OFFICE OF THE SUPERVISOR

Telephone (914) 277-3637 Fax (914) 276-0082 Town of Somers

SOMERS TOWN HOUSE 335 ROUTE 202 SOMERS, NY 10589

WESTCHESTER COUNTY, N.Y.

RICK MORRISSEY SUPERVISOR



# SOMERS TOWN BOARD REGULAR MEETING - 6:00pm THURSDAY, DECEMBER 9, 2021

www.somersny.com

#### I. PLEDGE OF ALLEGIANCE:

6:00pm

Regular Meeting

II. ROLL CALL:

## III. PUBLIC HEARING(Via In-Person and Remote Access):

a. 2022 Preliminary Budget

#### **PUBLIC COMMENT**

Please limit your comments to no more than 3 minutes.

### IV. APPROVAL OF MINUTES:

V. <u>DEPARTMENT REPORTS:</u> The Town Clerk announces receipt of the following monthly reports: Town Clerk, Building Inspector, Zoning Board of Appeals, Plumbing, Bureau of Fire Prevention, Parks & Recreation, Planning & Engineering, Tax Receiver, Director of Finance and Department Heads

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#### VI. BUSINESS OF THE BOARD:

#### A. TOWN BOARD:

- 1. Town of Somers Covid-19 Update
- 2. Adopt 2022 Preliminary Budget as the 2022 Adopted Budget
- 3. Old Bet Statue Update Somers Historical Society
- 4. Speed Data and Issued Summons Update Chief Brian Linkletter
- 5. Double Utility Poles in Town Discussion
- 6. Sale/Bid of the Old/Removed Doors, French Doors, and Casements from the Van Tassell House Discussion
- 7. Proposed amendments to the Town of Somers Zoning Code to:
  - 1. Modify the Definition of Site Coverage, Building Coverage, and create a new definition for Structure; Modify the Zoning Schedule to include Building Coverage and Site Coverage requirements for single family zoning districts.
    - a. Schedule a public hearing for January 13, 2022
  - 2. Below Grade (buried) Liquid Propane Tanks in the Groundwater Protection Overlay District
    - a. Declare Notice of Intent to Act as Lead Agency
    - b. Adopt a Short Form (EAF) prepared for the Proposed Action along with relevant documentation provided by the Town of Somers Building Department.
    - c. Distribute any and all relative documents to involved and interested agencies
    - d. Schedule a public hearing for January 13, 2022
  - 3. Modify the Definition of Family, and create a new definition; Modify the Zoning Schedule.
    - a. Schedule a public hearing for January 13, 2022
- 8. Authorize the adoption of the 2021 Westchester County, NY Hazard Mitigation Plan Update per email dated November 29, 2021 from Steve Robbins, Woodard and Curran, Town Engineer.

Thurs 1 of 5

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- 9. Authorize the Supervisor to execute:
  - a. The Community Choice Aggregation Electric Services Agreement (ESA) between the Town of Somers, Sustainable Westchester, and Constellation New Energy, Inc with the Standard Offering as our Default.
  - b. The proposal from McGrath & Co Real Estate Appraisers for preparing an appraisal of 265 Route 202, Tax Map # 17.11-1-21, Town of Somers, NY in the amount of \$3,500.00 per referral from Roland Baroni, Town Attorney.
- **B. PARKS & RECREATION:** No additional business.
- C. FINANCIAL: No additional business.
- **D. HIGHWAY:** No additional business.
- E. PERSONNEL:
  - 1. Current Vacancies:
    - a. Affordable Housing Board (1-2-year term ending 7/11/2023.)
    - b. Assessment Board of Review (1-5-year term ending 9/30/2026.)
    - c. Partners in Prevention (2- 3-year terms ending 12/31/2022.)
    - d. Partners in Prevention (2- 3-year terms ending 12/31/2023.)
    - e. Zoning Board of Appeals (1-5-year term ending 12/31/2023.)
  - 2. Upcoming Vacancies Terms Expiring in 2021:
    - a. Planning Board (1-7-year term ending 12/31/2021.)
    - b. Zoning Board of Appeals (1-5-year term ending 12/31/2021.)
  - 3. Authorize the provisional promotion of Ms. Tammi Savva to a Junior Administrative Assistant full-time in the Office of the Supervisor at an annual salary of \$75,500.00 retro to September 1, 2021 per memo dated December 3, 2021 from Rick Morrissey, Supervisor effective December 9, 2021.
  - 4. Authorize the reappointment of Mr. Richard Demelis to the Somers Assessment Board of Review to a five-year term ending September 30, 2026.
  - 5. Acknowledge the resignation of Nicholas Buzzetto, Road Maintainer from the Somers Highway Department effective November 24, 2021.

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- F. PLANNING & ENGINEERING: No additional business.
- **G. POLICE:** No additional business.

## H. CONSENSUS AGENDA:

- 1. Authorize the return of the following Bond per November 15, 2021 memo from Steven Woelfle, Engineering Department:
  - a. \$200.00 Erosion Control Bond Klimentov Stormwater Management and Erosion and Sediment Control Permit #ASMESC2012-33, TM: 38.17-2-4
  - \$500.00 Erosion Control Bond Portas Steep Slopes / Stormwater Management and Erosion and Sediment Control/Tree Preservation Permit #ASSSMESCT2015-39, TM: 16.09-2-10
- 2. Request permission to execute the Concession Extension Agreement with O'Neill's Concessions with a 2% increase in 2022 over 2021 per memo dated November 24, 2021 from Steven Ralston, Superintendent of Parks & Recreation.
- 3. Request permission to execute the Koegel Park Caretaker License Agreement with Howard Vinberg with a monthly rent of \$1,405.00 commencing on January 1, 2022 and terminating on December 31, 2023 per memo dated November 24, 2021 from Steven Ralston, Superintendent of Parks & Recreation.
- 4. Authorize the Supervisor to execute the NYS DOT Snow and Ice Year 2021/22 Adjustment Calculation in the amount of \$97,261.04.

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# 2021 Calendar

December 9, 2021 6:00pm Town Board Regular Meeting

Public Hearing:

2022 Preliminary Budget

December 29, 2021 10:00am Town Board Special Meeting

# 2022 Calendar

January 6, 2022	7:00pm	Town Board Work Session
January 13, 2022	7:00pm	Town Board Regular Meeting
February 3, 2022	7:00pm	Town Board Work Session
February 10, 2022	7:00pm	Town Board Regular Meeting
March 3, 2022	7:00pm	Town Board Work Session
March 10, 2022	7:00pm	Town Board Regular Meeting

12/8/2021 2:42 PM Z:\Supervisor\kdelucia\TB Agendas\2021\Dec 9 2021 Regular Meeting.docx

Sent 16: 18 TA,TC 12/8/2021

#### PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, THAT THE PRELIMINARY BUDGET OF THE TOWN OF SOMERS FOR THE FISCAL YEAR BEGINNING, JANUARY 1, 2022 has been approved by the Town Board of the Town of Somers and filed in the office of the Town Clerk at the Town House, Somers, New York where said budget is available for inspection by any interested person during regular office hours.

FURTHER NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Somers will meet and hold a public hearing on said Preliminary Budget at the Town House, 335 Route 202, Somers, New York or via remote access to be dictated by the requirements then in effect by virtue of COVID-19-related Executive Orders on Thursday evening, December 9, 2021 at 6:00 P.M. and that at such public hearing any person may be heard in favor or against any item or items contained therein. Please check the Town's website www.somersny.com or contact the Town Clerk's Office 914-277-3323 for updated meeting format information.

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

Officers are hereby specified as follows:

COUNCILMAN (4) each \$ 14,612.00

SUPERVISOR \$124,000.00

TOWN CLERK \$ 96,277.00

SUPERINTENDENT OF HIGHWAYS \$123,719.00

BY ORDER OF THE TOWN BOARD

## OF THE TOWN OF SOMERS

Patricia Kalba

Town Clerk - Town of Somers

Dated: November 18, 2021

The 2022 Preliminary
Budget is Available on
the Town's Website at
SOMERSNY.COM
under the News Section

Sent to: TBITMITC 11/29/21



10/20/202

Log of Old Van Tassel Windows

Ventus will premiers the ort

1-4	35 7/8" x 30 ½	Upper Sash	8 Panes	
2-4	35 7/8 x 31 7/8	Lower Sash	8 Panes	
3- 2 sets of 2	47 ½ (together) x 46 7/8	Casement	12 Panes (each)	
4- 1 set	47 1/8 (together) x 82 1/8	French Doors	12 Panes (each)	Wavy Glass
∨5-1 set	48 (together) x 79 %	French Doors	10 Panes (each)	
6- 2	47 7/8 x 11 3/8	Awning Screen	2 Panel	
<b>√7-1</b>	13 % x 35 %	Casement	6 Panes	
8-2	17 % x 31 1/8	Casement	6 Panes	
49-3	22 1⁄2 x 66	Casement	10 Panes	Wavy Glass
10- 2 sets of 2	48 (together) x 42	Casement	6 Pane (each)	Wavy Glass
11-2	32 7/8 x 43	Lower Sash	6 Panes	
12-2	32 7/8 x 42	Upper Sash	6 Panes	
13- 1	33 % x 31 1/8	Upper Sash	6 Panes	Wavy Glass
14-1	33 % x 31 7/8	Lower Sash	6 Panes	Wavy Glass
15-1	32 7/8 x 30 7/8	Lower Sash	6 Panes	Wavy Glass
16-1	32 7/8 x 30 ¼	Upper Sash	6 Panes	Wavy Glass
17- 1	32 ½ x 30 7/8	Lower Sash	1 Pane	
18- 1	32 % x 30 %	Upper Sash	12 Panes	
19- 1	32 % x 31	Lower Sash	12 Panes	
20-1	32 5/5 x 29 5/8	Upper Sash	6 Panes	Wavy Glass
21- 1	32 3/8 x 31	Lower Sash	6 Panes	Wavy Glass
22- 1	33 % x 31 3/8	Lower Sash	6 Panes	Wavy Glass
23- 1	32 % x 30 1/8	Upper Sash	6 Panes	Wavy Glass
24-1	33 % x 30 %	Upper Sash	6 Panes	Wavy Glass
25- 4	32 5/8 x 30 ¾	Upper Sash	12 Panes	Wavy Glass
26-4	32 5/8 x 30 ¾	Lower Sash	12 Panes	Wavy Glass
27-3	32 % x 31 3/8	Lower Sash	6 Panes	Wavy Glass



	28-3	32 5/8 x 30 1/8	Upper Sash	6 Panes	Wavy Glass
	29- 2	31 778 x 23 1/8	Upper Sash	6 Panes	
	30-1	31 7/8 x 24 1/8	Lower Sash	6 Panes	Wavy Glass
	31 -1	32 x 24 1/8	Lower Sash	6 Panes	
	32-3	30 7/8 x 23 7/8	Lower Sash	8 Panes	
	33-3	30 7/8 x 23 1/8	Upper Sash	8 Panes	
	34-1	29 7/8 x 21 7/8	Lower Sash	6 Panes	
	35-1	29 7/8 x 21 ¼	Upper Sash	6 Panes	
	36-1	26 7/8 x 24 <del>%</del>	Lower Sash	9 Panes	
	37 – 1	26 7/8 x 24 ¼	Upper Sash	9 Panes	
\	<b>*38 – 2</b>	17 % x 31	Casement	6 Panes	Wavy Glass
\	<b>439</b> – 1	26 ¼ x28	Casement	8 Panes	Wavy Glass
	40-2	11 ½ x 30 5/8	Upper Sash	3 Panes	Wavy Glass
	41-2	11 ½ x 30 ¾	Lower Sash	3 Panes	Wavy Glass

• Window # 39 Has an asterisk mullion pattern.

35 - window weights

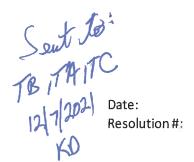
100 + Pulleys





1-	2	23 5/8 x 77 ¼ x 1 3/8	Right Hand	1 Panel
2-	1	23 3/8 x 77 ½ x 1 3/8	Left Hand	1 Panel
3-	1	23 7/8 x 79 ¼ x 1 3/8	Left Hand	2 Panel
4-	1	29 7/8 x 79 ½ x 1 3/8	Right Hand	2 Panel
5-	1	29 7/8 x 78 7/8 x 1 3/8	Right hand	2 Panel
6-	1	31 ½ x 73 7/8 x 1 3/8	Right Hand	4 Panel
7-	1	30 x 76 7/8 x 1 3/8	Right Hand	6 Panel
8-	1	31 5/8 x 74 3/8 x 1 ¼	Right Hand	6 Panel
9-	1	31 7/8 x 79 ½ x 1 3/8	Right Hand	2 Panel
10-	1	31 7/8 x 79 ½ x 1 3/8	Left Hand	2 Panel
11-	1	30 x 76 1/2 x 1 3/8	Right Hand	6 Panel
12-	1	30 % x 76 % x 1 %	Left Hand	6 Panel
13-	1	25 % x76 % x1 3/8	Left Hand	4 Panel
14-	1	31 5/8 x 77 5/8 x 1 3/8	Right Hand	6 Panel
15-	1	24 x 46 7/8 x 1 3/8	Left Hand	1 Panel

- All doors are painted & presumed to be Douglas Fir.
- Indicated "handing" of doors are as the door would pull toward you.
- All doors have the hardware that is on the door, no Jam side hardware



# RESOLUTION TOWN BOARD SEQR NOTICE OF INTENT TO ACT AS LEAD AGENCY ZONING CODE AMENDMENTS

WHEREAS, on or about February 11, 2016, the Somers Town Board (the "Town Board") adopted a duly prepared Comprehensive Plan Update which included significant public input including public hearings and an environmental review as required by the New York State Environmental Quality Review (SEQR); and

WHEREAS, the Comprehensive Plan Update outlined certain goals and objectives related to plan proposals and potential implementation programs designed to shape the physical environment of the Town that are meant to preserve its natural environment and historic character while creating a compatible environment for appropriate growth and development; and

WHEREAS, the Town Board has received petitions from the Town of Somers Zoning Board of Appeal, the Town of Somers Building Department and the Town of Somers Attorney related to specific zoning text amendments; and

WHEREAS, the nature of the amendments relates to updating certain definitions and the application of site coverage and building coverage in single family residential districts, allowing for the storage of liquid propane in the Town's Groundwater Protection Overlay District and updates to the definition of family to bring it into a more contemporary definition (collectively the "Proposed Action"); and

WHEREAS, the Town Board has caused there to be prepared an environmental assessment form ("EAF") Part 1 which provides an initial evaluation of the potential environmental impacts of the Proposed Action along with supporting documentation; and

NOW, THEREFORE, BE IT RESOLVED, that the Town Board finds that the Proposed Action is subject to SEQR and is hereby declaring their Intent to Act as Lead Agency under SEQR and directs the circulation of a Notice of Intent to Act as Lead Agency along with supporting documentation to all known Interested and Involved Agencies for their review and consent; and be it further

RESOLVED, that the Town Board requests a response from the other Interested and Involved Agencies regarding the Town Board Notice of Intent to Act as Lead Agency within 30 calendar days of the circulation of this Notice; and be it further

RESOLVED, that the Town Board does hereby schedule a public hearing on the Proposed Action for January 13, 2022 in which all member of the public are invited to attend and participate.

iviovea:	 	 -	
Seconded:		 	
Vote:			

NOTICE OF SEQR ACTIONS – Petition for Amendment to the Town of Somers Zoning Code to:
Modify the Definition of Site Coverage, Building Coverage, Family and create a new definition
for Structure; Modify the Zoning Schedule to include Building Coverage and Site Coverage
requirements for single family zoning districts; and allow Below Grade (buried) Liquid
Propane Tanks in the Groundwater Protection Overlay District

### Notice of Intent 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 a coordinated review for proposed zoning text amendments to modify the Definition of Site Coverage, Building Coverage, Family and create a new definition for Structure; Modify the Zoning Schedule to include Building Coverage and Site Coverage requirements for single family zoning districts; and allow the below grade storage of liquid propane as a special exception use in the Groundwater Protection Overlay District.

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: Petition for Amendment to the Town of Somers Zoning Code to

modify existing definitions for site coverage, building overage, family and create a new definition for the term Structure, and allow Below Grade (Buried) Liquid Propane Tanks in the Town's Groundwater

Protection Overlay District.

**DESCRIPTION OF ACTION:** The action involves text amendment to Section 170-3; the Zoning Schedule, and Section170-32.7.H (see attached).

**LOCATION:** Single Family Zoning Districts (R-10, R-40, R-80, R-120) and Groundwater Protection Overlay District, Town of Somers, Westchester County, New York (see attached map).

**SUPPLEMENTAL INFORMATION:** A Short Form (EAF) has been prepared for the Proposed Action along with relevant documentation provided by the Town of Somers Building Department. This form is being distributed to Involved and Interested Agencies (see list below), and this information is also

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

Contact: David B. Smith, Director of Planning

335 Route 202

Somers, New York 10589

Telephone: 914-277-5366

Date of this Notice: December 9, 2021

#### **SEQR DISTRIBUTION LIST**

#### Involved and Interested Agencies:

Town Board (Lead Agency) 335 Route 202 Somers, New York 10589 Attn: Rick Morrissey, Supervisor

Town of Somers Planning Board Somers Town House 335 Route 202 Somers, New York 10589 Attn: John Currie, Chair

Westchester County Planning Board 148 Martine Avenue White Plains, NY 10601 Attn: Lukas Herbert

Westchester County Department of Health 25 Moore Avenue Mt. Kisco, New York 10549 Attn: Zaw Thein

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

New York State Department of Environmental Conservation Division of Environmental Permits--Region 3
21 South Putt Corners Road
New Paltz, New York 12561-1620
Attn.: John Petronella

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

Somers Architectural Review Board Somers Town House 335 Route 202 Somers, New York 10589 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

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

Somers Fire Department P.O. Box 272 Somers NY 10589

Somers Energy Environment Committee Somers Town House 335 Route 202 Somers, New York 10589

NYS Office of Parks, Recreation and Historic Preservation-Taconic Region - #7 P.O Box 308 9 Old Post Rod Staatsburg, NY 12580

#### Other- Lead Agency Representatives

David B. Smith, Director of Planning Somers Town House 335 Route 202 Somers, New York 10589

Woodard & Curran Engineering P.A P.C. 709 Westchester Avenue Suite L2 White Plains, NY 10604 Attn: Steve Robbins

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

Joe Eriole, Esq. P.O. Box 4031 Kingston, NY 12402

#### Section 170.3 Definitions

<u>Building Coverage</u> – "That percentage of the lot area covered by the combined area of all buildings and or impervious structures on the lot, excluding pools, carports, and sheds (i.e., building area divided by site area) plus the area of all decks, porches and porticos as viewed from above, excluding those located wholly underground."

#### **FAMILY**

One or more persons occupying a dwelling unit, related by blood, marriage or adoption, living privately together as a single housekeeping unit and using a kitchen area and a dining area in common, and may include customary domestic servants, nurses necessarily in attendance and not exceeding four other unrelated persons, who may or may not be paying guests.

Any number of individuals living together and doing their cooking as a single housekeeping unit on the premises, as distinguished from a group occupying a boarding room, boardinghouse, hotel or motel, or renting the premises or part thereof on a daily or transient basis.

<u>Site Coverage</u> – "That percentage of the <u>lot site</u> area covered by the combined area of all buildings, structures and impervious surfaces, and off street parking and loading facilities, including access drives, whether paved or unpaved including impervious driveways, pools, carports, patios and walkways."

Structure - "Anything which is constructed or erected which requires a location on or under the ground or attachment to something having such location including but not limited to the following: Any building, shed, garage, carport, elevated deck, communications tower, tennis court, pool; but not anything which is less than 64 square feet in area and eight feet in height."

Zoning Schedule

Part 1 Town of Somers [Amended 11-27-1962; 8-12-1975; 11-12-1981; 6-14-1984; 8-8-1996 by L.L. No. 16-1995; 6-12-1997 by L.L. No. 7-1997; 12-19-2003 by L.L. No. 12-2003]

	Ž	F 7	<u>"</u>	\$ 170	Lands Come Off-st	Board chang Subst					ű		ÿ	
	13			Minimum	Livable Floor Area per Dwelling	Unit (square feet)	2,000		1,500		1,250		1,000	
		<u>"</u>	Minimum	170-47	7 9 4 4 5	Highest Point of Roof	e 13	se 10	l3	se 10	ie 13	se 11	ie 13	se 11
٠.	17	iht to Midpoint o	Min	ptions, §		In Stories	Principal Use	Accessory Use 1	Principal Use	Accessory Use 1	Principal Use	Accessory Use 1	Principal Use 1	Accessory Use 1
of Buildings uirements	91	Height to Midpoint of Slope of Roof	Maximum	For height exceptions, § 170-47	In Feet	to Midpoint of Slope of Roof	30	15	30	15	30	15	30	15
Heights of Other Req			Max	For		In Stories	2 1/2	1 1%	2 1/2	1 1%	2 1/2	1 1%	2 1/2	1 1%
inimun gs and	14	ssory in or	lding		12	Rear Lot Line	15		15		12		20	
um and M en Buildin	13	Minimum Distance in Feet From Accessory Use if Not Within or Attached	to Principal Building		٩	Side Lot Line	15		15		15		2	
s, Maxim s Betwe	12	Minim Feet F Use II	to Pri			See Note <sup>2</sup>	2		2		74		2	
Space:	11	rds	es			Rear	20		22		20		25	
d Open pled, D	10	ze of Ya	Lot Lin	0-48		Two Side Yards	110		95		09		30	
Require Be Occu	6	Minimum Size of Yards in Feet From Principal	<b>Building to Lot Lines</b>	see § 17		One Side Yard	20		40		30		15	
and the	80	Mini F	Bul	exceptions, see § 170-48		Front	20		40		40		25	
Lots, Yards ge of Lot Ti	7	Maximum Percentage of Lot to Coverage	be Occupied	For area exce	Site	Accessor y-Building	u	2]	৸৻৻	)	rn@	3	H2	<b>a</b> )
Schedule Controlling Minimum Sizes of Lots, Yards and the Required Open Spaces, Maximum and Minimum Heights of Buildings, Minimum Livable Floor Area, Percentage of Lot That May Be Occupied, Distances Between Buildings and Other Requirements	9	Maximum Percentago of Lot to Coverage	pe Occ	T	Building	Principal Building	4	(S)	மு	51	φ(	<b>∞</b> I	<b>9</b> (	8)
Iling Minim le Floor Are	22	m Size : per	Dwelling Unit		Width at	Front Lot Line (feet)¹	250		200		150		75	
dule Contro imum Livab	4	Minimum Size of Lot per	Dwellir		Per Dwelling	Unit (square feet)	120,000		80,000	6-0/T 8	40,000	6-0/T s	10,000	\$ 170-9
	3	Special Excep-tlon Uses Permitted by Board of	Appeals			General standards, § 170-59	§§ 170-61 through	170-82 Signs, § 170- 125	\$§ 170-61 through	5igns, § 170- 125	\$\$ 170-61 through	1/0-82 Signs, § 170- 125	§§ 170-61 through	170-82 Signs, § 170- 125
	2	Permitted Accessory	Uses	Note: Height of	accessory buildings, Columns 15 - 19, shall not exceed 15 feet to	midpoint of sloped roofs or 12 feet to high edge of flat roofs.	\$ 170-11	Signs, § 170-125	\$ 170-11	Signs, § 170-123	\$ 170-11	Signs, 9 170-123	\$ 170-11	Signs, § 170-125
	1	Permitted Principal	Uses	For uses	permitted under special permit by	Board of Appeals, see Col. 3,	\$ 170-10		\$ 170-10		\$ 170-10		\$ 170-10	

indistance between adjacent buildings shall be equal to ½ of the height of the higher building, but in no case less than 10 feet, except that where the State Building Construction Code is more restrictive said Code shall apply, said provisions in \$170-4 of this chapter.

Shall be set back at least 75 feet from any street line and 100 feet from a common property line with land in an adjoining single-family residence district. in approving new subdivisions, the Planning Board may reduce the frontage requirement to not less than 1/3 of the width requirement, provided that the lot fronts on a permanent turnaround and the full minimum width requirement is me

#### § 170-32.7. Prohibited uses.

The following uses are prohibited uses within the Groundwater Protection Overlay District:

- A. The disposal, storage or treatment of hazardous material and solid or liquid waste material, except the storage of such hazardous material in sealed containers for retail sale or for normal household use. "Hazardous material" shall be defined as material which is a present or potential danger to health or the environment when improperly stored, transported, disposed or otherwise managed and also as any other toxic, caustic or corrosive chemicals, radioactive materials or other substance listed in Title 40 of the Code of Federal Regulations or Part 366 of Title Six of the Official Compilation of Codes, Rules and Regulations of the State of New York.
- B. The creation or manufacturing of any hazardous material.
- C. Dry wells directly connected to any storm drainage system for a parking lot with more than four parking spaces, floor drain, garage drain, wash basin or sink.
- D. Gasoline service and filling stations and automobile service and repairfacilities.
- E. Dry-cleaning and dyeing establishments and laundries that use cleaning solvents.
- F. Photographic printing and processing labs.
- G. Furniture stripping and refinishing establishments.
- H. The storage of hydrocarbon products (excluding liquid propane) except those necessary for residential use in homes and vehicles, provided that such products are stored in appropriate containers.
- I. Disposal of hazardous materials used in medical and dental office operations.
- J. Disposal of septic or sewage sludge or ash.
- K. Any storage of materials which, in the opinion of the Planning Board, has the potential to contaminate or degrade groundwater resources.

## Short Environmental Assessment Form Part 1 - Project Information

#### **Instructions for Completing**

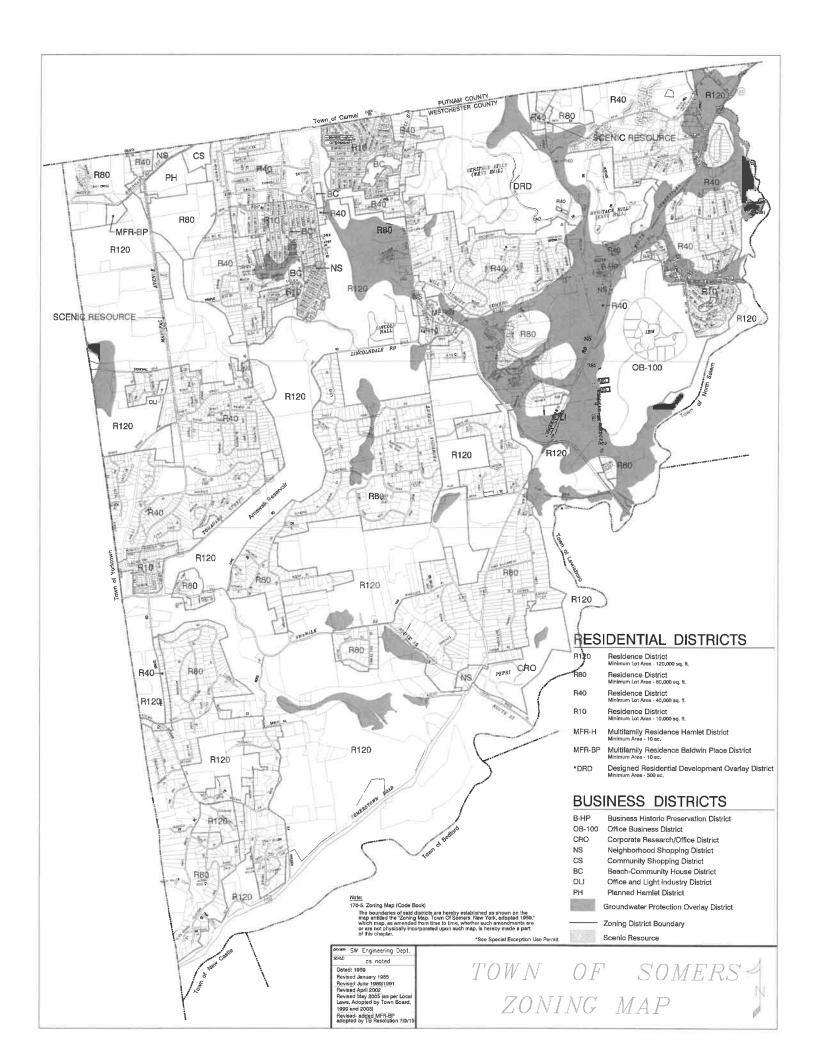
Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available.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

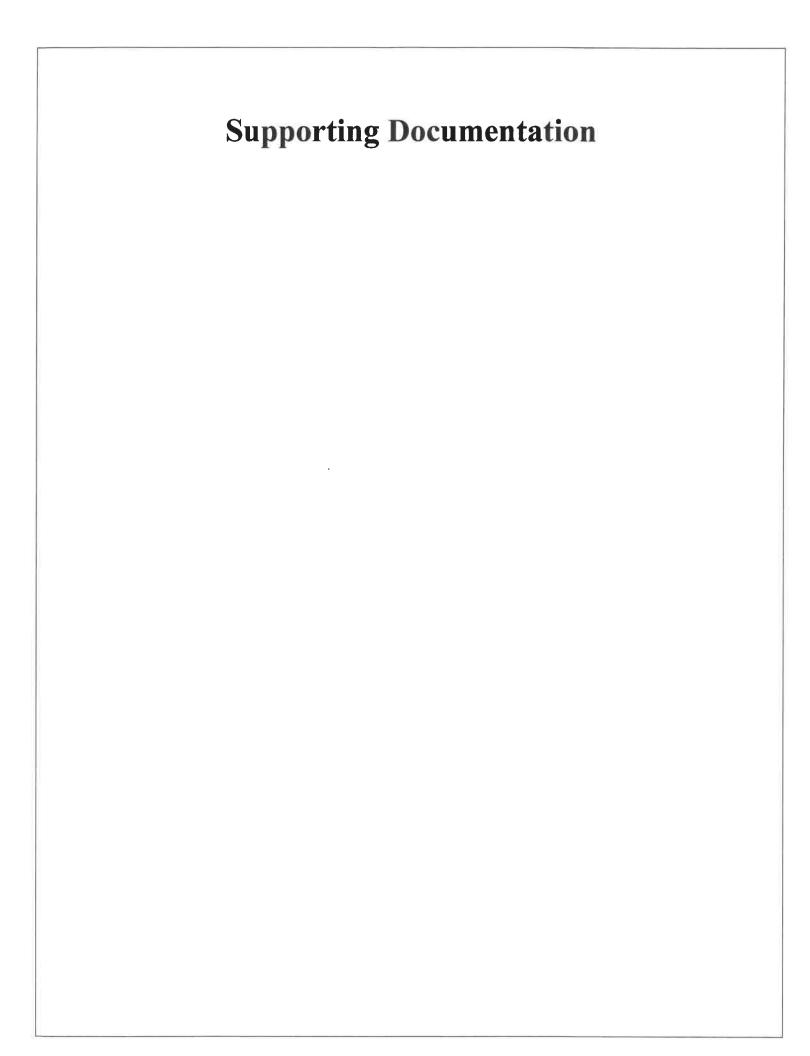
Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 – Project and Sponsor Information		
Name of Action or Project:		
Zoning text amendments related to building and site coverage for s.f. residential districts, defi	nitions and uses allowed with	in the GPOD
Project Location (describe, and attach a location map):		
Residence R-120, R-80, R-40 and R-10 Districts located Town-wide and Groundwater Protection	ction Overlay District	
Brief Description of Proposed Action:		
Clarification of existing definitions found in the Zoning Code related to Building Coverage, Sit existing conditions found through the Town of Somers single family residential districts. Revi (buried) Liquid Propane Tanks in the Groundwater Protection Overlay District. See attached Code.	sed definition for the term Far	mily. Allowing below Grade
Name of Applicant or Sponsor:	Telephone: 914-277-536	6
Town of Somers Town Board	E-Mail: directorofplanning	g@somersny.com
Address:		
335 Route 202		
City/PO:	State:	Zip Code: 10589
Does the proposed action only involve the legislative adoption of a plan, local		
administrative rule, or regulation?	,	NO YES
If Yes, attach a narrative description of the intent of the proposed action and the emay be affected in the municipality and proceed to Part 2. If no, continue to questions are the continue to the proposed action and the emay be affected in the municipality and proceed to Part 2.		aat 📗 🔽
2. Does the proposed action require a permit, approval or funding from any oth	er government Agency?	NO YES
If Yes, list agency(s) name and permit or approval:		
3. a. Total acreage of the site of the proposed action?	NA acres	
b. Total acreage to be physically disturbed? c. Total acreage (project site and any contiguous properties) owned	NA acres	
or controlled by the applicant or project sponsor?	NA acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:		
☐ Urban 🗹 Rural (non-agriculture) 🗹 Industrial 🗹 Commerci	al 🗹 Residential (subur	rban)
Forest Agriculture Aquatic Other(Spe	cify):	
Parkland		

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?		~	
b. Consistent with the adopted comprehensive plan?		V	
		NO	YES
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?			V
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?		NO	YES
NYC Reservoirs, Baldwin Place, Muscoot Farm County Park  If Yes, identify:			
		Ш	~
8. a. Will the proposed action result in a substantial increase in traffic above present levels?		NO	YES
b. Are public transportation services available at or near the site of the proposed action?			Ц
And any order to the control of the		Ш	~
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?			V
9. Does the proposed action meet or exceed the state energy code requirements?		NO	YES
If the proposed action will exceed requirements, describe design features and technologies:	,		
		П	
		_	السما
10. Will the proposed action connect to an existing public/private water supply?		NO	YES
NA NA	·	110	TES
If No, describe method for providing potable water:			
			ш
11. Will the proposed action connect to existing wastewater utilities?		NO	YES
If No, describe method for providing wastewater treatment:	4		
	_		
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the		NO	YES
Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the			<b>V</b>
State Register of Historic Places?			
			V
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?		_	ت
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain		NO	YES
wetlands or other waterbodies regulated by a federal, state or local agency?			~
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?		~	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres:			TAIL,
		10 to	
		- 1	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
Shoreline Forest Agricultural/grasslands Early mid-successional		
Wetland Urban Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or	NO	YES
Federal government as threatened or endangered?		V
16. Is the project site located in the 100-year flood plan?	NO	YES
		•
17. Will the proposed action create storm water discharge, either from point or non-point sources?	NO	YES
If Yes,	~	
a. Will storm water discharges flow to adjacent properties?		
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:		
Tres, blichy describe.		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?	NO	YES
If Yes, explain the purpose and size of the impoundment:		
		Ш
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste	NO	YES
management facility?	NO	YES
If Yes, describe:		
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or	NO	YES
completed) for hazardous waste?		
If Yes, describe:		
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BE MY KNOWLEDGE	ST OF	
Applicant/sponsor/name: Town of Somers Town Board Date:		
Signature:Title:		





Telephone (914) 277-5582

**ZONING BOARD OF APPEALS** 

TOWN HOUSE ANNEX 337 ROUTE 202 SOMERS, NY 10589

FAX (914) 277-3790

Town of Somers

WESTCHESTER COUNTY, N.Y.

