

OFFICE OF THE SUPERVISOR

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
WORK SESSION 7:00PM
THURSDAY, JUNE 7, 2018
www.somersny.com**

6:30PM – Executive Session

A. PLEDGE OF ALLEGIANCE:

7:00PM – Work Session

B. PUBLIC HEARING:

PUBLIC COMMENT

Please limit your comments to no more than 3 minutes.

C. PARKS & RECREATION:

D. TOWN BOARD:

1. Authorize the Supervisor to execute the Retainer Letter dated May 15, 2018 from Michael Fuller Sirignano, Attorney and Counselor at Law for services related to Article 78 Proceeding v. Somers Zoning Board of Appeals.
2. Proposed Code Change – House Numbering – Discuss with Efrem Citarella, Town of Somers Building Inspector
3. Authorize the Supervisor to proclaim June 10, 2018 Race Amity Day in the Town of Somers.

**SOMERS TOWN BOARD
WORK SESSION 7:00PM
THURSDAY, JUNE 7, 2018
www.somersny.com**

4. Zoning Amendment Relative to Electronic Nicotine Delivery Systems and Vape Shops in the NS Neighborhood Shopping District – Discussion
 - a. Town Board to declare themselves lead agency
 - b. Refer the proposed amendment to the Building Inspector, the Planning Board, the Somers Police Department and the Westchester County Planning Board
 - c. Schedule a public hearing to be held on July 12, 2018
5. Authorize the Supervisor to approve the purchase of a new generator transfer switch for the Travis Road Sewer Pump Station in the amount of \$4,777.00 from Kinsley Power per email dated May 30, 2018 from Adam Smith, Superintendent of Water and Sewer.
6. Authorize the Supervisor to execute the License Agreement between Sebastian Capital, Inc. and the Town of Somers for use of the One Pepsi Way parking lot for the sole purpose of having a Fourth of July celebration.
7. Approve going to RFPs to perform certain work, generally consisting of a one (1) year contract to furnish and deliver #2-TW Fuel and Heating Oil to multiple Town of Somers buildings per memo dated May 15, 2018 from Efrem Citarella, Building Inspector – Discussion
8. Consideration of making a recommendation to the Planning Board to modify the Resolution of Approval for the Hidden Meadows Project (Resolution NO.2017-20) to delay posting of Town fees from the “Prior to Signing of the Final Plat” to “Prior to Issuance of the Building Permit.” - Discussion

E. FINANCIAL:

F. HIGHWAY:

- No additional business.

G. PERSONNEL:

1. **Current Vacancies:**
 - a. Affordable Housing Board (2 – 2-year terms ending 7/11/2018.)
 - b. Affordable Housing Board (1- 2-year term ending 7/11/2019.)
 - c. Partners in Prevention (2 – 3-year terms ending 12/31/2019.)
 - d. Partners in Prevention (2 – 3-year terms ending 12/31/2020.)
2. Acknowledge resignation of Ms. Lisa Cheatham as member of the Somers Affordable Housing Board effective May 21, 2018.

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3. Acknowledge promotion of Mr. Edward Gall to Motor Equipment Operator at an hourly rate of \$33.9409 effective May 30, 2018 per June 1, 2018 memo from Thomas Chiaverini, Superintendent of Highways.

H. PLANNING & ENGINEERING:

I. POLICE: – No additional business.

J. PROPOSED CONSENSUS AGENDA:

1. Acknowledge receipt and authorize Supervisor to execute the Request For Renewal of Revocable Land Use Permits for use of New York City Property forms.
2. Approve the Renewal contract for the Town's insurance with Traveler's, per memo dated June 01, 2018 from Robert Kehoe, Director of Finance.
3. Authorize hiring of Day Camp and Tusker (teen travel) Trax Staff from June 25 to August 3, 2018 and continue to hire for these programs on an as-needed basis pursuant to County Health counselor-to-camper ratio regulations per memo dated May 29, 2018 from Steve Ralston, Superintendent of Parks & Recreation.
4. Authorize the return of the following Bonds per May 29, 2018 memos from Steven Woelfle, Principal Engineering Technician.
 - a. \$200.00 Erosion Control Bond (Ellen Solla-Diaz)
 - b. \$200.00 Erosion Control Bond (John Parubi)
 - c. \$2,103.00 Erosion Control Bond (Deans Bridge Associates)
 - d. \$25.00 Erosion Control Bond (Cynthia Batchelder)

**SOMERS TOWN BOARD
WORK SESSION 7:00PM
THURSDAY, JUNE 7, 2018
www.somersny.com**

2018 Calendar

June 7, 2018	7:00pm	Town Board Work Session
June 14, 2018	7:00pm	Town Board Regular Meeting 1. Public Hearing: Proposed Local Law to amend Chapter 170, entitled Zoning, Article XXII, entitled <u>Signs</u> .
July 5, 2018	7:00pm	Town Board Work Session
July 12, 2018	7:00pm	Town Board Regular Meeting
August 9, 2018	7:00pm	Town Board Work Session / Regular meeting
September 6, 2018	7:00pm	Town Board Work Session / Regular Meeting

Sent to:
TB, TA, TC
5/29/18
KO

Michael Fuller Sirignano
Attorney and Counselor at Law

Old Post Road Professional Building
892 Route 35, P.O. Box 784
Cross River, New York 10518

Tel: (914) 763-5500
Fax: (914) 763-9589
michael@sirignano.us

May 15, 2018

Hon. Rick Morrissey, Town Supervisor
Town of Somers
Town House
337 Route 202
Somers, New York 10589

Re: Article 78 Proceeding v. Somers Zoning Board of Appeals

Dear Supervisor Morrissey:

The Town of Somers has asked me to serve as Special Counsel to its Zoning Board of Appeals in the Article 78 Proceeding commenced by Thomas P. Kuck and Whispering Pine Landscape Supply Corp. against the Zoning Board in New York State Supreme Court, Westchester County under Index No. 1711-2018. This Retainer Letter is being sent to explain my billing procedures and obtain the Town's agreement to same prior to my appearance in this special proceeding.

The time expended by me to perform litigation services for you will be the primary basis for determining the total legal fees. My current hourly rate is \$350.00. The hourly rate does not include fees, charges and out-of-pocket expenses incurred in defending the Zoning Board's Resolutions on the jurisdictional questions in this special proceeding. Such expenses include, but are not limited to, charges for serving and filing papers, recording or certifying documents, facsimile transmissions, reproductions of materials, express mail and postage.

Of course, the Town shall have the right to terminate my representation for any reason whatsoever upon written notice to me. In the event of any such termination, the Town shall pay for all services rendered by me and all other costs, disbursements and fees, incurred pursuant to this letter agreement prior to the date of such termination.

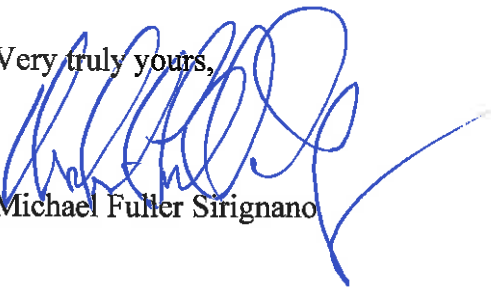
Likewise, I must reserve the right to withdraw from this matter if the Town fails to honor this agreement or for any reason as permitted or required under the New York State Code of Professional Responsibility. I shall notify you in writing of my withdrawal, and in that event, the Town shall promptly pay for all services rendered by me and all other fees, charges and expenses incurred pursuant to this Retainer Agreement.

Michael Fuller Sirignano
Attorney and Counselor at Law

If the above fee arrangement is acceptable to the Town as I have now outlined it, I ask you to please sign the extra copy of this letter where indicated below and return it to me.

Please call me if you have any questions.

Very truly yours,



Michael Fuller Sirignano

MFS/cp

I HAVE READ THE FOREGOING
RETAINER LETTER AND AGREE TO
ALL OF ITS TERMS AND CONDITIONS.

TOWN OF SOMERS

BY: RICK MORRISSEY, Town Supervisor

Date: _____

Sent to:
TB, TA, TC
5/29/18

KD Telephone
(914) 277-8228
Fax
(914) 277-3790

BUREAU OF FIRE PREVENTION

Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589

EFREM CITARELLA
CHIEF



MEMO TO: Town Board

FROM: Bureau of Fire Prevention

RE: Proposed Code Change – House Numbering

DATE: May 17, 2018

Currently the Town of Somers follows the 2015 International Property Maintenance Code about house numbering, which says that the numbers shall not be less than 4" high, as well as plainly legible and visible from the street or road fronting the property. The Bureau of Fire Prevention feels as though 4" is difficult to see. We hope that you too agree and would consider changing the Code of the Town of Somers as follows:

Existing:

116-3 Specifications.

In order to comply with this chapter, house numbers shall be Arabic design, shall have a minimum height of three (3) inches and shall be mounted in a secure fashion to the building's front wall or to a porch or other fixed appurtenance in front of the building in the general vicinity of the main entryway or main path of travel which leads to the main entrance from a public street, or otherwise separately mounted in an approved manner upon the face of a wall or upon a post in the front yard of the premises. Auxiliary numbers shall be mounted at a height between four (4) feet and ten (10) feet above the adjacent grade or exterior landing directly beneath, but never higher than fifteen (15) feet above the adjoining grade. They shall be sufficiently legible as to contrasting background, arrangement, spacing, size and uniformity of integers so that the numbers may be read with ease during the daylight hours by a person possessing at least 20/40 vision as he views the numbers from the center line of the facing street and at an elevation of five (5) feet above the finished surface thereof. The numbers shall be so placed that trees, shrubs or other obstructions do not block the line of the sight from the center of the street to any appreciable degree.

Proposed:

116-3 Specifications.

In order to comply with this chapter, house numbers shall be a minimum height of six (6) inches and shall be of a color or finish that significantly contrasts that of the surface they are displayed upon. They shall be produced in fonts and styles that are easily discernable and be free of any serifs or decorative features. All House numbers shall be securely attached to the building's wall, porch, or other fixed appurtenance on the building that is visible from the roadway. This location should be in the general vicinity of the main entryway or main path of travel which leads from the roadway. When this is not possible, or the House cannot be seen from the roadway the numbers should be mounted in a manner consistent with the above guidelines upon the face of a wall or post at the intersection of the driveway and the roadway or in close proximity there to. When installing on a house all numbers shall be mounted at a height between four (4) feet and ten (10) feet above the adjacent grade or exterior landing, but never higher than fifteen (15) feet above the adjoining grade. When installing on a post all numbers shall be mounted at a height between three (3) feet and six (6) feet above the adjacent grade but never obscure the visibility of motorist. The numbers shall be installed, and all yards maintained so that trees, shrubs or other obstructions do not block the line of the sight from the center of the street to any appreciable degree. Auxiliary numbers as required in section 116-2 shall be subject to the same specifications outlined above excepting that Auxiliary number locations are not required to be in the vicinity of the main entryway of the building only the main path of travel from the roadway they face.

