

OFFICE OF THE SUPERVISOR

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

Town of Somers
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE
335 ROUTE 202
SOMERS, NY 10589

ROBERT SCORRANO
SUPERVISOR



**SOMERS TOWN BOARD
REGULAR MEETING - 7:00pm
THURSDAY, MAY 12, 2022
www.somersny.com**

6:00pm Executive Session

I. PLEDGE OF ALLEGIANCE:

7:00pm Regular Meeting

II. ROLL CALL:

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

PUBLIC COMMENT

Please limit your comments to no more than 3 minutes.

IV. APPROVAL OF MINUTES:

V. DEPARTMENT REPORTS: 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. Department of Highways – Update – Nick DeVito – Superintendent of Highways
3. National Preservation Month – Grace Zimmerman - Somers Historical Society
4. Conceptual Presentation – NYS Route 100 - Plum Brook Realty, LLC
5. Best Plumbing – Lifting Property Use Restrictions – Discussion
6. Authorize the Supervisor to execute the Heritage Hills Shelter and License Agreement between the Heritage Hills Society, Ltd. and the Town of Somers.
7. Authorize the Supervisor to execute the Evoke Systems Subscription Service Agreement for the collection of fees related to the Electric Charging Stations located at Van Tassell & Reis Park and discuss fees, if any, for public use.
8. Award bid and authorize the Supervisor to execute a contract to place carpet tiles in the Main Room and Teen Room of the Somers Library in the amount of \$10,095.00 with Kanters Carpet per memo dated May 9, 2022 from Thomas J. Tooma, Building Inspector.
9. Award bid and authorize the Supervisor to execute a contract for the rewiring of the data cables in the Somers Library in the amount of \$15,505.00 with Select Telecom per memo dated May 9, 2022 from Thomas J. Tooma, Building Inspector.
10. Combine July 7, 2022 Work Session & July 14, 2022 Regular Meeting – Discussion
11. Combine August 4, 2022 Work Session & August 11, 2022 Regular Meeting – Discussion

B. PARKS & RECREATION: No additional business.

C. FINANCIAL: No additional business.

D. HIGHWAY: No additional business.

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E. PERSONNEL:

1. Current Vacancies:

- a. Affordable Housing Board (1- 2-year term ending 7/11/2022.)
- b. Assessment Board of Review (1- 5-year term ending 9/30/2023.)
- c. Library Board of Trustees (1 – 5-year term ending 12/31/2025.)
- d. Parks and Recreation Board (2- 3-year terms ending 03/09/2025.)
- e. Partners in Prevention (2- 3-year terms ending 12/31/2022.)
- f. Partners in Prevention (1- 3-year term ending 12/31/2023.)

2. Upcoming Vacancies - Terms Expiring in 2022:

- a. Affordable Housing Board (2- 2-year terms ending 7/11/2022.)
3. Authorize the hiring of Mr. Donald Spinelli as Part-Time Availability (PTA) Chauffeur for the Somers Senior Adult / Nutrition Department at an hourly rate of \$17.50 per memo dated May 3, 2022 from Barbara Taberer, Seniors and Nutrition Program Director effective May 5, 2022.
4. Authorize the hiring of Farah Cleary, for the position of full-time Recreation Leader in the Parks and Recreation Department effective May 20, 2022 with a delayed start date of June 6, 2022 and in accordance with the CSEA Contract Appendix B at Grade 4A, Step 6 at an annual salary of \$57,742.00 contingent upon the successful results of a physical, drug test, reference, background, and driver license checks per memo dated May 5, 2022 from Steven Ralston, Superintendent of Parks and Recreation.
5. Authorize the reappointment of Christopher McCormack to the Somers Parks and Recreation Board to a three-year term ending March 9, 2025.

F. PLANNING & ENGINEERING: No additional business.

G. POLICE:

1. Request permission to purchase a Ver-Mac variable message board with radar, Model PCMS-548/HYD-LE in the amount of \$18,500.00 per memo dated May 4, 2022 from Brian Linkletter, Chief of the Somers Police Department.

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H. CONSENSUS AGENDA:

1. Authorize the following SEQRA/Professional Service Fee refund per April 21, 2022 memo from Steve Woelfle, Engineering Department:
 - a. \$5,000.00 Alonquin Gas Transmission LLC
Atlantic Bridge Project Refund of SEQRA/Professional Service Fee,
Ms. Tammy Keith, Enbridge, 70 East Johnson Avenue, Cheshire, CT
06410
2. Authorize the Supervisor to execute the:
 - a. The IIIB Transportation Services Contract, for the period of January 1, 2022 through December 31, 2022 per memo dated April 18, 2022 from Barbara Taberer, Seniors and Nutrition Program Director.
 - b. The IIIC and corresponding NSIP funding contracts for period beginning January 1, 2022 and continuing through December 31, 2022 per memo dated April 18 2022 from Barbara Taberer, Seniors and Nutrition Program Director.
3. Declare May, 2022 as National Historic Preservation Month in the Town of Somers.
4. Award bid and authorize the Supervisor to execute a contract for the installation of a 100-kw generator in the Somers Library in the amount of \$80,000.00 with Light Electric per memo dated April 25, 2022 from Thomas J. Tooma, Building Inspector.
5. Authorize Supervisor to enter into an Intermunicipal Agreement ("TMA") with the County of Westchester in order for the County to release \$175,000.00 from the East of Hudson WQIP Fund to partially fund the Town's costs to construct a salt receiving, processing, and storing structure at the Somers Highway Garage pending the approval from the Westchester County Board of Legislators.
6. Authorize the solicitation of Request for Proposals to replace the original section of the Annex and Chimney Caps per memo dated April 22, 2022 from Thomas J. Tooma, Jr., Building Inspector.
7. Authorize the Supervisor to execute the:
 - a. The Woodard and Curran Professional Engineering Services Proposal for the design and project oversight of the Town House HVAC system for time and materials not to exceed \$35,000.
 - b. The 2022 Fireworks agreement between Garden State Fireworks, Inc and the Town of Somers in the amount of \$10,000.00.

**SOMERS TOWN BOARD
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2022 Calendar

| | | |
|-----------------|--------|----------------------------|
| May 12, 2022 | 7:00pm | Town Board Regular Meeting |
| June 2, 2022 | 7:00pm | Town Board Work Session |
| June 9, 2022 | 7:00pm | Town Board Regular Meeting |
| July 7, 2022 | 7:00pm | Town Board Work Session |
| June 14, 2022 | 7:00pm | Town Board Regular Meeting |
| August 4, 2022 | 7:00pm | Town Board Work Session |
| August 11, 2022 | 7:00pm | Town Board Regular Meeting |

5/10/2022 10:24 AM
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Sent to:
TB, TA, TC
5/10/2022
KD
copy S.H.S.

A Brief History of Preservation Month

This Preservation Month is a national high-five to everyone doing the great work of saving places—in ways big and small—and inspiring others to do the same!

Every year in May, local preservation groups, state historical societies, and business and civic organizations across the country celebrate Preservation Month through events that promote historic places and heritage tourism, and that demonstrate the social and economic benefits of historic preservation.

Preservation Month began as National Preservation Week in 1973. In 2005, the National Trust extended the celebration to the entire month of May and declared it Preservation Month to provide an even greater opportunity to celebrate the diverse and unique heritage of our country's cities and states.

History

The first National Preservation Week was celebrated on May 6-12, 1973. At the annual meeting on October 27, 1972, in Washington, D.C., Donald T. Sheehan, a member of the Trustees Advisory Committee on Membership & Public Relations, proposed the idea of the National Preservation Week as a "means of relating local and state preservation progress to the national effort for the mutual benefits of both." The National Trust chose the second week of May because it coincided with the organization's annual award luncheon, then in its third year.

A Joint Congressional Resolution was introduced on February 15, 1973, by Sen. Henry M. Jackson (D-Wash.), chairman of the Senate Interior and Insular Affairs Committee to designate the week of May 6-12, 1973, as National Preservation Week. President Richard Nixon signed the resolution into law on May 5, 1973.

First Lady Patricia Nixon, who presented the National Trust awards during the third annual Awards Luncheon in the Decatur House Garden on May 8th, also read the Presidential proclamation:

"As the pace of change accelerates in the world around us, Americans more than ever need a lively awareness of our roots and origins in the past on which to base our sense of identity in the present and our directions for the future."

Mayors and governors throughout the country have since added their proclamations to President Nixon's.

Sent to:
TB, TA, TC
5/10/2022
KD



ZARIN &
STEINMETZ

David S. Steinmetz ▪
david@zarin-steinmetz.com
▪ Also admitted in D.C.

April 28, 2022

Via Electronic Mail

Hon. Robert Scorrano
Supervisor of the Town of Somers
and Members of the Town Board
Town of Somers
335 Route 202
Somers, New York 10589

Re: Plum Brook Realty, LLC – Request for Conceptual Presentation
Tax Parcel 28.17-1-19.2 (“Property”)

Dear Supervisor Scorrano and Members of the Town Board:

This firm represents Plum Brook Realty, LLC, the owner of the referenced Property, located on the west side of NYS Route 100, adjacent to the Paramount at Somers Rehabilitation and Nursing Center. The 44-acre Property is in an R-80 Zoning District.

Our client respectfully requests an opportunity to appear before the Town Board on May 5 for an initial concept presentation about its proposed multi-family, independent senior living project on the Property. This proposal would meet a demand in the Town for modern rental units for seniors who wish to “age in place” so they can remain close to family and friends. This proposal will likely require a zoning text amendment from the Town Board. Our client made a similar presentation to the Planning Board late last year, and would appreciate receiving some initial feedback from the Town Board prior to submitting a rezoning application.