Victor Cannistra, Chairman



**MEMO TO:** Town Board

FROM: Zoning Board

**RE:** Proposed Code Change

**DATE:** June 28, 2021

An application was submitted to the Zoning Board at our May 18<sup>th</sup> meeting for lot coverage for the principal building additions to an existing one family dwelling. The Code says that only 6% of the lot can be occupied in an R-40 zoning district by the principal building and the proposal presented a significant increase in lot coverage of 23.2%.

Building Inspector Tom Tooma interpreted the Code as meaning that the maximum percentage of the lot to be occupied (columns 6 and 7 of the attached zoning schedule) includes the combined area of all buildings, driveways (paved or unpaved), walkways and decks (including patios). The overall feeling of the Board was that this regulation is very restrictive, especially that unpaved driveways and decks are not impervious surfaces. As a result of this interpretation, Town of Somers requirement is very restrictive as compared to that of neighboring towns (see below).

One-Acre Residential Coverage Comparison	Building	Impervious
Town of Somers	6%	6%
Town of Bedford	10%	20%
Town of North Salem	20%	40%
Town of Southeast	20%	40%
Town of Lewisboro	12%	
Town of Carmel	15%	
Town of Yorktown	15%	

Town Attorney Gerry Reilly was consulted for a legal interpretation and he agreed with Mr. Tooma's interpretation. The Code defines Percentage of Lot Area to be Occupied as "Shall be synonymous with "site coverage"." Site Coverage is defined as "That percentage of the lot area covered by the combined area of all buildings, structures, impervious surfaces, and off-street parking and loading facilities, including access drives, whether paved or unpaved. Building Coverage is defined as "That percentage of the lot area covered by the combined area of all buildings on the lot, plus the areas of all decks, porches and porticos, as viewed from above, excluding those located wholly underground".

The majority of the Board felt that this requirement is punitive to the applicant, has likely affected some property owners already, and will continue to do so if the percentage of the lot to be occupied isn't increased. In addition, Percentage of Lot Area to be Occupied should match the language used in the Zoning Schedule, Maximum Percentage of Lot to be Occupied.

In this particular instance, the Board cannot approve the proposed variance because it is so significant and would set a precedent. The flip side to that is that the request does not seem unreasonable.

Since the path to interpretating this part of the Code is not clear, your consideration in reviewing and considering amending this part of the Code is most appreciated.

cc: Tom Tooma, Building Inspector
David Smith, Town Planner
Steve Woelfle, Principal Engineering Technician

attachment

Telephone (914) 277-5582

**ZONING BOARD OF APPEALS** 

TOWN HOUSE ANNEX 337 ROUTE 202 SOMERS, NY 10589

FAX (914) 277-3790

Town of Somers

WESTCHESTER COUNTY, N.Y.

Victor Cannistra, Chairman



MEMO TO: Town Board

FROM: Zoning Board of Appeals

**RE:** Proposed Code Change

**DATE:** October 22, 2021

This memorandum is meant to follow-up on our memorandum to the Town Board dated June 28, 2021 which is attached hereto for your reference as Exhibit A.

On July 8, 2021, two members of the Zoning Board of Appeals (ZBA), Bart Lansky and Melissa D'Ippolito, appeared at the Town Board meeting to discuss "building coverage" and "site coverage" under the Town of Somers Zoning Code (the Code). Following this presentation, the Town Board asked the ZBA to recommend an amendment to the Code which would address the ZBA's concerns regarding these terms.

Since the July 8th meeting, the ZBA has met and discussed the matter and obtained feedback from Dave Smith the Town Planner and Tom Tooma the Building Inspector. We write to propose certain changes to the Town of Somers Zoning Code. Based on our understanding of how Building Coverage and Site Coverage are being defined by the Building Inspector, the Town of Somers is currently considerably more restrictive than its neighbors.

The sections of the Code which govern "building coverage" and "site coverage" are found on the Zoning Schedule (see <a href="https://ecode360.com/attachment/SO0406/SO0406-170a%20Zoning%20Sch.pdf">https://ecode360.com/attachment/SO0406/SO0406-170a%20Zoning%20Sch.pdf</a>) and in the definitional sections of the Code and are currently as follows:

Columns 6 and 7 of the existing Zoning Schedule:

		entage of Lot to be cupied
	Principal Building	Accessory Building
Residence R120	4.00%	2.00%
Residence R80	5.00%	2.00%
Residence R40	6.00%	3.00%
Residence R10	18.00%	7.00%

Existing Definition Building Coverage - "That percentage of the lot area covered by the combined area of all buildings on the lot, plus the area of all decks, porches and porticos as viewed from above, excluding those located wholly underground."

<u>Existing Definition Site Coverage</u> - "That percentage of the lot area covered by the combined area of all buildings, structures, impervious surfaces, and off-street parking and loading facilities, including access drives, whether paved or unpaved."

The ZBA proposes that the Code be amended so that these same sections are amended to read as follows:

Proposed replacement columns 6 and 7 of the Zoning Schedule:

	Percentage	Coverage
	Building Coverage	Site Coverage
Residence R120	5.00%	12.00%
Residence R80	7.00%	15.00%
Residence R40	8.00%	20.00%
Residence R10	20.00%	40.00%

<u>Proposed Definition Building Coverage</u> – "That percentage of the lot area covered by the combined area of all buildings and or impervious structures on the lot, excluding pools, carports, and sheds (i.e., building area divided by site area)."

<u>Proposed Definition Site Coverage</u> –"That percentage of the site area covered by the combined area of all buildings, structures and impervious surfaces including impervious driveways, pools, carports, patios and walkways."

<u>Proposed Definition Structure</u> (Note there is no existing definition of structure) - "Anything which is constructed or erected which requires a location on or under the ground or attachment to something having such location including but not limited to the following: Any building, shed, garage, carport, elevated deck, communications tower, tennis court, pool; but not anything which is less than 64 square feet in area and eight feet in height."

We thank the Town Board in advance for their thoughtful consideration of this matter.

cc: Tom Tooma, Building Inspector
David Smith, Town Planner
Steve Woelfle, Principal Engineering Technician

attachment

Telephone (914) 277-3539

FAX (914) 277-3790

Thomas J. Tooma, Jr. Building Inspector

# Building department Town of Somers

WESTCHESTER COUNTY, N.Y.

TOWN HOUSE ANNEX 337 ROUTE 202 SOMERS, NY 10589



MEMO TO: Town Board

FROM: Thomas J. Tooma, Jr.

**Building Inspector** 

**RE:** Groundwater Protection Overlay District

**Proposed Code Modification** 

**DATE:** March 30, 2021

As stated in Chapter 170-32. Zoning – Article IXA. Groundwater Protection Overlay GP District, § 170-32.7. Prohibited Uses, prohibits below grade (buried) liquid propane tanks under § 170-32.7.H of the zoning ordinance lists the proposed use of propane (hydrocarbon products) tanks as prohibited in the Ground Protection Overlay District. § 170-32.7H states – "The storge of hydrocarbon products except those necessary for residential use in homes and vehicles, provided that such products are stored in appropriate containers."

The need for this requirement is not necessary as it pertains to liquid propane as it is non-toxic, non-caustic and will not create an environmental hazard if released as a liquid or vapor into the water or soil. and I would request that the Town Board modify this section to read "The storage of hydrocarbon products (excluding liquid propane) except those necessary for residential use in homes and vehicles, and commercial use in buildings and vehicles, provided that such products are stored in appropriate containers."

The prohibited use would still apply to hydrocarbons such as diesel, oil and gas products.

I have reviewed and discussed with the Principal Engineering Technician and our Engineering Consultant who is in agreement with this modification.

Attachments – Chapter 170. Zoning, Article IXA. Groundwater Protection Overlay GP District, § 170-32.7. H
Propane 101 Document from Microsoft Bin An email from Bob Daros, owner of Heritage Fuel and Propane

## § 170-32.1 Purpose.

The purpose of the Groundwater Protection Overlay GP District is to protect the public health, safety and general welfare by preserving the quality and quantity of the Town's major groundwater resources in order to ensure an adequate and safe water supply for present and future residents, employees and the general public. The designation of groundwater protection overlay districts and the establishment of use regulations in such districts will further the preservation of groundwater resources currently in use and those aquifers having a potential for use as a source for substantial public or private water supply.

## § 170-32.2 Findings.

In continuation of the groundwater and aquifer policy adopted in December 1984 and set forth in Chapter 165 of the Code, the Town Board of the Town of Somers has reviewed a Planning Board commissioned report on the status and location of the Town's groundwater titled "Groundwater Supply Overview of the Town of Somers, New York," prepared by Leggette, Brashears & Graham, Inc., and dated December 1988, and hereby finds that:

- A. The groundwater underlying the Town is a major source of existing and potential future water supply, including drinking water, and, as such, should be protected from contamination.
- B. Unregulated development in areas with sensitive hydrogeologic formations of stratified drift aquifers and their primary recharge areas in addition to accidental spills and discharge of hazardous and toxic materials in those areas, can threaten the quality of the groundwater supplies and related water resources in the Town, posing potential health and safety hazards.
- C. Preventive measures and regulations should be adopted to control the development of land and to control the discharge and storage of hazardous materials within the hydrogeologic formations to limit the potential adverse impact that such development and discharge can create.
- D. The foregoing conclusions are set forth in the Water Quality Management Plan of Westchester County prepared pursuant to Section 208 of the Federal Clean Water Act and in Town-commissioned studies.
- E. The Town has the power through zoning to effectuate regulations that promote the public health, safety and general welfare.

## § 170-32.3 Applicability; district boundaries.

- A. Lands. The provisions of this Article shall apply to all real property lying within a Groundwater Protection Overlay District. The "Groundwater Protection Overlay District" is defined as an area designated on the Town of Somers Zoning Map containing a primary recharge area for a stratified drift deposit known or believed to be an aquifer. The boundaries of the district are indicated on the official Zoning Map. The Groundwater Protection Overlay District is based on the maps and report titled "Groundwater Supply Overview of the Town of Somers, New York," prepared by Leggette, Brashears & Graham, Inc., and dated December 1988.
- B. District mapping. The Groundwater Protection Overlay District line shall be determined by the use of the scale appearing on the Zoning Map. From time to time and to reflect new information of a site specific nature, the Town Board may make amendments to the mapping of Groundwater Protection Overlay Districts.
- C. Uses. The provisions, requirements and regulations of this Article shall apply to all uses of land within Groundwater Protection Overlay Districts and no land shall be used except in compliance with the provisions, requirements and regulations of this Article.

## § 170-32.4 General provisions.

A. Relation to other regulations. The provisions in this Article do not repeal, abrogate or annul any portion of the Code or regulations of the Town of Somers, New York State or federal regulations or existing private or public servitudes. In any case where there are conflicting regulations, whichever regulation imposes the more stringent restriction shall apply.

- B. Relation to underlying district. Nothing in this Article shall be construed to permit any use which is not currently permitted in the applicable underlying zoning district as established and regulated by this Chapter 170.
- C. Types of uses. All uses within the Groundwater Protection Overlay District shall be deemed to fit into one of three categories of uses:
  - (1) Uses permitted without regulation under § 170-32.5 and not requiring a special exception use permit.
  - (2) Uses permitted subject to regulation under § 170-32.6 and requiring a special exception use permit.
  - (3) Prohibited uses.
- D. Nonconforming uses. Any use existing as a lawful use at the effective date of this Article shall be deemed a nonconforming use. The nonconforming use may be continued subject to the provisions of Article XVI of this chapter.

## § 170-32.5 Uses permitted without regulation.

The following uses are permitted without regulation under this Article:

- A. The subdivision of a property into no more than two lots of at least 40,000 square feet each for one-family detached dwellings with roads that are designed to mitigate water quality impacts of first flush runoff.
- B. The construction of a one-family detached dwelling on a lot containing at least 40,000 square feet in area complete with a sanitary sewage disposal system, well and permitted accessory uses as specified in § 170-11.

## § 170-32.6 Uses permitted subject to regulation.

Uses permitted in the underlying district by other sections of this Chapter 170 and not listed in § 170-32.5 as a use permitted without regulation under Article IXA and not listed in § 170-32.7 as a prohibited use, shall require a special exception use permit from the Planning Board pursuant to § 170-32.8, § 170-115, Article XI and Article XVIII.

## § 170-32.7 Prohibited uses.

The following uses are prohibited uses within the Groundwater Protection Overlay District:

- A. The disposal, storage or treatment of hazardous material and solid or liquid waste material, except the storage of such hazardous material in sealed containers for retail sale or for normal household use. "Hazardous material" shall be defined as material which is a present or potential danger to health or the environment when improperly stored, transported, disposed or otherwise managed and also as any other toxic, caustic or corrosive chemicals, radioactive materials or other substance listed in Title 40 of the Code of Federal Regulations or Part 366 of Title Six of the Official Compilation of Codes, Rules and Regulations of the State of New York.
- B. The creation or manufacturing of any hazardous material.
- C. Dry wells directly connected to any storm drainage system for a parking lot with more than four parking spaces, floor drain, garage drain, wash basin or sink.
- D. Gasoline service and filling stations and automobile service and repair facilities.
- E. Dry-cleaning and dyeing establishments and laundries that use cleaning solvents.
- F. Photographic printing and processing labs.
- G. Furniture stripping and refinishing establishments.
- H. The storage of hydrocarbon products except those necessary for residential use in homes and vehicles, provided that such products are stored in appropriate containers.
- Disposal of hazardous materials used in medical and dental office operations.

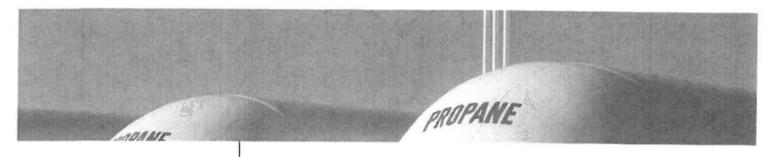
TANK INSTALL QUOTE ABOUT PROPANE

PROPANE CYCINDERS

REGULATORS

APPLIANCES

14.15



## PROPANE 101

PRODUME Statistics

Propage Prices

and vance

Correction

Propane and

# Propane and the Environment



Refined fuels and petroleum products are perceived as pollutants and environmentally unfriendly. Propane is not only clean and environmentally friendly in its unused state, it produces exhaust emissions that exceed the requirements for clean fuel vehicles and surpass eco-friendly expectations in all aspects.

# Propane Toxicity, Contamination and Spills

Propane is non-toxic, non-caustic and will not create an environmental hazard if released as a liquid or vapor into water or soil. If spilled in large quantity, the only environmental damage that may occur is freezing any organism or plant life in the immediate area. There are no long term effects following a propane spill even if the quantities are excessively large. The only damage and potential danger exists if the vapor is ignited following a spill. And even then, there are no long term effects of ignited propane that can be damaging to the environment.

Is or people.



d vapor are environmentally sound and nused states (prior to combustion) if released.

not considered a greenhouse gas.
not damaging to freshwater or saltwater
underwater plant or marine life.
not harmful to soil if spilled on the ground.
not cause harm to drinking water supplies.
nor will not cause air pollution. Propane vapor
dered air pollution.
nor is not harmful if accidentally inhaled by

 Propane will only cause bodily harm if liquid propane comes in contact with skin (boiling point -44°F).

Although the physical characteristics of propane may cause harm to living things, the chemical makeup of propane will not harm anything. Then again, drinking water is harmless but who would attempt to chew on an ice cube that is 45 degrees below zero or take a 450 degree steam bath. The point is propane will not harm people or the environment and while its harmless attributes are eco-friendly, its temperature characteristics can and will cause harm when handled with carelessness.

# **Propane Gas Emissions**

Combustion is the process of a fuel being burned in a chemical reaction that produces energy. The energy produced during combustion is in the form of heat, light or both. Examples of fuel are wood, paper, coal, gas, oil and of course, propane. Following combustion (after the fuel has burned), byproducts are produced that move into the atmosphere. These byproducts are called greenhouse gases and although emissions from propane combustion are greenhouse gases, the level of damaging emissions following LP Gas combustion is far below that of any readily available carbon based fuel used in vehicles and engines today. Propane is clean burning and environmentally friendly.

In fact, propane is listed as an approved clean fuel by U.S. Government energy policy makers and energy administrative bodies. The Southwest Research Institute in San Antonio, TX has conducted numerous studies on propane emissions and determined that using propane cuts smog producing exhaust by as much as 70 percent. Propane engine exhaust is so clean and friendly to the environment that propane powered forklifts operate inside warehouses throughout the world. Think about

the last time you saw a diesel powered forklift inside a warehouse. Additionally, many propane fueled vehicles are certified by the Environmental Protection Agency (EPA) as meeting the Ultra Low Emission Vehicle standard. Propane is a very clean burning fuel, without a doubt.

SITEMAP PRIVACY POLICY DISCLAIMER CONTACT

COPYRIGHT © PROPANE 101

#### **Denise Schirmer**

From:

Denise Schirmer

Sent:

Tuesday, March 30, 2021 6:33 AM

To:

**Denise Schirmer** 

Subject:

FW: Town of Somers - Question

From: Bob Daros < bob@heritagefuel.com>
Date: February 25, 2021 at 1:35:04 PM EST

To: Denise Schirmer <dschirmer@somersny.com>

**Subject: Town of Somers - Question** 

Hi Denise, all is well here. Thanks for reaching out to me.

Propane is very forgiving in many ways and ground water pollution it one of them.

Should an underground propane tank develop a leak, it will not contaminate the soil or ground water like a fuel oil or gasoline tank. If the gas escapes the tank it instantly turns to a vapor and dissipates into the air. It's under pressure and "high pressure always goes to low"

To give you an idea of how harmless it is, the board of health doesn't recognize propane as a contaminant and has zero involvement.

That tells you everything.

One thing I will say is a propane tank buried in a wet area should be tied down to a concrete slab. That's really Tom's call but universally it's common practice.

Best Regards, Bob.

#### **Robert Daros**

Heritage Fuel & Propane 8 Front St. P.O. Box 513 Croton Falls N.Y. 10519 W (914) 277- 8088 C (914) 906- 5520

Fire Commissioner Croton Falls Fire District P.O. Box 5 Croton Falls N.Y. 10519

Treasurer, Westchester/Putnam Heating and Cooling Professionals. P.O. Box 85
Croton Falls N.Y. 10519
A chapter of OESP.

On Feb 25, 2021, at 12:14 PM, Denise Schirmer < dschirmer@somersny.com > wrote:

Hi Bob,

Hope this finds you well.

Tom asked me to reach out to you regarding burying a liquid propane tank in the groundwater protection overlay district.

Currently a variance is needed to do so from the Zoning Board of Appeals and we are ultimately hoping the Town Board would agree to remove requirement from the Code as doing so would not result in something negative if it were to leak as it would just evaporate.

Your	thou	ghts.
------	------	-------

Thank you.

Denise

Sont to TO TO ITAIN RESOLUTION NO. XXXX-XX

A RESOLUTION OF THE

# A RESOLUTION OF THE Governing Body OF THE Jurisdiction Name AUTHORIZING THE ADOPTION OF THE 2022 WESTCHESTER COUNTY, NY HAZARD MITIGATION PLAN UPDATE

WHEREAS, all jurisdictions within Westchester County have exposure to natural hazards that increase the risk to life, property, environment, and the County and local economy; and

WHEREAS; pro-active mitigation of known hazards before a disaster event can reduce or eliminate long-term risk to life and property; and

WHEREAS, The Disaster Mitigation Act of 2000 (Public Law 106-390) established new requirements for pre and post disaster hazard mitigation programs; and

WHEREAS; a coalition of Westchester County municipalities with like planning objectives has been formed to pool resources and create consistent mitigation strategies within Westchester County; and

WHEREAS, the coalition has completed a planning process that engages the public, assesses the risk and vulnerability to the impacts of natural hazards, develops a mitigation strategy consistent with a set of uniform goals and objectives, and creates a plan for implementing, evaluating and revising this strategy;

# NOW, THEREFORE, BE IT RESOLVED that the [jurisdiction name]:

- 1) Adopts in its entirety, the 2022 Westchester County Hazard Mitigation Plan (the "Plan") as the jurisdiction's Natural Hazard Mitigation Plan, and resolves to execute the actions identified in the Plan that pertain to this jurisdiction.
- 2) Will use the adopted and approved portions of the Plan to guide pre- and post-disaster mitigation of the hazards identified.
- 3) Will coordinate the strategies identified in the Plan with other planning programs and mechanisms under its jurisdictional authority.
- 4) Will continue its support of the Mitigation Planning Committee as described within the Plan.
- 5) Will help to promote and support the mitigation successes of all participants in this Plan.
- 6) Will incorporate mitigation planning as an integral component of government and partner operations.
- 7) Will provide an update of the Plan in conjunction with the County no less than every five years.

PASSED AND	ADOPTED on this X <sup>st</sup> , X <sup>nd</sup> , X <sup>rd</sup> , X <sup>th</sup> day of MONTH, 2022, by the following vote:
AYES: NOES: ABSENT: ABSTAIN:	
ATTEST:	Mayor, City/Town/Village of  Clerk, City/Town/Village of



# 9.22 Town of Somers

This section presents the jurisdictional annex for the Town of Somers. It includes resources and information to assist public and private sectors to reduce losses from future hazard events. This annex is not guidance of what to do when a disaster occurs. Rather, this annex concentrates on actions that can be implemented prior to a disaster to reduce or eliminate damage to property and people. This annex includes a general overview of the municipality and who in the Town participated in the planning process; an assessment of the Town of Somers's risk and vulnerability; the different capabilities utilized in the Town; and an action plan that will be implemented to achieve a more resilient community.

# 9.22.1 Hazard Mitigation Planning Team

The following individuals have been identified as the Town of Somers's hazard mitigation plan primary and alternate points of contact. The Town of Somers followed the planning process described in Section 3 (Planning Process) in Volume I of this plan update. This annex was developed over the course of several months with input from many Town departments, including: Administration, Planning, and Engineering. The Town Supervisor represented the community on the Westchester County Hazard Mitigation Plan Planning Partnership, Steering Committee, and supported the local planning process requirements by securing input from persons with specific knowledge to enhance the plan. All departments were asked to contribute to the annex development through reviewing and contributing to the capability assessment, reporting on the status of previously identified actions, and participating in action identification and prioritization.

The following table summarizes municipal officials that participated in the development of the annex and in what capacity. Additional documentation on the municipality's planning process through Planning Partnership meetings is included in Section 3 (Planning Process) and Appendix C (Meeting Documentation).

Table 9.22-1. Hazard Mitigation Planning Team

Primary Point of Contact Name/Title: Nick DeVito, Highway Superintendent Address: 250 Route 100, Somers, NY 10589 Phone Number: 914-232-48487 Email: highway@somersny.com	Alternate Point of Contact  Name/Title: Brian Linkletter, Police Chief Address: 100 Primrose Street, Route 139, Somers, NY 10589 Phone Number: 914-232-9622 Email: Police@somersny.com
NFIP Floodplain Administrator	
Name/Title: Steve Woelfle, Consulting Town Engineer Address: 335 Route 202, Somers, NY 10589 Phone Number: 914-277-5366 Email: swoelfle@somersny.com	
Additional Contributors	
Name/Title: David Smith, Director of Planning Method of Participation: Provided data and information	
Name/Title: Steve Robbins, Consulting Town Engineer Method of Participation: Provided data and information. C	ontributed to mitigation strategy.
Name/Title: Rick Morrissey, Supervisor Method of Participation: Provided data and information	
Name/Title: Bob Kehoe, Finance Director Method of Participation: Provided data and information	

# 9.22.2 Municipal Profile

The Town of Somers is situated in the northern Westchester County, New York approximately 40 minutes to the north of Grand Central Station in New York City by train. The Town is approximately 32.3 square miles in area and is located primarily within the Croton River watershed. The Town is bordered by the Town of North Salem and the Town of Lewisboro to the east, the Town of Bedford and the Town of New Castle to the south,





and the Town of Yorktown to the west. Somers is bordered to the north by the Town of Carmel in Putnam County, New York.

The Town of Somers includes the communities of Amawalk, Baldwin Place, Granite Springs, Lake Lincolndale, Lincolndale, Lake Purdys, Shenorock, Lake Shenorock, Somers, and Whitehall Corners.

According to the U.S. Census, the 2010 population for the Town of Somers was 20,434. The estimated 2019 population was 21.487, a 5.2 percent increase from the 2010 Census. Data from the 2019 U.S. Census American Community Survey indicate that 2.8 percent of the population is 5 years of age or younger and 25.9 percent is 65 years of age or older. Communities must deploy a support system that enables all populations to safely reach shelters or to quickly evacuate a hazard area.

# 9.22.3 Jurisdictional Capability Assessment and Integration

The Town of Somers performed an inventory and analysis of existing capabilities, plans, programs, and policies that enhance its ability to implement mitigation strategies. Section 5 (Capability Assessment) describes the components included in the capability assessment and their significance for hazard mitigation planning. This section summarizes the following findings of the assessment:

- An assessment of legal and regulatory capabilities.
- Development and permitting capabilities.
- An assessment of administrative and technical capabilities
- An assessment of fiscal capabilities.
- An assessment of education and outreach capabilities.
- Classification under various community mitigation programs.
- The community's adaptive capacity to withstand hazard events.

For a community to succeed in reducing long-term risk, hazard mitigation must be integrated into the day-to-day local government operations. As part of this planning effort, planning/policy documents were reviewed, and each jurisdiction was surveyed to obtain a better understanding of their progress in plan integration. Areas with current mitigation integration are summarized in this Jurisdictional Capability Assessment (Section 9.22.3). The Town of Somers's identified opportunities for integration of mitigation concepts to be incorporated into municipal procedures are included in the updated mitigation strategy.

#### Planning, Legal, and Regulatory Capability and Integration

The table below summarizes the regulatory tools that are available to the Town of Somers. The comment field provides information as to where hazard mitigation has been integrated.