Sent to:
TB, TA, TC 5/29/18 KD

Rick Morrissey

From: Susan Cody
Sent: Tuesday, May 1, 2018 4:57 PM
To: Rick Morrissey
Subject: Race Amity Day

Dear Mr. Morrissey,

"E Pluribus Unum," (out of many, one) are the only words on the Great Seal of the United States of America. Though our national motto referred originally to the joining of the thirteen colonies into a single nation, its greater reality has played out since in an atmosphere of inevitable tension between injustice and conciliation, fear and acceptance. For those of us who believe "towards a more perfect union" is a universal and that amity overcomes enmity, each downward turn can be discouraging, even shocking. Perhaps, however, it is but the winter phase of a natural process, a phase intended to expose what is necessary to move us upward.

Under the leadership of Dr. William H. "Smitty" Smith, the National Center for Race Amity has worked for many years not only to promote friendship within our human family, but to explore the history of racial cooperation that has paralleled the much more sensationalized and recrudescant "otherness" that continues to cause so much pain and retard the progress of our nation.

Race Amity Day, the second Sunday in June of each year, is already an official state holiday in Massachusetts (since 2015) and was proclaimed a US national holiday for 2016 by senate resolution. It is the goal of the National Center for Race Amity to achieve congressional legislation making Race Amity Day an annual national holiday by 2021.

The Center is engaged in enlisting organizations and communities, locally, statewide and regionally in the effort to establish this national holiday. Our local celebration of Race Amity Day will be held Sunday, June 10 from 12:00 to 5:00 pm at the Somers library.

Among the accomplishments of the NCRA has been production of a 52 minute documentary exploring the history of interracial harmony and cooperation that predates the establishment of our nation. This film was first shown on WGBH in

Boston on April 12, 2018 and will make its way through the entire PBS system during the coming year. Our celebration will begin with a showing of a shorter version of this film followed by discussion and end with a potluck picnic either outside the library or inside the program room, if the weather is inclement. Music will be provided by the choir, Souls United of the Hudson Valley.

In light of this effort and this worthy cause for our community as well as our country of promoting friendship among all of our multicultural, multi-ethnic and multiracial citizens we would be very grateful to have June 10, 2018 proclaimed Race Amity Day in the Town of Somers.

Thank you,

Susan Cody,
Friends of the Somers Library Program Chair

PLANNING AND ENGINEERING DEPARTMENTS

Town of Somers

WESTCHESTER COUNTY, N.Y.



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

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

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

Syrette Dym, AICP
Director of Planning
sdym@somersny.com

MEMORANDUM

TO: Town Board

FROM: Syrette Dym, Director of Planning

DATE: May 30, 2018

RE: Zoning Amendments Relative to Electronic Nicotine Delivery Systems and Vape Shops in the NS Neighborhood Shopping District

The Town Board has expressed its interest in regulating the location of businesses that own, manage or operate vape shops and the sale of Electronic Nicotine Delivery Systems within the Town. To that effect, it reviewed the Local Law under consideration in the Town of Bedford intended to accomplish these goals.

I was asked by the Supervisor to craft a local law for Somers which would accomplish the above stated goals using the Bedford draft law as a model. After researching laws in other municipalities and examining the Bedford Law and the Town of Somers Zoning Ordinance, I determined that the main substance of the Bedford legislation was appropriate for the Town if applied to the NS Neighborhood Shopping District.

Since the formats of the Bedford and Somers Zoning Ordinances differ, adjustments regarding appropriate location and format in the Code needed to be made.

For Somers, the best fit was to add a new article to the ordinance, Article XXIII, entitled "Electronic Nicotine Delivery Systems and Vape Shops" to Chapter 170 Zoning as Sections 170-130 to 130.2.

The legislation restricts any Business as defined in the ordinance located within the NS Neighborhood Shopping district from owning, managing or operating a Vape Shop or selling any Electronic Nicotine Delivery System. A transition period of six months is proposed for a phase in of these regulations.

The Town has seven areas where the NS Neighborhood Shopping District is mapped. These locations are the following:

- Intersection of Route 35 and Route 100
- The Towne Centre at Somers and Heritage Hills Shopping Center in Somers hamlet
- Area on Route 100 across from IBM
- Route 202 (Lovell Street) and Maple Street
- Tighe Road and Sunset Drive
- North side of Route 6 east of Mahopac Avenue
- Route 202 and Old Tomahawk Road.

Although businesses in these areas will be restricted from engaging in Vape Shop activities or from selling any electronic nicotine delivery systems after the initial six-month grandfather period, other commercial districts, including particularly the CS Community Shopping District, will not be so restricted.

Should the Town Board determine to move ahead with this amendment, it should take the following actions:

- Declare itself lead agency at its work session meeting of June 7, 2018
- Refer the proposed amendment to the Building Inspector, the Planning Board, the Somers Police Department and the Westchester County Planning Board for their information at the June 7, 2018 meeting
- At its June 7, 2018 work session, set a date for a public hearing to be held at its meeting of July 12, 2018

With regard to the public hearing, the only official notification required by NYS law as corroborated by Roland Baroni, is notice in the newspaper and posting by the Town Clerk. The board may want to consider whether any other notification to individual NS District property owners/businesses is desired. Once the public hearing is held and closed at the July 12, 2018 meeting, the Town Board can review the EAF Parts 1 and 2 and Narrative, make a Negative Declaration and approve the proposed zoning amendments as currently proposed or with any amendments as determined by the Board.

Cc: Roland Baroni
Patricia Kalba

Z:\PE\General files\Vaping Shops Zoning\Town Board Memorandum 05-30-18.docx

TOWN OF SOMERS

Local Law No. _____ For the Year 2018

A Local Law to amend the Code of the Town of Somers Chapter 170 entitled Zoning:

Be It Enacted by the Town Board of the Town of Somers as follows:

Chapter 170 Zoning of the Town of Somers is hereby amended to add Article XXIII entitled "Electronic Nicotine Delivery Systems and Vape Shops" as follows:

Section 170-130. Purposes, findings and legislative intent

A. The purpose, findings and legislative intent of this article are to:

- (1) Regulate the sale of electronic nicotine delivery systems and the establishment of vape shops in order to serve the public health, safety and welfare of the residents and businesses within the Town.
- (2) The Town Board also finds that electronic nicotine delivery systems, commonly known as "e-cigarettes," have been growing steadily in popularity since entering the United States retail market in 2007. E-cigarettes are often advertised as alternatives to traditional tobacco products. The Town Board finds that many convenience and grocery stores sell these products, with some dedicated "vape shops" and "head shops" exclusively selling e-cigarettes, liquid nicotine and related products. Such devices may contribute to youth smoking and reduced cessation, since the devices contain or produce chemicals other than nicotine known to be toxic, carcinogenic and causative of respiratory and heart distress. E-cigarettes and similar devices look identical, whether they contain nicotine or not, and, as a result, their use not only normalizes e-cigarette use but also renormalizes tobacco addiction and use of tobacco products, like combustible cigarettes.

Section 170-130.1 Definitions; word usage

- A. As used in this article, the following terms shall have the following meanings unless the context shall otherwise require.

BUSINESS

Any person, business, corporation, unincorporated association, proprietorship, firm, partnership, joint venture, joint-stock association, or other business entity of any kind.

ELECTRONIC NICOTINE DELIVERY SYSTEM

Any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provide a vapor of liquid nicotine, any marijuana derivative and/or other substances, mixed with propylene glycol or a similar substitute, to the user as he or she simulates smoking. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name. This term shall include the component parts designed for such systems, including, but not limited to, liquid nicotine and other e-liquids, glass or plastic vials containing e-liquid, cartridges, atomizers, batteries, cartomizers and clearomizers, digital displays/lights that adjust settings, tank systems, drip tips, flavoring for electronic nicotine delivery system and programmable software.

VAPE SHOP

Any facility or location whose business operation, whether as its primary use or as an ancillary use, includes the smoking or selling of electronic nicotine delivery systems, hookahs or such other vaping paraphernalia, vapors, e-liquids, marijuana derivative, or other substances that are smoked through an Electronic Nicotine Delivery System or any related product.

- B. In the event of a conflict between the definitions in this article and Section 170-3 of this chapter, the definitions in this article shall apply to the provisions of this article.

Section 170-130.2 General restrictions and regulations

- A. It shall be unlawful for any Business to own, manage or operate a Vape Shop within the NS Neighborhood Shopping District.

- B. It shall be unlawful for any Business to sell any Electronic Nicotine Delivery System within the NS Neighborhood Shopping District.
- C. Any Business currently selling Electronic Nicotine Delivery Systems within the NS Neighborhood Shopping District may continue to operate and sell Electronic Nicotine Delivery Systems for six (6) months from the effective date of this Local Law. Thereafter, any Business located within the NS Neighborhood Shopping District shall be required to conform to all requirements of this Chapter and Section.

**NOTICE OF SEQR ACTIONS –Amendments to Chapter 170 Zoning to Add Article XXIII –
“Electronic Nicotine Delivery Systems and Vape Shops” as Section 170-130 Relative to the NS
Neighborhood Shopping District of the Code of the Town of Somers
Notice to Act as Lead Agency**

Issued by Town of Somers Town Board
Westchester County, New York

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

The Town Board of the Town of Somers, Westchester County, declares its intent to act as lead agency as part of an uncoordinated review for amendment to Chapter 170 Zoning to Add Article XXIII- “Electronic Nicotine Delivery Systems and Vape Shops” as Section 170-130 Relative to the NS Neighborhood Shopping District of the Code of the Town of Somers.

The Somers Town Board at its meeting of June 7, 2018 declared itself Lead Agency with regard to this Proposed Action under the procedures and requirements of SEQRA and Chapter 92 of the Somers Town Code as part of an uncoordinated review.

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*.

PROPOSED LEAD AGENCY: Town Board, Town of Somers
Somers Town House
335 Route 202
Somers, New York 10589

TITLE OF ACTION: Amendment to Chapter 170 Zoning To Add Article XXIII – “Electronic Nicotine Delivery Systems and Vape Shops” as Section 170-130 Relative to the NS Neighborhood Shopping District of the Code of the Town of Somers

DESCRIPTION OF ACTION: The action involves amendment to Chapter 170 Zoning of the Code of the Town of Somers to add Article XXXIII – “Electronic Nicotine Delivery Systems and Vape Shops” as Section 170-130 relative to the NS Neighborhood Shopping District. The amendment is intended to prohibit businesses as defined by the ordinance from the sale of Electronic Nicotine Delivery Systems and to prohibit any business as defined therein to own, manage or operate a Vape Shop within the NS Neighborhood Shopping District in the Town of Somers. To minimize economic impacts on Businesses in the NS District currently selling Electronic Nicotine Delivery Systems, this prohibition will not go into effect for six (6) months from the effective date of enactment of the Local Law.

