town of Somers

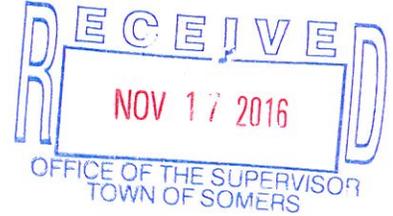
250 RT. 100
P.O. BOX 281

TELEPHONE
(914) 232-4848
FAX
(914) 232-0150

WESTCHESTER COUNTY, N.Y.

THOMAS E. CHIAVERINI
Superintendent of Highways

LOUIS N. NOTO, JR.
Deputy Supt. of Highways



MEMO TO: SUPERVISOR
TOWN BOARD

FROM: THOMAS E. CHIAVERINI
SUPT. OF HIGHWAYS

DATE: NOVEMBER 16, 2016

RE: 2017 MATERIAL — BIDS

I recommend that a resolution be passed accepting low bid for Highway Materials for 2017 with the exception of mileage deviations for all categories picked up (F.O.B.) by trucks furnished by the Town of Somers. As you can see Thalle Industries is lowest bidder on the Bituminous Concrete (FOB) by \$7.00, but located in Fishkill (vs) Peckham Materials located in Bedford please leave it up to the discretion of the Highway Superintendent when it is or is not cost effective based on the load quantities and wait times. Bituminous materials and asphalt concrete are subject to price adjustment formulas.

If you should have any questions please feel free to contact me.

THOMAS E. CHIAVERINI
SUPT. OF HIGHWAYS

cc: Town Clerk

RDM Computer Consultants, Inc. Annual Service Agreement

3 Bisbee Lane South Salem, NY 10590
914.582.8637
raymaggi@optonline.net

10.10.16

Town of Somers
335 Route 202
Somers, NY 10589

Executive Summary

RDM Computer Consultants, Inc. will provide Town of Somers with small business computer consulting services. In consideration for your one year commitment, which starts on January 1st 2017 and ends December 31st 2017, RDM will provide IT consulting, network, file server and desktop support for Town of Somers computer system.

As part of the contract, RDM will provide one scheduled full day service call per month to update the file servers and desktops with the newest service packs, updates, virus protection, and spyware definitions. The service call will also include installing any software updates, training, as well as troubleshooting any network, file server and desktop issues. Telephone and email support is also included. Cost of the contract is \$1,400 per month for the 2017 calendar year.

RDM will provide remote access to the file servers and desktops via a virtual private network or remote desktop application to troubleshoot and resolve issues that occur on a daily basis. After hours and emergency service is available for the duration of the contract. These services are billable at the current hourly rate.

For specific figures and terms of our agreement, signed by you and I, please refer to the attached Letter of Engagement.

Letter of Engagement for Annual Service Agreement

This Letter of Engagement supercedes all prior agreements between the parties. Any mutually acceptable and authorized Change Orders will be appended to this Letter of Engagement and supercede, as necessary, the corresponding elements in this letter.

This agreement is between the following parties: Town of Somers hereinafter referred to as Client, and RDM Computer Consultants, Inc., hereinafter referred to as RDM.

Tasks

A) Monthly On Site Visits – Each file server will be updated to the most current service pack, security fixes, and updates. Antivirus servers will be checked to make sure all virus definitions are up to date and virus free. Backup software and logs will be examined to make sure backups are current and successful. Event logs will be checked for operating system and application errors. Desktops will be examined for virus and spy ware activity. Any other IT related problems could also be addressed at this time.

B) Telephone / email Support – There is no charge for telephone and email support for clients under the annual support agreement.

C) Remote Support – VPN and remote desktop support is available at the current hourly rate under the contract.

D) Service Calls – Clients can schedule a service call at any time for additional work that cannot wait until the monthly onsite visit. The current contract hourly rate applies.

Time

The service contract, which includes one full day on site visit, is \$1,400 per month in the 2017 calendar year. The hourly rate for service that extends beyond the contract will be \$140 per hour for desktop and network/server support for clients who purchase the annual service agreement. Specialty consulting services will be estimated on a per project basis. It should be noted that hourly project estimates are not a fixed-price commitment and are only an estimate, based on needs analysis and network design.

Materials

Due to the volatile nature of the industry, estimates for hardware, software, peripherals and procured services are not a fixed-price commitment and are only estimates, based on needs analysis and network design. Prices and specifications are subject to revision at the time of ordering. Client will be notified verbally, or in writing upon request, of any material differences before proceeding.