Table 9.22-2. Planning, Legal, and Regulatory Capability and Integration

	Jurisdiction has this? (Yes/No)	Required by State? (Yes/No)	Code Citation and Date (code chapter, name of plan, date of plan)	Authority (local, county, state, federal)	Individual / Department / Agency Responsible
Codes, Ordinances, & Regula	ations				
Building Code	Yes	Yes	Chapter 74, Building Construction, Updated 2007	State and Local	Building and Codes Department
(the Uniform Code) pursuant to § 10 of	and the State Energy the Municipal Home	Conservation Constr Rule Law. Except as	f the New York State Uniform ruction Code (the Energy Cod otherwise provided in the Uni egardless of use or occupancy	e) in this Town. Thi form Code, other st	s article is adopted ate law, or other
Zoning/Land Use Code	Yes	No	Chapter 170, Zoning, Local Law No. 1-2019	Local	Zoning and Planning



	Jurisdiction has this? (Yes/No)	Required by State? (Yes/No)	Code Citation and Date (code chapter, name of plan, date of plan)	Authority (local, county, state, federal)	Individual / Department / Agency Responsible
How does this reduce risk?	[ (165/NO)	State: (Tes/No)	pian, date of pian	state, rederary	Responsible
The Town Board I Somers' remaining subdivisions that a existing aesthetic of land in such a reprovision of street (including roadsid Comprehensive M Pursuant to the Todevelopment patter protection and enhother similar specification of an econscale business, res Pursuant to the Todencouragement for neighborhood bust the Town of Some The purpose of the preserving the quarestiming assistance.	g open space lands, to are compatible with the qualities. It is thereformanner as to accomplises and utilities, protective vistas), preserving plaster Plan and reserving the source of the Somers Compressors of the Somers hand ancement of the feature in the source of the Somers hand ancement of the feature in the source of so	preserve the Town's e e natural topography a e the purpose of this a sh the above, whereve ng areas of meaningfi roposed open space an eng suitable lands for pehensive Master Plan, allet, including the size res of the Somers han well as to allow the res the community and actionally efficient, eness. The enesive Master Plan, enessed the primarily serve the let alternative housing ion Overlay GP District Town's major groun	roperty owners and the Town nvironmentally sensitive areas and any on-site cultural feature rticle to enable and encourage r practicable, including facilita all ecological, architectural, archeas as shown on the Town Plarark and recreation purposes. It is the purpose of the B-HP is and spacing of structures and let that have a special historic assonable use of land and build government center of the Town vironmentally sound and visual it is the purpose of the NS Distinguishment of the Town vironmentally sound and performent center of the Town vironment is to protect the public head dwater resources in order to entered public. The designation of the total contents of the designation of the public head dwater resources in order to entered public. The designation of the public head of the public head designation of the public head designation of the public head of the public head designation of the public head of t	in their natural stasts that may exist an flexibility of designing the adequate a haeological, scenic in Map in the Plant District to maintain open spaces, to enal, architectural, cultings as appropriate in a manner that only attractive mixed strict to provide the ally sound and visus sonal service need tolds.  The safety and generate an adequate a strict an adequate a strict and service need tolds.	te, to encourage d to protect Somer n and developmen nd economical and historic value ting Board's the historic courage the litural, aesthetic or to strengthen the encourages the lituse area of small opportunity and ally attractive s of the residents of all welfare by nd safe water
			neral public. The designation o		
			cts will further the preservatio		esources currently
in use and those a Subdivision Ordinance	quifers having a potem Yes	No	for substantial public or privation Chapter 150, Subdivision	Local	Planning Board
Subdivision Ordinance	ies	NO	of Land, Adopted by the Planning Board of the Town of Somers 11-24- 1971	Lucai	Flamming Board
menace. Proper pr compose a conven Development Plan as to accommodat	ovision shall be made tient system conforming, as such may be adop the prospective traffi	for drainage, water, so ag to the Official Map ted and amended by to ic, to afford adequate	g purposes without danger to lewerage and other needed imp and shall be properly related the Planning Board. Streets shall be the planning Board and the facilitate fisuitable location, size and char	rovements. The pro the proposals sho ill be of such width re protection. In pro	oposed streets shall own on the Town grade and location oper cases and
recreational purpo	ses shall be shown on				
Site Plan Ordinance	Yes	No	Chapter 144, Site Plan	Local and	Town Board
			Review, Adopted 1992	County	
Board for approva	of the Town Law,[1] a of any site plan requi sh a procedure for revi	ired by the Zoning Or		gates final authorit f the Town Law, th	y to the Planning ese regulations are
Stormwater Management Ordinance	Yes	Yes	Chapter 93, Stormwater Management and Erosion Control. This chapter also repealed former Chapter 93, Erosion and Sediment Control, adopted 2-9-2006 by L.L. No. 3-2006	Local	Planning Board
persons, protect pr controlling the des	roperty, prevent damag	ge to the environment, nce of any developme	ormwater management require and promote the public welfa ent or other activity which dist	re by guiding, regui	lating, and
Post-Disaster Recovery/	No	No	-	-	-
Reconstruction Ordinance					
How does this reduce risk?					
Real Estate Disclosure	Yes	Yes	Property Condition Disclosure Act, NY Code - Article 14 §460-467	State	NYS Departme of State, Real Estate Agent





	Jurisdiction has this? (Yes/No)	Required by State? (Yes/No)	Code Citation and Date (code chapter, name of plan, date of plan)	Authority (local, county, state, federal)	Individual / Department / Agency Responsible
How does this reduce risk?				THE REAL PROPERTY.	
certain disclosures un standardized disclosu	ider the law or pay re statement and de	a credit of \$500 to the liver it to the buyer be	nder the exceptions to "caveat buyer at closing. While the P efore the buyer signs the final and instead pay the credit.	CDA requires a sell	er to complete a
Growth Management	No	No	-	-	1-
How does this reduce risk?	May William	THE PERSON NAMED IN		ETTER IN	2 = 1 = 1 = 1 = 1
Environmental Protection	Yes	Yes	Chapter 92,	Local	Diam'r D. I
Ordinance	168	i es	Environmental Quality Review	Local	Planning Board
agencies.  All agenci resources ageneration  Protection along with on propose  The process do not result on the process of the purpose of the due to flood condition	ies shall conduct the and that they have a s. of the environmen a social and economed actions.  sses set forth in this ult in undue delays  Yes  is chapter to promons in specific areas	eir affairs with an awa an obligation to protect t and enhancement of nic considerations, and s chapter as far as pos- in agency planning ar Yes	Chapter 102, Flood Damage Prevention; This local law also repealed former Ch. 102, Flood Damage Prevention, adopted 4-9-1987 by L.L. No. 1-1987, as amended. afety and general welfare and d to:	of the air, water, lan and enjoyment of th rees shall be given a sidered together in r xisting agency proce  Local  to minimize public	d and living nis and all future appropriate weight eaching decisions edures and that the Town Board
	increases in erosion	n or in flood heights o to floods, including fa	and property due to water or r velocities. cilities which serve such uses		
the time of Control the accommod Control fil Regulate th hazards to Qualify for BFE+2 feet is require	dation of floodwate lling, grading, dred he construction of t other lands. r and maintain part d for all construction	al floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation in the SFHA (resident	channels and natural protection channels and natural protection of the protection of the channels and Flood Insurance Program.	osion or flood damag	ges.
the time of control the accommod Control file accommod Control file Regulate the Azards to Qualify for BFE+2 feet is require Wellhead Protection	e alteration of nature dation of floodwate lling, grading, drede the construction of the other lands. r and maintain part	al floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program.	osion or flood damag	ges.
the time of control the accommod Control file accommod Control file Regulate the Azards to Qualify for BFE+2 feet is require Wellhead Protection	e alteration of nature dation of floodwate ling, grading, dredghe construction of tother lands.  r and maintain parted for all construction of the lands.	al floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation in the SFHA (resident	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program.	osion or flood damag ters or which may it	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify fo BFE+2 feet is require Wellhead Protection How does this reduce risk?  Emergency Management Ordinance	e alteration of nature dation of floodwate ling, grading, dredghe construction of tother lands.  r and maintain parted for all construction of the lands.	al floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation in the SFHA (resident	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program.	osion or flood damag ters or which may it	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify fo BFE+2 feet is require Wellhead Protection How does this reduce risk? Emergency Management Ordinance	e alteration of nature dation of floodwate lling, grading, dredghe construction of tother lands.  r and maintain parted for all construction No	ral floodplains, streamers. ging and other developlood barriers which we icipation in the Nation in the SFHA (resident)	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program. ential and non-residential).	osion or flood damag ters or which may in	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify fo Qualify fo BFE+2 feet is require Wellhead Protection How does this reduce risk? Emergency Management Ordinance How does this reduce risk?	e alteration of natural dation of floodwate lling, grading, dred, the construction of to other lands.  r and maintain part d for all construction No	ral floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation on in the SFHA (resident) No	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program. ential and non-residential).	osion or flood damag ters or which may in	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify fo BFE+2 feet is require Wellhead Protection How does this reduce risk? Emergency Management Ordinance How does this reduce risk?	e alteration of nature dation of floodwate lling, grading, dredghe construction of tother lands.  r and maintain parted for all construction No	ral floodplains, streamers. ging and other developlood barriers which we icipation in the Nation in the SFHA (resident)	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program. ential and non-residential).	osion or flood damag ters or which may in	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify for BFE+2 feet is require Wellhead Protection How does this reduce risk? Emergency Management Ordinance How does this reduce risk? Climate Change Ordinance How does this reduce risk?	e alteration of natural dation of floodwate lling, grading, dred, the construction of to other lands.  r and maintain part d for all construction No	ral floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation on in the SFHA (resident) No	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program. ential and non-residential).	osion or flood damag ters or which may in	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify for BFE+2 feet is require Wellhead Protection How does this reduce risk? Emergency Management Ordinance How does this reduce risk? Climate Change Ordinance How does this reduce risk?	e alteration of natural dation of floodwate lling, grading, dredghe construction of to other lands.  r and maintain part d for all construction No	ral floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation on in the SFHA (reside No  No  No	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program. ential and non-residential).	osion or flood damageters or which may in	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify for BFE+2 feet is require Wellhead Protection How does this reduce risk? Emergency Management Ordinance How does this reduce risk? Climate Change Ordinance How does this reduce risk? Other Planning Documents Comprehensive Plan	e alteration of natural dation of floodwate lling, grading, dredghe construction of to other lands.  r and maintain part d for all construction No	ral floodplains, stream rs. ging and other develop lood barriers which w icipation in the Nation on in the SFHA (reside No  No  No	pment which may increase ero vill unnaturally divert floodwa nal Flood Insurance Program. ential and non-residential).	osion or flood damageters or which may in	ges. ncrease flood
the time of Control the accommod Control fil Regulate ti hazards to Qualify for BFE+2 feet is require Wellhead Protection How does this reduce risk? Emergency Management Ordinance How does this reduce risk? Climate Change Ordinance How does this reduce risk? Other Planning Documents Comprehensive Plan How does this reduce risk?  The vision for Somers	e alteration of natural dation of floodwate lling, grading, dredghe construction of tother lands.  r and maintain part d for all construction No  No  No  No  Ves  s is to protect and part that facilitate e	ral floodplains, streamers.  ging and other develophood barriers which we icipation in the Nation on in the SFHA (residence)  No  No  No  No  reserve its environments.	comment which may increase errorill unnaturally divert floodwarf flood Insurance Program.  In and non-residential)  Comprehensive Plan, Updated 2016  Intal and historical resources ver and a variety of residential division.	osion or flood damaş ters or which may ii  -  Local  vhile providing appr	ges. nerease flood  -  Town Planning opriate levels of



How does this reduce risk?	Jurisdiction has this? (Yes/No)	Required by State? (Yes/No)	Code Citation and Date (code chapter, name of plan, date of plan)	Authority (local, county, state, federal)	Individual / Department , Agency Responsible
Disaster Debris Management	No	No		-	-
Plan					
How does this reduce risk?					
Floodplain Management or Watershed Plan	No	No	-	-	-
How does this reduce risk?					1000
Stormwater Management Plan	Yes	No	Stormwater Management Plan, Adopted 2007	Local	Town Planning
How does this reduce risk?				SUNE DE	
The Plan is made to m Open Space Plan	itigate risk regardi Yes	Yes	exposure to water contamination The 2016 Comprehensive	on and flooding.	Town Planning
			Plan includes a separate chapter (Chapter 9) on Open Space. Town has separate Ordinances that relate to Steep Slopes (Chapter 148), Wetlands Protection (Chapter 167) and Groundwater Protections (Chapter 170-32.1)		Board
to Steep Slopes (Chapt has provisions to:	ter 148), Wetlands logically significa id enhance animal quality and quanti	Protection (Chapter I nt/sensitive lands such and plant habitats ity of public-use water	napter 9) on Open Space. Tow 167) and Groundwater Protection as steep slopes and wetlands resources including watershee	ons (Chapter 170-3	2.1). The Chapter
to Steep Slopes (Chapt has provisions to:  O Protect eco O Preserve an O Protect the streams.  Urban Water Management	ter 148), Wetlands logically significa id enhance animal	Protection (Chapter I nt/sensitive lands such and plant habitats	167) and Groundwater Protecti a as steep slopes and wetlands	ons (Chapter 170-3	2.1). The Chapter
to Steep Slopes (Chapt has provisions to:  O Protect eco Preserve an Protect the streams.  Urban Water Management Plan  How does this reduce risk?	ter 148), Wetlands logically significated enhance animal quality and quanti	Protection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	2.1). The Chapter
to Steep Slopes (Chapt has provisions to:  O Protect eco Preserve an Protect the streams.  Urban Water Management Plan  How does this reduce risk?  Habitat Conservation Plan	ter 148), Wetlands logically significa id enhance animal quality and quanti	Protection (Chapter I nt/sensitive lands such and plant habitats ity of public-use water	167) and Groundwater Protecti n as steep slopes and wetlands resources including watershee	ons (Chapter 170-3	2.1). The Chapter
to Steep Slopes (Chapt has provisions to: O Protect eco O Preserve an O Protect the streams.  Urban Water Management Plan How does this reduce risk?  Habitat Conservation Plan	ter 148), Wetlands logically significated enhance animal quality and quanti	Protection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	2.1). The Chapter c zones, lakes, and
to Steep Slopes (Chapt has provisions to:	ter 148), Wetlands logically significated enhance animal quality and quanti	Protection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	2.1). The Chapter c zones, lakes, and
to Steep Slopes (Chapt has provisions to:  O Protect eco O Preserve an O Protect the streams.  Urban Water Management Plan How does this reduce risk?  Habitat Conservation Plan How does this reduce risk?  Economic Development Plan	ter 148), Wetlands logically significated enhance animal quality and quanti	reprotection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3  ds, aquifer recharge	2.1). The Chapter c zones, lakes, and
to Steep Slopes (Chapt has provisions to: o Protect eco o Preserve an o Protect the	ter 148), Wetlands logically significated enhance animal quality and quanti	reprotection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No  No  No  Yes, in jurisdictions with	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3  ds, aquifer recharge	2.1). The Chapter c zones, lakes, and
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to Steep Slopes (Chapt has provisions to:  O Protect eco O Preserve an O Protect the streams.  Urban Water Management Plan  How does this reduce risk?  Economic Development Plan  How does this reduce risk?  Shoreline Management Plan	ter 148), Wetlands logically significated enhance animal quality and quanti  No  No  No	reprotection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No  No  No  Yes, in jurisdictions with	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	e zones, lakes, and
to Steep Slopes (Chapt has provisions to:  Protect eco. Protect eco. Protect eco. Protect the streams.  Urban Water Management Plan How does this reduce risk?  Economic Development Plan How does this reduce risk?  Shoreline Management Plan How does this reduce risk?  Community Wildfire Protection Plan	ter 148), Wetlands logically significated enhance animal quality and quanti  No  No  No  No	reprotection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No  No  No  Yes, in jurisdictions with CEHA areas	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	2.1). The Chapter c zones, lakes, and
to Steep Slopes (Chapt has provisions to:  Protect eco Preserve an Protect the streams.  Urban Water Management Plan How does this reduce risk?  Economic Development Plan How does this reduce risk?  Shoreline Management Plan How does this reduce risk?  Community Wildfire	ter 148), Wetlands logically significated enhance animal quality and quanti  No  No  No  No	reprotection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No  No  No  Yes, in jurisdictions with CEHA areas	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	2.1). The Chapter c zones, lakes, and
to Steep Slopes (Chapt has provisions to:  Protect eco Preserve an Protect the streams.  Urban Water Management Plan How does this reduce risk?  Economic Development Plan How does this reduce risk?  Shoreline Management Plan How does this reduce risk?  Community Wildfire Protection Plan How does this reduce risk?  Community Forest Management Plan	ter 148), Wetlands logically significated enhance animal quality and quanti  No  No  No  No  No	reprotection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No  No  No  Yes, in jurisdictions with CEHA areas	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	2.1). The Chapter c zones, lakes, and
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to Steep Slopes (Chapt has provisions to:  Protect eco. Protect eco. Protect eco. Protect the streams. Protect the streams.  Urban Water Management Plan How does this reduce risk?  Habitat Conservation Plan How does this reduce risk?  Economic Development Plan How does this reduce risk?  Shoreline Management Plan How does this reduce risk?  Community Wildfire Protection Plan How does this reduce risk?  Community Forest Management Plan How does this reduce risk?  Transportation Plan	ter 148), Wetlands logically significated enhance animal quality and quanti  No  No  No  No  No	reprotection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No  No  No  Yes, in jurisdictions with CEHA areas	167) and Groundwater Protection as steep slopes and wetlands resources including watershed	ons (Chapter 170-3 ds, aquifer recharge	2.1). The Chapter cones, lakes, and
to Steep Slopes (Chapt has provisions to:  Protect eco Proserve an Protect the streams.  Urban Water Management Plan How does this reduce risk?  Economic Development Plan How does this reduce risk?  Shoreline Management Plan How does this reduce risk?  Community Wildfire Protection Plan How does this reduce risk?  Community Forest	ter 148), Wetlands logically significated enhance animal quality and quanti  No  No  No  No  No  No  No	Protection (Chapter Int/sensitive lands such and plant habitats ity of public-use water No  No  No  Yes, in jurisdictions with CEHA areas	as steep slopes and wetlands resources including watershed  -  -  -  Anticipated for 2021	ons (Chapter 170-3 ds, aquifer recharge Local	2.1). The Chapter  zones, lakes, and  -  -  Administration



	Jurisdiction has this? (Yes/No)	Required by State? (Yes/No)	Code Citation and Date (code chapter, name of plan, date of plan)	Authority (local, county, state, federal)	Individual / Department Agency Responsible
Climate Action/ Resiliency/Sustainability Plan	No	No	-	-	-
How does this reduce risk?					
Tourism Plan	No	No	-	-	-
How does this reduce risk?					
Business/ Downtown Development Plan	No	No	-	-	-
How does this reduce risk?				51 8 7 18	
Other	No	-	-	-	-
Response/Recovery Planning	to Tree to				
Comprehensive Emergency Management Plan	Yes	Yes	Comprehensive Emergency Management	Local	Emergency Management
	1		Plan		
			zards" approach to hazard ide	entification, risk red	uction, response
The Town's Emergency procedures, recovery act				entification, risk red	uction, response
The Town's Emergency procedures, recovery act Continuity of Operations Plan	tivities, and inter	agency coordination.	zards" approach to hazard ide		
procedures, recovery act Continuity of Operations Plan How does this reduce risk? Strategic Recovery Planning Report	tivities, and inter	agency coordination.	zards" approach to hazard ide		
The Town's Emergency procedures, recovery act Continuity of Operations Plan How does this reduce risk?  Strategic Recovery Planning Report	tivities, and inter No	-agency coordination. No	zards" approach to hazard ide		
The Town's Emergency procedures, recovery act Continuity of Operations Plan How does this reduce risk? Strategic Recovery Planning	tivities, and inter No	-agency coordination. No	zards" approach to hazard ide		
The Town's Emergency procedures, recovery act Continuity of Operations Plan How does this reduce risk?  Strategic Recovery Planning Report How does this reduce risk?  Threat & Hazard Identification	No	-agency coordination. No No	zards" approach to hazard ide		
The Town's Emergency procedures, recovery act Continuity of Operations Plan How does this reduce risk?  Strategic Recovery Planning Report How does this reduce risk?  Threat & Hazard Identification & Risk Assessment (THIRA) How does this reduce risk?	No	-agency coordination. No No	zards" approach to hazard ide		
The Town's Emergency procedures, recovery act Continuity of Operations Plan How does this reduce risk?  Strategic Recovery Planning Report How does this reduce risk?  Threat & Hazard Identification & Risk Assessment (THIRA) How does this reduce risk?  Post-Disaster Recovery Plan	No No	No No Yes	zards" approach to hazard ide		
The Town's Emergency procedures, recovery act Continuity of Operations Plan How does this reduce risk?  Strategic Recovery Planning Report How does this reduce risk?  Threat & Hazard Identification & Risk Assessment (THIRA)	No No	No No Yes	zards" approach to hazard ide		
• The Town's Emergency procedures, recovery act Continuity of Operations Plan How does this reduce risk?  Strategic Recovery Planning Report How does this reduce risk?  Threat & Hazard Identification & Risk Assessment (THIRA) How does this reduce risk?  Post-Disaster Recovery Plan How does this reduce risk?	No No No	No No Yes	zards" approach to hazard ide	-	

# **Development and Permitting Capability**

The table below summarizes the capabilities of the Town of Somers to oversee and track development.

Table 9.22-3. Development and Permitting Capability

Indicate if your jurisdiction implements the following	Yes/No	Comment
Do you issue development permits? -If yes, what department is responsible? -If no, what is your process for development?	Yes	Building and Code Enforcement
Are permits tracked by hazard area? (For example, floodplain development permits.)	Yes	Floodplain
Do you have a buildable land inventory? -If yes, describeIf no, quantitatively describe the level of buildout in the jurisdiction.	No	Buildout is greater than 75% of zoning capacity.



# **Administrative and Technical Capability**

The table below summarizes potential staff and personnel resources available to the Town of Somers and their current responsibilities which contribute to hazard mitigation.

Table 9.22-4. Administrative and Technical Capabilities

Resources	Available? (Yes/No)	Comments (available staff, responsibilities, support of hazard mitigation)
Administrative Capability		
Planning Board	Yes	The Planning Board consists of seven local residents with the authority to approve, modify or disapprove site plans, subdivisions, and certain wetland and steep slope permits. The Planning Board members are appointed by the Town Board for a seven-year term. Staff and consultants to the Planning Board consists of Engineering and Planning Staff, legal counsel, Director of Planning, and Consulting Town Engineer.
Zoning Board of Adjustments	Yes	The ZBA is formed pursuant to NYS Town Law §267. The Board is comprised of 7 members each serving a 5-year term. Meetings of the Board are open to the public and minutes are prepared. The Board hears and decides appeals from and review of any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to Article 16 of New York State Town Law, for example, Town Zoning Regulations or Planning Board decisions. Residents typically come before this Board primarily for zoning variances. Example: The new porch you wish to add to your home doesn't meet the setback requirements for your neighbor's property line by two feet. The ZBA has the authority to grant permission for a variance enabling you to make this addition to your home. Neighbors located within 250 feet of the proposed variance request are notified by certified mail as to when the matter would be heard. This affords neighbors ample opportunity to review the request and appear to express concern for or support of the project. They also review and decide upon certain special use permits such as accessory apartments applications.
Planning Department	No	The Town of Somers Planning Department currently shares in the responsibility for reviewing all subdivision and site plan applications submitted to the Planning Board by property owners. The Planning Department is also responsible for maintaining and updating the Town's Comprehensive Plan, coordinating the Town's municipal separate storm sewer system permit activities, carrying out the Town's State Environmental Quality Review Act obligations and undertaking a variety of other responsibilities such as management of the Town's Geographic Information System, amending the Town Code, etc.  The Town also has a Zoning Department.
Mitigation Planning Committee	Yes	The Risk Management Committee was formed by the Town Board in March 1999 to promote safety and health issues for all employees. The committee reviews and addresses potential problem areas that impact the Town from a life, safety, employee work environment



into the rise of the latest the second	100000000000000000000000000000000000000	Comments
Resources	Available? (Yes/No)	(available staff, responsibilities, support of hazard mitigation)
ACSOUT CCS		and potential public liability exposure perspective. The Committee also coordinates these issues between the various Departments of the Town and follows up outstanding recommendations to be reported to the Town Board.  In March 2001 it was decided that the Committee should place increased emphasis on safety considerations for the benefit of both the Town and employees and the Town Board expanded the name to Risk Management and Safety Committee. The Committee has increased efficiency in many areas of Town operations, lowered insurance costs and reduced possible liability exposures. It is composed of a Town Board member and a member of the public. The Town's insurance broker is an integral part of the Committee's actions and provides a great deal of guidance and the benefit of his extensive experience.
Environmental Board/Commission	No	guidance and the benefit of his extensive experience.
Open Space Board/Committee	Yes	The To protect and preserve any largely unimproved parcel of land, whether publicly or privately owned, that is not permanently protected from future development by conservation easement of fee ownership for the purposes of conservation.
Economic Development Commission/Committee	No	•
Public Works/Highway Department	Yes	Highway Department, Water and Sewer Department
Construction/Building/Code Enforcement Department	Yes	Building Department
Emergency Management/Public Safety Department	Yes	Somers Emergency Preparedness Committee
Warning Systems / Services (mass notification system, outdoor warning signals)	Yes	Code Red
Maintenance programs to reduce risk (stormwater maintenance, tree trimming, etc.)	Yes	Highway Department
Mutual aid agreements	Yes	Highway Department
Human Resources Manual - Do any job descriptions specifically include identifying or implementing mitigation projects or other efforts to reduce natural hazard risk?	No	
Other	No	-
Technical/Staffing Capability		
Planners or engineers with knowledge of land	Yes	Contracted professional service
development and land management practices Engineers or professionals trained in building or	Yes	Contracted professional service
infrastructure construction practices Planners or engineers with an understanding of natural hazards	Yes	Contracted professional service
Staff with expertise or training in benefit/cost analysis	Yes	Director of Finance
Professionals trained in conducting damage assessments	Yes	Engineering/Finance
Personnel skilled or trained in GIS and/or Hazards United States (HAZUS) – Multi-Hazards (MH) applications	Yes	Contracted professional service
Scientist familiar with natural hazards	Yes	Engineering Technician
Surveyor(s)	No	
Emergency Manager	Yes	Supervisor
Grant writer(s)	Yes	Contracted professional service
Resilience Officer	No	-



Resources	Available? (Yes/No)	Comments (available staff, responsibilities, support of hazard mitigation)
Other (this could include stormwater engineer, environmental specialist, etc.)	No	
How do your administrative/technical capabilities		k reduction in your community? its combination of Town staff and outside professional

# **Fiscal Capability**

The table below summarizes financial resources available to the Town of Somers.

Table 9.22-5. Fiscal Capabilities

Financial Resources	Are these accessible or eligible to use for mitigation? (Yes/No) If yes, please describe. If no, can this be used to support in the future?
Community development Block Grants (CDBG, CDBG-DR)	No
Capital improvements project funding	Yes
Authority to levy taxes for specific purposes	Yes
User fees for water, sewer, gas or electric service	Yes
Impact fees for homebuyers or developers of new development/homes	Yes, but not likely to use for hazard mitigation purposes
Stormwater utility fee	No
Incur debt through general obligation bonds	Yes
Incur debt through special tax bonds	Yes, but not likely to use for hazard mitigation purposes
Incur debt through private activity bonds	No
Withhold public expenditures in hazard-prone areas	No
Other federal or state funding programs	Yes
Open Space Acquisition funding programs	Yes
Other (for example, Clean Water Act 319 Grants [Nonpoint Source Pollution])	Yes – the Town solicits grant funding where possible for stormwater management and water quality improvements.

# **Education and Outreach Capability**

The table below summarizes the education and outreach resources available to the Town of Somers.

Table 9.22-6. Education and Outreach Capabilities

Outreach Resources	Available? (Yes/No)	Does the jurisdiction have any public outreach mechanisms / programs in place to inform citizens on natural hazards, risk, and ways to protect themselves during such events?  If yes, please describe.
Public information officer or communications office	Yes	Supervisor's office communications, Town website, Code Red.
Personnel skilled or trained in website development	Yes	Town website maintenance and CodeRed.
Hazard mitigation information available on your website	Yes	Town website includes resources for readiness, shelter locations, dry ice, and water resources.
Social media for hazard mitigation education and outreach	Yes	Highway Department and Town Board members provide social media updates.
Citizen boards or commissions that address issues related to hazard mitigation	Yes	Planning Board, Zoning Board



Outreach Resources	Available? (Yes/No)	Does the jurisdiction have any public outreach mechanisms / programs in place to inform citizens on natural hazards, risk, and ways to protect themselves during such events?  If yes, please describe.
Other programs already in place that could be used to communicate hazard-related information	Yes	CodeRed
Warning systems for hazard events	Yes	CodeRed
Natural disaster/safety programs in place for schools	No	-
Other	No	

#### **Community Classifications**

The table below summarizes classifications for community programs available to the Town of Somers.

Table 9.22-7. Community Classifications

Program	Participating? (Yes/No)	Classification (if applicable)	Date Classified (if applicable)
Community Rating System (CRS)	No		
Building Code Effectiveness Grading Schedule (BCEGS)	No	-	-
Public Protection (ISO Fire Protection Classes 1 to 10)	No		
NYSDEC Climate Smart Community	No	•	-
Storm Ready Certification	No		
Firewise Communities classification	No		-
Other	No		

Note:

N/A Not applicable
NP Not participating
- Unavailable

## **Adaptive Capacity**

Adaptive capacity is defined as "the ability of systems, institutions, humans and other organisms to adjust to potential damage, to take advantage of opportunities, or respond to consequences" (IPCC 2014). In other words, it describes a jurisdiction's current capabilities to adjust to, protect from, or withstand a future hazard event, future conditions, and changing risk. The table below summarizes the adaptive capacity for each hazard of concern and the jurisdiction's rating.

Table 9.22-8. Adaptive Capacity

Hazard	Adaptive Capacity - Strong/Moderate/Weak*
Disease Outbreak	Moderate
Earthquake	Moderate
Extreme Temperature	Moderate
Flood	Moderate
Severe Storm	Moderate
Severe Winter Storm	Strong
Wildfire	Moderate
CBRN	Moderate

\*Strong Capacity exists and is in use

Moderate Capacity may exist; but is not used or could use some improvement

Weak Capacity does not exist or could use substantial improvement





# 9.22.4 National Flood Insurance Program (NFIP) Compliance

This section provides specific information on the management and regulation of the regulatory floodplain, including current and future compliance with the NFIP.

# **National Flood Insurance Program (NFIP) Summary**

The following table summarizes the NFIP statistics for the Town of Somers. Table 9.22-9. NFIP Summary

Municipality	# Policies	# Claims (Losses)	Total Loss Payments	# RL Properties
Town of Somers	39	35	\$302,447.08	3

Source: FEMA 7-2021

Notes: SRL information was not provided in the available data set.

RL Repetitive Loss; SRL Severe Repetitive Loss

#### Flood Vulnerability Summary and NFIP Compliance

The following table provides a summary of the NFIP program in the Town of Somers.

Table 9.22-10. Flood Vulnerability Summary and NFIP Compliance

NFIP Topic	Comments
Flood Vulnerability Summary	
Describe areas prone to flooding in your jurisdiction.  • Do you maintain a list of properties that have been damaged by flooding?	Warren St near Greenbriar has recently flooded. Monitoring to determine if it becomes a regular occurrence. Other areas have been addressed since last HMP update.
Do you maintain a list of property owners interested in flood mitigation?  • How many homeowners and/or business owners are interested in mitigation (elevation or acquisition)?	No.
Are any RiskMAP projects currently underway in your jurisdiction?  • If so, state what projects are underway.	No.
How do you make Substantial Damage determinations?  • How many were declared for recent flood events in your jurisdiction?	Based on the cost of required repairs, as reported on Building Permits.
How many properties have been mitigated (elevation or acquisition) in your jurisdiction?  If there are mitigation properties, how were the projects funded?	1
Do your flood hazard maps adequately address the flood risk within your jurisdiction?  • If not, state why.	Yes.
NFIP Compliance	
What local department is responsible for floodplain management?	Planning, Engineering, and Building
Are any certified floodplain managers on staff in your jurisdiction?	No
Do you have access to resources to determine possible future flooding conditions from climate change?	Outside consultants
Does your floodplain management staff need any assistance or training to support its floodplain management program?	Refresher training desired.



NFIP Topic	Comments
<ul> <li>If so, what type of assistance/training is needed?</li> </ul>	
Provide an explanation of NFIP administration services you provide (e.g. permit review, GIS, education/outreach, inspections, engineering capability)	Permit review
How do you determine if proposed development on an existing structure would qualify as a substantial improvement?	Per code, "50 percent of the market value of the structure before the start of construction of the improvement."
What are the barriers to running an effective NFIP program in the community, if any?	None
Does your jurisdiction have any outstanding NFIP compliance violations that need to be addressed?  • If so, state the violations.	No
When was the most recent Community Assistance Visit (CAV) or Community Assistance Contact (CAC)?	The most recent Community Assistance Visit (CAV) took place on June 27, 2015.
What is the local law number or municipal code of your flood damage prevention ordinance?  • What is the date that your flood damage prevention ordinance was last amended?	Chapter 102, Flood Damage Prevention. June 14, 2007
Does your floodplain management program meet or exceed minimum requirements?  • If exceeds, in what ways?	Yes.
Are there other local ordinances, plans or programs (e.g. site plan review) that support floodplain management and meeting the NFIP requirements? For instance, does the planning board or zoning board consider efforts to reduce flood risk when reviewing variances such as height restrictions?	Yes – Planning, Zoning, Open Space, and Building permit and site plan reviews all consider flood risk.
Does your jurisdiction participate in CRS?     If yes, is your jurisdiction interested in improving its CRS Classification?     If no, is your jurisdiction interested in joining the CRS program?	Yes, interested in improving classification.

# 9.22.5 Evacuation, Sheltering, Temporary Housing, and Permanent Housing

Evacuation routes, sheltering measures, temporary housing, and permanent housing must all be in place and available for public awareness to protect residents, mitigate risk, and relocate residents, if necessary, to maintain post-disaster social and economic stability.

#### **Evacuation Routes and Procedures**

The Town of Somers has identified the following routes and procedures to evacuate residents prior to and during an event:

North / South: Route 100
East / West: Route 35
North / South: Route 118

• North / South: Mahopac Avenue

## **Sheltering**

The Town of Somers has identified the following designated emergency shelters within the Town.





**Table 9.22-11. Designated Emergency Shelters** 

Site Name	Address	Capacity	Accommodates Pets?	ADA Compliant?	Backup Power?	Types of Medical Services Provided	Other Services Provided
Heritage Hills Activities Building	8 Heritage Hills Drive, Somers, NY 10589	300	No	Yes	Yes	None	N/A
Alternate: Somers Middle School	250 Route 202, Somers, NY 10589	TBD	No	Yes	TBD	None	N/A
Pets: Golden's Bridge Veterinary Center	15 Anderson Lane. Goldens Bridge, NY 10526	TBD	Yes	N/A	TBD	None	N/A

#### **Temporary Housing**

Each jurisdiction must identify sites for the placement of temporary housing units to house residents displaced by a disaster. The Town of Somers has identified the following sites suitable for placing temporary housing units.