LOCATION: The Town of Somers, Westchester County New York

SUPPLEMENTAL INFORMATION: A Short Form (EAF) has been prepared for the Proposed Action. This form is being distributed to Interested Agencies (see list below), and this information is also

available for review in the Planning and Engineering office at the Town House and on the Town's web site.

Contact: Syrette Dym, AICP, Director of Planning
335 Route 202
Somers, New York 10589

Telephone: 914-277-5366

Date of this Notice: June 7, 2018

**SEQR DISTRIBUTION LIST – Amendments to Chapter 170 Zoning to add Article XXIII entitled
“Electronic Nicotine Delivery systems and Vape Shops” Relative to the NS Neighborhood
Shopping District**

Involved Agency:

Town Board
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 Clerk

Town of Somers Building Inspector
Somers Town House
335 Route 202
Somers, New York 10589
Attn: Efrem Citarella, Building Inspector

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

Somers Police Department
Somers Town House
335 Route 202
Somers, New York 10589
Attn: Michael Driscoll, Chief

Westchester County Planning Board
148 Martine Avenue
White Plains, NY 10601
Attn: Norma Drummond, Acting Commissioner

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

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

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

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

Part 1 - Project and Sponsor Information							
Name of Action or Project: Amendment to Chapter 170 of Town Code to add Article XXIII "Electronic Nicotine Delivery systems and Vape Shops In NS Neigh, Bus. District							
Project Location (describe, and attach a location map): Town of somers , NY							
Brief Description of Proposed Action: Amendment to the Zoning Code to add Article XXIII entitled "Electronic Nicotine Delivery Systems and Vape Shops" to prohibit the sale by any business as defined in the ordinance located in the NS Neighborhood Shopping District from owning, managing or operating a Vape Shop or to sell any Electronic Nicotine Delivery System within the NS District.							
Name of Applicant or Sponsor: Town Board, Town of Somers		Telephone: 914-277-5366 E-Mail: sdym@somersny					
Address: 335 Route 202							
City/PO: Somers		State: NY	Zip Code: 10589				
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input checked="" type="checkbox"/></td> </tr> </table>	NO	YES	<input type="checkbox"/>	<input checked="" type="checkbox"/>
NO	YES						
<input type="checkbox"/>	<input checked="" type="checkbox"/>						
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">NO</td> <td style="width: 50%; padding: 2px;">YES</td> </tr> <tr> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 5px;"><input type="checkbox"/></td> </tr> </table>	NO	YES	<input type="checkbox"/>	<input type="checkbox"/>
NO	YES						
<input type="checkbox"/>	<input type="checkbox"/>						
3.a. Total acreage of the site of the proposed action? _____ acres b. Total acreage to be physically disturbed? _____ acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres							
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland							

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
b. Is the proposed action located in an archeological sensitive area?	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Rick Morrissey, Supervisor</u> Date: _____ Signature: _____		

EAF Part 1 – Narrative Description of Proposed Action

The action involves amendments to Chapter 170 Zoning of the Town of Somers to add Article XXIII entitled "Electronic Nicotine Delivery Systems and Vape Shops" as Sections 170-130 and 130.1 and 130.2. The legislation would result in a prohibition of owning, managing or operating a Vape Shop within the NS Neighborhood Shopping District and make it unlawful for any business as defined in the legislation to sell any Electronic Nicotine Delivery Systems within the NS Neighborhood Shopping District.

There are seven areas in the Town of Somers where the NS Neighborhood Shopping Center is mapped. Those areas are the following:

- Intersection of Route 35 and Route 100
- The Towne Centre at Somers and Heritage Hills Shopping Center in Somers hamlet
- Area on Route 100 across from IBM
- Route 202 (Lovell Street) and Maple Street
- Tighe Road and Sunset Drive
- North side of Route 6 east of Mahopac Avenue
- Route 202 and Old Tomahawk Road.

Although businesses in these areas will be restricted from engaging in Vape Shop activities or from selling any electronic nicotine delivery systems after an initial six-month grandfather period, other commercial districts, including particularly the CS Community Shopping District, will not be so restricted.

Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Short Environmental Assessment Form

Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

See Attached.

☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
 ☒ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Town Board Town of Somers

Name of Lead Agency

Date

Rick Morrissey

Supervisor

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

Involved and Interested Agencies:

SEQR DISTRIBUTION LIST – Amendments to Article XXII. Signs Section 170-126. Business districts of the Code of the Town of Somers

Involved Agency:

Town Board
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 Clerk

Town of Somers Building Inspector
Somers Town House
335 Route 202
Somers, New York 10589
Attn: Efreem Citarella, Building Inspector

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

Somers Police Department
Somers Town House
335 Route 202
Somers, New York 10589
Attn: Michael Driscoll, Chief

Westchester County Planning Board
148 Martine Avenue
White Plains, NY 10601
Attn: Norma Drummond, Acting Commissioner

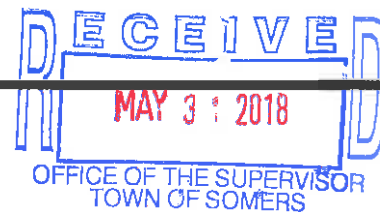
Others – Lead Agency Representatives–

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

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

Sent to:
TB, TA, TC 5/31/18 KD
Kim DeLucia



From: Adam Smith
Sent: Wednesday, May 30, 2018 2:06 PM
To: Rick Morrissey
Cc: Kim DeLucia; Bob Kehoe
Subject: Travis Road Sewer Pump Station
Attachments: P-17-0105 KCP-AMTC-0225S WQ.pdf

Hello Rick,

The generator transfer switch at Travis Road Sewer Pump Station has failed to operate several times during recent power failures requiring us to manually transfer the power.

The switch is approximately 20 years old and no longer operating correctly. I have attached a proposal from Kinsley Power in the amount of \$4777.00 for the new switch.

I am requesting authorization to place this order immediately as this is a critical component in the operation of the sewer pump station and there is a 6 week lead-time once approved.

Thank you,

Adam Smith
Superintendent of Water & Sewer
Town of Somers
Phone & Fax: (914) 248-5181
Mobile Phone: (914) 804-6543

Proposal



Quote Number	Project Name	Project Location	Date
Q-18-1235	Somers - Travis Road PS		5/14/2018

From: James Carlucci
310 Guinea Road
Brewster, NY 10509
Email: jcarlucci@KinsleyPower.com
Cell: 914.467.9107

Qty	Bill of Material Summary
1	Kohler KCP-AMTC-0225S Transfer Switch Type - Any Breaker Rated, Programmed Transition, 480 Volts/60Hz, 225 Amps Poles - 3-Pole, 4-Wire, Solid Neutral Enclosure - NEMA 3R Enclosure Warranty - 1 Year Standard Estimated Leadtime - 6 Weeks, ARO
1	Distributor Start-Up

Spec/Notes:

Terms	Retainage	F.O.B.	Mfg. Manuals
Net 30	No Retainage Allowed	Source	

OFFER TOTAL SELL PRICE: \$4,777.00

Price Quotation Expires in 30 Days
Price does not include state sales tax, or installation

The Energy Solutions Company

310 Guinea Road
Brewster, NY 10509
800.255.3503
www.kinsleypower.com

Page 1 of 5

Proposal



Automatic Transfer Switch

Qty	Description
1	ATS 1200 Transfer Switch System KCP-AMTC-0225S Includes the following: Literature Languages English Mechanism Standard Transition Programmed Logic 1200 Voltage 480V / 60 Hz Poles & Wires 3 Pole/4 Wire, Solid Neutral Enclosure Nema 3R Amps 225 Amps Connection Standard Miscellaneous Acc.,Installed Lockable User Interface Cover Warranty 1-YR STANDARD

Proposal



OFFER ACCEPTANCE

I hereby authorize Kinsley Power Systems, Inc. to use this form as a bona fide purchase order of the equipment shown on Proposal Number Q-18-1235 which clearly establishes definite price and specifications of material ordered. The person signing is doing so according to the terms and conditions.

Proposed By:

Company: Kinsley Power Systems, Inc.

Signature: James Carlucci

Printed Name: James Carlucci

Title: Sales Engineer

Date: Monday, May 14, 2018

Accepted By:

Company: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

TERMS & CONDITIONS:

Quote subject to Kinsley Power Systems' General Terms and Conditions. General Terms and Conditions available upon request.

INSTALLATION (not included)	Defined as to include but not limited to; rigging, wiring, plumbing, fuel or fuel for testing, unless noted. All "Shipped Loose" items are to be installed by others; including enclosure hoods, stacks, stairs, silencers, etc.
ESTIMATED SHIPPING	Ship dates are best estimates only. Therefore, Kinsley Power Systems is not responsible for incidental or liquidated damages.
TERMS	Net 30 days from shipment date or prior to start-up whichever comes first; subject to credit approval. We reserve the right to charge 1.5% on accounts over 30 days past due. Our price does not include sales tax or installation.
CANCELLATION/BILLABLE DELAYS	If the manufacturer will allow order to be cancelled a re-stocking charge will apply. Orders placed on in-stock items which are not shipped or picked up after 15 days of order date will be returned to inventory for sale to others. Factory-ordered units shipped to a Kinsley facility for temporarily storage due to customer payment or jobsite readiness issues are subject to storage fees of 1% per month unless order is paid in full.
CONTRACT CHANGES	A mutually agreed to, signed change order is required for any contract changes.
RETAINAGE	None
FREIGHT	F.O.B. Factory, Freight Allowed; Tailgate Delivery, Off-loading by others. Shipping addresses must be deliverable by an LTL carrier. Ex: No dirt roads, steep or narrow driveways etc. Delivery truck must be able to turn around or back in safely. Please specify special delivery requirements. Unless otherwise specified, additional charges will apply.
MANUALS	One set of manuals is included with each unit. Additional manuals can be ordered at additional cost.
WARRANTY	Manufacturer's standard warranty terms and conditions apply.
START UP	Start-up service is during normal business hours. After hours or weekend start up is available at an additional cost. Unless otherwise noted, all 3rd party testing such as NETA, Insulation Resistance, Ground Fault, Infrared Scanning, emissions testing, exhaust backpressure testing, etc. to be provided by others

I acknowledge that I have read and agree to the above Terms and Conditions:

(Initial)

The Energy Solutions Company

Proposal



Kinsley Power Systems General Terms and Conditions

1.0 Summary. These General Terms & Conditions are between Kinsley Group, Inc. d/b/a Kinsley Power Systems ("Kinsley") having a mailing address of 14 Connecticut South Drive, East Granby, CT 06026 (fax number 860-444-6136) and the person, company, firm or business entity purchasing equipment, renting equipment and/or obtaining products or services from Kinsley ("Customer", "You" or "Your"). The purpose of these General Terms & Conditions is to set forth the general terms and conditions that will apply to all services performed by Kinsley for the Customer and all products sold by Kinsley to the Customer. Specific terms and conditions on which such services and products will be provided may be set forth in separate agreements (written proposals, quotations, etc.) (each hereinafter referred to as a "Related Agreement"). The provisions of these General Terms & Conditions shall be incorporated into each of these Related Agreements and govern all the understandings and agreements between the parties unless otherwise expressly set forth in a Related Agreement. In the event of a specific conflict between the provisions of these General Terms & Conditions and the express provisions of any Related Agreement, the Related Agreement shall control, except for Section 3.0 below, "Limited Warranty Statement", which shall control over any Related Agreement, unless such Section 3.0 is specifically referenced and amended in writing and signed by authorized personnel of Kinsley. These General Terms and Conditions shall apply to each individual project, sale or transaction, provided that a default by Customer under the General Terms and Conditions or a Related Agreement with respect to one project, sale or transaction shall constitute a Customer default under all projects, sales and transactions with such Customer and its affiliates.