Respectfully submitted,

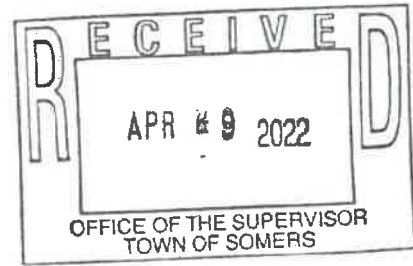
ZARIN & STEINMETZ

By: Brad Schwartz

Brad Schwartz
Brian Sinsabaugh

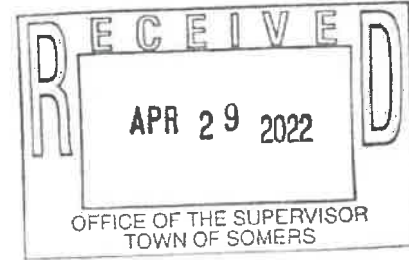
cc: Roland Baroni, Esq.
David Smith

Sent to:
FB, TA, TC
4/24/2022
5/10/2022
KS



BEST PLUMBING PROPERTY RESTRICTIONS

4-29-22
Honorable Robert Scorrano
Somers Town Supervisor
Elephant Hotel
335 Rte. 202
Somers, NY 10589



Re: Lifting Property Use Restrictions

Dear Supervisor Scorrano:

Best Plumbing Supply (BPS) has been and continues to be a vital part of the Somers community, providing residents with decorative Kitchen & Bathroom fixtures and needed plumbing supplies. We are a major tax contributor, continue to participate in community projects, and have donated plumbing fixtures to those in need. We, along with many other businesses, have struggled through the past two years attempting to keep our business viable.

Best Plumbing Supply has had the added burden of operating under Town imposed restrictions. The restrictions outlined below were imposed based on neighboring residents concerns for privacy and public safety concerns. We believe these restrictions are no longer applicable and or necessary as conditions have changed over the last two decades. Since these restrictions were imposed much has changed in and around Best Plumbing Supply. Most notably was the installation of a traffic light on Rte.138 in front of Kennedy Catholic High School and Best Plumbing Supply. This installation enhances public safety by effectively controlling vehicle access to our facility. To accommodate the neighbors' concerns surrounding Best Plumbing Supply, extensive landscaping was initiated which now has matured. There are no current site lines to be observed between the nearest neighbor (over 700 feet) and Best Plumbing Supply.

We are respectfully requesting that the following restrictions be removed to allow Best Plumbing Supply to compete unhampered in this new economy.

RULES OF PROPERTY USE

Section 170-10 of the Town Code

Item 7 - No outside storage shall be permitted.



We would like to store pipe outside. This would require us to build a concrete pad of approximately 40'x80' adjacent to the west side of the building and attach an

awning/roof type cover to keep it clear of snow. There would be no sides or walls on this shed. This location will not be visible from any of the neighbors. Please reference attached photos.

Item 9 – Condition 10 resolution dated 9-3-2010

Change **Warehouse and Office** operations from **Monday through Friday** to **Monday through Saturday**. Showroom only operation is currently permitted on Saturday.

Change current open business hours of operation for WAREHOUSE from **6:00AM to 6:00PM** to open hours of **5:00AM to 6:00PM**. This one hour earlier opening for WAREHOUSE would permit us additional time to prepare our customer orders for shipment and pick up.

Change Principal business activity commencing from **8:00AM to 5:00PM** to **7:00AM to 5:00PM**

Item 10- Trucking activities

We would like to have the No Truck restriction removed, since the traffic light is now installed.

It is hoped that the Somers Town Board with community input will remove these burdensome restrictions and allow Best Plumbing Supply to be one of the best and most competitive business in the Town.