**Table 9.22-12. Temporary Housing Locations** 

	Site Name	Site Address	Capacity (number of sites)	Type	Infrastructure / Utilities Available (water, electric, septic, etc.)	Actions Required to Ensure Conformance with the NYS Uniform Fire Prevention and Building Code
--	-----------	--------------	----------------------------------	------	---	--

The Town has not identified appropriate locations for the placement of temporary housing outside of the Special Flood Hazard Area. The Town will work with Westchester County to identify appropriate locations for the siting of temporary housing within the region (action 2021-Town of Somers -012).

#### **Permanent Housing**

Structures located in the regulatory floodplain may need to be relocated due to high flood risk or new properties must be built once severely damaged properties are demolished. Jurisdictions must identify suitable sites currently owned by the jurisdiction and potential sites under private ownership that meet applicable local zoning requirements and floodplain laws. The Town of Somers has identified the following areas suitable for relocating homes outside of the floodplain.

Table 9.22-13. Permanent Housing Locations

				Infrastructure /	Actions Required to Ensure
		Capacity		Utilities Available	Conformance with the NYS
		(number of		(water, electric,	Uniform Fire Prevention and
Site Name	Site Address	sites)	Туре	septic, etc.)	Building Code

The Town has not identified appropriate locations for the placement of permanent housing outside of the Special Flood Hazard Area. The Town will work with Westchester County to identify appropriate locations for the siting of permanent housing within the region (action 2021- Town of Somers -012).

# 9.22.6 Growth/Development Trends





Understanding how past, current, and projected development patterns have or are likely to increase or decrease risk in hazard areas is a key component to understanding a jurisdiction's overall risk to its hazards of concern. Table 9.22-14 summarizes recent and expected future development trends, including major residential/commercial development and major infrastructure development.

Table 9.22-14. Recent and Expected Future Development

Type of Development	20	014	20	015	2	016	20	)17	20	018	2	019	20	20	
Number of Buil floodplain)	ding P	ermits fo	or New	Constr	uction	Issued S	ince th	nce the previou		us HMP* (total		/within regulat		777	
	Total	Within SFHA	Total	Within SFHA	Total	Within SFHA	Total	Within SFHA	Total	Within SFHA	Total	Within SFHA	Total	Within	
Single Family	11	0	14	0	10	0	10	0	4	0	28	0	48	0	
Multi-Family	0	0	8	0	20	0	0	0	0	0	0	0	0	0	
Other (commercial, mixed-use, etc.)	2	0	0	0	0	0	2	0	0	0	1	0	0	0	
Total Permits Issued	13	0	22	0	30	0	12	0	4	0	29	0	48	0	
Property or Development Name		Type of elopment		# of Units / Structures		Location (address and/or block and lot)			Known Hazard Zone(s)*			Description / Status of Development			
					r Devel	lopment a	nd Infra						100		
American Water GAC Treatment	Infras	tructure	N.	'A	16.16-2		1	Wildfire Interface		Uı	Under construction				
Somers Crossing	Mixe	d use	66			307 Route		Wildfire Intermix		Ur	Under construction				
Hidden Meadows	Resid	lential	53			16 Route 6		None		Ur	Under construction				
Artis Senior Living	Resid	lential	72			4.19-2-22		Wildf	ire Intern	nix	Ur	Under construction			
Somers Realty Phase 3'	Mixe	d use				4.20-1-13, 1 and 15		Wildfi	ire Interr	nix	Ur	nder const	ruction	-	
Crossroads at Baldwin Place	Mixe	d use	64	units		4.20-1-3.1		None			Co	mpleted			
	Kr	town or A	vn or Anticipated Major Dev		r Deve	lopment a	nd Infr	astructui	re in the	Next Fiv	e (5) Ye	ars	TANK.		
Cobbling Rock	Resid	lential	9		176	37.19-1-1		Wildfire Intermix		A	Approved				
285 Route 100	Resid	ential	28			285 Route	e 100	Wildf	fire Intermix		Ar	Anticipated			
Granite Pointe	Resid	ential	23		1 15	27.05-1-2		Wildfi	ire Interr	nix	Aţ	proved	N.L.I		
Disiena Subdivison	Resid	lential	4			128 Route	e 139	Wildf	ire Interr	nix	Ap	proved			
American Water - New Wells	Infras	tructure	N	'A		16.16-2-2	1	100-ye	ear flood		Ap	proved			
Tamarack & Vine	Resid	ential	4			Vine Roa Hickory I		Wildf	ire Interi	nix	Ap	proved			

SFHA Special Flood Hazard Area (1% flood event)

# 9.22.7 Jurisdictional Risk Assessment

The hazard profiles in Section 5 (Risk Assessment) provide detailed information regarding each plan participant's vulnerability to the identified hazards. Refer to Section 5.2 (Methodology and Tools) and Section 5.4 (Hazard Ranking) for a detailed summary for the Town of Somers's risk assessment results and data used to determine the hazard ranking discussed later in this section.

Hazard area extent and location maps were generated to illustrate the probable areas impacted within the jurisdiction. These maps are based on the best available data at the time of the preparation of this plan and are



<sup>\*</sup> Only location-specific hazard zones or vulnerabilities identified.



adequate for planning purposes. Maps have been generated only for those hazards that can be clearly identified using mapping techniques and technologies and for which the Town of Somers has significant exposure. The maps also show the location of potential new development, where available. These maps are illustrated below.



Figure 9.22-1. Town of Somers Hazard Area Extent and Location Map 1

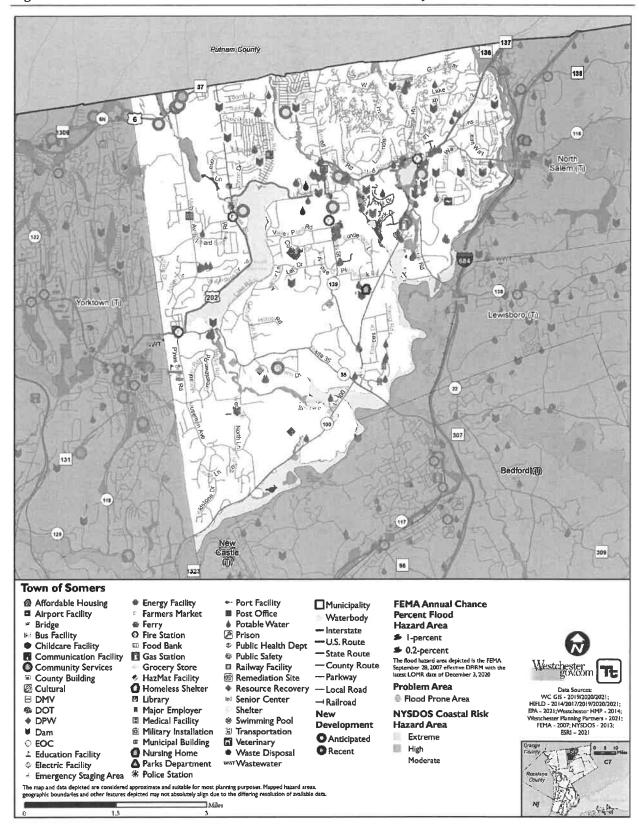




Figure 9.22-2. Town of Somers Hazard Area Extent and Location Map 2

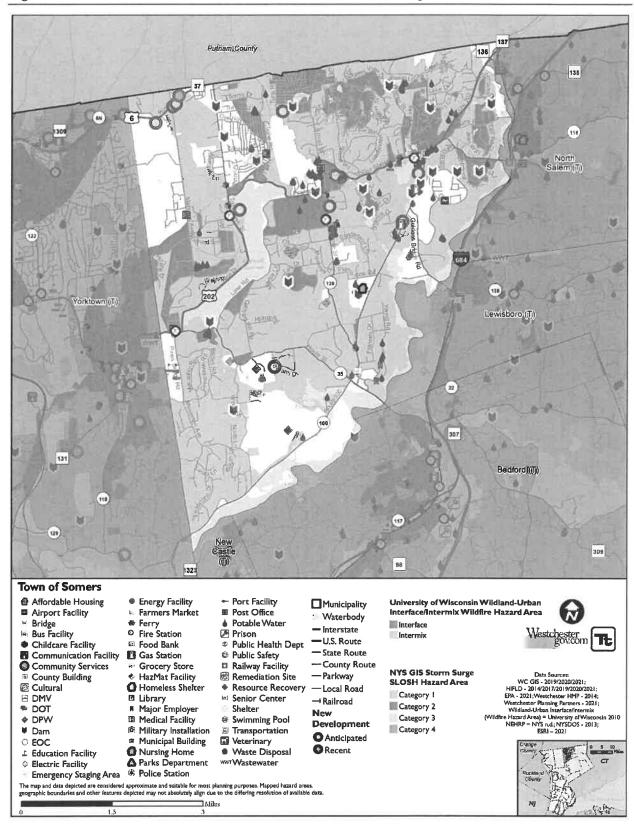




Figure 9.22-3. Town of Somers Hazard Area Extent and Location Map 3

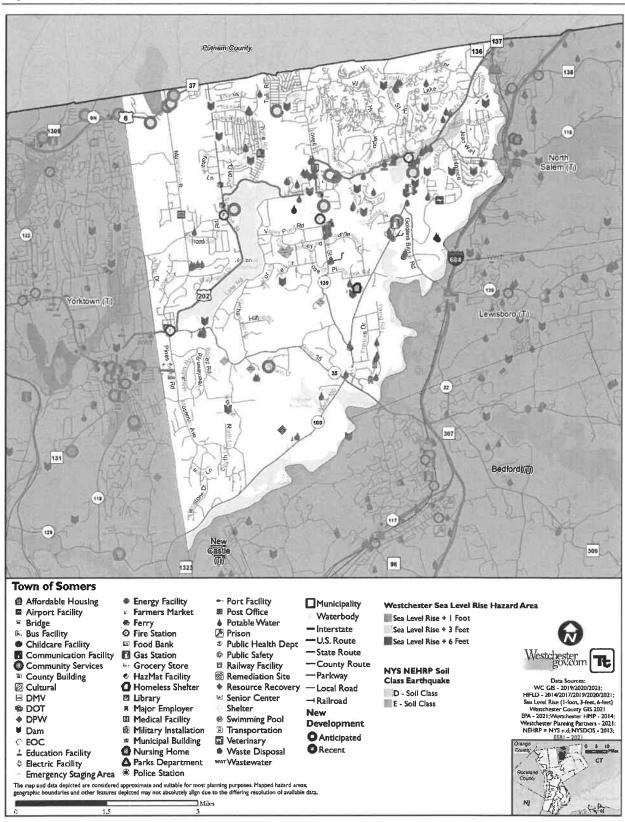
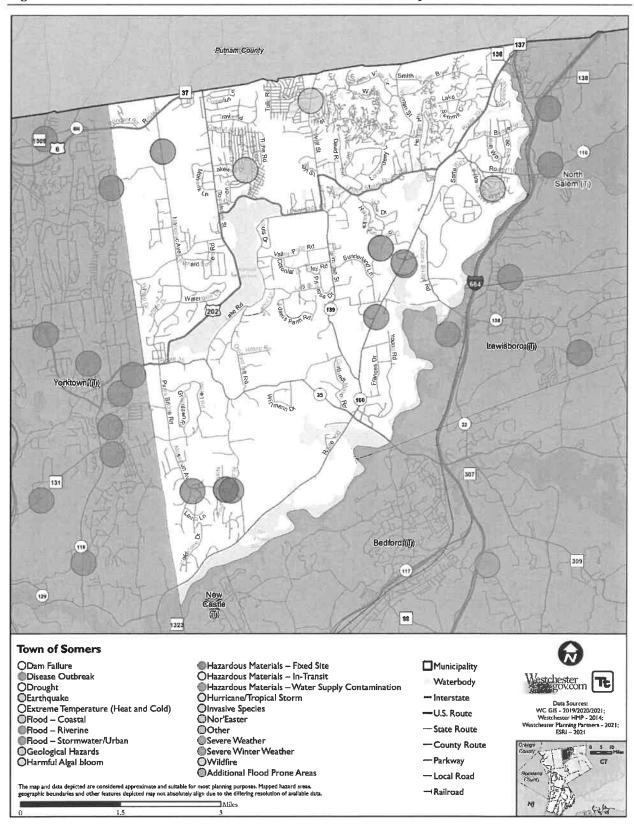




Figure 9.22-4. Town of Somers Hazard Area Extent and Location Map 4





#### **Hazard Event History**

Westchester County has a history of natural and non-natural hazard events as detailed in Volume I, Section 5 (Risk Assessment) of this plan. A summary of historical events is provided in each of the hazard profiles and includes a chronology of events that have affected the county and its municipalities.

The Town of Somers's history of federally-declared (as presented by FEMA) and significant hazard events (as presented in NOAA-NCEI) is consistent with that of Westchester County. Table 9.22-15 provides details regarding municipal-specific loss and damages the Town experienced during hazard events since the last hazard mitigation plan update. Information provided in the table below is based on reference material or local sources. For details of these and additional events, refer to Volume I, Section 5.0 of this plan.

Table 9.22-15. Hazard Event History

Dates of Event	Event Type (Disaster Declaration if applicable)	County Designated?	Summary of Event	Municipal Summary of Damages and Losses
February 13, 2017	High Wind	No	Low pressure passed to the east of Westchester County and rapidly deepened, resulting in strong winds with gusts exceeding 70 mph.	Numerous downed trees, loss of power in portions of town. Damage not quantified.
March 2, 2018	High Wind	No	A deep area of low pressure passed off the coast resulting in strong winds with gusts exceeding 70 mph.	Numerous downed trees, loss of power in portions of town. \$210,000 in documented recovery costs, inclusive of March 7 <sup>th</sup> follow-on event.
April 13, 2020	High Wind	No	Deep low pressure passed to the west of the area resulting in high winds with gusts near 70 mph.	Numerous downed trees, loss of power in portions of town. Damage not quantified.
August 4, 2020	Tropical Storm (DR-4567)	Yes	Tropical Storm Isaias passed over the region, resulting in high winds with gusts between 60-80 mph.	Numerous downed trees, loss of power in portions of town. \$293,100 in documented recovery costs.
January 20, 2020 - Present	Covid-19 Pandemic (EM-3434) (DR-4480)	Yes	Between March 1, 2020 and June 6, 2021, Westchester County reported 129,488 confirmed cases of COVID-19, and 2,284 total fatalities.	The Town was impacted by closures and masking/social distancing requirements.

Notes:

EM Emergency Declaration (FEMA) FEMA Federal Emergency Management Agency DR Major Disaster Declaration (FEMA)

N/A Not applicable

# Hazard Ranking and Vulnerabilities

The hazard profiles in Section 5.0 (Risk Assessment) of this plan have detailed information regarding each plan participant's vulnerability to the identified hazards. The following summarizes the Town of Somers's risk assessment results and data used to determine the hazard ranking.

#### Hazard Ranking

This section provides the community specific identification of the primary hazard concerns based on identified problems, impacts and the results of the risk assessment as presented in Section 5 (Risk Assessment) of the plan. The ranking process involves an assessment of the likelihood of occurrence for each hazard, along with its potential impacts on people, property, and the economy as well as community capability and changing future climate conditions. This input supports the mitigation action development to target those hazards with highest level of concern.

As discussed in Section 5.3 (Hazard Ranking), each participating jurisdiction may have differing degrees of risk exposure and vulnerability compared to Westchester County as a whole. Therefore, each municipality ranked





the degree of risk to each hazard as it pertains to their community. The table below summarizes the hazard risk/vulnerability rankings of potential natural hazards for the Town of Somers. The Town of Somers has reviewed the county hazard risk/vulnerability risk ranking table as well as its individual results to reflect the relative risk of the hazards of concern to the community.

During the review of the hazard/vulnerability risk ranking, the Town indicated the following:

The Town changed the hazard ranking for flood from medium to low, noting that flooding issues are isolated to small areas, do not impact main transportation corridors, and have been largely resolved by culvert repairs.

Table 9.22-16. Hazard Ranking Input

Disease Outbreak	Earthquake	Extreme Temperatures	Flood*	Severe Storm	Severe Winter Storm	Wildfire	CBRN
Low	Low	Low	Low	High	Medium	Low	Low

Note: The scale is based on the hazard rankings established in Section 5.3 and modified as appropriate during review by the jurisdiction

#### Critical Facilities

New York State Department of Environmental Conservation (DEC) Statute 6 CRR-NY 502.4 sets forth floodplain management criteria for State projects located in flood hazard areas. The law states that no such projects related to critical facilities shall be undertaken in a Special Flood Hazard Area (SFHA) unless constructed according to specific mitigation specifications, including being raised 2' above the Base Flood Elevation (BFE). This statute is outlined at <a href="http://tinyurl.com/6-CRR-NY-502-4">http://tinyurl.com/6-CRR-NY-502-4</a>. While all vulnerabilities should be assessed and documented, the State places a high priority on exposure to flooding. Critical facilities located in an SFHA, or having ever sustained previous flooding, must be protected to the 0.2-percent annual chance flood event, or worst damage scenario. For those that do not meet these criteria, the jurisdiction must identify an action to achieve this level of protection (NYS DHSES 2017).

The table below identifies critical facilities in the community located in the 1-percent and 0.2-percent floodplain and presents Hazards United States (HAZUS) – Multi-Hazards (MH) estimates of the damage and loss of use to critical facilities as a result of a 1-percent annual chance flood event.

Table 9.22-17. Potential Flood Losses to Critical Facilities

		Expe	osure		Loss from d Event	THE STATE
Name	Туре	1% Event	0.2% Event	Percent Structure Damage	Percent Content Damage	Addressed by Proposed Action
MILL POND OFFICES	Potable Water Treatment Facility	N	Y	0.0	0.0	2021-Town of Somers-008
DYKEER WATER CO.	Potable Water Treatment Facility	Y	Y	0.0	0.0	2021-Town of Somers-008
WELL #1	Potable Water Well	N	Y	0.0	0.0	
WELL#3	Potable Water Well	Y	Y	0.0	0.0	2021-Town of Somers-010
WELL # 4	Potable Water Well	Y	Y	0.0	0.0	2021-Town of Somers-010
WELL #5	Potable Water Well	N	Y	0.0	0.0	-
WELL #6	Potable Water Well	Y	Y	0.0	0.0	2021-Town of Somers-010



		Exp	osure	Potential 1% Floo		
Name	Туре	1% Event	0.2% Event	Percent Structure Damage	Percent Content Damage	Addressed by Proposed Action
Amawalk Dam	Dam	Y	Y	0.0	0.0	2021-Town of Somers-008
Somars Dam	Dam	Y	Y	0.0	0.0	2021-Town of Somers-008

Source: Westchester HMP 2021; FEMA 2007

#### **Identified Issues**

After review of the Town of Somers's hazard event history, hazard rankings, jurisdiction specific vulnerabilities, hazard area extent and location, and current capabilities, the Town of Somers has identified the following vulnerabilities within their community:

- Frequent flooding events have resulted in damages to residential properties. These properties have been repetitively flooded as documented by paid NFIP claims. The Town has 3 repetitive loss properties, but other properties may be impacted by flooding as well. Warren Street near Greenbriar has recently flooded.
- Critical facilities require backup power to maintain continuity of operations. The Heritage Hills emergency shelter and the Highway Garage lack backup power sources.
- Water supply for firefighting is limited in areas.
- The Mahopac Avenue Crossing of Muscoot River is flood prone.
- The Comprehensive Plan lacks information contained within the HMP on hazards and mitigation.
- Existing drainage facilities do not have sufficient capacity for heavy rain events.
- Areas of Route 6 are prone to icing due to inadequate drainage.
- The Town has numerous critical facilities with flood exposure which are privately owned.
- The Town is impacted by power outages and communication failure from falling tree branches. The Town lacks a Community Forestry Management Plan.
- The Town has several Town-owned potable water wells located within the SFHA.
- The status of maintenance and hazard classification of dams needs to be reviewed to identify any necessary repair actions. Dams in the Town are privately owned.
- The Town has not identified appropriate locations for the placement of temporary and permanent housing outside of the Special Flood Hazard Area.

Specific areas of concern based on resident response to the Westchester County Hazard Mitigation Citizen survey include:

- Many power losses during storms and even just high winds on Wilner Road in Somers and surrounding
  areas. Because most people have septic and wells, there is no water or heat or lights. This happened for
  several days about 8-10 years ago.
- In severe winter storm / northeasters, if the electric and Optimum cable go out and cell towers are not working there is no way for anyone to communicate with anyone unless they have a landline.

#### 9.22.8 Mitigation Strategy and Prioritization

This section discusses past mitigations actions and status, describes proposed hazard mitigation initiatives, and their prioritization.

#### **Past Mitigation Initiative Status**

The following table indicates progress on the community's mitigation strategy identified in the 2015 HMP. Actions that are carried forward as part of this plan update are included in the following subsection in its own table with prioritization. Previous actions that are now on-going programs and capabilities are indicated as such in the following table and may also be found under 'Capability Assessment' presented previously in this annex.





Table 9.22-18. Status of Previous Mitigation Actions

1. Next Steps Project to be included in HMP or Discontinue 2. If including action in the HMP Update, revise/reword to be more specific (as appropriate). 3. If discontinue, explain why.	Discontinue     S. Ongoing Capability, Planning Board and Bureau of Fire Prevention review ability to provide multiple means of egress for new subdivisions on a case-by-case basis. The Bureau of Fire Prevention reviews against NYS Fire code.	Discontinue     Ongoing Capability. Town has assisted Lake Shenorock Homeowner's Association in pursuit of a grant to fund a dam assessment.	1.Discontinue 2. 3. No longer a priority	1.Discontinue 2. 3. No longer a priority	Include in HMP Update     Town is reviewing options to bring public water to B-HP District for fire protection.	1. Discontinue 2. 3. Complete	Include in HMP Update     Town is applying for grant funding for emergency generators at key sites.     3.
Evaluation of Success (if project status is complete)	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success:
Status (in Progress, Ongoing, No Progress, Complete)	Ongoing Capability	Ongoing Capability	No Progress	No Progress	In Progress	Complete	In Progress
Responsib le Party	Planning / Engr.	Engr.	Highway / Engr.	Town Board / Engr.	Fire Dept., Water & Sewer	Planning Board / Engr.	Emer. Mgmt. / Town Board
Brief Summary of the Original Problem							
Hazard(s) Addressed	All Hazards	Flooding	Flooding	Winter Storms	Wildfre Structure Fire	Flooding	All Hazards
Project	Encourage or require the construction of two modes of egress for all new subdivisions	Prepare Emergency Action Plan, including dam failure analysis, for Lake Shenorock Dam	Upgrade undersized drainage systems on Brick Hill Road, Pines Bridge Road, and Annarock Drive	Encourage the State to upgrade or install drainage systems on Route 6 to climinate icing issues	Determine areas suitable for extension of public water supply for firefighting	Update Chapter 102 of Town Code to require elevation to BFE+2 for all new construction or substantial improvement	Identify locations where generators are needed and pursue fixed or portable generators to provide emergency power to these facilities
# tosjor4	TS- 1	TS-	TS-	TS-	S S	TS- 6	TS-





<ol> <li>Next Steps Project to be included in HMP or Discontinue</li> <li>If including action in the HMP Update, revise/reword to be more specific (as appropriate).</li> <li>If discontinue, explain why.</li> </ol>	1. Discontinue 2. 3. Complete	I. Include in HMP Update     Evaluation is ongoing.     3.	<ol> <li>Include in HMP Update</li> <li>Director of Planning and Supervisor to review inclusion.</li> </ol>	1. Discontinue 2. 3. Complete	Discontinuc     S. Complete	I. Include in HMP Update     Options in review.     3.
Evaluation of Success (if project status is complete)	Cost: Level of Protection: Damages Avoided; Evidence of Success: Pipe replaced	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success:	Cost: Level of Protection: Damages Avoided; Evidence of Success: Equipment purchased	Cost: Level of Protection: Damages Avoided; Evidence of Success: Generator installed	Cost: Level of Protection: Damages Avoided; Evidence of Success:
Status (In Progress, Ongoing, No Progress, Complete)	Complete	In Progress	In Progress	Complete	Complete	In Progress
Responsib le Party	Engr.	Engr.	Super. / Planning Board	Police	Supervisor	Municipal NFIP FPA; support from NYS DHSES and FEMA
Brief Sunmary of the Original Problem						
Hazard(s) Addressed	Flooding	Flooding	All Hazards	All Hazards	All Hazards	Flooding, Severe Storm
Project	Evaluate potential flood mitigation options at Moseman Avenue near North Lane	Evaluate potential flood mitigation options at Mahopac Avenue crossing of Muscoot River	Incorporate hazard mitigation plan information into Comprehensive Plan	Purchase a small truck to be used to reduce the risk of further damage and loss of function from flooding and other hazards.	Install backup generator at Town Hall	Promote and support non- structural flood hazard mitigation alternatives for at risk properties within the floodplain, including those that have been identified as Repetitive Loss (RL) and Severe Repetitive Loss (SRL), such as acquisition/relocation or elevation depending on feasibility. The parameters for this initiative would be: funding, benefits versus cost, and willing participation of property owners. Specifically identified are properties in the following locations:
Project #	-S L	TS- 9	TS- 10	TS- 11	TS- 12	13- 13



# **Completed Mitigation Initiatives Not Identified in the Previous Mitigation Strategy**

The Town of Somers has identified the following mitigation projects/activities that have also been completed but were not identified in the previous mitigation strategy in the 2015 HMP:

- Emergency generator being installed at Heritage Hills emergency shelter, to be completed 2021.
- Lakeview Drive box culvert installed to mitigate flooding.
- Emergency Generator for Highway Garage is in process, anticipated 2022.

# **Proposed Hazard Mitigation Initiatives for the HMP Update**

The Town of Somers participated in a mitigation action workshop in October 2021 and was provided the following FEMA publications to use as a resource as part of their comprehensive review of all possible activities and mitigation measures to address their hazards: FEMA 551 'Selecting Appropriate Mitigation Measures for Floodprone Structures' (March 2007) and FEMA 'Mitigation Ideas – A Resource for Reducing Risk to Natural Hazards' (January 2013).

The table below indicates the range of proposed mitigation action categories.

Table 9.22-19. Analysis of Mitigation Actions by Hazard and Category

CARL STORE TO BE SUIT TO SURE THE	FEMA				CRS					
Hazard	LPR	SIP	NSP	EAP	PR	PP	PI	NR	SP	ES
Disease Outbreak	X	X			X			X 8	100	X
Earthquake	X	X			X					X
Extreme Temperature	X	X			X					X
Flood	X	X		X	X	X	X		X	X
Severe Storm	X	X	X		X	X		X		X
Severe Winter Storm	X	X	X	X	X		X	X		X
Wildfire	X	X			X					X
CBRN	X	X			X					X

Note: Section 6 (Mitigation Strategy) provides for an explanation of the mitigation categories.

Table 9.22-20 summarizes the comprehensive-range of specific mitigation initiatives the Town of Somers would like to pursue in the future to reduce the effects of hazards. Some of these initiatives may be previous actions carried forward for this plan update. These initiatives are dependent upon available funding (grants and local match availability) and may be modified or omitted at any time based on the occurrence of new hazard events and changes in municipal priorities. Both the four FEMA mitigation action categories and the six CRS mitigation action categories are listed in the table below to further demonstrate the wide-range of activities and mitigation measures selected.

As discussed in Section 6, 14 evaluation/prioritization criteria are used to complete the prioritization of mitigation initiatives. For each new mitigation action, a numeric rank is assigned (-1, 0, or 1) for each of the 14 evaluation criteria to assist with prioritizing your actions as 'High', 'Medium', or 'Low.' The table below summarizes the evaluation of each mitigation initiative, listed by Action Number.

Table 9.22-21 provides a summary of the prioritization of all proposed mitigation initiatives for the HMP update.



Table 9.22-20. Proposed Hazard Mitigation Initiatives

CRS Category	£ TO STATE OF THE	BS
Mitigation Category	dis .	SIP
Priority	High	High
Potential Funding Sources	FEMA HMGP and FMA, local cost share by residents	FEMA HMGP and BRIC, USDA Community Facilities Grant Program, Emergency Manageme nt  nt Performanc e Grants
Estimated Benefits	Eliminates flood damage to homes and residents, creates open space for the municipality increasing flood storage.	Protect public health and safety, and ensure continued operation of critical facility and essential functions during power outages.
Estimate d Costs	High	High
Lead Agency	NFIP Floodplain Administrator, supported by homeowners	Engineer, Public Works
Estimate d Timeline	3 years	Within 5
EHP Issues	Non	Non e
Critical Facility (Yes/No)	o Z	Yes
Description of Problem and Solution	Problem: Frequent flooding events have resulted in damages to residential properties. These properties have been repetitively flooded as documented by paid NFIP claims. The Town has 3 repetitive loss properties, but other properties may be impacted by flooding as well. Warren St near Greenbriar has recently flooded.  Solution: Conduct outreach to 10 flood-prone property owners, including RL/SRL property owners and provide information on mitigation alternatives. After preferred mitigation measures are identified, collect required property-owner information and develop a FEMA grant application and BCA to obtain funding to implement acquisition/purchase/moving/elevat ing residential homes in the flood prone areas that experience frequent flooding (high risk areas).	Problem: Critical facilities require backup power to maintain continuity of operations. The Heritage Hills emergency shelter and the Highway Garage lack backup power sources.  Solution: The Engineer will research what size generator is needed to power the Heritage Hills emergency shelter and the Highway Garage. The Town will then purchase and install the selected
Hazard(s ) to be Mitigate d	Flood, Severe Storm	All Hazards
Goal s Met	1,2	1,2
Project Name	Repetitive Loss Mittgation	Backup Power for Critical Facilities
Project Number	Town of Somers -001	2021- Town of Somers -002





CRS Category		ES	ዋ 、ያ	A .	Ad .
Mitigation Category		SIP	SIP	LPR	SIP
Priority		High	High	High	Mediu m
Potential Funding Sources	(EMPG) Program, Municipal Budget	BRIC, HMGP, Assistance to Firefighters Grant Program, Town budget	BRIC, HMGP, Town budget	Town budget	Town budget
Estimated Benefits		Increased firefighting capabilities	Reduced flood risk	Increased HMP integration	Reduced flooding and risk for egress issues
Estimate d Costs		High	Medium	Staff time	Medium
Lead Agency		Fire Department, Water and Sewer	Engineer, Public Works	Director of Planning, Supervisor	Highway Department
Estimate d Timeline		Within 5 years	Within 5 years	2 years	Within 5 years
EHP Issues		Non	Non	Nom	Non
Critical Facility (Yes/No)		°Z	Š	°Z	oN.
Description of Problem and Solution	generator and necessary electrical components to supply backup power to the Heritage Hills emergency shelter and the Highway Garage. Public Works will be responsible for maintenance and testing of the generators following installation.	Problem: Water supply for firefighting is limited in areas.  Solution: The Town will determine areas suitable for extension of public water supply for firefighting. The Town is currently reviewing options to bring public water to B-HP District for fire protection.	Problem: The Mahopac Avenue Crossing of Muscoot River is flood prone.  Solution: The Town will evaluate potential flood mitigation options at Mahopac Avenue crossing of Muscoot River. Cost effective options will be implemented.	Problem: The Comprehensive Plan lacks information contained within the HMP on hazards and mitigation.  Solution: The Director of Planning and Supervisor will review and oversee inclusion of hazard mitigation concepts into the Comprehensive Plan update.	Problem: Existing drainage facilities do not have sufficient capacity for heavy rain events.
Hazard(s ) to be Mitigate d		Wildfire	Flood	All Hazards	Flood
Goal S Met		1, 2, 4	1, 2	2	2
Project Name		Water Supply Extension	Mahopac Avenue Crossing of Muscoot River Flood Mitigation	HMP Integration in Comprehensiv e Plan	Upgrade Undersized Drainage Systems
Ргојесt Иитрег		2021- Town of Somers -003	2021- Town of Somers -004	2021- Town of Somers -005	2021- Town of Somers -006





Viogets CAC		E .	П	z
Mitigation Category		EAP	EAP	LPR
Priority		Mediu	High	High
Potential Funding Sources		NYSDOT	FEMA grants, Municipal budget	NYSDEC Urban Forestry grant, Municipal budget
Estimated Benefits		Reduce risk of vehicle accidents	Facility managers aware of flood exposure and potential mitigation options	Reduction in falling trees, power outages and communicatio n failure
Estimate d Costs		Medium	Staff time	Staff time
Lead Agency		Engineer	FPA	Administratio n, Public Works
Estimate d Timeline		Within 5 years	Within 6 months	Within 6 months
EHP lesnes		Non	Non	o Non
Critical Pacility (Yes/No)		°Z	Yes	°N
Description of Problem and Solution	Solution: The Highway Department and Engineer will design and install improved drainage systems.	Problem: Areas of Route 6 are prone to icing due to inadequate drainage.  Solution: The engineer will encourage NYSDOT to improve roadside drainage through installation of drainage systems on Route 6.	Problem: The Town has numerous critical facilities with flood exposure which are privately owned.  Solution: The FPA will conduct outreach to facility managers to discuss flood exposure and potential options for mitigation. The FPA will assist facility owners with applications for funding to assess dam maintenance, hazard classification, and needed repairs.	Problem: The Town is impacted by power outages and communication failure from falling tree branches. The Town lacks a Community Forestry Management Plan.  Solution: The Town will develop and adopt a Community Forestry Management Plan that identifies necessary maintenance of hazardous trees that could result in power outages and communication outages.
Hazard(s ) to be Mitigate d		Flood, Severe Winter Storm	Flood	Severe Storm, Severe Winter Storm, Wildfire
Goal S Met		m	6	1,2,
Project Name		Route 6 Drainage	Critical Facility Flood Outreach	Community Forestry Management Plan
Project Mumber		2021- Town of Somers -007	Town of Somers -008	Town of Somers -009



CRS Category	 ස	a The second	ES
Mitigation Category	ags .	EAP	LPR
Priority	High	High	High
Potential Funding Sources	HMGP and BRIC, USDA Community Facilities Grant Program, Municipal Budget	Town budget	Town budget
Estimated Benefits	Protect critical facilities to the 500-year flood level	Dam statuses determined	Temporary and permanent housing locations identified
Estimate d Costs	Medium, TBD by feasibility assessme nt	Staff time	Staff time
Lead Agency	Engineer	Administratio n	Administratio n working with Westchester County
Estimate d Timeline	Within 5	l year	6 months
EHP Issues	Non	Non	Non
Critical Facility (Yes/No)	Yes	Yes	Š
Description of Problem and Solution	Problem: The Town has several Town-owned potable water wells located within the SFHA.  Solution: The Engineer will survey each flood exposed well to determine level of flood protection. For facilities not protected to the 500-year flood level, the Town will complete a feasibility assessment to determine cost-effective measures that can be completed to provide 500-year flood protection. Costeffective measures will be completed.	Problem: The status of maintenance and hazard classification of dams needs to be reviewed to identify any necessary repair actions. Dams in the Town are privately owned.  Solution: The Administration will conduct outreach to dam owners to determine the status of maintenance and hazard classification of dams. The Town will encourage dam owners to conduct proper maintenance, assess all dam risks, and have proper emergency preparedness plans in place.	Problem: The Town has not identified appropriate locations for the placement of temporary and permanent housing outside of the Special Flood Hazard Area.  Solution: The Town will work with Westchester County to identify appropriate locations for the siting
Hazard(s ) to be Mitigate d	Flood	Flood	All Hazards
Goal s Met	2,7		1,2
Project Name	Potable Well Flood Protection	Dam Status	Temporary and Permanent Housing
Project Number	Town of Somers -010	2021- Town of Somers -011	2021- Town of Somers -012







CRS Category	
Mitigation Category	
Priority	
Potential Funding Sources	
Estimated Benefits	
Estimate d Costs	
Lead Agency	
Estimate d Timeline	
EHP Issues	
Critical Facility (Yes/No)	
Description of Problem and Solution	of temporary and permanent housing within the region.
Hazard(s ) to be Mitigate d	
Goal S Met	
Project Name	
Project Munber	

lotes:

Not all acronyms and abbreviations defined below are included in the table.