2.0 Freight and Payment Terms. Kinsley's freight terms are F.O.B. Factory/Origin. All charges are due and payable in accordance to our credit terms set forth on Kinsley's invoice. Down payments and/or progress payments may be required prior to order, release or shipment. Unless otherwise agreed to in writing, payments related to equipment purchases are due on Net, thirty (30) day terms from invoice date or prior to start-up, whichever comes first. No retainage is allowed. Payments related to rentals or service invoices are due on a Net, ten (10) day term from invoice date. If the Purchaser delays delivery from the agreed upon date, payment terms shall take effect on the date Kinsley is prepared to make shipment. The failure of customer to make any payments required by General Terms and Conditions or under any Related Agreement shall be considered a material breach and event of default and, without limiting its remedies at law or under these General Terms and Conditions, shall entitle Kinsley to suspend or terminate the services or products provided to you under all Related Agreements, even if the Related Agreements are for different projects or locations.

2.1 Recoverable Costs & Expenses. All costs advanced and expenses incurred that are related to the services performed will be reimbursed to Kinsley. These may include, but not be limited to, airfare, hotel accommodations, tolls, business meals, parking, miscellaneous travel expenses, faxes, courier charges, express mailing, mileage round-trip from Kinsley's service location or shipping point, and all other out-of-pocket expenses.

2.2 Finance Charges, Collection Costs, Expenses, and Other Remedies. All bills not paid within agreed-upon terms shall be assessed a late charge of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the unpaid balance until paid in full. In the event that Kinsley incurs collection expenses or brings any lawsuit, arbitration or other proceeding to collect amounts owed, Kinsley shall be entitled to recover the costs and expenses (including but not limited to its filing fees, witness fees and reasonable legal fees) incurred in collecting such amounts. Kinsley reserves the right, where permitted by law, to charge a two percent (2%) surcharge, processing fee, or convenience fee for all payments made by credit card. Furthermore, if Kinsley is not paid in full within one hundred twenty (90) days of invoice date, Kinsley reserves the right to remove any rental equipment or partially paid equipment from customer site, storage, or any physical location where equipment resides and place the equipment back into Kinsley inventory for resale or further rent. Any proceeds from resale will be used first to reimburse Kinsley for any removal costs and other remedies or costs incurred due to the delinquency, removal, and resale.

2.3 Storage. If equipment ordered by Customer is not shipped after notification has been made to the Customer or its agent that it is ready for shipping, for any reason beyond Kinsley's control, including Customer's failure to give shipping instructions, Kinsley may store the equipment at the Customer's risk and expense. The Customer shall pay all handling, transportation, storage and insurance cost at the prevailing commercial rates.

2.4 Credit Approval Sales. Shipments, deliveries and performance of work shall at all times be subject to the approval of Kinsley. Kinsley may at any time reject any purchase order, or decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Kinsley in its sole discretion.

2.5 Cancellation or Changes. Order cancellations without Kinsley's written consent, shall be subject to, in Kinsley's sole discretion, the following:

Generator sets: Standard Product Orders cancelled within five (5) weeks of the acknowledged ship date from the vendor or three (3) weeks of the production start date will be subject to a charge of twenty percent (20%) of the selling price plus a charge for unique parts. Orders completed and ready for shipment are non-cancellable. Estimated order cancellation fees will be offered upon request and are subject to change based on actual product and engineering fees.

Electrical Controls: Standard Product Orders cancelled within five (5) weeks of the acknowledged ship date from the vendor or cancelled within three (3) weeks of the production start date will be subject to a charge of up to twenty percent (20%) of selling price plus a charge for unique parts. Orders completed and ready for shipment are non-cancellable.

Paralleling Switchgear or DPS: In the event of order cancellation, prior to release of order for manufacture and following receipt of order by Kohler, there will be a charge of fifteen percent (15%) of selling price, with additional charges related to unique part procurement and engineering fees. Once a Kohler accepted order is released for manufacture, paralleling switchgear and DPS orders are non-cancellable.

ATS: Standard, Programmed or Closed Transition (30-1200A): Orders cancelled at least two (2) weeks prior to acknowledged ship date from the vendor will be subject to a charge of twenty percent (20%) of selling price. Orders cancelled within two (2) weeks of acknowledged ship date from the vendor will be subject to a charge of fifty percent (50%) of selling price.

ATS: Standard, Programmed or Closed Transition (1600 to 4000A): Orders cancelled at least four (4) weeks prior to acknowledged ship date from the vendor will be subject to a charge of twenty percent (20%)

of selling price. Orders cancelled less than four (4) weeks prior to acknowledged ship date from the vendor will be subject to a charge of fifty percent (50%) of selling price.

ATS: Bypass Isolation (up to 1200A): Orders cancelled at least three (3) weeks prior to acknowledged ship date from the vendor will be subject to a charge of thirty percent (30%) of selling price. Orders cancelled less than three (3) weeks prior to acknowledged ship date from the vendor will be subject to a charge of sixty percent (60%) of selling price.

ATS: Bypass Isolation (1600A to 4000A): Orders cancelled at least five (5) weeks prior to acknowledged ship date from the vendor will be subject to a charge of thirty percent (30%) of selling price. Orders cancelled less than five (5) weeks prior to acknowledged ship date from the vendor will be subject to a charge of sixty percent (60%) of selling price.

ATS: Service Entrance: Orders cancelled at least two (2) weeks prior to acknowledged ship date from the vendor will be subject to a charge of twenty percent (20%) of selling price. Orders cancelled less than two (2) weeks prior to acknowledged ship date from the vendor will be subject to a charge of fifty percent (50%) of selling price.

Engineered Specials & Standard Accessories: In the event of order cancellation, once the order has been submitted to Kohler and the order is outside of standard product parameters by Kohler, there will be a charge of fifteen percent (15%) of the selling price plus additional unique parts and engineering charges. Standard accessories cancelled or changed after order acknowledgement are subject to a charge of eight percent (8%) of the value of the accessory or Fifty Dollars (\$50.00) (whichever is greater) plus a charge for unique parts.

Order changes without Kinsley Power Systems' written consent, shall be subject to, in Kinsley's sole discretion, the following:

Rescheduling Product Shipment Dates: Requests to extend the acknowledged ship date from the vendor will be considered on an individual basis. The extended date cannot be greater than three months following the original acknowledged ship date, and storage fees will be assessed. Requests for improved shipping dates will be considered on an individual basis subject to availability of material and manufacturing capacity.

Product Changes: Requests for factory modifications, on an individual basis, will be reviewed and may be possible if received thirty (30) calendar days prior to production start date. Product change requests to orders within the factory frozen schedule (factory will need to be contacted - frozen schedule varies based on generator, tank and enclosure) will be subject to a Five Hundred Dollar (\$500.00) fee in addition to any product or components deemed as unusable by the factory after the change has taken place. All other requests for modifications, including Switchgear and Engineering Specials that are in production at time of order acknowledgement, will be reviewed on an individual basis and will be subject to availability of material. Any product changes may affect the acknowledged shipping date and the acknowledged price. Product deletions will be subject to the conditions of the cancellation policy.

Storage Policy: Products not accepted at acknowledged ship date are subject to a two percent (2%) storage fee per month assessed at time of confirmed ship date. The base date for determination will be the distributor requested shipping date or the Kohler confirmed product availability date, whichever is latest.

Shipping Policy: A claim for a shortage or shipment error must be submitted to Kinsley within thirty (30) days of the product invoice date.

2.6 Return Merchandise: Electrical parts/components and special orders are not returnable. There will be a minimum of a twenty-five percent (25%) restocking charge on all other parts and equipment returns. All sales are final after ninety (90) days. Prior written authorization is required before returning any merchandise. All merchandise must be returned prepaid to Kinsley's designated outlet, unless otherwise instructed when the authorization is granted.

Kinsley reserves the right to deny authorization for return of any items in its sole discretion.

Kinsley reserves the right to refuse unauthorized returns in its sole discretion.

All claims on returned goods must be made within thirty (30) days from shipment and accompanied by receipt on which original delivery was made.

In cases where Kinsley sells a product on an "exchange" basis, a "core charge" is payable by the Customer if an acceptable "core" is not returned to Kinsley, freight prepaid, within thirty (30) days after shipment of the exchange product. Kinsley reserves the right to determine if the "core" is "acceptable" (i.e.; reasonably and economically suitable for repair and resale).

2.7 Force Majeure: Kinsley shall not be liable in any way for any default or delay due to conditions or contingencies beyond its control, which prevents or interferes with Kinsley or its suppliers or subcontractors making delivery or performing services on the date specified, including but not limited to war, or restraints affecting shipping, delivery of materials or credit as a result of war or war restrictions, non-arrival delay or failure to produce materials as a result of war or war restrictions, rationing of fuel, strikes, lockouts, fires, bombings, acts of terrorism, accidents, weather conditions, floods, droughts and any other condition or contingency affecting Kinsley, its suppliers, or subcontractors; and Kinsley shall have the right to cancel a contract for services or cancel a contract of sale or to extend the shipping date in the event of one or more of such conditions or contingencies. In the event of delayed or extended shipping dates due to the above causes, and the Customer changes shipping instructions, any additional shipping charges shall be paid by the Customer as a part of the purchase price.