Terms

A) Minimum Charges – One hour minimum for on-site service, after hour service, emergency service, and remote support.

B) Terms for Services - Client agrees to bear full responsibility and reimburse RDM for any and all collection costs incurred due to Client's non-payment or late payment of fees and other costs enumerated herein. Such collection costs may include but are not limited to, attorney fees and court costs.

C) Rate Lock – Hourly billing rate will be held at \$140 for desktop and server service through 2017.

D) Software Licensing – RDM does not support unlicensed software. Client represents that all installed software is licensed. In the event that Client has any unlicensed software on premises, Client is responsible for notifying RDM of such so that a remediation plan can be prepared and implemented to assist Client in achieving 100% license compliance.

E) Recruiting or Hiring of RDM Staff and Contractors – Client agrees to not recruit or hire or retain any RDM staff and/or outside contractors for employment or work of any kind, either as an employee or an independent contractor, except through RDM during the duration of RDM's servicing client and for a period of 12 months thereafter.

F) Sanctity of Administrator Password – Client agrees that all reasonable attempts will be made to ensure only authorized and properly trained Client employees are privy to the current administrator password(s). RDM recommends that a minimum of two Client employees, but no more than three, be entrusted with this responsibility. In addition, Client agrees that these authorized employees who have access to administrator password(s) will be available for both initial and ongoing training with RDM staff.

G) Risk of Data Loss -- Client assumes all risk of data loss from any and all causes or in any way related to or resulting from the repair or service of computer hardware, software or other equipment by RDM. Client agrees to bear full responsibility for all data backup prior to any repair or service of computer hardware, software or other equipment by RDM. Client hereby releases RDM from any claim or liability related to data loss for any reason whatsoever.

H) Computer Viruses – RDM agrees to take all reasonable measures to protect Client's computer systems from computer viruses, including installation and maintenance of the latest versions of anti-virus software. Client assumes all risk of computer viruses and will not hold RDM responsible. Client is responsible for the costs of consulting time and materials required to remove any computer viruses.

I) Indemnification -- Client shall indemnify and hold harmless RDM from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of any kind, including reasonable attorney's fees, caused by or arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake or negligence of RDM, its employees, agents, representatives or subcontractors in connection with or incidental to the performance of this agreement.

J) Jurisdiction -- The laws of The United States of America and the state of New York shall govern this agreement, its terms and conditions. Client agrees that the proper forum for any claim arising under this agreement shall be in the state of New York.

K) Termination of Contract -- The contract may be cancelled at any time by either party although there will be no refunds for early termination for clients who wish to prepay or pay on an annual basis.

L) Equipment -- Client is responsible for the cost and replacement of all hardware components that are not covered under the original manufacturer warranty including servers, workstations, printers, routers, etc. RDM will assist in the repair and replacement of such items either during a scheduled on site visit or during a paid service call.

M) Software -- RDM will support all Client software including Microsoft Windows operating systems, Microsoft Office, Antivirus, etc. that are installed on file servers and workstations. Third party and custom software will also be supported. Access to the vendor's support staff may be necessary and support contracts with these vendors is highly recommended.

Principal Contacts

- A) Primary Financial Contact (authorized signer) – Tammi Savva
- B) Primary Technical Contact (Client on-site project manager, responsible for prioritization of projects and tasks, authorization to schedule work and act on-behalf of Primary Financial Contact) – Tammi Savva
- C) Billing Contact (invoices will be sent to this person at address listed above) – Tammi Savva

Enforceability of Surviving Parts

- A) Modification or Amendment – No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties hereto.
- B) Entire Understanding – This document and any exhibit attached constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
- C) Unenforceability of Provisions – If any provision of this Agreement, or any portion thereof, is held to be invalid and un-enforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect.

Approval

Please sign below to indicate your approval and return (2) copies at your earliest convenience. An executed copy will be returned to you within 7 days.

Client Acceptance

Signature

Print Name

Date

RDM Computer Consultants, Inc. Acceptance

Signature

Print Name

Date

CP: TC
YD, TC
MAG
PDP
R
MAG

OFFICE OF THE SUPERVISOR

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

Telephone
(914) 277-3637
Fax
(914) 276-0082

RICK MORRISSEY
SUPERVISOR



AGENDA

November 23, 2016

TO: Town Board
FROM: Rick Morrissey
RE: Budget Transfers and Modifications

Authorize the following Transfer of Funds & Budget Modifications.