Timeline. The time required for completion of the project upon implementation	Cost: The sotimated coet for involvmentation	Benefits:	A description of the estimated benefits, either quantitative and/or qualitative.
Potential FEMA HMA Funding Sources: FMA Flood Mitigation Assistance Grant Program HMGP Hazard Mitigation Grant Program	BRIC Building Resilient Infrastructure and Communities Program		
Acronyms and Abbreviations: CAV Community Assistance Visit CRS Community Rating System	Department of Public Works Environmental Planning and Historic Preservation	Federal Emergency Management Agency Floodplain Administrator	Hazard Mitigation Assistance Not applicable
Acronyn CAV CRS	DPW EHP	FEMA FPA	HMA N/A

# Critical Facility:

National Flood Insurance Program Office of Emergency Management

NFIP OEM Yes 

Critical Facility located in 1% floodplain

# Mitigation Category:

- Local Plans and Regulations (LPR) These actions include government authorities, policies or codes that influence the way land and buildings are being developed and built.
- Structure and Infrastructure Project (SIP) These actions involve modifying existing structures and infrastructure to protect them from a hazard area. This could apply to public or private structures as well as critical facilities and infrastructure. This type of action also involves projects to construct manmade structures to reduce the impact of hazards.
- Natural Systems Protection (NSP) These are actions that minimize damage and losses, and also preserve or restore the functions of natural systems.
- Education and Awareness Programs (EAP) These are actions to inform and educate citizens, elected officials, and property owners about hazards and potential ways to mitigate them. These actions may also include participation in national programs, such as StormReady and Firewise Communities

# CRS Category:

- Preventative Measures (PR) Government, administrative or regulatory actions, or processes that influence the way land and buildings are developed and built. Examples include planning and zoning, floodplain local laws, capital improvement programs, open space preservation, and storm water management regulations.
- Property Protection (PP) These actions include public activities to reduce hazard losses or actions that involve (1) modification of existing buildings or structures to protect them from a hazard or (2) removal of the structures from the hazard area. Examples include acquisition, elevation, relocation, structural retrofits, storm shutters, and shatter-resistant glass.
  - Public Information (PI) Actions to inform and educate citizens, elected officials, and property owners about hazards and potential ways to mitigate them. Such actions include outreach projects, real estate disclosure, hazard information centers, and educational programs for school-age children and adults.





- Natural Resource Protection (NR) Actions that minimize hazard loss and also preserve or restore the functions of natural systems. These actions include sediment and erosion control, stream corridor restoration, watershed management, forest and vegetation management, and wetland restoration and preservation.
  - Structural Flood Control Projects (SP) Actions that involve the construction of structures to reduce the impact of a hazard. Such structures include dams, seiback levees, floodwalls, retaining walls, and safe rooms.
- Emergency Services (ES) Actions that protect people and property during and immediately following a disaster or hazard event. Services include warning systems, emergency response services, and the protection of essential facilities

9,22-31



Table 9.22-21. Summary of Prioritization of Actions

High / Medium / Low	High	High	High	High	High	High	High	High	High	High	High	High
Total	10	12	10	Ξ	14	11	13	13	14	10	13	14
Other Community Objectives	-	-	-	-	-	-		-	-	-	-	_
Agency Champion	-	-	-	-	-	-	-	-	_	-	-	-
əniləmiT	0	0	0	0	-	0	0	1	-	0		1
Multi-Hazard	-	1	0	0	-	0	-	0	-	0	0	1
Administrative	0	_	_	-	-	-	_	-	1	-	-	-
Social	0	-		1	-	П	-		1	1	T.	-
Environmental	-	-	-	1	-	-	-	1	-	-	-	-
lsosia	0	0	0	0	-	0	-	П	1	0	-	-
Legal	_	-	-	1	-	-	-	1	1	Г	1	-
Political	-	-	-	1	-	-	-	1	-	-	-	-
Technical	1		-	1	_	-	-	1	1	0	_	_
Cost-Effectiveness	_	1	-	1	-	-	-	1	-	-	_	_
Property Protection	1	-	0	-	-		-	1	-	-	-	-
Life Safety	1	-	1	1	-	1	1	1	-	-	1	
Project Name	Repetitive Loss Mitigation	Backup Power for Critical Facilities	Water Supply Extension	Mahopac Avenue Crossing of Muscoot River Flood Mitigation	HMP Integration in Comprehensive Plan	Upgrade Undersized Drainage Systems	Route 6 Drainage	Critical Facility Flood Outreach	Community Forestry Management Plan	Potable Well Flood Protection	Dam Status	Temporary and
Project Number	2021-Town of Somers-001	2021-Town of Somers-002	2021-Town of Somers-003	2021-Town of Somers-004	2021-Town of Somers-005	2021-Town of Somers-006	2021-Town of Somers-007	2021-Town of Somers-008	2021-Town of Somers-009	2021-Town of Somers-010	2021-Town of Somers-011	2021-Town of Somers-012

Note: Refer to Section 6, which conveys guidance on prioritizing mitigation actions. Low (0-4), Medium (5-8), High (9-14).





# 9.22.9 Action Worksheets

The following action worksheets have been developed by the Town of Somers to aid in the submittal of grant applications to support the funding of high priority proposed actions.



F. 77 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		Action \	Work	sheet	1155	THE RESERVE		
Project Name:	Backup Power for Critical Facilities							
Project Number:	2021-Town of Somers-002							
Risk / Vulnerability		1 2 19			UN SIN			
Hazard(s) of Concern:	All Hazards							
Description of the Problem:	Critical facilities require backup power to maintain continuity of operations. The Heritage Hills emergency shelter and the Highway Garage lack backup power sources.							
Action or Project Intended	for Implementatio	n	21.8	St. III Gard	100			
Description of the Solution:	The Engineer will research what size generator is needed to power the Heritage Hills emergency shelter and the Highway Garage. The Town will then purchase and install the selected generator and necessary electrical components to supply backup power to the Heritage Hills emergency shelter and the Highway Garage. Highway Department will be responsible for maintenance and testing of the generators following installation.							
Is this project related to a								
	Is this project related to a Critical Facility located within the 100-year floodplain?							
(If yes, this project must intend	to protect the 500-year	flood ever	nt or th	e actual worse case	damage s	cenario, whichever is greater)		
Level of Protection:	N/A	NI/A		mated Benefits ses avoided):		Protect public health and safety, and ensure continued operation of critical facility and essential functions during power outages.		
Useful Life:	20 years		Goals Met:			1, 2		
Estimated Cost:	High		Mitigation Action Type:			Structure and Infrastructure Projects (SIP)		
Plan for Implementation			100		J. British			
Prioritization:	High		Desired Timeframe for Implementation:			Within 5 years		
Estimated Time Required for Project Implementation:	1 year		Pote	ential Funding Sc	urces:	FEMA HMGP and BRIC, USDA Community Facilities Grant Program, Emergency Management Performance Grants (EMPG) Program, Municipal Budget		
Responsible Organization:	Engineer, Highway Department		Local Planning Mechanisms to be Used in Implementation if any:			Hazard Mitigation, Emergency Management		
Three Alternatives Considered (including No Action)								
	Action		Estimated Cost			Evaluation		
	No Action  Install solar panels				W	Problem continues.  Weather dependent; need large		
Alternatives:					amo e	amount of space for installation; expensive if repairs needed		
Install wind turbing		bine				Veather dependent; poses a threat to wildlife; expensive repairs if needed		
Progress Report (for plan	maintenance)	allfa l	BULL	STE MAN				
Date of Status Report:								
Report of Progress:								
Update Evaluation of the Problem and/or Solution:								



	Actio	on Worksheet				
Project Name:	Backup Power for Critical Facilities					
Project Number:	2021-Town of Somers-002					
Criteria	Numeric Rank (-1, 0, 1)	Provide brief rationale for numeric rank when appropriate				
Life Safety	1	Project will protect critical services of critical facilities				
Property Protection	1	Project will protect buildings from power loss.				
Cost-Effectiveness	1					
Technical	1					
Political	1					
Legal	1	The Town has the legal authority to complete the project.				
Fiscal	0	Project requires funding support.				
Environmental	1					
Social	1					
Administrative	1					
Multi-Hazard	1	All Hazards				
Timeline	0	Within 5 years				
Agency Champion	1	Engineer, Highway Department				
Other Community Objectives	1					
Total	12					
Priority (High/Med/Low)	High					



Action Worksheet									
Project Name:	Critical Facilities Flood Protection								
Project Number:	2021- Town of Somers -010								
Risk / Vulnerability		100	A)		I BURET				
Hazard(s) of Concern:	Flood								
Description of the Problem:	The Town has several Town-owned potable water wells located within the SFHA.								
Action or Project Intended				100					
Description of the Solution:	The Engineer will survey each flood exposed critical facility to determine level of flood protection. For facilities not protected to the 500-year flood level, the Town will complete a feasibility assessment to determine cost-effective measures that can be completed to provide 500-year flood protection. Cost-effective measures will be completed.								
Is this project related to a	Critical Facility?	Yes	$\boxtimes$	No					
Is this project related to a Critical Facility located within the 100-year floodplain?		Yes	$\boxtimes$	⊠ No □					
(If yes, this project must intend t		flood ever	nt or th	e actual	worse ca	se damage so	cenario, whichever is greater)		
Level of Protection:	500-year flood l		Estimated Benefits (losses avoided):				Ensures continuity of operations of potable water wells		
Useful Life:	TBD by feasibi assessment	lity	Goals Met:				1, 2		
Estimated Cost:	Medium, TBD feasibility assess	Mitigation Action Type:			Гуре:	Structure and Infrastructure Projects (SIP)			
Plan for Implementation	REPORT FRANCE	a 50 3		RIE					
Prioritization:	High			esired Timeframe for nplementation:			Within 5 years		
Estimated Time Required for Project Implementation:	1 year		Potential Funding Sources:			Sources:	FEMA HMGP and PDM, BRIC, USDA Community Facilities Grant Program, Town Budget		
Responsible Organization:	Engineer		Local Planning Mechanisms to be Used in Implementation if any:				Hazard Mitigation		
Three Alternatives Conside		Action)			17.24				
	Action		Estimated Cost			Evaluation			
Alternatives:	No Action Relocate wells		\$0 N/A				Problem continues.		
	Build levee around each well					No	Not possible space for full levee system		
Progress Report (for plan					W 11 10				
Date of Status Report:									
Report of Progress:									
Update Evaluation of the Problem and/or Solution:									



	Actio	on Worksheet				
Project Name:	Critical Facilities Flood Protection					
Project Number:	2021- Town of Somers -010					
Criteria	Numeric Rank (-1, 0, 1)	Provide brief rationale for numeric rank when appropriate				
Life Safety	1	Project will protect critical services of potable wells				
Property Protection	1	Project will protect potable wells from flood damage.				
Cost-Effectiveness	1					
Technical	0	Technical feasibility of flood protection unknown.				
Political	1					
Legal	1	The Town has the legal authority to complete the project.				
Fiscal	0	Project requires funding support.				
Environmental	1					
Social	1					
Administrative	1					
Multi-Hazard	0	Flood				
Timeline	0	Within 5 years				
Agency Champion	1	Engineer				
Other Community Objectives	1	Protection of critical services				
Total	10					
Priority (High/Med/Low)	High					

# **Electric Service Agreement**

Sout to:
2021 NYSEG ESA TEMPLATE 2021TO TAIL (2021)
TO TAIL (2021) Exhibit 1 to accompany the Memorandum of Understanding on Community Choice Aggregation

between local government members of Sustainable Westchester, Constellation NewEnergy, Inc., and Sustainable Westchester

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## **RECITALS**

WHEREAS, Sustainable Westchester, Inc. sought approval of a demonstration community choice energy aggregation ("Community Choice") program in Westchester County in 2014, which would allow local governments to participate in a Sustainable Westchester program to procure energy supply from an Energy Services Company for the residents of the municipalities;

WHEREAS, on February 26, 2015, the Public Service Commission of the State of New York approved implementation of the first Community Choice pilot program in New York State;

WHEREAS, the PSC subsequently issued the order "Authorizing Framework for Community Choice Aggregation Opt-out Program" on April 21, 2016 (the "CCA Framework Order") enabling Community Choice throughout New York State;

WHEREAS, the Westchester Community Choice Aggregation program (also known as Westchester Power) is intended to include residential and small non-residential customers, and to permit the aggregation of electric purchases by the communities which elect to participate;

WHEREAS, the Town of Somers ("Municipality") has adopted a Local Law to participate in the Sustainable Westchester Community Choice Program ("Program") to aggregate customers located within the Municipality and to negotiate competitive rates for the supply of electricity for such customers;

WHEREAS, the program allows Municipality to solicit competitive bids for the supply of electricity individually or as part of a buying group with other municipal aggregators;

WHEREAS, Sustainable Westchester, Inc. has been authorized by the Municipality to act as Program Manager for a Community Choice Program, pursuant to Local Law and Memorandum of Understanding 2021, issue a request for proposals ("RFP") to suppliers to provide energy to Participating Customers, and to award supply contracts;

WHEREAS, the Program executed the first electric service contracts in 2016 (the "2016 ESA") with four municipalities in the Westchester New York State Electric and Gas ("NYSEG") utility territory, and added one more municipality in 2018, and the most recent contracts expire on November 30, 2021;

WHEREAS, Constellation NewEnergy, Inc., an entity duly authorized to conduct business in the State of New York as an energy service company ("ESCO") (the "Competitive Supplier"), desires to provide Full-Requirements Power Supply to customers located within the Municipality, pursuant to the terms and conditions of the Municipality's Program and this Electric Service Agreement ("ESA");

WHEREAS, the Municipality desires that the Competitive Supplier provide Firm Full-Requirements Power Supply and Consolidated Billing as an alternative to Default Service for customers within the Municipality;

WHEREAS, Competitive Supplier is willing to to provide two distinct electric supply products and two corresponding pricing levels, (1) a Standard Product and price, and (2) a 100% Renewable Clean Power Product comprised of the Standard Product plus New York Voluntary Clean Power RECs and price as set out in Exhibit A herein;

WHEREAS, Municipality has chosen the Standard Product as the Default Product for Participating Customers;

WHEREAS, Competitive Supplier agrees to pay a fee to Program Manager;

WHEREAS, Municipality prefers for Competitive Supplier to collect and remit the fees due the Program Manager;

WHEREAS, the local governments that participate in the Sustainable Westchester Community Choice Program, including this Municipality, intend that this Agreement be uniform in form and substance in each instance throughout the Program; and

NOW THEREFORE, IT IS AGREED THAT, Municipality, Program Manager, and the Competitive Supplier hereby enter into this ESA subject to the terms and conditions below.

# **ELECTRIC SERVICE AGREEMENT**

## ARTICLE 1 DEFINITIONS

Capitalized terms that are used but not defined in the body of this ESA, including the Exhibits hereto, shall be defined as set forth in this Article 1. Words defined in this Article 1 that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

- 1.0 Associated Entities Any and all of the employees, officers, agents, representatives, and independent contractors and subcontractors of the Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, the Competitive Supplier in meeting its obligations under the ESA, but specifically excluding the Distribution Utility.
- Bankruptcy With respect to a Party, (i) such Party ceases doing business as a going 1.1 concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, provided that, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.
- 1.2 CCA Orders Collectively, the February 26, 2015 "Order Granting Petition in Part" issued by the PSC in Case 14-M-0564; the April 21, 2016 "Order Authorizing Framework for Community Choice Aggregation Opt-out Program" issued by the PSC in Case 14-M-0224 (the "CCA Framework Order"), which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; and the November 15, 2018 "Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program" issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan.

- 1.3 100% Renewable Clean Power Product Firm Full-Requirements Power Supply matched with New York Voluntary Clean Power RECs (hydropower, solar energy or wind energy) as defined in, and subject to the Attribute delivery rules set forth in, the New York Generation Tracking System ("NYGATS") Operating Rules, supporting the Public Service Commission's Environmental Disclosure Program, as further described and defined in Exhibit A—Part 2.
- 1.4 Commercially Reasonable Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations, as defined in the Uniform Business Practices or without limitation in additional applicable law and regulations, provided that in no event shall increased costs or economic hardship be an excuse for not performing a Party's obligations under this ESA.
- 1.5 Community Choice Municipal electricity procurement program, purchasing supply for the aggregated demand for all Participating Customers within the Municipality.
- 1.6 Competitive Supplier or Energy Services Company ("ESCO")— An entity duly authorized to conduct business in the State of New York as an ESCO.
- 1.7 Consolidated Billing A billing option that provides Participating Customers with a single bill issued by the Distribution Utility combining delivery and supply charges from the Distribution Utility and Competitive Supplier respectively.
- 1.8 Default Product The product selected by the Municipality for supply to its Participating Customers, unless they take action to select a different product or opt out.
- 1.9 Default Service Supply service provided by the Distribution Utility to customers who are not currently receiving service from a Competitive Supplier.
- 1.10 Delivery Term The period for which prices for Firm Full-Requirements Power Supply have been established, as set forth in Exhibit A.
- 1.11 Distribution Utility Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Municipality.
- 1.12 Electronic Data Interchange ("EDI") The exchange of business data in a standardized format between business computer systems.
- 1.13 Effective Date The date upon which this ESA has been executed by the Parties (to be determined by the later date, if the Parties execute on different dates).
- 1.14 Eligible Customers Customers of electricity eligible to participate in the CCA Program, either on an Opt-out or Opt-in basis, as delineated in the CCA Framework Order. For

the avoidance of doubt, all Eligible Customers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality and served by the Distribution Utility, as such boundaries exist on the Effective Date of this ESA.

- 1.15 ESA This Electric Service Agreement.
- 1.16 Environmental Disclosure Label The fuel mix purchased by an ESCO and the related emissions of those fuels compared to a statewide average, which is required to be reported under the DPS's Environmental Disclosure Program.
- 1.17 Federal Energy Regulatory Commission ("FERC") The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.
- 1.18 Firm Full-Requirements Power Supply The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply at a fixed contract price including all those components regardless of changes in kWh usage or customer grouping during the contract term to Participating Customers at the Point of Sale.
- 1.19 Force Majeure Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of any Party shall not constitute an event of Force Majeure.
- 1.20 General Communications The type of communications described and defined in Article 5.7 herein.
- 1.21 Governmental Authority Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Municipality.
- 1.22 Governmental Rule Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

- 1.23 kWh, kW Kilowatt-hour and kilowatt, respectively.
- 1.24 Local Law A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Sustainable Westchester Community Choice Program.
- 1.25 Memorandum of Understanding 2021 Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.
- 1.26 Newly Opt-Out Eligible Customers Residential and small commercial customers of electricity that become Opt-out Eligible Customers after the Effective Date, including those that move into Municipality and those who complete or terminate other 3<sup>rd</sup> party supply contracts and have returned to Default Service, provided these customers have not previously opted out of the Program.
- 1.27 New Taxes Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Customers.
- 1.28 Nominal Start Date February 28, 2022, which is the date immediately preceding the Service Commencement Date.
- 1.29 NYISO The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.
- 1.30 Opt-out Eligible Customers Eligible Customers that are eligible for Opt-out treatment as delineated in the CCA Framework Order. For the avoidance of doubt, Opt-out Eligible Customers shall not include customers that have previously opted-out of the Program.
- 1.31 Participating Customers Eligible Customers enrolled in the Program, including Opt-out Eligible Customers who have been enrolled subsequent to the opt-out process and other customers who have been enrolled after opting in.
- 1.32 Parties The Municipality, the Program Manager, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.
- 1.33 Point of Delivery The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.
- 1.34 Point of Sale The electric meter for each Participating Customer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.

- 1.35 Program Sustainable Westchester Community Choice Aggregation Program.
- 1.36 Program Manager Sustainable Westchester, Inc., a non-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Customers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.
- 1.37 PSC or DPS The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.
- 1.38 Qualifying Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation. To meet the threshold of being a Qualifying Regulatory Event, the impact of the event must impact the majority of customers in the same rate class, but not including a Regulatory Event that applies uniquely to Competitive Supplier. Notwithstanding anything to the contrary in this ESA or the RFP, any changes to the Purchase of Receivables (POR) approved by the PSC shall be deemed a Qualifying Regulatory Event hereunder.
- 1.39 Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.
- 1.40 Retail Price As set forth in Exhibit A.
- 1.41 Service Commencement Date The date of the first meter read date for Participating Customers after the Nominal Start Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.
- 1.42 Standard Product Firm Full-Requirements Power Supply consisting of the standard generation mix, meeting the minimum Clean Energy Standard for electric power established by New York State.
- 1.43 Term As defined in Article 4.1.

1.44 Uniform Business Practices – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights, issued by the New York State Public Service Commission (Case 98-M-1343).

## ARTICLE 2 RIGHTS GRANTED

# 2.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to be the default provider of Firm Full-Requirements Power Supply to Participating Customers pursuant to the terms of this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Firm Full-Requirements Power Supply only to Participating Customers enrolled in the plan or plans managed by the Program Manager, and the Distribution Utility will continue to have the right and obligation to supply electricity to Eligible Customers who opt-out of the Program and remain on, or return to, Default Service, until changes in law, regulation or policy may allow otherwise.

In accordance with Article 3 below, all Opt-out Eligible Customers shall be automatically enrolled in the Program unless they choose to opt-out or have previously opted out of the Program. In the event the geographic boundaries of the Municipality change during the term of this ESA, Competitive Supplier shall only be obligated to supply Firm Full-Requirements Service to those Participating Customers located within the Municipality as such boundaries existed on the Effective Date of this ESA. As between the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Distribution Utility, and any arrangements which may be necessary with the NYISO so that Participating Customers receive the electricity supplies to be delivered pursuant to this ESA.

The Municipality shall specifically authorize the Distribution Utility to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Customers as is reasonably available from the Distribution Utility. The Distribution Utility Fees for the provision of this data shall be paid for by the Supplier. Competitive Supplier shall request consumption data for individual Participating Customers from the Distribution Utility via EDI. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the Program Manager, on behalf of the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Customers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Participating Customers and/or the PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier or any of its Associated Entities makes in the provision of Firm Full-Requirements Power Supply only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

# 2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 18.11, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the CCA Orders and Local Law for Eligible Customers to purchase electricity from the Competitive Supplier in accordance with this ESA. The Municipality, or Program Manager in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Customers interested in contracting for electric supply and on behalf of all Participating Customers, unless otherwise prevented by law.

# 2.3 COMPLIANCE WITH LAWS

The Municipality represents that the Local Law has been duly adopted.

Competitive Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations, requirements, and orders of the FERC, NYISO, and PSC.

# 2.4 CONDITIONS PRECEDENT

The Municipality's obligations under this ESA shall be conditioned upon the Competitive Supplier fulfilling the following requirements:

- a) maintain Competitive Supplier's license from PSC (as such term is defined in the Local Distribution Utility's Terms and Conditions for Competitive Suppliers);
- b) execute any appropriate NYISO applications and agreements;
- c) obtain authorization from the FERC to sell power at market-based rates;
- d) complete EDI testing with Distribution Utility;
- e) provide all other documentation required by the Distribution Utility; and
- f) satisfying all insurance requirements set forth in Article 16 or elsewhere in this ESA.

If Competitive Supplier has not fulfilled all such requirements fourteen days prior to the Nominal Start Date, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier.

# 2.5 OWNERSHIP AND USE OF ELIGIBLE CUSTOMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Customer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm Full-Requirements Power Supply to Participating Customers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Customer data without the prior written consent of the Municipality is strictly prohibited. Competitive Supplier may share such Eligible Customer data with third-party vendors as reasonably necessary to

accommodate Competitive Supplier's provision of Firm Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables or enhancement of data exchange between the Parties), provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data through a signed non-disclosure agreement, a copy of which will be provided to the Municipality. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Customer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Customer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Customer data, Competitive Supplier and its Associated Entities shall treat such Eligible Customer data as confidential information. Competitive Supplier may use Eligible Customer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

# ARTICLE 3 CUSTOMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

## 3.1 CUSTOMER CHOICE

The Parties acknowledge and agree that all Participating Customers have the right, pursuant to CCA Orders, Local Law, and the Program, to change their source or product of electricity supply, as set forth in Article 2.1. The Parties represent and warrant to each other that they shall not interfere with the right of Participating Customers to opt-out of the Program, and shall comply with any rules, regulations or policies of PSC, the Distribution Utility and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Not inconsistent with the above, however, the Parties may take Commercially Reasonable measures to encourage Participating Customers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

# 3.2 NOTIFICATION TO NEWLY OPT-OUT ELIGIBLE CUSTOMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a Newly Optout Eligible Customer and has provided to Competitive Supplier such Newly Optout Eligible Customer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such Newly Optout Eligible Customer (i) of the date on which such Newly Optout Eligible Customer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such Newly Optout Eligible Customer as of the same date, subject to the optout provisions of the PSC Orders, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be

mailed to each such Newly Opt-out Eligible Customer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A; (iii) state how such Newly Opt-out Eligible Customer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Customers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality.

In providing the notifications set forth in this Article 3.2, and in otherwise conducting the activities in Article 3.4 below, the Competitive Supplier must rely upon information provided to it by the Distribution Utility for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors in connection with notification of Eligible Customers only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

# 3.3 CUSTOMER AWARENESS

Upon mutual agreement concerning the content and method, either the Competitive Supplier, Municipality, or Program Manager may conduct customer awareness efforts at its sole expense.

# 3.4 ENROLLMENT

- 3.4.1 Participating Customers –All Opt-out Eligible Customers as of the Effective Date will be enrolled in the Program, thus becoming Participating Customers, under the terms of this ESA unless they opt-out during the 30-day period specified in the PSC Orders. Participating Customers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Manager who has agreed in writing to a non-disclosure agreement, a copy of which will be provided to the Municipality, a list of Participating Customers as of the Effective Date, as well as such Participating Customer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Customers as of the Service Commencement Date.
- 3.4.2 Newly Opt-out Eligible Customers If Newly Opt-out Eligible Customers elect not to opt-out of the Program as provided in Article 3.2, such Newly Opt-out Eligible Customers will be automatically enrolled by Competitive Supplier in the Program. These Newly Opt-out Eligible Customers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at a price as defined in Exhibit A. For the avoidance of doubt, Participating Customers that have opted into the Program shall also be enrolled in the Program at a price as defined in Exhibit A. Competitive Supplier shall enroll such Newly Opt-out Eligible Customers and opt-in customers in accordance with applicable PSC and Distribution Utility rules. The Parties agree and acknowledge that on or about the customer meter read dates each October and

March during the term of this ESA, Competitive Supplier shall perform a refresh or new customer sweep to create a list of Newly Opt-Out Eligible Customers. As a result of any such refresh or sweep performed, Newly Opt-Out Eligible Customers will be automatically enrolled in the Program unless a customer opts out of the Program; provided, however, that no refresh, sweep or enrollment of such Newly Opt-Out Eligible Customers that are part of any refresh or sweep shall occur less than four (4) months prior to the End Date or in the event of termination of this ESA. Competitive Supplier may perform a refresh and enroll Newly Opt-out Eligible Customers outside of the October and March periods if mutually agreed to by all the Parties hereunder.

- 3.4.3 Eligible Customers Who Have Previously Opted Out At any time during this ESA, Eligible Customers who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such Eligible Customers at a price as set forth in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Customers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.
- 3.4.4 Customers Served by Third-Parties Customers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Customers under this ESA until such program terminates or is otherwise completed. Competitive Supplier agrees that customers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Customers. Competitive Supplier further agrees that customers being served under other competitive supply programs that terminate or are otherwise completed become Newly Opt-out Eligible Customers and may be automatically enrolled as Participating Customers under the CCA Orders in accordance with Section 3.2 above. Eligible Customers who opt-in as provided in this Article 3.4.4 or who enroll following the termination or completion of another competitive supply program offered by a third party shall be enrolled in the Program at the rates reflected in Exhibit A.
- 3.4.5 Termination Fees. There shall be no termination fees for any residential, small commercial, or municipal Participating Customers to disenroll from the Program.

## ARTICLE 4 TERM OF CONTRACT AND TERMINATION

# **4.1 TERM**

This ESA shall commence on the Effective Date; provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate as delineated in Exhibit A, unless this ESA is terminated earlier under Article 4.2 below ("Term"). Term shall not exceed 36 months unless otherwise agreed to in a writing signed by all Parties.