2.8 Third Party Vendors: Kinsley may from time to time refer the Customer to third party vendors for specific products or services. These vendors are not Kinsley's subcontractors, so it is the Customer's responsibility to select and negotiate the terms and conditions of the Customer's business with them. Kinsley will not be responsible for their products or services.

2.9 Taxes. In addition to all other amounts payable under this Agreement or under a Related Agreement, the Customer shall pay all United States and foreign sales, use, value added, and other taxes and duties, of whatever nature, federal, state, provincial or otherwise (herein "taxes"), which are levied or imposed by reason of these General Terms and Conditions or any of the services or products purchased from Kinsley. The Customer shall promptly pay Kinsley for any such Taxes paid by Kinsley on behalf of the Customer or which are required to be collected and paid by Kinsley. Kinsley may bill the Customer separately for such Taxes.

The Energy Solutions Company

310 Guinea Road
Brewster, NY 10509
800.255.3503
www.kinsleypower.com

Page 4 of 5

Proposal



2.10 General: Any claims for shortages or deductions for erroneous charges must be made in writing within thirty (30) days after receipt of goods or services or shall be deemed waived. All manufacturer's names, numbers, symbols and descriptions are used for reference purposes only, and it is not implied that any part listed is the product of these manufacturers.

All clerical errors on the part of Kinsley are subject to corrections.

Prices are subject to change without notice.

Unless otherwise stated, prices are FOB point of manufacture.

Delivery dates may be quoted by Kinsley. Such dates are estimates only and in no event shall such dates be construed as falling within the meaning of "time is of the essence".

2.11 No Hire Clause: During the term of any Related Agreement under which Kinsley is providing products or services, and for a period of one (1) year thereafter, neither the Customer nor its affiliates shall: (a) employ or hire, or engage as a consultant or subcontractor, any employee or subcontractor of Kinsley or any of its affiliates, (b) solicit any employee or subcontractor of Kinsley or any of its affiliates to become an employee of, or consultant or subcontractor to Customer or any of its affiliates, or (c) recommend or suggest to any other person or entity that it so solicit, employ, hire, or engage any such employee or subcontractor. In the event of any breach of the foregoing provisions, Kinsley shall be entitled to be paid, on demand, as liquidated damages and not as penalty, an amount equal to the annualized base salary and other regular compensation being paid to such employee or subcontractor as of the date of the termination of his or her employment or contract with Kinsley or its affiliate. It is agreed that the amount of damages, which would be suffered because of a breach of the foregoing provisions of this Section, would be difficult to measure and that such payment amount constitutes reasonable liquidated damages for such a breach.

2.12 Governing Law and Jurisdiction. These General Terms & Conditions and each Related Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut, without regard to its conflict of law provisions. The United Nations Convention on the International Sale of Goods shall not apply to these General Terms and Conditions and conditions of any Related Agreement. All suits under this agreement shall be brought and filed in the State of Connecticut.

2.13 Assignment and Transfer. Except as otherwise provided in any Related Agreement, these General Terms and Conditions and any Related Agreement may not be assigned or transferred by Customer, and shall be binding upon and for the benefit of Kinsley and the Customer, as well as the Customer's and Kinsley's respective legal representatives, successors and assigns.

2.14 Invalid Provisions. These General Terms and Conditions and any Related Agreement shall be valid and enforceable to the fullest extent permitted by law. If any term, condition, or provision of these General Terms and Conditions or any Related Agreement, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, then such term, condition, or provision shall be curtailed and limited to the extent necessary to bring it within the legal requirements, and the remainder of these General Terms and Conditions, or Related Agreement, and the application of such term, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.15 Entire Agreement, Modification. These General Terms and Conditions and any Related Agreements constitute the entire agreement between Kinsley and the Customer with respect to the subject matter thereof, superseding all previous communications and negotiations, whether written or oral. No modification of these General Terms and Conditions or any Related Agreement shall be binding unless it is in writing and executed by authorized representatives of Kinsley and the Customer.

2.16 Notices. Any written notice or other written communication to a party under these General Terms & Conditions or any Related Agreement shall be delivered personally, sent by fax, or sent by express carrier for next business day delivery evidenced by a receipt, or by United States registered or certified mail, freight or postage prepaid. Notices shall be sent to a party's address or fax number set forth at the beginning of the agreement or purchase order in which these General Terms and Conditions are incorporated or such other address or fax number as such party may specify in writing in accordance with these notice provisions.

2.17 Waiver of Failure to Act. No failure or delay by Kinsley in exercising any right or remedy under these General Terms and Conditions or a Related Agreement shall be deemed to be a waiver. The waiver by Kinsley in any respect of any right provided for in these General Terms and Conditions or any Related Agreement shall not be deemed a waiver of any further right hereunder.

2.18 Third Party Beneficiaries. These General Terms and Conditions and any Related Agreement shall not be deemed to create any rights in any third parties (excepting only Kinsley's affiliates), including suppliers and customers of a party, or to create any obligations of a party to any such third parties.

2.19 Affiliate. As used in these General Terms and Conditions or in any Related Agreement, an "affiliate" of a party means a third party that directly or indirectly (by the ownership of voting securities, contract or otherwise) controls, is controlled by, or is under the common control with, such party.

2.20 Security Interest. Customer hereby grants Kinsley, and Kinsley will retain, a purchase money security interest and lien on any and all equipment, goods or merchandise sold hereunder wherever located, and all replacements or proceeds of the same, until the invoice for the applicable equipment, goods or merchandise is paid in full, including any late charges and costs of collection. Customer consents to Kinsley's use of these General Terms and Conditions, as well as product invoices, as financing statements under the Uniform Commercial Code ("UCC") and to create additional financing statements for protecting this security interest, and appoints Kinsley as Customer's agent for any necessary signatures on such filings and hereby authorizes Kinsley, at Customer's expense, to take such action as may be necessary to perfect and protect Kinsley Power Systems' security interest, including the filing and/or recording of UCC financing statements, and grants Kinsley the right and power of attorney to execute Customer's name thereto. Customer agrees to pay or reimburse Kinsley for any searches, filings, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. In the event of a default by Customer of any of its payment obligations hereunder, Kinsley shall be entitled to any of the rights and remedies provided by law. Customer will not change its name, principal place of business, or state of incorporation without Kinsley's prior written consent, and Customer will notify Kinsley in writing of any change in the location of any other place of business prior to making such change, and of the acquisition of any new place of business prior to such acquisition. Customer shall at its expense protect and defend Kinsley's rights against all persons claiming against or through Customer at all times, keeping the equipment, goods or merchandise sold hereunder free from any other legal process

or encumbrance whatsoever, including, but not limited to liens, attachments, levies and executions, and shall give Kinsley immediate written notice thereof and shall indemnify and hold Kinsley harmless from any loss caused thereby.

3.0 LIMITED WARRANTY STATEMENT Kinsley makes no express or implied warranties, including without limitation, implied warranties of merchantability and fitness for particular purpose, on equipment, parts or devices or any other goods or products sold or rented by Kinsley. The Customer's sole remedy is under the warranty of the manufacturer. At the Customer's request, Kinsley may furnish specific manufacturers' express limited warranty policies. The Customer accepts the goods or products sold "as is" and "with all faults" except only as provided by the warranty of the manufacturer of the goods or products sold.

Kinsley may provide technical information or advice to assist the Customer in the proper application and utilization of equipment or systems, in which case Kinsley disclaims all warranties, express or implied, including without limitation implied warranties of merchantability and fitness for a particular purpose, or compliance with governmental regulations.

SOLE LIMITED WARRANTY BY KINSLEY. Kinsley warrants that for ninety (90) days beginning on the date of invoice, service labor by Kinsley technicians shall be free from material defects in workmanship. This warranty does not cover damage due to external causes including accident, abuse, misuse, problems with electrical power, servicing not authorized or performed by Kinsley, usage not in accordance with product instructions, failure to perform required preventive maintenance, and problems caused by use of parts and components not supplied by Kinsley. This warranty does not cover replacement or repair of materials due to normal wear. Kinsley's responsibility is limited to repair or replacement at its designated facility, and the decision as to location of the repair work shall be made in the sole judgment of Kinsley.

IN NO EVENT SHALL KINSLEY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOSS OF REVENUE OR PROFITS, FEES OR FINES), EVEN IF KINSLEY HAS BEEN ADVISED OR MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY.

Kinsley's cumulative liability for all losses and damages under these General Terms and Conditions or under any of the Related Agreements (including, without limitation, those arising out of contract, tort (including negligence), strict liability, warranty, or other theory of liability) shall not exceed (a) in the case of any services provided or to be provided by Kinsley, the amount of the fees paid by Customer for such services under the applicable Related Agreement, and (b) in the case of any products or devices provided or to be provided by Kinsley, the amount of Kinsley's labor services paid by Customer and associated with the product sale.

Kinsley makes no warranties beyond those stated in this warranty statement. Furthermore, no personnel of Kinsley are authorized to make warranties of any nature, orally or otherwise.

4.0 Indemnification. Customer shall save harmless, indemnify, and at Kinsley's option, defend Kinsley, and Kinsley's owners, directors, officers, agents, representatives, affiliates and successors and assigns, from and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature arising or growing out of or in any way connected with Kinsley's selling, repairing, evaluating, starting up, testing or maintaining equipment or other items or providing other services or products to or for the benefit of Customer or its affiliates, unless it is determined by a court of competent jurisdiction, after expiration of applicable appeal rights, that such matters were directly caused by Kinsley's gross negligence or willful misconduct.

5.0 Waiver of Subrogation. Customer and all parties claiming to be related to customer hereby agree to release and discharge Kinsley from all claims and/or liabilities arising from or caused by any casualty or hazard which may arise out of or in connection with activities associated with Kinsley's work on equipment or premises at the request or direction of Customer except as specifically stated herein, and Customer agrees to waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof and further agree to evidence such waiver as may be required by Customers' insurance policies.

6.0 Acknowledgement. Customer acknowledges that it engages in the conduct of trade or commerce. Customer acknowledges that this transaction is in a business context and is not for personal services or for personal goods sold or delivered as a consumer.

The Energy Solutions Company

310 Guinea Road
Brewster, NY 10509
800.255.3503
www.kinsleypower.com

Page 5 of 5

Sent to:
TB, TA, TC
6/1/18
KD

LICENSE AGREEMENT

This License Agreement made as of _____, 2018, by and between ONE P WAY LLC, having an address at c/o Sebastian Capital, Inc., 417 fifth Avenue, New York, New York 10016 (hereinafter "Licensor"), and the Town of Somers, a _____, having an address at _____ (hereinafter "Licensee").