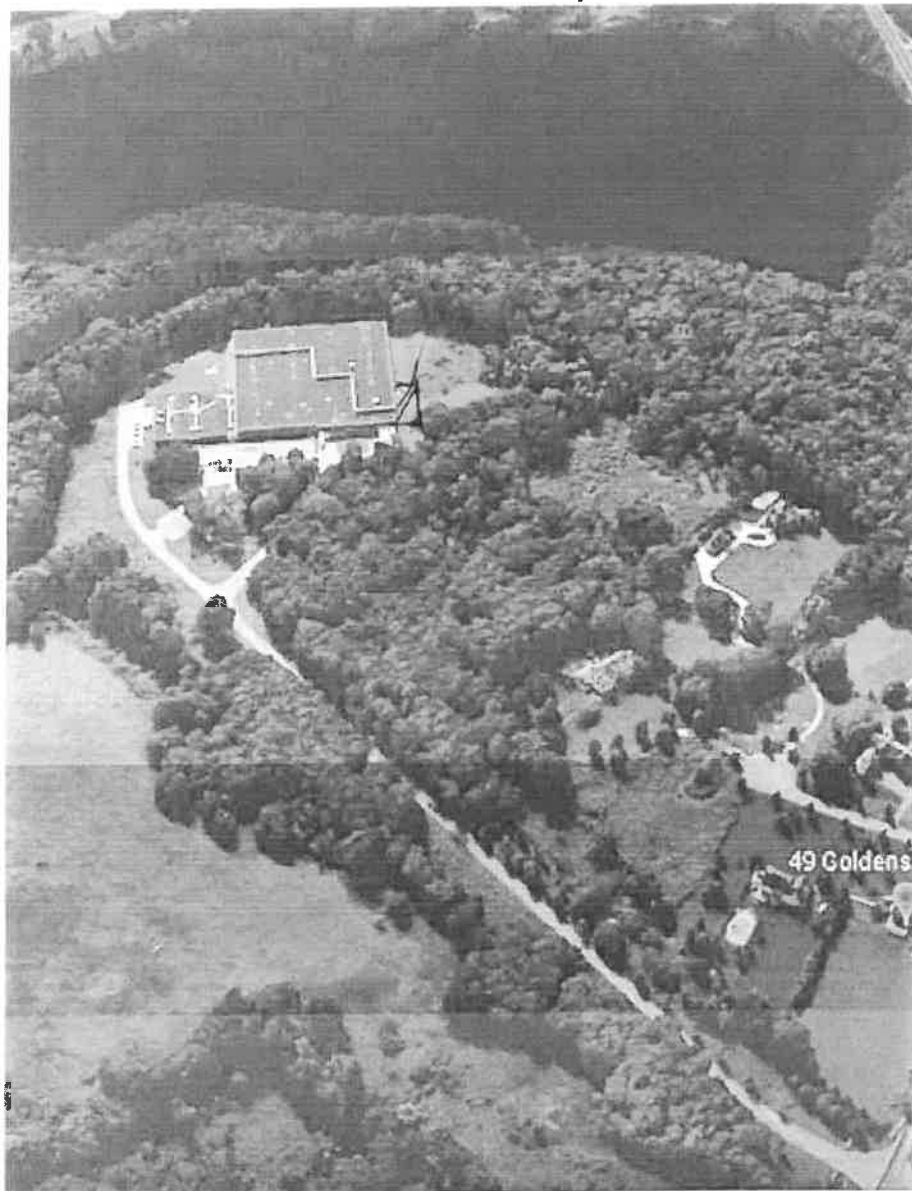
Sincerely,



Jonas Weiner
President
Best Plumbing Supply
914-301-9240
jonas@Bestplg.com

cc: Councilman Anthony Ciriaco
Councilman Richard Clinchy
Councilman William Faulkner
Councilman Thomas Garrity
Town Planner David B. Smith

CONCRETE PAD



Google

(41°16'28"N 73°13'03"W) 2,500 ft



0.00 ft

Add Point



Jonas Weiner

President

📞 914.301.9240

✉️ jonas@bestplg.com

49 Route 138
Somers, NY 10589

www.bestplg.com
📘 facebook.com/bestplg

Sent to:
TB, TA, TC
5/12/2022
KO

SHELTER AND LICENSE AGREEMENT

AGREEMENT (this "Agreement") made and entered into this ____ day of May 2022 between the Heritage Hills Society, Ltd., a corporation duly organized and existing under the laws of the State of New York, having its principal office at 8 Heritage Hills Drive, Somers, NY 10589, (hereinafter "Licensor" or "HH") and the Town of Somers, a municipal corporation duly organized and existing under the laws of the State of New York, having its principal office at Town Hall, 335 Route 202, Somers, NY 10589, (hereinafter "Licensee" or "Town").

RECITALS:

A. Licensor is the owner of certain property located at 8 Heritage Hills Drive, Somers, NY 10589 (the "property") upon which is situated an Activity Center building and associated parking. This property has for many years been used as an emergency shelter by residents of Heritage Hills and the greater Somers residential community.

B. Licensee has agreed to purchase and install a backup generator and associated propane tanks on the property adjacent to the Activity Center sufficient to power the Activity Center during emergencies.

C. Licensor is willing to grant the requested license subject to and upon the following terms and conditions:

AGREEMENT:

NOW THEREFORE, in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant: Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive license (the "license") to enter upon the property and to have installed thereon a back up generator and associated propane tanks and to have performed any necessary electrical work to connect same to the Activity Center.

2. Licensee agrees to install the backup generator, propane tanks and to have the necessary electrical work performed to connect same to the Activity Center as soon as the equipment is available and delivered to the property.

Title to the backup generator and propane tanks shall remain vested in Licensee. Licensee shall be responsible to insure same against risk of damage or loss.

3. Licensor agrees that the Activity Center shall remain available and open for use as an emergency shelter for at least the useful life of the generator during all times when an emergency is declared in the Town of Somers or any portion thereof.

4. Licensor agrees to be responsible for the on-going maintenance of the backup generator and for the cost and delivery of the propane fuel.

5. Licenser agrees, to the fullest extent permitted by law, to indemnify the Licensee and any agents or employees of Licensee from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of any obligation hereunder but only to the extent caused by the negligent act or omission of Licenser or anyone directly or indirectly employed by Licenser.

6. Licensee agrees, to the fullest extent permitted by law, to indemnify the Licenser and any agents or employees of Licenser from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of any obligation hereunder but only to the extent caused by the negligent act or omission of Licensee or anyone directly or indirectly employed by Licensee.