# 4.2 TERMINATION

This ESA may be terminated at any time upon written notice:

- a) by the Municipality, or the Competitive Supplier, if the other Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9), but excluding the failure to provide or arrange for Firm Full-Requirements Power Supply, which is addressed in Article 4.2(f), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event affects the Competitive Supplier and Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Customers; or
- d) by the Municipality, if a court, PSC or other lawful authority adjudicates contrary to Article 6; or
- e) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or
- f) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Firm Full-Requirements Power Supply to Participating Customers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Firm Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in Article 4.2(a).

# 4.3 OBLIGATIONS UPON TERMINATION

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA and Competitive Supplier shall continue to have the right to collect all monies due for services rendered to that date.

Upon termination of this ESA, Competitive Supplier shall have all Participating Customers switched back to obtaining supply from the Distribution Utility by submitting drop requests of all Participating Customers via EDI to the Distribution Utility in a form acceptable to the Distribution Utility. Competitive Supplier shall provide written notice to Program Manager at

least sixty (60) days prior to submitting any such Participating Customer drop requests in accordance with Section 4.3, which notice shall include the timing of submission of such requests to the Distribution Utility, that Competitive Supplier intends to be executed before or in anticipation of the termination of this ESA; provided, however, that Competitive Supplier's notice obligation shall not apply to any Participating Customer drop that is initiated by a Participating Customer.

# 4.4 EXTENSION

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A Extension. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by any Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

## ARTICLE 5 CONTINUING COVENANTS

The Competitive Supplier agrees and covenants to perform each of the following obligations during the term of this ESA.

# 5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Customers; and that, at all times with respect to Participating Customers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available.

# 5.2 CUSTOMER SERVICE ACCESS

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Customers. Such services shall be reasonably accessible to all Participating Customers, shall be available during normal working hours, shall allow Participating Customers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the Municipality, and the Distribution Utility. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Customers to contact Competitive Supplier during normal business hours (9:00 A.M.- 5:00 P.M. Eastern Time, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. To the extent practicable, the Municipality will post program-related information on the

Municipality's website which will be available to Participating Customers for general information, comparative pricing, product, and service information, and other purposes.

# 5.3 RESPONDING TO REQUESTS FOR INFORMATION

To the extent authorized by the Participating Customer(s) and to the extent such individual permission is required by law, the Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge therefore to reasonable requests of the Municipality for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Customers. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Customers, or to comply with any regulation of PSC regarding customer service.

# 5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Customers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Firm Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Customers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Customers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Customers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Customers (notwithstanding whether such disconnection is directed by NYISO).

# 5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Customers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential and small commercial as defined by the Distribution Utility) or by such other categories as appear in Exhibit A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the New York General Laws, the regulations of PSC, and other applicable provision of law. To the extent required by law and/or the conditions of any PSC approval of this ESA, the Competitive Supplier may not deny service to an Eligible or Participating Customer for

failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Customer's failure to pay bills from the Competitive Supplier, subject to any provisions of law or applicable PSC orders or regulations. Provision of electric energy supply shall be subject to Competitive Supplier's Standard Credit Policy, to the extent permitted by law, as described in Exhibit A.

## 5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Customers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible or Participating Customers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual customer), provide a copy of such General Communication to the Municipality and to Program Manager for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Manager. The Municipality or Program Manager shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality and Program Manager fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) above shall require approval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Customers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Completive Supplier's notice to exercise or enforce its rights under the ESA or Customer Agreement, including but not limited to any notice of Force Majeure or Change in Law.

# 5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier shall, at its expense, print and mail one letter or postcard per year to all active Participating Customers, the design of which shall be determined by the Municipality or Program Manager.

In addition, Competitive Supplier agrees that if it communicates with Participating Customers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality or Program Manager to include no less than three (3) inserts per year into such communications, provided that the Program Manager or Municipality, where appropriate pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the Municipality's demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) calendar days after receipt (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication which has been ordered by PSC or any other Governmental Authority to be so communicated. Competitive Supplier shall notify Program Manager at least two (2) weeks before a direct communication to Participating Customers is to be mailed. Program Manager shall provide Program General Communications insert file within seven (7) calendar days of receiving such notice.

Competitive Supplier agrees to allow and facilitate the Program Manager to utilize the supplier messages area of the bill for Program communications; provided, however, Program Manager shall provide a written request to Competitive Supplier of not less than fourteen (14) days, which requests details the message to be included on the bill, and any such message shall be subject to Competitive Supplier's approval, such approval not to be unreasonably withheld.

# 5.8 PARTICIPATING CUSTOMER LISTS

To the extent not prohibited by any Governmental Rule or expressly by any Participating Customer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Manager, provide aggregate consumption information as the Municipality or Program Manager may request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide Participating Customer lists in an electronic format, secure transfer mode, frequency and format as set out in Exhibit D, subject to non-disclosure agreement for customers who have not requested that their personal information be denied to Program Manager or to Municipality.

# 5.9 COMPLIANCE WITH LAWS

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

## 5.10 CONSENT

Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain

such consent or approval. In the event the Competitive Supplier requests the Municipality's assistance in obtaining such consent or approval and the Municipality anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs. Upon receiving the estimate, Competitive Supplier shall determine whether it will continue to request the Municipality's assistance, and if so, the Competitive Supplier shall reimburse the Municipality for all costs, up to the estimated dollar amount, reasonably incurred by the Municipality in connection with such efforts.

# ARTICLE 6 ROLE OF THE MUNICIPALITY

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Firm Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under the PSC Orders and Local Law and may include negotiating the terms and conditions under which Firm Full-Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full-Requirements Power Supply to Participating Customers. The Parties agree that, with regards to electricity, Municipality is not a "public utility company" or providing any "public utility service" within the meaning of GML 360 and Article 4 of Public Service Law as a result of this ESA. Should a court, PSC, or other lawful authority adjudicate to the contrary, the provisions of 4.2 a) shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to the PSC Orders and Local Law. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Customer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Firm Full-Requirements Power Supply.

Municipality may conduct outreach to the community in addition to the initial program notification letter, which will be delivered at the Competitive Supplier's expense, with a Business Reply Mail insert to allow Eligible Customer to opt out without postage expense. Municipality will report on their endeavors to Program Manager to inform residents on the Program and "non-demand charge" commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

## ARTICLE 7 ROLE OF PROGRAM MANAGER

# 7.1 PROGRAM MANAGER DUTIES

Sustainable Westchester Inc, as Program Manager, agrees to:

- a. Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b. Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Manager in furtherance of establishing the Program;

c. Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the PSC Orders, including but not limited to the following:

Agreeing to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.

In addition, Program Manager will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued.

- d. Sign the ESA in a timely fashion including the conditions that the Competitive Supplier is verified to be a qualified electricity supplier by the NYISO in the Distribution Utility's service territory and the Competitive Supplier's response to the Energy Procurement Request for Proposals is deemed compliant with the terms and conditions set forth in the ESA;
- e. Provide the Municipality with timely communications content to implement customer notification requirements for approval, not to be unreasonably withheld, given the projected schedule of Program's implementation;
- f. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities; and
- g. Fulfill any other responsibilities as set forth in this agreement herein.

## 7.2 PROGRAM MANAGER FEE

Competitive Supplier shall pay Program Manager \$0.001 for each kWh delivered, invoiced and paid for by Participating Customers during the Term ("Program Manager Fee" or "Fee"). The Parties agree that Competitive Supplier will remit the Program Manager Fee to the Program Manager, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Sustainable Westchester, Inc. for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

## 7.3 PAYMENT OF FEE

Payment to Program Manager will be made monthly by Automated Clearing House ("ACH") (an electronic network for financial transactions) to the account set forth in Exhibit C hereto, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Customers. The Program Manager Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Customer during the calendar month two months prior. For example, full payments received in January will be paid by the end of March. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail.

Program Manager shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact, financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

# 7.4 INDEPENDENT CONTRACTOR

The Parties agree that Program Manager is not an agent or employee of Competitive Supplier for any purpose. All expenses which are incurred by Program Manager in connection with this ESA shall be borne wholly and completely by Program Manager. Program Manager shall be responsible for all state, federal, and local taxes, including estimated taxes and social security and employment reporting for Program Manager or any employees or agents of Program Manager.

# 7.5 AUCTION SERVICE FEE

Competitive Supplier shall pay the auction service company, Transparent Energy ("Auction Service Company"), \$0.00020 for each kWh delivered, invoiced and paid for by Participating Customers during the Term ("Auction Service Fee"). The Parties agree that Competitive Supplier will remit the Auction Service Fee to the Program Manager for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

Payment to the Auction Service Company shall be made monthly by ACH to the account indicated by the Auction Service Company, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Customers. The Auction Service Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Customer during the calendar month prior. For example, for full payments received from Participating Customers in January the Auction Service Fee associated with those payments will be paid by the end of March. If Competitive Supplier has paid a past Auction Service Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due to the Auction Service Company and provide a sufficiently detailed explanation of the error.

# ARTICLE 8 PRICES AND SERVICES; BILLING

# 8.1 SCHEDULE OF PRICES AND TERMS

Competitive Supplier agrees to provide Firm Full-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this ESA, which Exhibit is hereby incorporated by reference into this ESA.

# 8.2 OBLIGATION TO SERVE

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full-Requirements Power Supply for all of the Participating Customers under the Program. Competitive Supplier, except as

explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Customers, regardless of their location or energy needs provided such Participating Customers are eligible under the applicable regulations and tariffs of the Distribution Utility.

# 8.3 METERING

The Distribution Utility will be responsible for any metering which may be required to bill Participating Customers in accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers.

# 8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

## 8.4.1 Title

Title to Firm Full-Requirements Power Supply will transfer from Competitive Supplier to Participating Customers at the Point of Sale. In accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers, the Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Distribution Utility.

# 8.4.2 Billing and Payment

Unless otherwise specified in an Exhibit to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Customer's meter(s) performed by the Distribution Utility. Competitive Supplier shall cause the Distribution Utility to prepare and mail bills to Participating Customers monthly. The Competitive Supplier shall adopt the billing and payment terms offered by the Distribution Utility to its Eligible Customers on Default Service. If actual meter date is unavailable, the Competitive Supplier may cause the Distribution Utility to bill based on its good faith estimates of usage. Any overcharge or under-charge will be accounted for in the next billing period for which actual meter data is available.

# 8.4.3 Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Utility under its distribution service tariff or local transmission costs as may be imposed by NYISO or individual electric utilities that have FERC transmission tariffs. The Competitive Supplier understands that these costs will be collected by the Distribution Utility. If, in the future, Competitive Supplier becomes responsible for such distribution or transmission costs, Competitive Supplier shall be entitled to collect such costs from Participating Customers to the extent permitted by any Governmental Rules. These costs are "pass through" costs as determined by the appropriate regulatory agencies.

# 8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier

shall be included on the Participating Customer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. For avoidance of doubt, it is understood that the Competitive Supplier shall include gross receipts tax in its preparation of Participating Customers' bills. Participating Customers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. Participating Customers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

# ARTICLE 9 COMPLIANCE WITH THE PSC ORDERS

Competitive Supplier agrees that it, and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA, will comply with the applicable provisions of the PSC Orders and any regulations, orders or policies adopted pursuant thereto.

## ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CUSTOMERS

# 10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its Associated Entities agree to comply with any code of conduct or policies the PSC may adopt in accordance with the PSC Orders and to all related Orders of Case 14-M-0564 and 14-M-0224 to which the Program Manager is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

# 10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES

The Competitive Supplier shall, at least fourteen days prior to the Nominal Start Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Customers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Customer(s) so permit(s) or to the extent such permission is required by law or the terms of any PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any customer complaints received from a Participating Customer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure to timely submit such written

description, or the submission of practices and procedures which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

# 10.3 DISPUTE RESOLUTION

In accordance with the Uniform Business Practices, in the event of a dispute regarding an invoice or Competitive Supplier's service, whether directly or through its Associated Entities, under this ESA, a Participating Customer may initiate a formal dispute resolution process by providing written notice to the PSC. The PSC will assist the Parties in reaching a mutually acceptable resolution. If no such resolution is reached within 40 calendar days of receipt of the formal written notice, any Party may request an initial decision from PSC. Parties may appeal this decision.

## ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Competitive Supplier agrees that it shall conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees, and will require all Associated Entities to do the same.

## ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

# 12.1 POWER SUPPLY INFORMATION

# 12.1.1 Monthly Report of Sales

Competitive Supplier shall provide the Municipality or its agent with the following monthly reports as shown on Exhibit B attached hereto within 30 days of the end of the month:

- 1. kWh and counts disaggregated by municipality, utility zone, customer type, rate class, product
- 2. Add-Drop report with count of transactions for drop categories Moved, Changed Supplier, Opt-out, Other, and add categories of Opt-in and Newly Eligible.

All reports provided under this 12.1 shall be provided in electronic format.

# 12.1.2 Customer-Related Data

On and after the Effective Date, Competitive Supplier will maintain customer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP (Installed Capacity) data. A violation of this Article 12.1.2 shall be grounds for termination under Article 4.2(a) unless such violation is due to a system or reasonable administrative error and the Competitive Supplier demonstrates to the Municipality's

satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

## 12.1.3 Standard of Care

Competitive Supplier and its Associated Entities shall use all Commercially Reasonable efforts in preparing and providing any information or data required under the ESA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it shall provide corrections to such information or data to the Municipality or its agent within a Commercially Reasonable time.

## 12.2 POWER SUPPLY REPORT

Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Labels in the State of New York, including, once finalized by the PSC and/or the New York State Energy Research and Development Authority and available to Competitive Supplier, the creation of separate labels to reflect renewable CCA products within the Competitive Supplier's portfolio, as well as individual municipal renewable purchases within the CCA program.

Unless the Environmental Disclosure Label requirement is waived by PSC, within fifteen (15) days of the end of the quarter, Competitive Supplier shall present a copy of the current Environmental Disclosure Label required by the PSC of all Competitive Suppliers to be disclosed to their Participating Customers, which includes information pertaining to Competitive Supplier's power supply and a reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Customers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

# 12.3 BOOKS AND RECORDS

Competitive Supplier shall keep their books and records in accordance with any applicable regulations or guidelines of PSC, FERC, and any other Governmental Authority. The Municipality will have electronic access to any reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Municipality and at the Municipality's reasonable expense, Competitive Supplier or its Associated Entities shall provide reasonable back up for any charge under this ESA questioned by the Municipality.

# 12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

# ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

## 13.1 CHOICE OF LAW AND FORUM

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the State of New York without respect to conflicts-of-laws principles. Any litigation arising hereunder shall be brought solely in the appropriate federal court in New York or appropriate state court sitting in the New York county in which the Municipality is located, to whose jurisdiction the Parties hereby assent, waiving all objections to venue or forum.

## 13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties may seek judicial enforcement subject to the provisions of this ESA. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this ESA.

## **ARTICLE 14 INDEMNIFICATION**

# 14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, the Competitive Supplier shall indemnify, defend and hold harmless the Municipality and the Program Manager ("Indemnified Parties") and the Indemnified Parties' elected officials, officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising directly from or in connection with (i) any material breach by Competitive Supplier or its Associated Entities of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Municipality or its employees or agents, or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

## 14.2 NOTICE OF INDEMNIFICATION CLAIMS

If the Municipality or Program Manager seeks indemnification pursuant to this Article 14, it shall notify Competitive Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim.

#### 14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA for a period of two (2) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

# 14.4 DUTY TO MITIGATE

Each Party agrees that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of the other Party's performance or non-performance of this ESA.

## ARTICLE 15 REPRESENTATIONS AND WARRANTIES

## 15.1 BY THE COMPETITIVE SUPPLIER

As a material inducement to entering into this ESA, the Competitive Supplier hereby represents and warrants to the Municipality as of the Effective Date that the following are true:

- a) This ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with the ESA's terms, subject to applicable law, and the Competitive Supplier can and will perform its obligations hereunder to the Municipality in conformance with the terms and conditions of this ESA, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity.
- b) Subject to the conditions set forth in Article 2.4:
  - i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
  - ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
  - the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
  - iv) no bankruptcy is pending against it or to its knowledge threatened against it;

- v) none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- vi) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

# 15.2 BY THE MUNICIPALITY

As a material inducement to entering into this ESA, the Municipality hereby represents and warrants to Competitive Supplier as of the Effective Date that the following are true:

- a) This ESA constitutes a legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law, and Municipality will perform its obligations hereunder in conformance with the terms and conditions of this ESA, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
- b) The execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- c) Municipality has all authorizations from local Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- d) No bankruptcy is pending or threatened against the Municipality;

## 15.3 BY THE PROGRAM MANAGER

As a material inducement to entering into this ESA, the Program Manager hereby represents and warrants to Competitive Supplier and Municipality as of the Effective Date that the following are true:

- a) This ESA constitutes a legal, valid and binding contract of Program Manager enforceable in accordance with its terms, subject to applicable law;
- b) The execution, delivery and performance of this ESA are within Program Manager's powers, have been or will be duly authorized by all necessary action;
- c) Program Manager has all authorizations from any local or state Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- d) No Bankruptcy is pending or threatened against Program Manager.

- 16.1 In order to help support the indemnifications provided in Article 14, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, before the Nominal Start Date and throughout the term of this ESA, unless otherwise specified, commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of New York. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event the Competitive Supplier's insurance carrier is downgraded to a rating of lower than Best's A-, Competitive Supplier shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-. A certificate that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before fourteen days prior to the Nominal Start Date and thereafter whenever renewed or requested by the Municipality. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.
- 16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Nominal Start Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.
- 16.3 Competitive Supplier, to the extent required by law, must provide worker's compensation insurance meeting all applicable state and federal requirements.

## ARTICLE 17 REGULATORY EVENT/NEW TAXES

## 17.1 REGULATORY EVENT

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If despite such best efforts, a Regulatory Event affects Competitive Supplier and Program Manager and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such costs, such amount shall be allocated to and collected from Participating Customers on a per kWh basis through applicable monthly invoice(s).

# 17.2 QUALIFYING REGULATORY EVENT

If a Qualifying Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Qualifying Regulatory Event affects

Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Customers on a per kWh basis through applicable monthly invoice(s).

## 17.3 NEW TAXES

If any New Taxes are imposed for which Competitive Supplier is responsible, the amount of such New Taxes shall be allocated to and collected from Participating Customers through applicable monthly invoice(s).

## **ARTICLE 18 MISCELLANEOUS**

# 18.1 NO ASSIGNMENT WITHOUT PERMISSION

Except in the event of the sale of all or substantially all of its retail electricity business to an entity with credit and service ability to deliver on all facets of this ESA reasonably acceptable to Municipality, Competitive Supplier or Program Manager shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier or Program Manager in the ESA. Notwithstanding the above, any assignment of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least ninety (90) days prior to such assignment: (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Manager may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Manager and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

## 18.2 DIRECT MARKETING

Prior to the introduction of any new product or service which Competitive Supplier may wish to make available to Participating Customers or other Eligible Customers located within the Municipality, Competitive Supplier agrees to (i) give the Municipality written notice of such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the Municipality the possible inclusion of such new product or service in this or another aggregation program undertaken by the Municipality.

Competitive Supplier also agrees not to engage, whether directly or through any of its Associated Entities, in any direct marketing to any Participating Customer that relies upon Competitive Supplier's unique knowledge of, or access to, Participating Customers gained as a result of this ESA. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Participating Customer. Programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

# 18.3 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to:

# If to Competitive Supplier:

Constellation NewEnergy, Inc. 1001 Louisiana St., Suite 2300 Houston, TX 77002 Attn: Contract Administration

If to Municipality: Town Clerk Town of Somers 335 Route 202 Somers NY, 10589

and if to Program Manager: Executive Director Sustainable Westchester Inc 55 Maple Ave. Mount Kisco, NY 10549

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this ESA. Any party may change its address and contact person for the purposes of this Article 18.3 by giving notice thereof in the manner required herein.

# 18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the Municipality

and the Program Manager in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the Municipality changes, prompt notice shall be given to the Competitive Supplier and the Program Manager in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the Program Manager changes, prompt notice shall be given to the Competitive Supplier and the Municipality in the manner set forth in Article 18.3.

## 18.5 ENTIRE ESA; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto, duly authorized to sign such instrument.

# 18.6 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If (i) an event of Force Majeure caused by any strikes, lockouts or other industrial disturbances involving Competitive Supplier or its Associated Entities continues for a period of thirty (30) days or longer, or (ii) an event of Force Majeure arising from any other cause continues for a period of one hundred eighty (180) days or longer, any Party may terminate this ESA by sending the other Party a written notice as set forth in Article 4.2; provided, however, that the same shall not constitute a default under this ESA and shall not give rise to any damages. Additionally, Competitive Supplier shall submit all Participating Customer drops via EDI to the Distribution Utility in accordance with the rules and regulations set forth by the PSC in Case 98-M-0667.

# 18.7 EXPENSES

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all of its attorney's fees and expenses.

# 18.8 NO JOINT VENTURE

Each Party will perform all obligations under this ESA as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Municipality and the Competitive Supplier hereunder are individual and neither collective nor joint in nature.

# 18.9 JOINT WORK PRODUCT

This ESA shall be considered the work product of all Parties hereto, and, therefore, no rule of strict construction shall be applied against any Party.

#### **18.10 COUNTERPARTS**

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

# **18.11 WAIVER**

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective with respect to an obligation to the waiving Party and shall only be effective if made in writing and signed by the Party who is making such waiver.

# 18.12 ADVERTISING LIMITATIONS

Competitive Supplier and Municipality agree not to use, whether directly or through any of its Associated Entities, the name of the other Party, or make any reference to the other Party in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the other Party expressly agrees to such usage. Any proposed use of the name of a Party must be submitted in writing for agreement and prior written approval which may be withdrawn through a notice in writing at any time. The Municipality acknowledges that the Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

# 18.13 PRESS RELEASES

The Parties agree to joint review and approval prior to issuance of all media press releases regarding this Agreement. Approval of press releases will not be unreasonably withheld. The Parties agree to cooperate in good faith prior to the issuance of any formal press release with

respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

# 18.14 HEADINGS AND CAPTIONS

The headings and captions appearing in this ESA are intended for reference only, and are not to be considered in construing this ESA.

#### 18.15 SURVIVAL OF OBLIGATION

Termination of this ESA for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination.

# **ARTICLE 19 REMEDIES**

#### 19.1 GENERAL

Subject to the limitations set forth in Article 19.2 below and Article 4, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

# 19.2 LIMITATIONS

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, each Party acknowledges that the preceding sentence shall not limit the other Party's rights to seek direct damages or, under Article 14.1, to seek indemnification from Competitive Supplier for consequential, punitive, or incidental damages described in the preceding sentence or other such losses claimed by third-parties.

### 19.3 DISCLAIMER

COMPETITIVE SUPPLIER MAKES NO WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

//Signatures Follow//

IN WITNESS WHEREOF, the Parties have caused this ESA to be executed by their duly authorized representatives, as required by the applicable laws of the city, town or municipality and the laws, rules and regulations of the State of New York, as of the respective dates set forth below

# **COMPETITIVE SUPPLIER**

By:
Name:
Title:
Address:
Dated:
MUNICIPALITY
By:
Name: Rick Morrissey
Title: Supervisor
Address: 335 Route 202, Somers, NY 10589
Dated:
PROGRAM MANAGER
By:
Name: Nina Orville
Title: Executive Director
Address: 40 Green Street, Mount Kisco, NY 10549
Dated:

# EXHIBIT A – PART 1 PRICES AND TERMS – STANDARD PRODUCT

Firm Full-Requirements Price by Rate Classification for all Participating Customers located in **New York State Electric & Gas** territory commencing service on the first customer meter-read date after February 28, 2022.

Municipality understands that for any supply to Participating Customers the Fixed Price **includes** NY Public Policy Transmission Costs and NY Tier 2 REC Program Costs based on the estimates of such costs for calendar year 2022 that were obtainable by Competitive Supplier and Competitive Supplier will pass through to Participating Customers any future changes, (upward or downward) to such NY Public Policy Transmission Project Costs or NY Tier 2 REC Program Costs, based on changes in such costs during the remainder of term of this ESA, and which will be reflected in a future adjustment. Any such adjustments shall occur once during any calendar year.

"NY Public Policy Transmission Project Costs" means costs or charges imposed by the NYISO (including without limitation, Work in Progress charges or other related transmission costs not including charges under NY TOTS Project Costs or Ancillary Services And Other ISO Costs) associated with the development of the transmission facilities under the NYISO's Public Policy Transmission Planning Process and in compliance with FERC Order No.1000 (Stats. & Regs 31,323 issued July 2011, as may be amended or modified from time to time during the term of this ESA).

"NY Tier 2 REC Program Costs" means any costs related to the purchase of Tier 2 eligible renewable energy certificates ("Tier 2 REC's") associated with the expansion of the Clean Energy Standard to include additional compliance requirements in accordance with the "Order Adopting Modifications to the Clean Energy Standard" in DPS Case 15-E-0302 dated October 15, 2020 (as may be proposed or implemented during the term of this ESA).

The Parties agree and acknowledge that the Fixed Price set forth below <u>excludes</u> costs and charges associated with changes to the obligations of New York's Clean Energy Standard ("CES"), including but not limited to CES Tier 4 program costs as described in the "Order Adopting Modifications to the Clean Energy Standard" in case 15-E-0302 dated October 15, 2020, as may be amended or modified from time to time during the term of this Agreement. In the event that changes to such regulations/orders are finalized, such changes shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event.

#### Table 1:

Rate Class	Fixed Price per kWh	
Residential & Small Commercial	\$0.08736	

# **Terms for System Supply Service**

The Price and Terms stated on this Exhibit A will commence on the first customer meter read date after February 28, 2022 for each Participating Customer and continue until the first customer meter read date after November 30, 2023 ("End Date") for each Participating Customer, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of Firm Full-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of each Participating Customer's first meter read dates after February 28, 2022. Service shall continue until the first customer meter read date after November 30, 2023 for each Participating Customer.

Clean Energy Standards ("Clean Energy Requirements"): The standard electricity generation mix offered to Participating Customers under the Standard Electricity Product shall meet the minimum Clean Energy Requirements for electric power designated by New York State.

Eligible Customer Opt-Out: Participating Customers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Customers are to provide five (5) business days' notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Customers to opt-out or terminate service.

Competitive Supplier's Standard Credit Policy: The Competitive Supplier will not require a credit review for any customer participating in the Program, nor will Competitive Supplier require any customer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Customer and return such customer to Default Service in the event that the customer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

Supplier shall serve Newly Opt-out Eligible Customers, as well as Eligible Customers who opt-in to the Program, who enroll or are enrolled into the Program after the first customer meter-read date referred to above at the fixed price in Table 1 above.

# EXHIBIT A – PART 2 PRICES AND TERMS – 100% RENEWABLE CLEAN POWER PRODUCT

Firm Full-Requirements Price for 100% Renewable Clean Power Product by Rate Classification for all Participating Customers located in New York State Electric & Gas territory commencing service on the first customer meter-read date after February 28, 2022.

Municipality understands that for any supply to Participating Customers the Fixed Price **includes** NY Public Policy Transmission Costs and NY Tier 2 REC Program Costs based on the estimates of such costs for calendar year 2022 that were obtainable by Competitive Supplier, and Competitive Supplier will pass through to Participating Customers any future changes, (upward or downward) to such NY Public Policy Transmission Project Costs or NY Tier 2 REC Program Costs, based on changes in such costs during the remainder of term of this ESA, and which will be reflected in a future adjustment. Any such adjustments shall occur once during any calendar year.

"NY Public Policy Transmission Project Costs" means costs or charges imposed by the NYISO (including without limitation, Work in Progress charges or other related transmission costs not including charges under NY TOTS Project Costs or Ancillary Services And Other ISO Costs) associated with the development of the transmission facilities under the NYISO's Public Policy Transmission Planning Process and in compliance with FERC Order No.1000 (Stats. & Regs 31,323 issued July 2011, as may be amended or modified from time to time during the term of this ESA).

"NY Tier 2 REC Program Costs" means any costs related to the purchase of Tier 2 eligible renewable energy certificates ("Tier 2 REC's") associated with the expansion of the Clean Energy Standard to include additional compliance requirements in accordance with the "Order Adopting Modifications to the Clean Energy Standard" in DPS Case 15-E-0302 dated October 15, 2020 (as may be proposed or implemented during the term of this ESA).

The Parties agree and acknowledge that the Fixed Price set forth below **excludes** costs and charges associated with changes to the obligations of New York's Clean Energy Standard ("CES"), including but not limited to CES Tier 4 program costs as described in the "Order Adopting Modifications to the Clean Energy Standard" in case 15-E-0302 dated October 15, 2020, as may be amended or modified from time to time during the term of this Agreement. In the event that changes to such regulations/orders are finalized, such changes shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event.

Table 2:

Rate Class	Fixed price per kWh
Residential and Small Commercial	\$0.10179

# Terms for System Supply Service

The Price and Terms stated on this Exhibit A will commence on the first customer meter read date after February 28, 2022 for each Participating Customer and continue until the first customer meter read date after November 30, 2023 ("End Date") for each Participating Customer, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of 100% Renewable Clean Power Product shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: 100% Renewable Clean Power Firm Full-Requirements Power Supply will commence at the prices stated above as of each Participating Customer's first meter read dates after February 28, 2022. Service shall continue until the first customer meter read date after November 30, 2023 for each Participating Customer.

Clean Energy Standard ("Clean Energy Requirements"): The standard electricity generation mix offered to Participating Customers under the Standard Electricity Product shall meet the minimum Clean Energy Requirements for electric power designated by New York State.

100% New York Voluntary EDP Eligible RECs -- This Exhibit A-Part 2 includes a voluntary purchase of Renewable Energy Certificates ("RECs") which comply with the attribute delivery rules set forth in the New York Generation Tracking System ("NYGATS") Operating Rules, supporting the NY EDP Program that are sourced from NY EDP Eligible Renewable Resources in an amount equal to 100% of the Participating Customers' electricity usage, in addition to any then-current REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier. In the event that the DPS or other governmental authority determines that a 100% Renewable Clean Power Product may be provided through the voluntary purchase of NY Tier 2 Voluntary RECs in an amount equal to 100% of the Participating Customers' electricity usage less any then-current Tier 1 REC purchase associated with the Clean Energy Standard requirements applicable to Competitive Supplier in New York, such change shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event. Competitive Supplier anticipates that the RECs provided hereunder will be generated primarily by hydroelectric facilities, but some portion of the RECs may be generated by wind, solar or other facilities, and Competitive Supplier reserves the right to source the RECs from any qualifying NY EDP Eligible Renewable Resource. Each REC represents environmental attributes associated with one MWh of electricity generated by a renewable fuel type defined by NYGATs Operating Rules, dated May 18, 2018, but does not include any tax credits, depreciation allowances or third party subsidies of any kind. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program. For purposes of this Agreement:

i. "NY EDP Eligible Renewable Resource" means any electric power generator meeting the NY EDP Program eligibility criteria of a NY renewable energy generating source which comply with the attribute delivery rules set forth in the NYGATS Operating Rules, supporting the NY EDP Program, as of the Effective Date of this Agreement. RECs will be retired for all participants collectively at the Program level.

ii. "NY EDP Program" means the environmental disclosure program administered by the New York State Department of Public Service, through which load serving entities periodically inform their customers of the fuel source, emissions and other characteristics of the electricity resources supplied to them.

Eligible Customer Opt-Out: Participating Customers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Customers are to provide five (5) days' notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Customers to opt-out or terminate service.

Competitive Supplier's Standard Credit Policy: The Competitive Supplier will not require a credit review for any customer participating in the Program, nor will Competitive Supplier require any customer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Customer and return such customer to Default Service in the event that the customer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

Supplier shall serve Newly Opt-out Eligible Customers, as well as Eligible Customers who optin to the Program, who enroll and are enrolled into the Program after the first customer meterread date referred to above at the price in Table 2, above.