1. **Grant of License.** Subject to all of the terms and conditions of this License Agreement, Licensor grants to Licensee a non-assignable license to enter upon the real property located at 2875 Route 35 (a/k/a "One Pepsi Way"), Katonah, New York 10536 (the "Real Property") for the sole purpose of having a Fourth of July celebration for one (1) day, namely on, June 30 ~~July 4~~, 2018, and for no other purpose or use without Licensor's prior written consent, which may be given or withheld in Licensor's sole and absolute discretion.

Licensee understands and agrees that this license does not establish a landlord-tenant relationship between the parties, and that Licensor has no interest or estate in any real property at the Real Property.

2. **License Area.** The License Area to which this License applies shall be only the landscaped and paved areas located on the Real Property (the "License Area"). No portion of any building located on the Real Property shall be used by Licensee, it being understood that same are expressly excluded from the License Area. Licensee acknowledges and agrees that it has inspected the License Area and agrees to accept the License Area in its "as-is" condition existing on the date hereof. Licensor has no obligation to perform any work, supply any materials, incur any expense or make any alterations or improvements to prepare the License Area for Licensee use thereof. Licensor is not responsible for providing Licensee with any services in connection with Licensee's use of the License Area. Licensee shall use the License Area with utmost care and shall conduct the celebration with due caution and safety.

3. **Term.** This License shall be for one (1) day, namely, ~~June 30~~ July 1, 2018, and only during the hours of _____ a.m. until _____ p.m. with a rain date of July 1, 2018.

4. **Compliance with Laws.** Licensee shall, at its sole cost and expense, comply with all laws, statutes, ordinances, orders, rules and regulations of federal, state, and municipal authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon the Licensor or the Licensee with respect to the Licensee's use of the License Area. Licensee shall, at its sole cost and expense, obtain all licenses, permits and approvals which may be required with respect to the Licensee's use of the License Area.

5. **Maintenance.** Licensee shall maintain the Real Property, including all landscaped areas adjoining the Real Property, in a good, clean and safe condition, free and clear of accumulations of trash, garbage or debris, and return the Real Property to Licensor in substantially the same condition as Licensee received it, normal wear and tear excepted. At Licensee's sole cost and expense, Licensee shall remove all trash, garbage and debris from the Real Property throughout

the day as needed and immediately following the Fourth of July celebration. In addition, Licensee shall remove any and all equipment, decorations and other items of personal property brought upon the Real Property no later than 11:59p.m., July 14, 2018. Licensee further agrees that Licensor shall bear no liability for any such removal or disposal of property which is deemed abandoned.

6. **Insurance.** Licensee agrees that, at its sole cost and expense, it shall maintain the following types of insurance, naming Licensor as an additional insured: commercial general liability insurance on an occurrence basis, provide "first dollar" coverage and be primary to all insurance applicable to the License Area by an insurance company licensed and authorized to do business in the State of New York, which shall include contractual liability coverage and independent contractors coverage, in an amount of at least \$10,000,000 general aggregate. If the policy covers more than one location, the general aggregate coverage should apply per location in the amounts required herein; and workers compensation insurance as required by law. Licensee hereby releases and waives all right of recovery which it might otherwise have against Licensor, its agents and employees by reason of any loss or damage resulting from any recovery, claim, action or cause of action against Licensor, damage or injury no matter how caused. Not later than ~~June~~ July 27th, 2018, Licensee shall submit to Licensor a copy of such policies evidencing that all the above criteria have been met, including that Licensor is named as an additional insured.

7. **Indemnification.** Licensee agrees to indemnify, defend with counsel acceptable to Licensor, and hold harmless Licensor, and Licensor's principals, members, officers, employees, directors, agents, ground lessors, mortgagees, and all of their successors and assigns, from and against all legal actions, liabilities, obligations, causes of action, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, which may arise in any manner out of Licensee's use of the Real Property or this License Agreement, and/or in connection with loss of life, bodily or personal injury or property damage arising from or out of all acts, failures, omissions or negligence of Licensee and/or any of the Licensee's agents, licensees, employees, independent producers, contractors and suppliers (said parties, excluding Licensee, collectively "Licensee's Parties"). Licensee further agrees that in the event an action or proceeding is brought by Licensor to enforce any of the terms of this License Agreement, and Licensor prevails in such action or proceeding in whole or in part, Licensee shall be required to pay all reasonable attorney fees and expenses incurred by Licensor.

8. **Licensor's Remedies For Licensee's Default Or Breach.** In the event of any claim by Licensor against Licensee, whether or not material, Licensor shall have all rights available at law and/or in equity. In addition to, and in no way limiting, the foregoing, Licensee agrees to reimburse Licensor for all costs of collection and enforcement (including reasonable legal fees and disbursements) and damages for any failure by Licensee to pay or perform any of its obligations under the License Agreement.

9. **Waiver of Responsibility.** Neither Licensor or its principals, members, officers, employees, directors, agents, ground lessors, mortgagees, and all of their successors and assigns, shall be liable for, and Licensee waives, all claims for loss or damage, economic or otherwise, to Licensee's business or damage to person or property sustained by Licensee or any person

claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the Real Property, including without limitation claims for loss, theft or damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) construction or renovation in, on or about the Real Property; (iii) injury caused by wind or weather; (iv) any defect in or failure to operate of any electric wiring, water system or gas system; (v) broken glass; (vi) sewer back-up; (vii) the falling of any fixture, plaster, tile or stucco; (viii) any lack of or impeded ingress or egress to the Real Property; (ix) the failure of Licensor to advertise or market; (x) the failure of Licensor to maintain parking facilities; (xi) any other cause of any nature. To the maximum extent permitted by law, Licensee agrees to use the License Area, and to use such other portions of the Real Property as it may be entitled to use, at Licensee's own risk.

10. **Access.** Licensor shall have the right enter upon the License Area at any time, upon reasonable advance notice for the purposes of assuring Licensee's compliance with the terms of this License Agreement.

11. **Alterations.** Licensee shall make no alteration, addition or improvement ("alteration") in the License Area, without the prior written consent of Licensor, in its sole and exclusive discretion. All alterations, additions or improvements to the License Area, shall be removed by Licensee and any damage repaired, at Licensee's expense prior to the expiration of the term of this License Agreement.

12. **Assignment or Sublicensing.** Licensee may not do any of the following without Licensor's prior written consent: (a) assign its interest in this License, (b) sublet or sublicense all or any part of the License Area.

13. **Exculpation.** Licensee shall look only to Licensor's estate in the Real Property for the satisfaction of any judgment in the event of any default by Licensor hereunder, and no other property of Licensor shall be subject to levy, execution or other enforcement procedure for the satisfaction of the same. Licensor's principals, partners, members, shareholders, directors or officers shall not be liable for the performance of any of Licensor's obligations under this Agreement.

14. **Authority.** Licensee represents, warrants and agrees that Licensee has the full right, power and authority to enter into this License Agreement.

15. **No oral modification.** Except as otherwise provided expressly herein, this License Agreement may be amended or modified only in a writing signed by both parties hereto.

16. **Representations.** Licensee acknowledges that Licensor has made no representations regarding the subject matter of this License Agreement except as expressly provided herein.

17. **Severability.** If any provision of this License Agreement be deemed unenforceable, it is the intent of the parties that the remainder of this License Agreement be enforceable to the maximum extent permitted by law.

18. **Counterparts.** This License Agreement may be executed in counterparts each of which shall be deemed an original binding the signor thereof against the other signing party, but all counterparts together will constitute and are the same instrument.

19. **Facsimile and Pdf Signatures.** For purposes of this License Agreement, any signature transmitted by facsimile or e-mail (in pdf format) shall be considered to have the same legal and binding effect as any original signature.

I have read, understand, and agree to all of the foregoing.

Licensee:

Licensor:

TOWN OF SOMERS

ONE P WAY LLC

By: _____
Name:
Title:

By: _____
Name:
Title:

Telephone
(914) 277-3539

FAX
(914) 277-3790

Efrem Citarella
Building Inspector

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

**TOWN HOUSE
ANNEX
337 ROUTE 202
SOMERS, NY 10589**



MEMO TO: Rick Morrissey, Town Supervisor

FROM: Efrem Citarella, Building Inspector

RE: Fuel and Oil Heating RFP's

DATE: May 15, 2018

The current contract with Almeida Oil Company, Inc. expires on July 28, 2018. Permission is being requested to solicit Requests for Proposal (RFP's) to perform certain work, generally consisting of a one (1) year contract to furnish and deliver #2-TW Fuel and Heating Oil to the Somers Highway Department, Somers Library, Somers Parks and Recreation Office, Somers Police Station, Somers Town House, Somers Town House Annex, and Van Tassell House (Nutrition).

Sent to:
TB, TA, TC 6/7/18
KD
Kim DeLucia

From: Steve Robbins <srobbins@woodardcurran.com>
Sent: Thursday, June 7, 2018 1:02 PM
To: Rick Morrissey; Patricia Kalba; Kim DeLucia
Cc: Joe Barbagallo
Subject: Letter on Hidden Meadows and Somers Realty Bid Process for Town Board Meeting
Attachments: 2018-06-07 Hidden Meadows and Somers Realty Recommendation of Award Letter.pdf

Good afternoon Rick,

Attached please find a letter summarizing the status of the Hidden Meadows and Somers Realty bid process, including next steps to award the project. This is being provided for discussion with the Town Board tonight. I will be at the meeting to help answer questions and facilitate the process as needed.

Please let me know if you have any questions.

Thank you,
- Steve

Steven Robbins, P.E., LEED AP
Project Manager/Principal
Woodard & Curran
709 Westchester Avenue | White Plains, NY 10604
914.380.3011 | 914.960.1115 (cell)
www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS



Via Electronic Mail

June 7, 2018



Rick Morrissey, Supervisor
Town of Somers
335 Route 202
Somers, NY 10589

Re: Hidden Meadows Offsite Improvements Project

Dear Supervisor Morrissey:

Woodard & Curran has reviewed the bids received by the Town of Somers for the Hidden Meadows Offsite Improvements Project (Base Bid), including Bid Alternates 1 and 2 for water main extension work associated with the Somers Realty project.

Bids were advertised From February 14, 2018 through March 23, 2018, including a mandatory site walk on March 14, 2018. Four bids were received, tabulated, and checked for completeness. The low bid for the Base Bid, Base Bid plus Alternate 1, and Base Bid Plus Alternate 2, was ELQ Industries, Inc. of New Rochelle, NY (ELQ). Woodard & Curran checked references for ELQ, including the City of White Plains and New York State Department of Transportation, has previous successful experience working with ELQ on past projects. ELQ's bid was responsive and complete.