7. This License Agreement shall be governed by the laws of the State of New York.

8. All notices or other communications provided for under this Agreement shall be in writing.

If to Licenser: Office of the President
Heritage Hills Society, Ltd.
8 Heritage Hills Drive
Somers, NY 10589

If to Licensee: Office of the Supervisor
Town of Somers
335 Route 202
Somers, NY 10589

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first written above.

HERITAGE HILLS SOCIETY, LTD.

By: _____
Dom Rubino, President, Licenser

TOWN OF SOMERS

By: _____
Robert Scorrano, Supervisor, Licensee

Sent to:
TB, TA, TC & Copy to Finance
5/10/2022
KD

EVOKE SYSTEMS, LLC
TERMS OF SOFTWARE SERVICE AGREEMENT

This Terms of Software Service Agreement (this "**Agreement**"), including any order form or statement of work that references this Agreement which by this reference is incorporated herein ("**Order Form**"), is a binding agreement between EVOKE SYSTEMS, LLC, a Florida limited liability company with offices located at 405 N Reo Street, Suite # 110, Tampa, FL 33609 ("**EVo**ke"), and the person or entity identified on the Order Form as the customer of the Services ("**Customer**"). EVo

ke and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**." For the purposes of this Agreement, the term "**Reseller**" shall refer to the authorized reseller of EVo

ke's services from which you have agreed to purchase the Services.

PLEASE NOTE: BY ACCEPTING THIS AGREEMENT, EITHER BY (A) CLICKING THE "ACCEPT" BUTTON, (B) COMPLETING AND SUBMITTING TO RESELLER AN ONLINE ORDER FORM REFERENCING THIS AGREEMENT OR OTHERWISE INDICATING YOUR ACCEPTANCE OF AN ONLINE VERSION OF THIS AGREEMENT, (B) SIGNING A COPY OF THIS AGREEMENT, OR (C) SIGNING AN ORDER FORM OR STATEMENT OF WORK THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (E.G., YOUR EMPLOYER, PRINCIPLE OR CLIENT), YOU REPRESENT THAT YOU ARE AUTHORIZED TO DO SO (AND, AS USED HEREIN, THE TERMS "CUSTOMER," "YOU" AND "YOUR" REFER TO YOU AND, IF APPLICABLE, ANY SUCH ENTITY). IF YOU ARE NOT SO AUTHORIZED, OR IF YOU DISAGREE WITH ANY OF THE TERMS OF THIS AGREEMENT, YOU MUST NOT USE THE SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT.

1. **Definitions.**

(a) "**Aggregated Statistics**" means data and information related to Customer's use of the Services that is used by EVo

ke in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

(b) "**Authorized User**" means Customer's employees, consultants, contractors, and agents who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement or as provided in the Order Form.

(c) "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

(d) "**Documentation**" means user manuals, handbooks, and guides relating to the Services provided by EVo

ke to Customer either electronically or in hard copy form.

(e) "**EVo**ke Billing Services" means, to the extent purchased by Customer, the billing services offering described in the Order Form and in **Exhibit B**.

(f) **"EVOKE IP"** means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, EVOKE IP includes Aggregated Statistics and any information, data, or other content derived from EVOKE's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

(g) **"Services"** means the software-as-a-service offering described in the Order Form and in this Agreement (which may include the EVOKE Billing Services to the extent purchased by Customer pursuant to the Order Form).

2. Access and Use.

(a) Provision of Access. Subject to and conditioned on Customer's payment of Fees as provided in the Order Form and compliance with the terms and conditions of this Agreement, EVOKE hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12(g)) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. EVOKE shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services. In no event will EVOKE be liable for any unauthorized use or misuse of Customer's user name(s) or password(s).

(b) Documentation License. Subject to the terms and conditions contained in this Agreement, EVOKE hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(g)) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

(c) Use Restrictions. Customer may use the Services solely in accordance with this Agreement and the Order Form. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; or (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d) Reservation of Rights. EVOKE reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the EVOKE IP.

(e) Suspension. Notwithstanding anything to the contrary in this Agreement, EVoke may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) EVoke reasonably determines that (A) there is a threat or attack on any of the EVoke IP; (B) Customer's or any Authorized User's use of the EVoke IP disrupts or poses a security risk to the EVoke IP or to any other customer or vendor of EVoke; (C) Customer, or any Authorized User, is using the EVoke IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) EVoke's provision of the Services to Customer or any Authorized User is prohibited by applicable law; or (ii) any vendor of EVoke has suspended or terminated EVoke's access to or use of any third-party services or products required to enable Customer to access the Services (any such suspension described in subclause (i) or (ii), a "**Service Suspension**"). EVoke shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. EVoke will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f) Charging Session Data Reporting; Aggregated Statistics.