In the event that New York State institutes a subsidy for CCA purchase of RECs after the signing of this ESA that is applicable to all or any portion of the Competitive Suppliers obligations under this ESA, Competitive Supplier shall pass through the full subsidy to Participating Customers in the form of a rate reduction.

# EXHIBIT B - TEMPLATE KWH SALES AND CUSTOMER ACCOUNTS DATA SUMMARY

# **KWH Sales Template**

UsageEndYrMo	Municipality	Zone	CustType	RateClass	Product	Count	Consump_kWh
202101	[MUNI NAME]	L	Residential	SC1	100% renewable	##,###	###,###
202101	[MUNI NAME]	ı	Residential	SC1	Standard	##,###	###,###
202101	[MUNI NAME]	1	Small Coml	SC2	100% renewable	##,###	###,###
202101	[MUNI NAME]	ı	Small Coml	SC2	Standard	##,###	###,###
202101	[MUNI NAME]	Н	Residential	SC1	100% renewable	##,###	###,###
202101	[MUNI NAME]	Н	Residential	SC1	Standard	##,###	###,###
202101	[MUNI NAME]	Н	Small Coml	SC2	100% renewable	##,###	###,###
202101	[MUNI NAME]	Н	Small Coml	SC2	Standard	##,###	###,###
etc							

# Add-Drop Report

UsageEndYearMonth	Municipality	customerType	RateClass	Product	AddOrDrop	AddDropType	Count
202101	[MUNI NAME]	Residential	SC1	enewable	Drop	Moved	##
etc.					Drop	Changed Supplier	
					Drop	Opt-out	
					Drop	Other	
					Add	Opt-in	
					Add	Newly Eligible	

# **EXHIBIT C - PAYMENT**

# PROGRAM MANAGER BANK INFORMATION FOR PAYMENTS BY ACH

Bank Name:		
Bank Routing Number:		
Bank Account Number:		
Federal ID:		

# **EXHIBIT D - DATA REQUIREMENTS**

In order for program administrators and participants to have visibility into their participation with the program, certain data will need to be exchanged, in a regular format, with regular transmission methods and times.

There are three file formats currently in use for this purpose which must be provided by Competitive Supplier to Program Manager:

- 1. Newly\_Opt-out Eligible\_Customer file Competitive Supplier will obtain this data quarterly from the Utility and the notification mailing is made from the list following procedures described elsewhere in this ESA. The Program Manager requires a matching dataset as defined below in order to perform its duties for customer service during the opt out period.
- 2. Post-enrollment file After the Competitive Supplier sends enrollments to the Utility, either at the beginning of this contract or after a Newly Opt-out Eligible Customer opt out period, the Competitive Supplier will send this file to the Program Manager to update its records.
- 3. Commission file Standard practice for aggregation suppliers.

The abovementioned files should, at minimum, contain the following information:

Newly Opt-out Eligible	Post-enrollment file	Commission file
Customer file  Pre-Enrollment ID Customer Name Service Address Service City State Zip Mailing Address Mail City State Zip Customer Classification Rate Category	Pre-Enrollment ID Utility Account Number Meter Read Cycle Account Start Account End Enrollment Issue/Reason Code Municipality Name Contract Start Contract End Rate Class Annual kWh Capacity Tag Capacity Start Date Capacity End Date Billing Name Billing Address Billing State Billing City Billing Zip Enrollment Date (Contract Start Date) Load Zone	Customer Name Service Account Number Invoice Number Contract ID Municipality Customer Class Invoice Date Start Date End Date Earned Date Scheduled Payment Month Usage UDC Code Commission Rate/Amount Commission Payment Lag (Days)

File transfer between the Supplier and Program Manager, or a party designated by Program Manager, shall be by SFTP or other secure mode.

# **EXHIBIT E - OPTION FOR ALTERNATIVE SUPPLY OF POWER**

Competitive Supplier shall provide power to Participating Customers, including through the purchase of REC's, throughout the term of this ESA and from sources selected in Competitive Supplier's own discretion. However, Program Manager desires to build or contract with a third party to supply renewable sources of energy (the "Renewable Power Source") after the Effective Date of the Program for the benefit of the Participating Customers. Upon completion of any such Renewable Power Source the Program Manager may offer to sell output from the Renewable Power Source to Competitive Supplier, either directly or through an Associated Entity, under a separate Power Purchase Agreement ("PPA"). Program Manager understands and acknowledges that (i) Competitive Supplier shall have no obligation to enter into a PPA during the term of this ESA; and (ii) if Competitive Supplier agrees to enter into a PPA, then completion of a PPA is contingent upon (without limitation) Competitive Supplier's confirmation (in its sole determination) that (a) the terms are in compliance with all rules, laws and regulations; (b) it has internal senior management approval after completion of financial, credit, legal and operation due diligence; and (c) the Parties have executed an amended ESA to incorporate terms of the PPA. In the event that Competitive Supplier elects not to enter into a PPA as described above and Program Manager enters into a Third Party Agreement, then the terms of this ESA shall remain unmodified and in full force and effect.

If Competitive Supplier elects to enter into a PPA as described above, Competitive Supplier agrees to review a roster of Renewable Power Sources pre-approved by Program Manager and Competitive Supplier who retain a PPA form consistent with the needs of Program Manager and Competitive Supplier, provided, however, that final determination of a Renewable Power Source provider shall be in the sole discretion of Competitive Supplier and may be a source not listed on the roster.

In the event Program Manager identifies output from Renewable Power Source(s) that Program Manager desires to assign to or request that the Competitive Supplier use in the Program, Program Manager will describe whether each product is unit-contingent or smoothed, and Program Manager will describe the projected (if unit contingent) or committed quantity (if smoothed) for RECs, Capacity and/or kWh, including time blocks for the product, if appropriate.

Competitive Supplier and Program Manager will then discuss the best strategy for moving forward, including whether Competitive Supplier desires to solicit offers from the free market for like quantities of power, REC or capacity.

In such case, the Parties agree to negotiate, in a Commercially Reasonable manner, a rate adjustment to Participating Customers to (a) compensate Competitive Supplier (or an Associated Entity) for any losses should Competitive Supplier (or an Associated Entity) need to then sell off any of the original power purchased to supply the Program at a lower price than it purchased it for, or (b) compensate Participating Customers for any gains should Competitive Supplier (or an Associated Entity) then be able to sell off any of the original power purchased to supply the Program at a higher price than it purchased it for. Any such rate adjustment shall only amend or modify the ESA by a written instrument signed by all Parties hereto. For avoidance of doubt, the foregoing does not obligate Competitive Supplier or Program Manager to come to an agreement regarding a rate adjustment.



MoSeath & Company you.
PO Box 514 Tranket by 12574
Into@meroattlandon com
us41 us46 1.00

# Professional Valuation Services Agreement

DATE OF AGREEMENT: December 3, 2021

PARTIES TO AGREEMENT:

Client

Town of Somers % Rick Morrissey, Town Supervisor 335 Route 202 Somers, NY 10589 (914) 277-3637 |Supervisor@somersny.com **Appraiser** 

Kevin M. Schick, Director McGrath & Company, Inc. PO Box 514 Fishkill, NY 12524

(845) 896-5333 | kevin@mcgrathandco.com

Client hereby engages Appraiser to complete an appraisal assignment as follows:

#### PROPERTY IDENTIFICATION

265 Route 202 - Tax ID: 17.11-1-21

#### PROPERTY TYPE

Neighborhood Retail Strip

# **INTEREST VALUED**

Leased Fee

# **INTENDED USERS**

Town of Somers

Note: No other users are intended by Appraiser. Appraiser shall consider the intended users when determining the level of detail to be provided in the Appraisal Report.

### **INTENDED USE**

To assist the Client and intended users with establishing market value for potential acquisition.

# TYPE OF VALUE

As-Is Market Value

### **EFFECTIVE DATE**

The effective date will be the date the property is inspected by the appraiser.

# HYPOTHETICAL CONDITIONS, EXTRAORDINARY ASSUMPTIONS

There are no hypothetical conditions or extraordinary assumptions anticipated.

# APPLICABLE REQUIREMENTS OTHER THAN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

The Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute (USPAP)

# ANTICIPATED SCOPE OF WORK

#### SITE VISIT

Interior and exterior observation, on-site

#### VALUATION APPROACHES

Sales Comparison & Income Capitalization Approach

Note: Appraiser shall use all approaches necessary to develop a credible opinion of value.

#### Report option

Appraisal Report

#### Form or format:

Narrative

#### **DELIVERY DATE**

On or about January 15th, 2022

#### DELIVERY METHOD

Email (PDF) and/or U.S. Postal Service (if specified)

#### NUMBER OF COPIES

1 digital PDF, 1 printed copy (if specified)

#### APPRAISAL FEE

\$3,500

# PROPOSED IMPROVEMENTS

If the property appraised consists of proposed improvements, Client shall provide to Appraiser plans, specifications, or other documentation sufficient to identify the extent and character of the proposed improvements.

#### PROPERTIES UNDER CONTRACT FOR SALE

If the property appraised is currently under contract for sale, Client shall provide to Appraiser a copy of said contract including all addenda.

#### CONFIDENTIALITY

Appraiser shall not provide a copy of the written Appraisal Report to, or disclose the results of the appraisal prepared in accordance with this Agreement with, any party other than Client, unless Client authorizes, except as stipulated in the Confidentiality Section of the ETHICS RULE of the Uniform Standards of Professional Appraisal Practice (USPAP).

#### **CHANGES TO AGREEMENT**

Any changes to the assignment as outlined in this Agreement shall necessitate a new Agreement. The identity of the client, intended users, or intended use; the date of value; type of value; or property appraised cannot be changed without a new Agreement.

#### CANCELLATION

Client may cancel this Agreement at any time prior to the Appraiser's delivery of the Appraisal Report upon written notification to the Appraiser. Client shall pay Appraiser for work completed on assignment prior to Appraiser's receipt of written cancellation notice, unless otherwise agreed upon by Appraiser and Client in writing.

#### NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement shall create a contractual relationship between the Appraiser or the Client and any third-party, or any cause of action in favor of any third-party. This Agreement shall not be construed to render any person or entity a third-party beneficiary of this Agreement, including, but not limited to, any third parties identified herein.

#### USE OF EMPLOYEES OR INDEPENDENT CONTRACTORS

Appraiser may use employees or independent contractors at Appraiser's discretion to complete the assignment, unless otherwise agreed by the parties. Notwithstanding, Appraiser shall sign the written Appraisal Report and take full responsibility for the services provided as a result of this Agreement.

#### TESTIMONY AT COURT OR OTHER PROCEEDINGS

Unless otherwise stated in this Agreement, Client agrees that Appraiser's assignment pursuant to this Agreement shall not include the Appraiser's participation in or preparation for, whether voluntarily or pursuant to subpoena, any oral or written discovery, sworn testimony in a judicial, arbitration or administrative proceeding, or attendance at any judicial, arbitration, or administrative proceeding relating to this assignment.

#### APPRAISER INDEPENDENCE

Appraiser cannot agree to provide a value opinion that is contingent on a predetermined amount. Appraiser cannot guarantee the outcome of the assignment in advance. Appraiser cannot ensure that the opinion of value developed as a result of this Assignment will serve to facilitate any specific objective by Client or others or advance any particular cause. Appraiser's opinion of value will be developed competently and with independence, impartiality and objectivity.

#### **EXPIRATION OF AGREEMENT**

This Agreement is valid only if signed by both Appraiser and Client within 10 days of the Date of Agreement specified.

#### **GOVERNING LAW & JURISDICTION**

The interpretation and enforcement of this Agreement shall be governed by the laws of the state in which the Appraiser's principal place of business is located, exclusive of any choice of law rules.

<u>Appraiser</u>		<u>Client</u>	
Name:	Kevin M. Schick	Name:	
Signature:	K-M Slik	Signature:	
Date:	December 3, 2021	Date:	

Sent to:
TB, TA, TC
12/8/2021

OFFICE OF THE SUPERVISOR

Telephone (914) 277-3637 Fax (914) 276-0082 Town of Somers

SOMERS TOWN HOUSE 335 ROUTE 202 SOMERS, NY 10589

WESTCHESTER COUNTY, N.Y.

RICK MORRISSEY SUPERVISOR



December 3, 2021

# Memo

TO:

Town Board

FROM:

Rick Morrissey, Town Supervisor

RE:

Request for Approval

Tammi Savva, Senior Office Assistant (Auto Sys) in the Supervisor's Office for twenty years, completed Civil Service Form LJ-2 in order to have her current title of Senior Office Assistant (Office Sys) S751-01 reclassified to Junior Administrative Assistant 0171-01. The form was sent to Westchester County Human Resources on August 20, 2021. They approved the request on November 30, 2021.

My recommendation is to add this title to the CESA agreement under Wage Group VII. Given that Tammi has been performing the duties of a Junior Administrative Assistant I'd like to promote Tammi effective December 9, 2021 retroactive to September 1, 2021. Tammi's new annual salary of \$75,500.00, in accordance with the CSEA contract, Group VII, Step 8.

Civil service rules require that Tammi pass a future dated promotional exam and be reachable by the Rule of Three in order to be status changed from provisional to probationary.

Cc: Bob Kehoe - Director of Finance Greg Maroni - CSEA President

RM/kd

Z:\Supervisor\kdelucia\Memos\Town Board\_T. Savva.doc



# Kim DeLucia

From:

Rich DeMelis

Sent:

Tuesday, November 30, 2021 8:49 AM

To:

Kim DeLucia Rick Morrissey

Cc: Subject:

Re: Town of Somers - Assessment Board of Review Term Expiring

Good morning,

Yes, I have decided I would like to renew my term for the Assessment Board of Review.

Thanks,

Rich DeMelis

----Original Message----

From: Kim DeLucia <kdelucia@somersny.com>

To:

Cc: Rick Morrissey <supervisor@somersny.com>

Sent: Mon, Nov 29, 2021 2:33 pm

Subject: FW: Town of Somers - Assessment Board of Review Term Expiring

Good afternoon Mr. DeMelis,

As discussed, please confirm you would like to be reappointed to the Assessment Board of Review.

Thank you,

# Kim

Kim DeLucia
Executive Assistant to
Rick Morrissey, Town Supervisor
TOWN OF SOMERS
335 ROUTE 202
SOMERS, NY 10589
Phone: 914-277-3637
Fax: 914-276-0082
WWW.SOMERSNY.COM

From: Kim DeLucia

Sent: Tuesday, September 28, 2021 1:53 PM

To:

Cc: Rick Morrissey (supervisor@somersny.com) <supervisor@somersny.com>

Subject: Town of Somers - Assessment Board of Review Term Expiring

Good afternoon Mr. DeMelis,

The attached letter from Supervisor Morrissey is going out in today's mail.

Please let me know if you have any questions.

Thank you,

# Kim

# Sent to: TB, TA, TC 12/3/2021 KD

# Nicholas Buzzetto

November 14, 2021

The Town of Somers Highway Department 250 Route 100 Somers, NY 10589

Dear Nick DeVito,

I would like to inform you that I will be resigning from my position as a Laborer/Road Maintainer at The Somers Highway Department, effective November 24, 2021.

I have thoroughly enjoyed my time here at the highway department along with the knowledge and experience I have gained over this time.

Please let me know if any assistance will be required from me during this transition period.

Thank you and sincerely,

Nicholas Buzzetto

# PLANNING AND ENGINEERING DEPARTMENTS

Sent to:
TBITAITC
11/29/21 10 Telephone (914) 277-5866 Fax (914) 277-4098

Town of Somers

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

Steven Woelfle Principal Engineering Technician swoelfle@somersny.com



David B. Smith Town Planner directorofplanning@somersny.com

Date:

November 15, 2021

To:

Town Board

From:

Steven Woelfle SU

**Engineering Department** 

RE:

Klimentov Stormwater Management and Erosion and Sediment

Control Permit #ASMESC2012-33

TM: 38.17-2-4

Release of Erosion Control Bond Check received October 11, 2012

This office has no objection to the return of the Erosion Control Bond in the amount of \$200.00

Please return to:

Dmitri Klimentov

SW/wg

cc:

Town Clerk

Director of Finance Dmitri Klimentov

PLANNING AND ENGINEERING DEPARIMENTS

Telephone (914) 277-5866 Fax (914) 277-4098 Town of Somers

WESTCHESTER COUNTY, N.Y.

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

Steven Woelfle
Principal Engineering Technician
swoelfle@somersny.com



David B. Smith
Town Planner
directorofplanning@somersny.com

Date:

December 2, 2021

To:

Town Board

From:

Steven Woelfle 5

Engineering Department

RE:

Portas Steep Slopes/ Stormwater Management and Erosion and Sediment Control/Tree Preservation Permit #ASSSMESCT2015-39

TM: 16.09-2-10

Release of Erosion Control Bond Check received October 1, 2015

This office has no objection to the return of the Erosion Control Bond in the amount of \$500.00

Please return to:

Luisa Portas

SW/wg

cc:

Town Clerk

Director of Finance

Luisa Portas

# Somers Department of Parks & Recreation PO Box 46 Somers, New York 10589

Phone: (914)-232-8441
Fax: (914)-232-8548
Email: parks@somersny.com
Web: www.somersny.com
Steven Raiston

Superintendent



November 24, 2021

To: Town Board

From: Steven Ralston Superintendent of Parks and Recreation

Request for Approval Re:

Request permission for Supervisor Morrissey to execute the attached Concession Extension Agreement with O'Neill's Concessions.

C: Town Clerk Director of Finance Park Board Town Attorney

The Town of Somers is soliciting proposals for the provision of concessions operation in Reis Park with the right to the exclusive sale of all food and beverage in the Town of Somers Parks.

# **Submittals**

Proposals will be received in person at the office of the Town Clerk, Monday – Friday, 9:00 a.m. – 4:00 p.m. or by mail to Somers Town Clerk, 335 Route 202 Somers, NY 10589 until 4:00 p.m. Friday, January 25, 2019.

Proposals shall be enclosed in a sealed envelope marked Somers Concession Contract.

Potential candidates may view the site by contacting the Superintendent of Parks and Recreation at 914-232-8441

Proposals shall be made upon the form included; stating the price both in words and in figures and include attachments as required.

Proposals must include a detailed list of concession items with prices including sales tax. It is the intent of the Town of Somers to offer residents a quality food service at a reasonable cost. The item detail for all proposed sale items and their pricing will be considered when awarding the contract. Pricing included in the proposal shall be used by the successful candidate upon commencement of business.

The Town of Somers reserves the right, in its discretion, to reject any or all proposals or to waive any informality or irregularity in the proposals received.

# **Term of Contract**

The contract shall be for three seasons, commencing on April 1, 2019 and terminating on November 31, 2021. The minimum acceptable proposal will be \$10,000.00, for the first year, with a 2% increase over 2019 in 2020 and 2% increase in 2021 over 2020. The contract may be extended by the Town of Somers for two additional seasons with a 2% per season increase over the previous season.

# **Qualifications**

Potential candidates shall be skilled, experienced and regularly engaged in providing the type of work required under this contract. The Town, in its sole discretion, shall determine whether the bidder meets the qualifications set forth herein"

The Town of Somers may, in its discretion, make such investigation(s) as it deems necessary or desirable to determine the qualifications of the potential candidate to perform the work. Potential candidates shall furnish additional information and data for this purpose as may be required.

A select number of potential candidates will be required to appear before Town Officials to discuss details of their proposed food concession operation.

# Scope of Work

The successful candidate will have the exclusive right to operate the concession stand in Reis Park and the exclusive sale of all food and beverage in Somers Parks under the jurisdiction of Town of

# SOMERS CONCESSION AGREEMENT

THIS AGREEMENT made the	day of		_, 2021, by and
between the TOWN OF SOMERS,	a municipal	corporation of the	State of New York,
having offices at the Town House	e, 335 Route	202, Somers, New	York 10589
(hereinafter referred to as the "To	own"),		

And

O'Neill's Concessions 2071 Baldwin Road Yorktown Heights, NY 10598

(hereinafter referred to as the "Contractor").

WHEREAS, the Town has received a proposal from the Contractor to perform certain work, generally consisting of: Concession services. NOW, THEREFORE, the Town of Somers and the Contractor, by and for the considerations hereinafter set forth, agree as follows:

The successful candidate will have the exclusive right to operate the concession stand in Reis Park and the exclusive sale of all food and beverage in Somers Parks under the jurisdiction of Town of Somers Department of Parks & Recreation. Exceptions to this right will be determined by the Superintendent of Parks & Recreation when there are events occurring in Town parks by Town groups. A list of these events will be provided to the concessionaire on a yearly basis prior to the beginning of the season. The Contractor shall provide, furnish and perform all of the work specified in the attached proposal including all labor, materials, tools and equipment to satisfactorily complete the work in accordance with this Agreement. All work shall be performed by competent and skilled workers and in accordance with good trade practices and all applicable codes. The Contractor warrants that it is experienced in, is capable of, and is fully familiar with the work to be performed.

For the performance of all of the work in accordance with the provisions of this Agreement, the Contractor will pay the Town

Year 1: Ten Thousand Four Hundred Four Dollars (\$10,404.00)

Year 2: Ten Thousand Six Hundred Twelve Dollars (\$10,612.00)

# REQUIRED Dates and hours of operation:

# Weekdays:

- First week in April Third week in April, 1-6 p.m.
- Fourth Week in April Third Week in June, 11 a.m. 9 p.m.
- Last week in June Last week in August 8 a.m. 9 p.m.
- First week in September Third week in November 11 a.m. 9 p.m.

# Weekends and Holidays:

- Third week in April Last week in October, 9 a.m. 9 p.m.
- First week in November Last week in November, 11 a.m. 6 p.m.
- Note: concessionaire may open earlier and close later than the dates required, weather permitting. Concessionaire may open earlier and stay open later than the times required.
- Concessionaire must provide adequately trained staff to manage the operation in order to provide an excellent service to park patrons. The concessionaire agrees to have one staff at least twenty years of age present at all times. Prior to commencing each season, the Concessionaire shall submit a list of all employees and certification of background checks to the Superintendent of Parks and Recreation.

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement, or any right, title or interest therein, or the power to execute this Agreement, without the prior written consent of the Town. The Contractor shall not sub-contract any part of the work without the prior written consent of the Town. In the event any part of the work is subcontracted, the Contractor shall remain responsible for its obligations hereunder and for the proper performance of the sub-contracted work in compliance with this Agreement.

The Contractor agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission to act of the Town, or any of its boards, officers, employees or representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein.

Nothing in this Agreement, express or implied, is intended to confer upon any third party any right or remedy under or by virtue of this Agreement.

This Agreement shall constitute the entire Agreement between the parties regarding the subject matter hereof, shall supersede all prior understandings, whether oral or written, and shall not be amended or modified, except by a written document signed by both parties hereto stating the intent to amend or modify this Agreement.

# **Contract Termination**

The Town may terminate this Agreement in its sole an exclusive discretion, in whole or in part, upon thirty (30) days notice in writing to the Contractor whenever the Town deems such termination to be in its best interests or, if default, as set forth in default provision of contract,

Contractor shall be held in default of this agreement if:

- a. it shall have failed to pay when due any rent, utility bills or
- b. it or any guarantor of this agreement shall have failed to discharge any petition in bankruptcy, execution on its property, or assignment for the benefit of creditors within thirty (30) days after receipt of notice thereof, or
- c. Contractor shall have vacated or abandoned the premises for a period of no less than 7 consecutive days.

In the event of such default, Town of Somers may declare the term of this Lease terminated, and may sue to recover said premises by summary proceeding or otherwise. Landlord, further, shall have all rights granted to it under the laws of the state in which the premises are located, including the right, but not the obligation, to re-let the premises.

Additionally, Town of Somers shall have the right to take immediate possession of the premises as a public benefit.

Contractor waives or surrenders any of its rights and privileges which it might have under or by reason of any present or future law to redeem the premises or to have a continuance of this Lease for the term hereof after tenant is disposed or ejected therefrom by process of law or under the terms of this agreement. Contractor also waives the provisions of any law relating to notice and/or delay in levy of execution in case of any eviction or dispossession and of any successor or other law of like import. Town of Somers and tenant waive trial by jury in any action or proceeding and waive any counterclaim brought by either party against the other on any matters whatsoever arising out of or in any way connected with this agreement or tenant's use or occupancy of the premises.

# Liquidated Damages

In the event that the concessionaire terminates the concession prior to the completion of the three-season term in violation of this contract, the parties agree that it will be impractical or extremely difficult to fix the amount of the Town's damages. Accordingly, in such event, the concessionaire agrees that it shall be liable to the Town for the full amount payable to the Town under the contract for the full three-year term, less any amount which the concessionaire has actually paid to the Town hereunder, as liquidated damages and not as a penalty

# **Terms of Payment**

The contract shall provide payment to the Director of Finance equal installments during the contracts effective dates as follows: June 1, July 1, August 1, September 1, October 1, November 1, December 1. A 2% penalty will be added to any late payment and may result in termination of the contract.

This Agreement shall be construed and enforced in accordance with the Laws of the State of New York. Any action or proceeding commenced by the Contractor in relation to this Agreement or the work hereunder, in which the Town is joined as a party, shall be commenced in the Courts of the State of New York and venue shall be in Westchester County.

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

TOWN OF SOMERS	By: Rick Morrissey, Supervisor
THE CONTRACTOR	By:(Authorized to sign as Contractor)

# **Town Acknowledgment**

STATE OF NEW YORK ) ) ss.:	
COUNTY OF WESTCHESTER)	
undersigned, a Notary Public in a Supervisor of the Town of Somers to me or proved to me on the bas name is subscribed to the within it the same in her capacity, and tha	in the year 2021, before me, the nd for said State, personally appeared Rick Morrissey, s, on behalf of the Town of Somers, personally known sis of satisfactory evidence to be the individual whose instrument and acknowledged to me that she executed t by her signature on the instrument, the individual, or individual acted, executed the instrument.
NOTARY PUBLIC	

# **Contractor Acknowledgment**

STATE OF NEW YORK COUNTY OF	)			
COUNTY OF	)			
On the day undersigned, a Notary Pu	y of ublic in and f	in the ye	ear 2021, before ersonally appear	me, the ed
personally known to me individual(s) whose name acknowledged to me that and that by his/her/their upon behalf of which the	e(s) is (are) t he/she/the signature(s)	subscribed to the ey executed the on the instrum	ne within instrum same in his/her/f nent, the individu	ent and their capacity(ies), al(s), or person
NOTARY PUBL	IC			

# Somers Department of Parks & Recreation

PO Box 46 Somers, New York 10589

Phone: (914)-232-8441

Fax: (914)-232-8548

Email: <a href="mailto:parks@somersny.com">parks@somersny.com</a>

Web: <a href="www.somersny.com">www.somersny.com</a>

Steven Ralston Superintendent TOWN OF SOMERS

November 24, 2021

To: Town Board

From: Steven Ralston

Superintendent of Parks and Recreation

Re: Request for Approval

Request permission for Supervisor Morrissey to execute the attached Koegel Caretaker License Agreement with Howard Vinberg.

C: Town Clerk
Director of Finance
Park Board
Town Attorney

#### LICENSE AGREEMENT

AGREEMENT made as of this day of 2021, between the Town of Somers, a municipal corporation having an address at 335 Route 202, Somers, New York 10589 (hereinafter referred to as "Town") and <u>Howard M. Vinberg</u> (hereinafter referred to as "Licensee") residing at Caretaker's Residence, Koegel Park, Route 118, Somers, New York 10589.

#### WITNESSETH:

The Town hereby enters into this License Agreement with the Licensee for the Premises known as The Caretakers Residence, Koegel Park, Route 118, Somers, New York for a Term commencing on January 1, 2022, and terminating on December 31, 2023, with a monthly License Fee, payable in advance, of \$1,377.00 per month for the period 1/1/22 to 12/31/22; \$1,405.00 per month for the period 1/1/23 to 12/31/23. The parties acknowledge that the monthly License Fee for the Premises is discounted below the full market appraised value for the Premises. Therefore, the Licensee's consideration for the License Agreement is the Licensee's payment of the License Fee as provided for herein and the Licensee's continued performance of the duties described in Schedule "A", which is attached hereto and made a part hereof. The parties hereto hereby covenant as follows:

- 1. Security Deposit. Licensee shall pay \$1,000.00 as a security deposit.
- 2. No Smoking Permitted. No smoking will be permitted in the residence.
- 3. Ownership. The License Agreement is granted solely on the basis of the Town's ownership of the property and the Licensee being an employee of the Town of Somers. Occupancy hereunder is expressly conditioned upon (i) the continued ownership of the property by the Town; and (ii) the continued employment as hereinafter defined by the Town of the Licensee; and (iii) the continued performance by the Licensee of the listed duties described in Schedule "A". In the event that either Licensee's employment by the Town is terminated, voluntarily or otherwise, or Licensee

no longer fulfills the duties described in Schedule "A", the Town may terminate this License Agreement immediately and require the Licensee to vacate the Premises immediately.

In addition, should the Town sell or transfer or otherwise divest itself of ownership of the property, the Town may terminate this License Agreement upon thirty (30) days' written notice to the Licensee, and the Licensee shall be required to vacate the Premises immediately at the end of the thirty (30) day period.

The Town may terminate this agreement with ten (10) days' prior written notice for any reason whatsoever.

Any improvements or other physical alterations of the Premises, including but not limited to structures, fences, garden shrubs and trees, and interior painting in any manner whatsoever by the Licensee, must have the prior written approval of the Superintendent of Parks & Recreation.

- 4. <u>Use</u>. The Premises must be used to live in only and for no other reason. Without limiting the foregoing, the Licensee shall not run, operate or conduct any business in or on the Premises. The Town, at its sole discretion, may limit the type and number of occupants on the License Agreement Premises for reasons of public health and safety, to preserve the dignity of the property or if the Town determines that the removal of the occupants is in the best interests of the Town as defined by the Town.
- 5. <u>Failure to Give Possession</u>. The Town shall not be liable for failure to give Licensee possession of the Premises on the beginning date of the Term. License Fee shall be payable as of the beginning of the Term unless the Town is unable to give possession. In that case, License Fee shall be payable when possession is available. The Town will notify Licensee as to the date possession is available. The ending date of the Term will not change.
- 6. <u>License Fee, Added License Fee.</u> All License Fee payments shall be made by payroll deductions unless special arrangements are made in advance and approved by the Finance Director of the Town of Somers. If payment is made by other than payroll deductions, the License Fee payments for each month must be paid on the first day of that month at the Town's address above. The Town need not give notice to pay the License Fee. License Fee must be paid in full and no amount subtracted from it. The first month's License Fee is to be paid when the Licensee signs this License Agreement. Licensee may be required to pay other charges to the Town under the terms of this License Agreement ("Added License Fee"). This Added License Fee is payable as License Fee, together with the next monthly License Fee due. If Licensee fails to pay the Added License Fee on time, the Town shall have the same rights against Licensee as if it were a failure to pay License Fee. The whole amount of License Fee is due and payable when this License Agreement is effective. Payment of License Fee in installments is for the Licensee's convenience only. If

Licensee defaults, the Town may give notice to Licensee that Licensee may no longer pay License Fee in installments. The entire License Fee for the remaining part of the Term will then be due and payable.

7. <u>Notices.</u> Any bill, statement or notice must be in writing and delivered or mailed to the Licensee at the Premises and to the Town at the address below. It will be considered delivered on the day mailed or if not mailed, when left at the proper address. Any notice must be sent by certified mail. The Town must send Licensee written notice if the Town changes the addresses for the notices.

To the Town: Town of Somers

Office of the Supervisor

335 Route 202

Somers, New York 10589

With a copy to: Town of Somers

Office of the Town Attorney

335 Route 202

Somers, New York 10589

To the Licensee: Howard M. Vinberg

Caretaker's Residence Koegel Park - Route 118 Somers, New York 10589

- 8. <u>Utilities and services</u>. The Licensee shall, at its own cost and expense, furnish all utilities, including but not limited to electricity, heat, cooking fuel and telephone necessary for its occupancy of Premises. With the exception of cooking stoves, which will be provided by the Town, Licensee, must provide for its own appliances.
- 9. <u>Repairs and alterations</u>. Licensee is responsible for day-to-day maintenance of the interior portions of the premises and the security of the unit. If Licensee defaults, the Town has the right to make repairs and charge the Licensee the cost. The cost will be an Added License Fee. Licensee must not alter, decorate, change or add to the Premises, without the prior written consent of the Town.