FUND/ ACCOUNT CODE	FROM	TO	AMOUNT	REASON
HIGHWAY	002.9040.0800 WORKERS COMP	TRANSFER TO CAPITAL FUND 002.9950.0940	\$2,400.00	To Cover legal and other cost associated with Equipment Bond.
HIGHWAY	001.9060.0800 Health Insurance	001.1660.0400 (\$750.00) Shared Services 001.1930.0400 (\$5,100) Refunds Tax Payments 001.8020.0400 (\$20,000 Planning-Contractual 001.8160.0400 Town Cleanup (\$350) 001.9040.0800 Workers Comp (\$25,000)	\$51,200.00	TO COVER YEAR- END BUDGET SHORTFALLS

General	001.9950.0930 Transfer to Debt Service	001.9950.0900 Transfer to Capital Fund	\$30,000	To cover Legal and other cost associated with Equipment Bond and Cost of Air Conditioning replacement at Town House and Police Department.
Windsor Farms Water District	049.049.0909 Fund Balance- Unreserved	049.8320.0400 Water Supply Contractual	\$4,170.04	Shared cost of the NJWW Storage Tank Project
Amawalk Heights Walk District	050.050.0909 Fund Balance – Unreserved	050.8320.0400 Water Suplly Contractual	\$12,510.12	Shared cost of the NJWW Storage Tank Project
Amawalk Shenorock Water District	051.051.0909 Fund Balance - Unreserved	051.8320.0400 Water Supply Contractual	\$118,968.84	Shared cost of the NJWW Storage Tank Project

11/23/2016 11:37 AM

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2016

Budget Transfer

From:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
Highway	002.9040.0800	Workers Comp	\$2,400

To:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
Highway	002.9950.0940	Transfer to Capital Fund	\$2,400

Explanation:

To cover 2016 legal and other costs associated with Equipment Bond.



Superintendent of Highways

Date: 11/23/16

2016

Budget Transfer

From:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
General	001.9060.0800	Health Insurance	\$51,200

To:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
General	001.1660.0400	Shared Services	\$750
	001.1930.0400	Refunds-Tax Payments	\$5,100
	001.8020.0400	Planning-Contractual	\$20,000
	001.8160.0400	Town Cleanup	\$350
	001.9040.0800	Workers Comp	\$25,000

Explanation:

To cover 2016 year-end budget shortfalls.



Director of Finance

Date: 11/23/16

2016

Budget Transfer

From:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
General	001.9950.0930	Transfer to Debt Service Fund	\$30,000

To:

FUND	ACCOUNT CODE	ACCOUNT NAME	AMOUNT
General	001.9950.0900	Transfer to Capital Fund	\$30,000

Explanation:

To cover 2016 legal and other costs associated with Equipment Bond and cost of Air Conditioning replacement at Town House and Police Department.


Director of Finance

Date: 11/23/16

**Windsor Farms Water District
2016 Modification**

FROM:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
049	049.049.0909	Fund Balance – Unreserved	4,170.04

TO:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
049	049.8320.0400	Water Supply Contractual	4,170.04

EXPLANTION:

Shared cost of the Northern Westchester Joint Water Works Storage Tank Project

Authorized Signature: _____



Date: November 22, 2016

**Amawalk Heights Water District
2016 Modification**

FROM:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
050	050.050.0909	Fund Balance – Unreserved	12,510.12

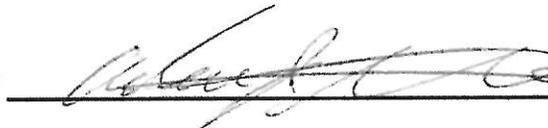
TO:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
050	050.8320.0400	Water Supply Contractual	12,510.12

EXPLANTION:

Shared cost of the Northern Westchester Joint Water Works Storage Tank Project

Authorized Signature: _____



Date: November 22, 2016

**Amawalk - Shenorock Water District
2016 Modification**

FROM:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
051	051.051.0909	Fund Balance - Unreserved	118,968.84

TO:

<u>FUND</u>	<u>ACCOUNT CODE</u>	<u>ACCOUNT NAME</u>	<u>AMOUNT</u>
051	051.8320.0400	Water Supply Contractual	118,968.84

EXPLANTION:

Shared cost of the Northern Westchester Joint Water Works Storage Tank Project

Authorized Signature:



Date: November 22, 2016