(i) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that EVoke may (x) collect data relating to charging sessions of end-users of the electric vehicle charging equipment provided to Customer by or on behalf of Reseller which is facilitated by the Services (including, but not limited to, data regarding the number and duration of charging sessions daily, kWh per charging session, plug outage information, cost per kWh, charging revenues derived, and any other data required by applicable utilities and/or funding agencies for purposes relating to any credits, benefits, rebates, refunds, or other intangible incentives resulting from the use of such electric vehicle charging equipment) and (y) generate and share reports regarding such data with applicable utilities and/or funding agencies.

(ii) Notwithstanding anything to the contrary in this Agreement, EVoke may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between EVoke and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by EVoke (except as provided in Section 2(f)(i) above). Customer acknowledges that EVoke may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that EVoke may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

(g) EVOKE Billing Services. If the Customer has purchased the EVOKE Billing Services pursuant to the Order Form, the EVOKE Billing Services Terms and Conditions set forth in **Exhibit B** will govern the applicable fees and payment terms of the EVOKE Billing Services.

3. Customer Responsibilities. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.

4. Service Levels and Support.

(a) Service Levels. Subject to the terms and conditions of this Agreement, EVOKE shall use commercially reasonable efforts to make the Services available in accordance with the service levels set out in **Exhibit A**.

(b) Support. The access rights granted hereunder entitle Customer to the support services described on **Exhibit A** during the Term.

5. Fees and Payment. All fees for the Services ("**Fees**") are payable in the manner set forth in the Order Form and are non-refundable, except as may be expressly set forth in the Order Form.

6. Confidential Information. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order for EVOKE to fulfill its charging session data reporting obligations pursuant to Section 2(f)(i), (ii) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (iii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the

Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership; Feedback.

(a) EVOKE IP. Customer acknowledges that, as between Customer and EVOKE, EVOKE owns all right, title, and interest, including all intellectual property rights, in and to the EVOKE IP.

(b) Customer Data. EVOKE acknowledges that, as between EVOKE and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to EVOKE a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for EVOKE to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

(c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to EVOKE by mail, email, telephone, or otherwise, suggesting or recommending changes to the EVOKE IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), EVOKE is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to EVOKE on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and EVOKE is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although EVOKE is not required to use any Feedback.

8. Limited Warranty and Warranty Disclaimer.

(a) EVOKE warrants that the Services will conform in all material respects to the service levels set forth in **Exhibit A** when accessed and used in accordance with the Documentation. EVOKE does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in **Exhibit A**. The remedies set forth in **Exhibit A** are Customer's sole remedies and EVOKE's sole liability under the limited warranty set forth in this Section 8(a).

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN **SECTION 8(a)**, THE EVOKE IP AND THE SERVICES ARE PROVIDED "AS IS" AND EVOKE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. EVOKE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), EVOKE MAKES NO WARRANTY OF ANY KIND THAT THE EVOKE IP AND THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

9. Indemnification.

(a) EVOKE Indemnification.

(i) EVOKE shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, provided that Customer promptly notifies EVOKE in writing of the claim, cooperates with EVOKE, and allows EVOKE sole authority to control the defense and settlement of such claim.

(ii) If such a claim is made or appears possible, Customer agrees to permit EVOKE, at EVOKE's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If EVOKE determines that neither alternative is reasonably available, EVOKE may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii) This **Section 9(a)** will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by EVOKE or authorized by EVOKE in writing; (B) modifications to the Services not made by EVOKE; or (C) Customer Data.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at EVOKE's option, defend EVOKE from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with

this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; (iii) use of the Services in combination with data, software, hardware, equipment, or technology not provided by EVOKE or authorized by EVOKE in writing; or (iv) modifications to the Services not made by EVOKE, provided that Customer may not settle any Third-Party Claim against EVOKE unless EVOKE consents to such settlement, and further provided that EVOKE will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

(c) Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND EVOKE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability. IN NO EVENT WILL EVOKE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER EVOKE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL EVOKE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER FOR THE SERVICES PROVIDED HEREUNDER DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AT ISSUE ACCRUED.

11. Term and Termination.

(a) Term. The term of this Agreement (the "**Term**") shall commence upon Customer's acceptance of the terms and conditions of this Agreement and shall expire upon the occurrence of any one of the following events: (i) the expiration or termination of the term set forth in the Order Form, (ii) the expiration or termination of the agreement entered into between EVOKE and the Reseller pertaining to the resale and provisioning of the Services, or (iii) the termination of this Agreement in accordance with the terms and conditions set forth herein.

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) EVOKE may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due under the Order Form or this Agreement, and such failure continues more than 10 business days after delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;

(ii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the EVOKE IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the EVOKE IP and certify in writing to the EVOKE that the EVOKE IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

(d) Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. Miscellaneous.

(a) Entire Agreement. This Agreement, together with the Order Form and any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by

reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement or the Order Form (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, pandemic, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. Notwithstanding the foregoing, EVOKE may revise the terms of this Agreement from time to time and in its sole discretion. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Florida. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder may be instituted in the federal courts of the United States or the courts of the State of Florida, and each Party irrevocably submits to the jurisdiction of such courts in any such suit, action, or proceeding.

(g) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of EVoke, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h) Export Regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), that prohibit or restrict the export or re-export of the Services or any Customer Data outside the US.