The Town shall provide a: stove, refrigerator, three wall air conditioners, and water softener. The licensee at the sole cost and expense of the same shall maintain the equipment (to manufacturers recommendations) in full and complete repair to the satisfaction of the Superintendent of Parks and Recreation during the term of this contract. Licensee shall provide a list of additional appliances to the Town.

Licensee shall provide the Town with certification from a licensed contractor that the wood stove chimney has been cleaned and is in good working order prior to use each year.

The Town will be responsible to maintain the exterior of the building and make all essential structural and mechanical repairs to meet all code requirements. These repairs include: electrical, plumbing, septic, heat and hot water, exterior painting, siding, windows, chimney, roof, foundations, structure, fences and infestations caused by termites and carpenter ants.

- 10. Space "as is". Licensee has inspected the Premises and takes the Premises "as is".
- 11. Care of Premises Grounds. Licensee shall keep the unit neat and clean and at the termination of the License Agreement, the Premises must be "broom clean". Personal vehicles may be driven or parked only in driveways or in the garage. Only legally registered vehicles will be stored on Town property. Licensee shall be responsible, at Licensee's sole cost and expense, for all snow removal on the Premises. The Town shall be responsible for snow removal only on those portions of the Premises, if any, that are used by the public; provided, however, that the Town shall not be under any obligation to perform such snow removal within a specific period of time or to otherwise ensure continuous and uninterrupted access from the Premise to the public street. The Town, at its sole discretion, may limit the type and number of pet(s) on the License Agreement Premises for reasons of public health and safety, to preserve the dignity of the property or if the Town determines that the removal of the pet is in the best interests of the Town as defined by the Town.
- 12. <u>Carbon Monoxide and Smoke Detectors</u>. The Town shall, at the beginning of the term, make certain that working carbon monoxide and smoke detectors have been installed in the Premises in sufficient numbers consistent with the size of the Premises. During the term of the License Agreement, the Licensee shall be responsible for the maintenance and repair of the carbon monoxide and smoke detectors, including but not limited to, replacement of batteries or replacement of the units.
- 13. <u>Fire Damage</u>. Licensee must give the Town immediate notice in case of fire or other damages to the Premises. The Town will have the right to repair the damage within a reasonable time or cancel this License Agreement. If the Town repairs, Licensee shall pay License Fee only to the date of the fire or damage and shall start to pay License Fee again when the Premises become usable. The Town may cancel the License Agreement by giving Licensee three (3) days' written notice. The term shall be over at the end of the third day and all License Fees shall be paid to the date of the damage.
- 14. <u>Liability</u>. The Town is not liable for loss, expense or damage to any person or property unless it is due to the Town's negligence. Licensee must pay for damages suffered and money spent

by the Town relating to any claim arising from any act or neglect of Licensee. Licensee is responsible for all acts of Licensee's family, employees, guests, invitees, and pets, or any third party under the control of the Licensee.

Licensee agrees to indemnify and save the Town harmless from any and all expense arising from damage to the premises due to the negligence of the Licensee or its guests or invitees. The Town will pay for fire and liability insurance on the building and furnishings owned by the Town. The Town shall not be liable for any loss to occupant's personal property. Licensee shall, at its own expense, obtain coverage (renters insurance) for its own benefit and provide proof to the Town.

- 15. <u>Assignment/Sublet</u>. Licensee may not sublet all or any part of the Premises or assign this License Agreement or permit any other person to use the Premises.
- 16. Right to Enter. The Town may, at reasonable times, enter the Premises to examine, make repairs or alterations, and to show it to possible buyers, lenders or Licensees. To the extent practicable, the Town shall provide advance notice to the Licensee of any visits. The Premises are to be secured at all times, with all doors and windows locked when Licensee is out.
- 17. Condemnation. If all of the Premises is taken or condemned by a legal authority, the Term, and Licensee's rights shall end as of the date the authority takes title to the Premises. If any part of the Premises is taken, the Town may cancel this License Agreement on notice to Licensee setting forth a cancellation date not less than 30 days from the date of the notice. If the License Agreement is cancelled, Licensee must deliver the Premises to the Town on the cancellation date together with all License Fees or Added License Fees due to that date. Licensee gives to the Town any interest the Licensee might have to any part of the award and shall make no claim for the value of the remaining part of the Term.
- 18. <u>Compliance with authorities</u>. The Licensee must promptly comply with all laws, orders, rules and directions of all governmental authorities, property owner's associations, insurance carriers of Board of Fire Underwriters or similar group. The Licensee may not do anything which may increase the Town's insurance premiums or insurable risks. If the Licensee does, the Licensee must pay the increase as Added License Fee.
- 19. <u>Licensee's defaults and Town's remedies</u>. In addition to the terms of occupancy in paragraph I, the Town may give ten (10) day's written notice to Licensee to correct any of the following defaults:

- Failure to pay Licensee Fee or Added License Fee on time.
- Improper assignment of the License Agreement, improper subletting all or part of the premises, or allowing another to use the Premises.
- Improper conduct by the Licensee or other occupant of the Premises.
- Failure to fully perform any other term in the License Agreement.

If the Licensee fails to correct the defaults listed above within five (5) days, the Town may cancel the License Agreement by giving the Licensee a written ten (10) day notice stating the date the term will end. On that date, the term and Licensee's rights in the License Agreement automatically end and the Licensee must leave the Premises and give the Town the keys. The Licensee continues to be responsible for the License Fee, expenses, damages and losses.

If the License Agreement is cancelled, or License Fee or Added License Fee is not paid on time, or the Licensee vacates the Premises, the Town may, in addition to other remedies, take any of the following steps:

Enter the Premises and remove the Licensee and any person or property;

Use dispossesses eviction or other lawsuit method to take back the Premises.

If the License Agreement is ended or the Town takes back the Premises, License Fee and Added License Fee for the unexpired term becomes due and payable. The Town may enter into a new License Agreement for the Premises and anything on it for any term. The Town may re-License Fee for a lower License Fee and give allowances to the new Licensee. The Licensee shall be responsible for the Town's cost of replacing the Licensee with a new Licensee. The Town's cost shall include the cost of repairs, decorations, broker's fees, attorney's fees, advertising and preparation for finding a new Licensee. The Licensee shall continue to be responsible for Licensee Fee, expenses, damages, and losses. Any License Fee received from the replacement Licensee shall be applied to the reduction of money the Licensee owes. The Licensee waives all rights to return to the Premises after possession is given to the Town by a Court.

- 20. <u>Bankruptcy</u>. If the Licensee assigns property for the benefit of creditors; Licensee files a voluntary petition or an involuntary petition is filed against Licensee under any bankruptcy or insolvency law; or a trustee or receiver of Licensee or Licensee's property is appointed, the Town may give the Licensee thirty (30) days' notice of cancellation of the term of this License Agreement. If any of the above is not fully dismissed within the thirty (30) days, the Tenancy shall end as of the date stated in the notice. The Licensee must continue to pay License Fee damages, losses and expenses without offset.
- 21. <u>Correcting Licensee's default</u>. If the Licensee fails to correct a default after notice from the Town, the Town may correct it for Licensee at Licensee's expense. The sum Licensee must repay to the Town will be Added License Fee.
- 22. <u>Unable to perform.</u> If due to labor trouble, government order, lack of supply, the Licensee's act or neglect, or any other cause not fully within the Town's reasonable control, the Town is delayed or unable to a) carry out any of the Town's promises or agreements, b) supply any service to be supplied, c) make any required repair or change in the Apartment or Building, or (d) supply any equipment or appliances, this License Agreement shall not be ended or Licensee's obligations affected.
- 23. No Waiver. The Town's failure to enforce any Terms of this License Agreement shall not prevent the Town from enforcing such Terms at a later time.
- 24. <u>No Lease.</u> It is expressly understood and agreed that no building, structure, equipment or space is leased to the Licensee, and the Licensee's privilege to use and occupy any space assigned to it for the operation of this License shall continue only so long as the Licensee shall comply with each and every term and condition of this License.
- 25. <u>Successors</u>. This License Agreement is binding on all parties who lawfully succeed to the rights or take the place of the Town or Licensee.
- 26. <u>Representations. changes in license</u>. The Licensee has read this License. All promises made by the Town are in this License Agreement. There are no others. This License Agreement may be changed only by an agreement inwriting signed by and delivered to each party.
- 27. Paragraph headings. The paragraph headings are for convenience only.

28. а сору	Effective date. This License Agreement is effective signed by all parties.	when the Town delivers to the Licensee
the day	IN WITNESS WHERE OF, this Agreement has by and year first above written.	een duly executed by the parties hereto
		TOWN OF SOMERS
		By: Rick Morrissey, Supervisor
	Print Name:	(Licensee)

# **ACKNOWLEDGEMENTS**

STATE OF NEW YORK	)	
	) SS.:	
COUNTY OF WESTCHESTER	)	
proved to me on the basis of satisfato the within instrument and acknowledge.	ectory evident wledged to nument, the inc	in the year 2021 before me, the undersigned rivisor of the Somers, personally known to me or ce to be the individual whose name is subscribed ne that he executed the same in his capacity, and lividual, or the person upon behalf of which the
		Notary Public
STATE OF NEW YORK	)	
	) SS.:	
COUNTY OF WESTCHESTER	)	
basis of satisfactory evidence to instrument and acknowledged to n	be the indiv ne that he ex	in the year 2021 before me, the undersigned personally known to me or proved to me on the idual whose name is subscribed to the within ecuted the same in his capacity, and that by his person upon behalf of which the individual acted,
		Notary Public

#### SCHEDULE "A"

## KOEGEL PARK TENANT RESPONSIBILITIES

Be alert to people within the park.

Tenant shall be informed of activities scheduled for Koegel Park and shall through general observation determine if activity, scheduled or spontaneous, is appropriate. Inappropriate activity shall be addressed immediately and, if necessary, seek assistance of Town/State Police.

Lock and unlock the entrance gate daily, according to posted hours. Prior to closing, the park shall be checked for and have removed vehicles from within the park.

Immediately call Police or Fire Department in the event of an emergency and monitor the situation until police or fire personnel arrive.

Respond to public inquiries in a courteous manner.

The following shall be performed outside of regularly scheduled work hours and shall be maintained by the Tenant to Parks and Recreation specifications.

- All areas of the park and surrounding the residence shall be kept neat and clean including lawn, shrubs, gardens, walkways, drives, greenway, parking area and park entrance.
- Check all trails and other facilities routinely, but not less than once per week and remove all debris.

If any work needs attention during regularly scheduled work hours, it must be pre-approved by the Superintendent of Parks and Recreation.

Tenant shall park town-owned vehicle outside the house in a conspicuous manner at all times as to make patrons aware of its presence.

Tenant shall be available to respond to security or other alarms, as well as emergencies, i.e. water, septic, accidents, etc. that arise in any parks within the Town of Somers inventory and any other parks which may become part of the park system during the duration of this agreement. Tenant shall be reachable by cell phone during and after work hours to enable 24/7 communication with Town officials. Tenant shall be paid overtime calculated at actual time worked.

A monthly written report of activity, problems, repairs and concerns shall be submitted to the Park Board Chairman, Superintendent of Parks and Recreation and the Town Board.

## OFFICE OF THE SUPERVISOR

Telephone (914) 277-8687 Fax (914) 276-0082 Town of Somers

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE 885 ROUTE 202 SOMERS, NY 10589

RICK MORRISSEY SUPERVISOR



## LICENSE AGREEMENT

AGREEMENT made as of this 1<sup>st</sup> day of July, 2018, between the **Town of Somers**, a municipal corporation having an address at 335 Route 202, Somers, New York 10589 (hereinafter referred to as "*Town*") and **Howard M. Vinberg** (hereinafter referred to as "*Licensee*") residing at Caretaker's Residence, Koegel Park, Route 118, Somers, New York 10589.

## WITNESSETH:

The Town hereby enters into this License Agreement with the Licensee for the Premises known as The Caretakers Residence, Koegel Park, Route 118, Somers, New York for a Term commencing on July 1, 2018, and terminating on December 31, 2021, with a monthly License Fee, payable in advance, of \$1,000.00 per month for the period 7/1/18 to 12/31/18; \$1,300.00 per month for the period 1/1/19 to 12/31/19; \$1,323.00 per month for the period 1/1/20 to 12/31/20; and \$1,350.00 per month for the period 1/1/21 to \$30/21. The parties acknowledge that the monthly License Fee for the Premises is discounted below the full market appraised value for the Premises. Therefore, the Licensee's consideration for the Licensee Agreement is the Licensee's payment of the License Fee as provided for herein and the Licensee's continued performance of the duties described in Schedule "A", which is attached hereto and made a part hereof. The parties hereto hereby covenant as follows:

- 1. Security Deposit. Licensee shall pay \$1,000.00 as a security deposit.
- 2. No Smoking Permitted. No smoking will be permitted in the residence.
- 3. Ownership. The License Agreement is granted solely on the basis of the Town's ownership of the property and the Licensee being an employee of the Town of Somers. Occupancy hereunder is expressly conditioned upon (i) the continued ownership of the property by the Town; and (ii) the continued employment as hereinafter defined by the Town of the Licensee; and (iii) the continued performance by the Licensee of the listed duties described in Schedule "A". In the event that either Licensee's employment by the Town is terminated, voluntarily or otherwise, or Licensee no longer fulfills the duties described in Schedule "A", the

Town may terminate this License Agreement immediately and require the Licensee to vacate the Premises immediately.

In addition, should the Town sell or transfer or otherwise divest itself of ownership of the property, the Town may terminate this License Agreement upon thirty (30) days' written notice to the Licensee, and the Licensee shall be required to vacate the Premises immediately at the end of the thirty (30) day period.

The Town may terminate this agreement with ten (10) days' prior written notice for any reason whatsoever.

Any improvements or other physical alterations of the Premises, including but not limited to structures, fences, garden shrubs and trees, and interior painting in any manner whatsoever by the Licensee, must have the prior written approval of the Superintendent of Parks & Recreation.

- 4. <u>Use</u>. The Premises must be used to live in only and for no other reason. Without limiting the foregoing, the Licensee shall not run, operate or conduct any business in or on the Premises. The Town, at its sole discretion, may limit the type and number of occupants on the License Agreement Premises for reasons of public health and safety, to preserve the dignity of the property or if the Town determines that the removal of the occupants is in the best interests of the Town as defined by the Town.
- 5. <u>Failure to Give Possession</u>. The Town shall not be liable for failure to give Licensee possession of the Premises on the beginning date of the Term. License Fee shall be payable as of the beginning of the Term unless the Town is unable to give possession. In that case, License Fee shall be payable when possession is available. The Town will notify Licensee as to the date possession is available. The ending date of the Term will not change.
- 6. License Fee, Added License Fee. All License Fee payments shall be made by payroll deductions unless special arrangements are made in advance and approved by the Finance Director of the Town of Somers. If payment is made by other than payroll deductions, the License Fee payments for each month must be paid on the first day of that month at the Town's address above. The Town need not give notice to pay the License Fee. License Fee must be paid in full and no amount subtracted from it. The first month's License Fee is to be paid when the Licensee signs this License Agreement. Licensee may be required to pay other charges to the Town under the terms of this License Agreement ("Added License Fee"). This Added License Fee is payable as License Fee, together with the next monthly License Fee due. If Licensee fails to pay the Added License Fee on time, the Town shall have the same rights against Licensee as if it were a failure to pay License Fee. The whole amount of License Fee is due and payable when this Licensee Agreement is effective. Payment of License Fee in installments is for the Licensee's convenience only. If Licensee defaults, the Town may give notice to Licensee that Licensee may no longer pay License Fee in installments. The entire License Fee for the remaining part of the Term will then be due and payable.
- 7. Notices. Any bill, statement or notice must be in writing and delivered or mailed to the Licensee at the Premises and to the Town at the address below. It will be considered delivered on the day mailed or if not mailed, when left at the proper address. Any notice must be

sent by certified mail. The Town must send Licensee written notice if the Town changes the addresses for the notices.

To the Town:

Town of Somers

Office of the Supervisor

335 Route 202

Somers, New York 10589

With a copy to:

Town of Somers

Office of the Town Attorney

335 Route 202

Somers, New York 10589

To the Licensee:

Howard M. Vinberg Caretaker's Residence Koegel Park - Route 118 Somers, New York 10589

- 8. <u>Utilities and services</u>. The Licensee shall, at its own cost and expense, furnish all utilities, including but not limited to electricity, heat, cooking fuel and telephone necessary for its occupancy of Premises. With the exception of cooking stoves, which will be provided by the Town, Licensee, must provide for its own appliances.
- 9. <u>Repairs and alterations</u>. Licensee is responsible for day-to-day maintenance of the interior portions of the premises and the security of the unit. If Licensee defaults, the Town has the right to make repairs and charge the Licensee the cost. The cost will be an Added License Fee. Licensee must not alter, decorate, change or add to the Premises, without the prior written consent of the Town.

The Town shall provide a: stove, refrigerator, three wall air conditioners, and water softener. The licensee at the sole cost and expense of the same shall maintain the equipment (to manufacturers recommendations) in full and complete repair to the satisfaction of the Superintendent of Parks and Recreation during the term of this contract. Licensee shall provide a list of additional appliances to the Town.

Licensee shall provide the Town with certification from a licensed contractor that the wood stove chimney has been cleaned and is in good working order prior to use each year.

The Town will be responsible to maintain the exterior of the building and make all essential structural and mechanical repairs to meet all code requirements. These repairs include: electrical, plumbing, septic, heat and hot water, exterior painting, siding, windows, chimney, roof, foundations, structure, fences and infestations caused by termites and carpenter ants.

10. Space "as is". Licensee has inspected the Premises and takes the Premises "as is".

- 11. Care of Premises Grounds. Licensee shall keep the unit neat and clean and at the termination of the License Agreement, the Premises must be "broom clean". Personal vehicles may be driven or parked only in driveways or in the garage. Only legally registered vehicles will be stored on Town property. Licensee shall be responsible, at Licensee's sole cost and expense, for all snow removal on the Premises. The Town shall be responsible for snow removal only on those portions of the Premises, if any, that are used by the public; provided, however, that the Town shall not be under any obligation to perform such snow removal within a specific period of time or to otherwise ensure continuous and uninterrupted access from the Premise to the public street. The Town, at its sole discretion, may limit the type and number of pet(s) on the License Agreement Premises for reasons of public health and safety, to preserve the dignity of the property or if the Town determines that the removal of the pet is in the best interests of the Town as defined by the Town.
- 12. <u>Carbon Monoxide and Smoke Detectors</u>. The Town shall, at the beginning of the term, make certain that working carbon monoxide and smoke detectors have been installed in the Premises in sufficient numbers consistent with the size of the Premises. During the term of the License Agreement, the Licensee shall be responsible for the maintenance and repair of the carbon monoxide and smoke detectors, including but not limited to, replacement of batteries or replacement of the units.
- 13. Fire Damage. Licensee must give the Town immediate notice in case of fire or other damages to the Premises. The Town will have the right to repair the damage within a reasonable time or cancel this License Agreement. If the Town repairs, Licensee shall pay License Fee only to the date of the fire or damage and shall start to pay License Fee again when the Premises become usable. The Town may cancel the License Agreement by giving Licensee three (3) days' written notice. The term shall be over at the end of the third day and all License Fees shall be paid to the date of the damage.
- 14. <u>Liability</u>. The Town is not liable for loss, expense or damage to any person or property unless it is due to the Town's negligence. Licensee must pay for damages suffered and money spent by the Town relating to any claim arising from any act or neglect of Licensee. Licensee is responsible for all acts of Licensee's family, employees, guests, invitees, and pets, or any third party under the control of the Licensee.

Licensee agrees to indemnify and save the Town harmless from any and all expense arising from damage to the premises due to the negligence of the Licensee or its guests or invitees. The Town will pay for fire and liability insurance on the building and furnishings owned by the Town. The Town shall not be liable for any loss to occupant's personal property. Licensee shall, at its own expense, obtain coverage (renters insurance) for its own benefit and provide proof to the Town.

- 15. <u>Assignment/Sublet</u>. Licensee may not sublet all or any part of the Premises or assign this License Agreement or permit any other person to use the Premises.
- 16. Right to Enter. The Town may, at reasonable times, enter the Premises to examine, make repairs or alterations, and to show it to possible buyers, lenders or Licensees. To the extent practicable, the Town shall provide advance notice to the

Licensee of any visits. The Premises are to be secured at all times, with all doors and windows locked when Licensee is out.

- 17. Condemnation. If all of the Premises is taken or condemned by a legal authority, the Term, and Licensee's rights shall end as of the date the authority takes title to the Premises. If any part of the Premises is taken, the Town may cancel this License Agreement on notice to Licensee setting forth a cancellation date not less than 30 days from the date of the notice. If the License Agreement is cancelled, Licensee must deliver the Premises to the Town on the cancellation date together with all License Fees or Added License Fees due to that date. Licensee gives to the Town any interest the Licensee might have to any part of the award and shall make no claim for the value of the remaining part of the Term.
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- 19. <u>Licensee's defaults and Town's remedies</u>. In addition to the terms of occupancy in paragraph 1, the Town may give ten (10) day's written notice to Licensee to correct any of the following defaults:
  - Failure to pay Licensee Fee or Added License Fee on time.
  - Improper assignment of the License Agreement, improper subletting all or part of the premises, or allowing another to use the Premises.
  - Improper conduct by the Licensee or other occupant of the Premises.
  - Failure to fully perform any other term in the License Agreement.

If the Licensee fails to correct the defaults listed above within five (5) days, the Town may cancel the License Agreement by giving the Licensee a written ten (10) day notice stating the date the term will end. On that date, the term and Licensee's rights in the License Agreement automatically end and the Licensee must leave the Premises and give the Town the keys. The Licensee continues to be responsible for the License Fee, expenses, damages and losses.

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If the License Agreement is ended or the Town takes back the Premises, License Fee and Added License Fee for the unexpired term becomes due and payable. The Town may enter into a new License Agreement for the Premises and anything on it for any term. The Town may re-License Fee for a lower License Fee and give allowances to the new Licensee. The Licensee shall be responsible for the Town's cost of replacing the Licensee with a new Licensee. The Town's cost shall include the cost of repairs, decorations, broker's fees, attorney's fees, advertising and preparation for finding a new Licensee. The Licensee shall continue to be responsible for Licensee Fee, expenses, damages, and losses. Any License Fee received from the replacement Licensee shall be applied to the reduction of money the Licensee owes. The Licensee waives all rights to return to the Premises after possession is given to the Town by a Court.

- 20. <u>Bankruptcy</u>. If the Licensee assigns property for the benefit of creditors; Licensee files a voluntary petition or an involuntary petition is filed against Licensee under any bankruptcy or insolvency law; or a trustee or receiver of Licensee or Licensee's property is appointed, the Town may give the Licensee thirty (30) days' notice of cancellation of the term of this License Agreement. If any of the above is not fully dismissed within the thirty (30) days, the Tenancy shall end as of the date stated in the notice. The Licensee must continue to pay License Fee damages, losses and expenses without offset.
- 21. <u>Correcting Licensee's default</u>. If the Licensee fails to correct a default after notice from the Town, the Town may correct it for Licensee at Licensee's expense. The sum Licensee must repay to the Town will be Added License Fee.
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- 23. <u>No Waiver</u>. The Town's failure to enforce any Terms of this License Agreement shall not prevent the Town from enforcing such Terms at a later time.
- 24. <u>No Lease</u>. It is expressly understood and agreed that no building, structure, equipment or space is leased to the Licensee, and the Licensee's privilege to use and occupy any space assigned to it for the operation of this License shall continue only so long as the Licensee shall comply with each and every term and condition of this License.
- 25. <u>Successors</u>. This License Agreement is binding on all parties who lawfully succeed to the rights or take the place of the Town or Licensee.

- 26. <u>Representations, changes in license</u>. The Licensee has read this License. All promises made by the Town are in this License Agreement. There are no others. This License Agreement may be changed only by an agreement in writing signed by and delivered to each party.
  - 27. Paragraph headings. The paragraph headings are for convenience only.
- 28. <u>Effective date</u>. This License Agreement is effective when the Town delivers to the Licensee a copy signed by all parties.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto the day and year first above written.

TOWN OF SOMERS

Rick Morrissey, Supervis

Howard M. Vinberg

(Licensee)

## **ACKNOWLEDGEMENTS**

STATE OF NEW YORK )	
) SS.: COUNTY OF WESTCHESTER )	
On the 18 day of July in the year 2018 before me, the undersigned personally appear RICK MORRISSEY, Supervisor of the Somers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the with instrument and acknowledged to me that he executed the same in his capacity, and that by I signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.  Notary Public  FATRICIA KALBA  Notary Public, State of New York  No. 01RA6030158  Qualified in Westernstor County  My Commission Expires Sept. 5, 20	the hin his
STATE OF NEW YORK ) ) SS.:	
COUNTY OF WESTCHESTER)	

On the 19 day of July in the year 2018 before me, the undersigned personally appeared HOWARD M. VINBERG, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

PATRICIA KALBA
Notary Public, State of New York
No. 01KA6080158
Qualified in Westchester County
My Commission Expires Sept. 9, 20

#### SCHEDULE "A"

#### KOEGEL PARK TENANT RESPONSIBILITIES

Be alert to people within the park.

Tenant shall be informed of activities scheduled for Koegel Park and shall through general observation determine if activity, scheduled or spontaneous, is appropriate. Inappropriate activity shall be addressed immediately and, if necessary, seek assistance of Town/State Police.

Lock and unlock the entrance gate daily, according to posted hours. Prior to closing, the park shall be checked for and have removed vehicles from within the park.

Immediately call Police or Fire Department in the event of an emergency and monitor the situation until police or fire personnel arrive.

Respond to public inquiries in a courteous manner.

The following shall be performed outside of regularly scheduled work hours and shall be maintained by the Tenant to Parks and Recreation specifications.

- All areas of the park and surrounding the residence shall be kept neat and clean including lawn, shrubs, gardens, walkways, drives, greenway, parking area and park entrance.
- Check all trails and other facilities routinely, but not less than once per week and remove all debris.

If any work needs attention during regularly scheduled work hours, it must be pre-approved by the Superintendent of Parks and Recreation.

Tenant shall park town-owned vehicle outside the house in a conspicuous manner at all times as to make patrons aware of its presence.

Tenant shall be available to respond to security or other alarms, as well as emergencies, i.e. water, septic, accidents, etc. that arise in any parks within the Town of Somers inventory and any other parks which may become part of the park system during the duration of this agreement. Tenant shall be reachable by cell phone during and after work hours to enable 24/7 communication with Town officials. Tenant shall be paid overtime calculated at actual time worked.

A monthly written report of activity, problems, repairs and concerns shall be submitted to the Park Board Chairman, Superintendent of Parks and Recreation and the Town Board.



Sentito:
Te.TAITC
Te.TAITC

**Town of Somers**335 Route 202
Somers, NY 10589
ATTN: **Rick Morrissey** 

## KATHY HOCHUL Governor

# MARIE THERESE DOMINGUEZ

Commissioner



RE: NYSDOT Snow and Ice Agreement Year 2021/22 Adjustment Calculation Town of Somers, NY

## Dear Supervisor Morrissey:

Please find enclosed 3 copies of the year 2021/2022 Agreement Adjustment Calculation Worksheet for contract #D014870 review by your office. If your office has any questions or concerns upon review of the worksheets you are welcome to contact the local NYSDOT Residency to discuss further.

Since the five-year Municipal Snow and Ice Agreement is currently in effect, the NYSDOT no longer requires the one-year extension agreements. However, the NYSDOT is still required to adjust the estimate expenditure each year of the contract term to account for changes in labor, materials, equipment, and fixed costs. In years two through five of the contract, the estimate may require a simple recalculation or a fully approved and executed contract amendment (also known as a Supplemental Agreement) depending on the severity of the previous winter season.

A special note for the 2021/22 season is that the equipment portion of the estimate will be <u>increased by 31%</u>. *This is a one-time increase.* 

If your office is agreeable with the **pre-infilled** estimates, please return the three copies signed (by an Authorized Municipal Official). Please submit the completed/signed documents to this office for processing, by **Friday December 31**st, **2021.** 

## PLEASE SUMBIT THE COMPLETED DOCUMENTS TO:

New York State DOT Residency 8-8 Westchester North 85 Route 100 Katonah, N.Y. 10536 ATTN: Michael LeRose

The Department appreciates the Town effort and participation during the Snow and Ice season. If you have any questions or comments, please contact the Residency at (914) 232-3060.

Michael LeRose

Assistant Resident Engineer, NYSDOT Westchester North Residency 8-8

cc: file

# **NYSDOT Municipal Snow & Ice Program**

# AGREEMENT ADJUSTMENT/CALCULATION WORKSHEET For Index Lump Sum Agreements

2021/22 Snow & Ice Season Current Contract Period: 7/1/2019 to 6/30/2024

Municipality		TOWN OF SOMERS	Contract #	D014870
County		WESTCHESTER	Region	8
Contract LM	30.03		,	

	2020/21 Seas	\$85,88	33.68			
%	Labor	39.61%	Materials	27.59%	Equipment	32.80%
Value	\$33,5	68.07	\$23,38	82.23	\$27,79	7.74

## LABOR \*

Labor Portion of 2020/21 Estimated Expenditure % Labor Increase/Decrease for 2021/22 Season

\$33,568.07

0.00

%

Additional/Less Labor Costs for 2021/22

# Labor Portion of 2021/22 Season Estimated Expenditure

\$33,568.07

## **MATERIALS**

Materials Portion of 2020/21 Extension's Estimated Expenditure

\$23,382.23

	% Materials	2020/21 Total Material \$	I. Proportionate \$ Amount	2021/22 Price Per Unit	2020/21 Price Per Unit	Difference (Show +/-)	II. ± ▲ %	I. x II. Inc/Dec
Salt	100.00%	\$23,382.23	\$23,382.23	\$73.50	\$65.74	\$7.76	11.80%	\$2,760.06
Sand								
Other								
						Mater	ials Total	\$26,142.29

Materials Portion of 2021/22 Season's Estimated Expenditure \$	\$26,142.29
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## **EQUIPMENT**

Equipment Portion of 2020/21 Estimated Expenditure

\$27,797.74

% Equipment Increase/Decrease for 2021/22 Season

x 31.00%

Additional/Less Equipment Costs for 2021/22

\$8,617.30

<b>Equipment Portion</b>	of 2021/22 Seaso	on Estimated Expenditure
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\$36,415.04

SUBTOTAL of Labor + Materials + Equipment:

\$96,125.40

<sup>\*</sup> Attach Municipality's certification of applicable labor cost increase

FIXED COSTS (fill out if necessary)

	1	A
Salt Storage (Barns)		\$1,135.64
DTN Weather Service		
Snow Fence		
	Total Fixed Costs	\$1 135 64
	lotal Fixed Costs	\$1,135.64

21/22 SEASON ESTIMATE (Labor + Materials + Equipment + Fixed Costs) \$97,261.04	
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# **SUMMARY OF COSTS**

	2020/21 \$	%	2021/22 \$	%
Labor	\$33,568.07	39.61%	\$33,568.07	34.92%
Materials	\$23,382.23	27.59%	\$26,142.29	27.20%
Equipment	\$27,797.74	32.80%	\$36,415.04	37.38%
Fixed Costs	\$1,135.64	11	\$1,135.64	
Totals	\$85,883.68	100%	\$97,261.04	100%

A: Original Base Season Estimate from Current Agreement:	\$85,883.68
B: 2021/22 Season Estimate	\$97,261.04
Increase or Decrease (B minus A)**	+\$11,377.36

<sup>\*\*</sup>Due to a light winter during the 2020/21 season, if an increase of more than \$41,901.30 is needed for the 2021/22 season, an amendment (Supplemental Agreement) to the contract will be required and will be subject to OSC approval.

Estimate Recommended/Reviewe	ed By:
	Resident Engineer
Estimate Reviewed By:	
	Municipality
Estimate Approved By:	
S8	I Program Manager