Since the receipt of bids, Woodard & Curran held a pre-award meeting with ELQ and the Hidden Meadows and Somers Realty project sponsors, and representatives from the Town, to confirm common project understanding and coordinate on action items between receipt of bids and potential award by the Town. In addition, since the bid opening, we have been working with ELQ to identify items that could reduce overall project costs without sacrificing function. As a result, we have identified cost saving measures on the Somers Realty portion of the project that we would resolve through Change Order on the favor of the Town, and eliminated certain risks associated with unforeseen conditions on the Kearney Realty portion of the work. As a result, we are in a position to Award the contract providing certain Action Items are completed.

The Bid Documents require that the Contractor Bid remain valid for a period of 45 days, or until May 7, 2018. Since the bid amounts were greater than the budgets allocated by the Somers Realty Corp. and Kearney Realty & Development, Inc. (Developers), the award of the bid has been delayed beyond that period of time and ELQ has formally agreed to hold their Bid Amount open until June 15, 2018. As a result, and now that the financial aspects that have driven the delay in award have been resolved, the Town must move expeditiously to formal Award. Based on our review, and upon completion of the Action Items outlined at the end of this letter, we support and would recommend that the Town Board award the Base Bid plus both Alternates 1 and 2, for a total contract amount of \$3,064,965.00 to ELQ Industries, Inc.

The tabulation of the bids and associated soft costs for each project are aligned with the respective funding are as follows. The action items that need to occur to facilitate Award are located after the table that outlines the cost obligations of the Developers.



	Kearney Realty	Somers Realty	Total
Construction	\$2,055,565	\$1,009,400	\$3,064,965
Project Administration, Engineering and Permitting, and Bidding	\$27,000	\$149,880	--
Additional Services During Bidding (3)	\$5,794	\$3,890	\$9,684
Town Administration	--	\$7,500 (4)	--
Construction Administration	\$141,000 (5)	\$100,000 (6)	\$252,715
Construction Contingency	--	\$100,940 (7)	
Total Costs	\$2,229,359	\$1,371,610	\$3,613,684
Funding Available and Sources	\$1,614,250 (1)	\$770,000 (2)	--
<i>Additional Funding Required Prior to Award</i>	<i>\$615,109</i>	<i>\$601,610</i>	--

Notes:

- (1) The Town entered into an IMDA with Westchester County and Kearney Realty & Development, Inc. on January 24, 2018. In accordance with the IMDA, the County authorized \$1,600,000 to fund the Hidden Meadows portion of the project (Base Bid). In accordance with the IMDA Kearney Realty is obligated to post any shortfalls in funding. Kearney is in the process of securing through the County at his sole risk to fund the shortfall. However, in the meantime to facilitate Award, the Additional Funds Required to Award of \$615,109 must be deposited by Kearney Realty. The Funding Available and Sources line item include the County \$1.6M plus the amount of \$14,250 that has already been provided by Kearney Realty.
- (2) Somers Realty Corp. and the Town entered into an Agreement dated June 2, 2016 that dictates the funding for the Somers Realty portion of the project (Alternatives 1 and 2). The initial escrow posted was \$770,000. The Additional Funds Required to Award of \$601,610 must be deposited by Somers Realty.



- (3) As a result of the Construction bids being over the budgets established by the Developers for their portions of the work, Woodard & Curran was required, at the request of the Developers and Town to initiate value engineering, additional coordination with the Contractor to receive pricing, and a number of meetings associated with establishing a path forward on the project. The amount of additional services incurred was split between the two Developers in approximate proportion of effort.
- (4) Administrative costs for the Town Finance Department as stipulated in the June 2, 2016 agreement.
- (5) Estimated amount, per March 2, 2016 proposal from Woodard & Curran to the Town.
- (6) Estimated amount, based on updated estimates for construction administration services.
- (7) Includes additional 10% above bid amount, per the June 2, 2016 Agreement.

Action Items prior to Award

The Action Items that need to be addressed to facilitate Award are as follows:

- June 7, 2018 – At the Town Board Work Session the Town Board consider making a recommendation to the Planning Board to modify the Resolution of Approval for the Hidden Meadows Project (Resolution No. 2017-20) to delay the posting of Town fees from the "Prior to Signing of the Final Plat" to "Prior to Issuance of the Building Permit." The fees associated with the Hidden Meadows Project that would be subject to this modification include Recreation Fees, Engineering Inspection Fees, and Erosion and Sediment Control Bond Fees. Should the Town Board concur with this approach, it would need to vote in support of providing such recommendation to the Planning Board.
- June 13, 2018 - The Planning must consider the recommendation of the Town Board and upon agreement, vote in support of the modification to the resolution of approval.
- June 14, 2018 - Kearney Realty must file the Plat at the County Clerk's office and provide the Town with documentation of such filing.
- June 14, 2018 – On or before June 14 the Developers need to post the Amount Required Prior to Award (as outlined in the Table above) to the Town in the form of certified check or Letter of Credit.
- June 14, 2018 – The Town Board vote to authorize the Supervisor to Award the Contract with ELQ and sign the Agreement with ELQ Industries to complete the project per the Contract Documents.
- June 15, 2018 – The Notice of Award will be issued by the Town to ELQ.

Action Items following Award

- Town will enter into a contract with ELQ when pre-contract submittals are received from ELQ and approved by Woodard & Curran.
- Woodard & Curran will hold a pre-construction meeting with ELQ to initiate construction work.

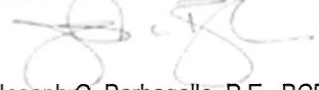


- Woodard & Curran will initiate the change request process for project Change Order #01 to update the project scope and Contract Amount to reflect project adjustments to the Somers Realty portion of project work discussed during pre-award coordination.
- Once Change Order #01 is issued, escrow funds for Somers Realty that are in excess of the adjusted construction contract amount plus 10% will be returned to Somers Realty.
- If additional funds are approved by Westchester County raising the funding levels for the Kearney Realty portion of the project, funds previously provided by Kearney Realty prior to project award will be applied to the Recreation Fees, Engineering Inspection Fees, Erosion and Sediment Control Bond Fees, and other applicable fees with any excess amount between provided funds and required funds returned to Kearney Realty.

Please do not hesitate to contact me or Steve Robbins, PE of our office if you have any questions. Steve will be attending the Town Board Meeting on June 7, 2018 to answer any questions that the Town Board may have on this project or the approach to Award.

Sincerely,

WOODARD & CURRAN ENGINEERING P.A. P.C.


Joseph C. Barbagallo, P.E., BCEE
Principal

Sent to: TB,TA,TC 5/29/18

Kim DeLucia

From: Ellen Devey
Sent: Monday, May 21, 2018 6:42 PM
To: Rick Morrissey; Kim DeLucia; Tom Smith; Richard A Auerbach
Cc: Lisa Cheatham; Syrette Dym
Subject: Lisa Cheatham

Rick,
Lisa Cheatham has been a wonderful member of the Somers Affordable Housing Board.
She wrote me an email saying that she will
have to resign from the board. She will be sorely missed.
Ellen Devey

Sent to:
TB, TA, TC
6/1/18
KD

Highway Department

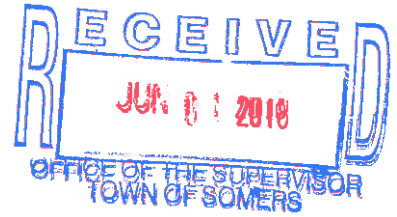
TELEPHONE
(914) 232-4843
FAX
(914) 232-C150

Town of Somers
WESTCHESTER COUNTY, N.Y.

250 RT. 100
P.O. BOX 281

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: June 1, 2018

RE: EDWARD GALL

As of May 30, 2018 Edward Gall has been promoted to Motor Equipment Operator at the pay rate of \$ 33.9409 per hour.

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


Thomas E. Chiaverini
Supt. of Highways

Cc: Finance
Town Clerk
File

R/f Sent to:
TB, TA, TC
5/29/18
KD



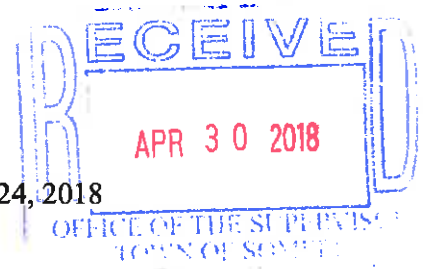
**Environmental
Protection**

Vincent Sapienza
Commissioner

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
prush@dep.nyc.gov

465 Columbus Avenue
Valhalla, New York 10595
T: (845) 340-7800
F: (845) 334-7175

April 24, 2018



Rick Morrissey, Supervisor
Town of Somers
335 Route 202
Somers, NY 10589

**Re: Notification of DEP's 5-Year Land Use Permit
Renewal**

Dear Permittee,

This letter is to inform you that your Revocable Land Use Permit(s) to use New York City (City) property pursuant to Chapter 17 of Title 15 of the Rules of the City of New York are scheduled for renewal. This letter is also a request for information associated with your Land Use Permit(s). Your response to this letter and submission of requested information are required.

In order to legally access City property your Land Use Permit(s) must be renewed every five years. There is no cost to you for the renewal. However, Land Use Permits that are not billed under the current fee schedule, such as those billed under "historical," may be adjusted accordingly. All other Land Use Permits will continue to be billed as usual. If your Land Use Permit does not conform with the current Chapter 17 of Title 15 Rules of the City of New York, you will be issued a new Offer Letter with updated conditions requiring a signed Certificate of Acknowledgement.

Land Use Permit(s) scheduled for renewal are identified in table at the end of this letter. If you are no longer using City property, we will need to verify that the area has been restored in order to satisfy your Land Use Permit. If you no longer wish to use City property, please submit plans to remove infrastructure and restore City property, which will require submission of a Land Use Permit application and issuance of a separate Land Use Permit.

Within 6 months of the receipt of this letter, please return the attached Permit Renewal Notification Form(s) along with as much applicable information listed below for each Land Use Permit to Matthew Castro, Land Use Permit Administrator, at DEP Land Use Permits, 465 Columbus Avenue, Valhalla, NY 10595.

Information Required:

- location map;
- as-built drawings/site plans;
- detailed asset table identifying all infrastructure on City property (size, type of equipment, description, etc.);

- recent photos;
- inspection reports within the past six months; and
- any other permits associated with the facility (i.e. Department of Health)

Many of your permits were issued years ago and need to be updated with current information, it is expected that Permittees make every effort to supply DEP with as much information as possible. This may include drafting a new set of plans for facilities that may not currently have them. For immediate assistance or questions please contact Matthew Castro at (914) 749-5350 or mcastro@dep.nyc.gov. Following receipt this information, DEP will follow up for additional information or to schedule a site visit, as needed.