(i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(j) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

EVOKE SYSTEMS, LLC

By: _____

Name: _____

Title: _____

[CUSTOMER NAME]

By: _____

Name: _____

Title: _____

EXHIBIT A

SERVICE LEVELS AND SUPPORT

Service Levels

Except for any Service Suspension, any scheduled maintenance and any downtime resulting from outages of third-party connections or utilities (including but not limited to electrical, cellular and Internet service interruptions) or other reasons beyond EVOKE's control ("**Permitted Downtime**"), EVOKE shall ensure the reasonable functionality of the Service. In the event non-Permitted Downtime continues for more than three (3) business days, Customer's sole and exclusive remedy, and EVOKE's entire liability, in connection with the Service availability shall be limited to the provisioning of credits for each day of non-Permitted Downtime in excess of three (3) business days.

Support

EVOKE will provide 24x7 technical support to Customer via both telephone and electronic mail ("**Support Hours**").

Customer may initiate a helpdesk ticket during Support Hours by emailing support@evokesystems.com or calling (813) 492.5220.

EVOKE will use commercially reasonable efforts to respond to all helpdesk tickets within one (1) business day.

EXHIBIT B
EVOKE BILLING SERVICES TERMS AND CONDITIONS

If the Customer has purchased the EVOKE Billing Services pursuant to the Order Form, the EVOKE Billing Services Terms and Conditions set forth below (these “**Billing Services T&Cs**”) will govern the applicable fees and payment terms of the EVOKE Billing Services. Customer acknowledges and affirms that the Order Form and the Terms of Software Service Agreement are made part of and are fully incorporated by reference into these Billing Services T&Cs. All capitalized terms used herein but not defined shall have the meanings ascribed in the Order Form and in the Terms of Software Service Agreement.

1. Fees.

| <u>Name</u> | <u>Description</u> | <u>Fee Amount</u> |
|-----------------|--|---|
| Transaction Fee | This is a payment processing fee that is charged on a monthly basis. Applies for Customers purchasing EVOKE Billing Services. | Transaction Fee = 7% of Base Session Fees |

2. Definitions. As used in this Exhibit B, the following definitions shall apply:

(a) “**Base Session Fees**” means the gross fees charged to Drivers for Drivers’ use of Customer’s electric vehicle service equipment, according to the pricing policy designated by Customer, less any Driver Discounts.

(b) “**Charge Backs**” means any costs or loss incurred by EVOKE in connection with the expected collection of the Base Session Fees, including but not limited to payment reversals, chargeback fees or refunds issued to Drivers.

(c) “**Driver Discounts**” means any applicable discounts to charging session rates that have been designated by the Customer.

(d) “**Drivers**” means end users that have created an account with EVOKE to utilize Customer’s electric vehicle service equipment that has been integrated with the Service.

(e) “**Net Deficit**” means the monthly sum of the (a) Transaction Fees, (b) Charge Backs, and (c) Tax and Compliance Costs less the Base Session Fees.

(f) **“Net Session Fees”** means the monthly Base Session Fees less the monthly sum of the (a) Transaction Fees, (b) Charge Backs, and (c) Tax and Compliance Costs.

(g) **“Reseller”** means a reseller or distributor that has an agreement with EVOKE that authorizes them to resell EVOKE software and services, including but not limited to, the EVOKE Billing Services.

(h) **“Set-Off”** means the agreement by EVOKE to collect any Net Deficit owed by Customer from future Net Session Fees.

(i) **“Tax and Compliance Costs”** means any Taxes and Compliance Costs paid by the EVOKE (as such terms are defined in Sections 3(f) and 3(g)).

(j) **“Transaction Fee”** means the Transaction Fee described in Section 1 above.

3. Payment Terms.

(a) Customer is solely responsible for setting the rates of any Base Session Fees and Driver Discounts.

(b) EVOKE reserves the right to change the Transaction Fee or applicable charges and to institute new charges and fees any time after the end of the Initial Service Term or then-current Renewal Service Term, upon thirty (30) days prior notice to Customer (which may be sent by email). Upon receipt of such 30 day notice reflecting an increase in the applicable charges or the institution of new charges and Fees, Customer may elect to terminate this Agreement. If Customer does not elect to terminate this Agreement within such 30-day period, such increase in applicable charges or institution of new charges and fees, as the case may be, shall be deemed to have been accepted by Customer.

(c) If Customer believes that EVOKE has calculated Net Session Fees incorrectly, Customer must contact EVOKE no later than sixty (60) days after the closing date on the first statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to EVOKE’s customer support department support@evokesystems.com. If Customer fails to contact EVOKE within such 60-day period after the closing date on the first billing statement in which the error or problem appeared, then EVOKE shall have no obligation to make any adjustment or credit with respect thereto.

(d) So long as the monthly Base Session Fees exceed the monthly sum of all Transaction Fees, Charge Backs and Tax and Compliance Costs, Customer shall be entitled to any Net Session Fees, less any applicable Set-Offs, on a monthly basis, which shall be payable by EVOKE to Customer on or by the thirtieth (30th) day following the end of each month.