Sincerely,



Eve Fox
Supervisor
Land Use Permits

c. M. Castro

Land Use Permits scheduled for renewal

Permit No.	Date Issued	SBL	Location	Purpose
9194	6/29/1988	6.12-25-13	S/S OF MAHOPAC CROT FALLS ROAD	Recreational Use
9515	3/20/1997	16.18-25-6	a/f 82 LAKE ROAD	Maintenance
9689	8/28/2001	37.13-25-8	ROUTE 35 & MAHOPAC AVENUE	Water Utility/Use
10005	3/4/2013	28.14-25-1	Plum Brook Road & Route 100	Drainage/Diversion/Culvert/ Detention Ponds
9917	10/26/2011	37.06-5 and 37.11- 1-2	Route 35, Amawalk Rd.	Recreational Use
10095	6/10/2014	28.14-25-1	EAST OF ROUTE 100, WEST OF ROUTE 138	Storage
10083	4/9/2014	28.14-25-1	EAST of 250 ROUTE 100, WEST of ROUTE 138	Drainage/Diversion/Culvert/ Detention Ponds

REQUEST FOR RENEWAL
Revocable Land Use Permit for use of New York City Property
Permit No.: 9194

Please confirm or update the following information as it appears on your Permit invoice.

Please return this form:

Attn: Matthew Castro

465 Columbus Avenue Valhalla, New York 10595

**Please indicate any changes/missing information identified below on this form,
or on an additional sheet of paper.**

☐ **No Changes**

Permittee Name: TOWN OF SOMERS

Mailing Address: TOWN HOUSE - 335 ROUTE 202, SOMERS, NY 10589

Contact: RICK MORRISSEY

Telephone: (914) 277-3637

Email:* rmorrissey@somersny.com

Use space below to indicate any change in your current use of City land.

☐ **No Changes**

Permit No.	List Changes for each permit (use additional paper if needed)
------------	---

☐ The property is no longer used and was vacated on _____.
(date)

Print Name: _____

Title: _____

Signature: _____

Date: _____

* To better serve you, please supply us with your e-mail address if this line is blank.

* To better serve you, please supply us with your e-mail address if this line is blank.

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Attn: Matthew Castro

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REQUEST FOR RENEWAL
Revocable Land Use Permit for use of New York City Property
Permit No.: 10005

Please confirm or update the following information as it appears on your Permit invoice.

Please return this form:

Attn: Matthew Castro

465 Columbus Avenue Valhalla, New York 10595

Please indicate any changes/missing information identified below on this form, or on an additional sheet of paper.

☐ **No Changes****Permittee Name: TOWN OF SOMERS**

Mailing Address: TOWN HOUSE - 335 ROUTE 202, SOMERS, NY 10589

Contact: RICK MORRISSEY

Telephone: (914) 277-3637

Email:* rmorrissey@somersny.com

Use space below to indicate any change in your current use of City land.

No Changes

Permit No.	List Changes for each permit (use additional paper if needed)
-------------------	--

[illegible]

☐ The property is no longer used and was vacated on _____.

(date)

Print Name: _____

Title: _____

Signature: _____

Date: _____

100

* To better serve you, please supply us with your e-mail address if this line is blank.

REQUEST FOR RENEWAL

Please return this form:

465 Columbus Avenue Valhalla, New York 10595

☐ **No Changes**

Email:* rmorrissey@somersny.com

☐ **No Changes**[illegible]

Date: _____

* To better serve you, please supply us with your e-mail address if this line is blank.

* To better serve you, please supply us with your e-mail address if this line is blank.

REQUEST FOR RENEWAL
Revocable Land Use Permit for use of New York City Property
Permit No.: 10083

Please confirm or update the following information as it appears on your Permit invoice.

Please return this form:

Attn: Matthew Castro

465 Columbus Avenue Valhalla, New York 10595

**Please indicate any changes/missing information identified below on this form,
or on an additional sheet of paper.**

☐ **No Changes**

Permittee Name: TOWN OF SOMERS

Mailing Address: TOWN HOUSE - 335 ROUTE 202, SOMERS, NY 10589

Contact: RICK MORRISSEY

Telephone: (914) 277-3637

Email:* rmorrissey@somersny.com

Use space below to indicate any change in your current use of City land.

☐ **No Changes**

Permit No.	List Changes for each permit (use additional paper if needed)
-------------------	--

☐ The property is no longer used and was vacated on _____
(date)

Print Name: _____

Title: _____

Signature: _____

Date: _____

* To better serve you, please supply us with your e-mail address if this line is blank.

Kim DeLucia

From: Bob Kehoe
Sent: Tuesday, June 5, 2018 2:02 PM
To: Kim DeLucia
Subject: FW: Town of Somers Proposal Travelers 2018
Attachments: 2018 town somers-060518-122419.pdf

From: Spencer, AnnMarie [mailto:annmarie.spencer@fcbins.com]
Sent: Tuesday, June 05, 2018 12:37 PM
To: Bob Kehoe
Cc: Connelly, Mark
Subject: Town of Somers Proposal Travelers 2018

Dear Bob,

Per your conversation with Mark Connelly on Friday June 1st, please find your Commercial Insurance Proposal through the Travelers Insurance Company for your renewal July 1st, 2018.

The renewal premium increase is approximately 1.5% over expiring.

The 1.5 % includes some exposure adjustments that took place last year. I know we added a couple of locations and I think there might have been some vehicle changes. If you back that out, the renewal is virtually flat with expiring.

Please review and advise if you have any questions, or if you would like to make any changes.

Thank you as always for the opportunity to be of service.

Sincerely,

AnnMarie Spencer
Fairfield County Bank Insurance Services LLC
401 Main Street
Ridgefield CT 06877
Phone: 203-894-3188
Fax: 203-431-8789
E-Mail: AnnMarie.spencer@fcbins.com

NOTICE: The information in this E-Mail and in any attachment(s) is confidential. It is for the sole use of the intended recipient(s) and may contain privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of the original E-Mail. All insurance coverage(s) are dictated by terms of the applicable policies, and coverage(s) cannot be added, changed or deleted via an E-Mail.



A Commercial Insurance Proposal for:

TOWN OF SOMERS

Effective Date: 07/01/2018

Expiration Date: 07/01/2019

Prepared For: Fairfield Cty Bank Ins

Date of Proposal:
Print Date: 05/09/18

Sent to:
TB, TA, TC
3/31/18
KD

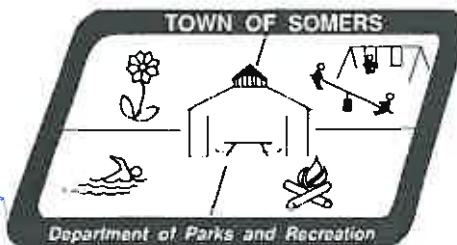
Somers Department of Parks & Recreation

PO Box 46 Somers, New York 10589

OFF: (914)-232-8441

FAX: (914)-232-8548

Steven Ralston
Superintendent



May 29, 2018

To: Town Board

From: Steven Ralston **SR**
Superintendent of Parks and Recreation

Re: Request for Approval

Request permission to hire the attached Day Camp and Tusker (teen travel) Trax staff from June 25 – August 3, 2018 and continue to hire for these programs on an as-needed basis pursuant to County Health counselor-to-camper ratio regulations.

Thank you

C: Park Board
Director of Finance
Town Clerk

Sent to:
TB, TATC
5/29/18
KD

PLANNING AND ENGINEERING DEPARTMENTS

Telephone
(914) 277-5336

Fax
(914) 277-4393

Town of Somers

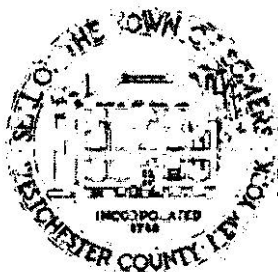
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE

335 ROUTE 29
SOMERS, NY 10589

WWW.SOMERSNY.GOV

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com



Syrette Dym, AICP
Town Planner
sdym@somersny.com

May 29, 2018

Town Board

From: Steven Woelfle *SW*
Principal Engineering Technician

RE: Gonzalez/Dang Pools Inc. Stormwater Management and Erosion and
Sediment Control Permit #ASW.ESC2013-13
DCA: 15.07-1-1.2
Release of Erosion Control Bond
Check Received April 12, 2013

This office has no objection to the return of the Erosion Control Bond in the amount of \$200.

Please return to:

SW/wg

cc: Town Clerk
Director of Finance
Eileen Solla-Diaz

Sent to:
TB, TA, TC
5/29/18
KD

PLANNING AND ENGINEERING DEPARTMENTS

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

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
835 ROUTE 209
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com



Syrette Dym, AICP
Town Planner
sdym@somersny.com

Date: May 29, 2018
To: Town Board
From: Steven Woelfle *SW*
Principal Engineering Technician
RE: Parubi Stormwater Management and Erosion and Sediment Control
Permit #ASMESC2012-21
TM: 26.15-1-16
Release of Erosion Control Bond
Check Received June 27, 2012

This office has no objection to the return of the Erosion Control Bond in the amount of \$200.

Please return to:

SW/wg
cc: Town Clerk
Director of Finance
John Parubi

Sent to:
TB, TA, TC
5/29/18
KD

PLANNING AND ENGINEERING DEPARTMENTS

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

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
836 ROUTE 90E
SOMERS, NY 10589
www.somersny.com

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com



Syrette Dym, AICP
Town Planner
sdym@somersny.com

Date: May 29, 2018
To: Town Board
From: Steven Woelfle *SW*
Principal Engineering Technician
RE: Deans Bridge Associates Subdivision
Release of Erosion Control Bond
Received check July 21, 2009

This office conducted a site inspection of the subject property and found the site to be stable. Therefore, this Office has no objection to the return of the Erosion Control Bond in the amount of \$2,103. Please return to:

Deans Bridge Associates
P.O. Box 309
Somers, New York 10589

SW/wg

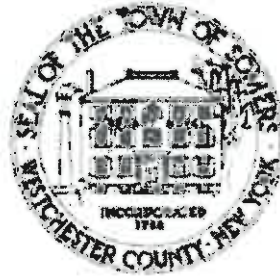
cc: Town Clerk
Director of Finance
Deans Bridge Associates



OFFICE OF THE SUPERVISOR
TOWN OF SOMERS
Telephone:
(914) 277-5366
Fax:
(914) 277-4093

PLANNING AND ENGINEERING DEPARTMENTS

Town of Somers
WESTCHESTER COUNTY, N.Y.



Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com

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

Syrette Dym, AICP
Town Planner
sdym@somersny.com

Date: May 30, 2018
To: Town Board
From: Steven Woelfle *SW*
Principal Engineering Technician
RE: Batchelder Tree Preservation Permit
TWP: 5.20-4-17
Release of Erosion Control Bond

This office has no objection to the return of the Erosion Control Bond in the amount of \$25.00.

Please return to:

SW/wg
cc: Town Clerk
Director of Finance
Cynthia Batchelder