(e) In the event the monthly sum of Transaction Fees, Charge Backs and Tax and Compliance Costs exceeds the monthly Base Session Fees, EVoke shall be entitled to the Net Deficit, on a monthly basis, which, unless the EVoke has agreed to a Set-Off, shall be payable by Customer to EVoke on or by the thirtieth (30th) day following EVoke's issuance of an invoice for such Net Deficit. In the event a Net Deficit occurs on an ongoing basis (more than twice in a twelve-month period), EVoke may require Customer to provide authorization for EVoke to automatically debit a bank account or charge a credit card for such Net Deficits fees.

(f) Customer shall be financially responsible for all taxes associated with Base Session Fees and Net Session Fees (including but not limited to any obligations that arise in connection with the sale of electricity, import or export) other than U.S. taxes based on EVoke's net income ("**Taxes**").

(g) Customer shall be financially responsible for all other fees charged by regulatory bodies in connection with the use of EVoke Billing Services (including but not limited to fees that must be charged to Drivers, permit fees, and customs fees) ("**Compliance Costs**").

(h) Any Taxes or Compliance Costs paid directly by Customer shall not be considered a part of, a deduction from, or an offset against, payments due to EVoke hereunder.



Local Sales and Use Tax Rates on Residential Energy

Effective June 1, 2021

The Tax Law provides that residential energy sources and services are exempt from the 4% New York State sales and use tax, and the 3% sales and use tax imposed in the Metropolitan Commuter Transportation District (MCTD), if applicable. The term *residential energy sources and services* means the following tangible personal property and services used for residential purposes:

- natural gas
- propane sold in containers of 100 pounds or more
- electricity
- steam
- gas, electric, and steam services
- fuel oil (except diesel motor fuel)
- coal
- wood (for heating purposes only)

Counties and cities that impose a local sales and use tax may choose to either tax or exempt the residential energy sources and services listed above. Also, certain school districts are authorized to impose a sales and use tax on natural gas, propane (in containers of 100 pounds or more), electricity, and steam, as well as on gas, electric, and steam services.

Part 1 lists the jurisdictions that impose a local tax on residential sales of gas, propane (in containers of 100 pounds or more), electricity, and steam, and the applicable tax rate.

Part 2 lists the jurisdictions that impose a local tax on residential sales of coal, fuel oil, and wood (for heating), and the applicable tax rate.

Localities or school districts not listed in this publication do not impose a local tax on residential energy sources and services.

Part 1 – Jurisdictions that tax residential gas, propane (100 pounds or more), electricity, and steam

| Taxing jurisdiction (county names added for clarification) | Tax rate % |
|--|------------|
| Albany School District (<i>Albany County</i>) | 3 |
| Cohoes School District (<i>Albany County</i>) | 3 |
| Watervliet School District (<i>Albany County</i>) | 3 |
| Allegany County | 4½ |
| Cattaraugus County (outside the following) | 3 |
| Olean (city) | 3 |
| Salamanca (city) | 3 |
| Cayuga County (outside the following) | 4 |
| Auburn (city) | 4 |
| Chemung County | 4 |
| Norwich (city) (<i>Chenango County</i>) | 3 |
| Hudson School District (<i>Columbia County</i>) | 3 |
| Cortland County | 4 |
| Poughkeepsie School District (<i>Dutchess County</i>) | 3 |
| Erie County (outside the following) | 4¾ |
| Lackawanna School District | 7¾ |
| Franklin County | 2 |
| Gloversville School District (<i>Fulton County</i>) | 3 |
| Johnstown School District (in <i>Fulton County</i>) | 3 |
| Batavia School District (<i>Genesee County</i>) | 3 |
| Watertown School District (<i>Jefferson County</i>) | 3 |
| Oneida (city) (<i>Madison County</i>) | 2 |
| Johnstown School District (in <i>Montgomery County</i>) | 3 |
| Glen Cove School District (<i>Nassau County</i>) | 3 |
| Long Beach School District (<i>Nassau County</i>) | 3 |
| Niagara County (outside the following) | 4 |
| Lockport (city) | 4 |
| Niagara Falls School District | 7 |
| Utica School District (<i>Oneida County</i>) | 3 |

| Taxing jurisdiction (county names added for clarification) | Tax rate % |
|--|------------|
| Middletown School District (<i>Orange County</i>) | 3 |
| Newburgh School District (outside city) (<i>Orange County</i>) | 3 |
| Newburgh School District (inside city) (<i>Orange County</i>) | 6 |
| Port Jervis (city) (<i>Orange County</i>) | 3 |
| Orleans County | 4 |
| Oswego (city) (<i>Oswego County</i>) | 4 |
| Rensselaer School District (<i>Rensselaer County</i>) | 3 |
| Troy School District (<i>Rensselaer County</i>) | 3 |
| Rockland County | 4 |
| Schenectady County (outside the following) | 4 |
| Schenectady School District | 7 |
| Hornell School District (<i>Steuben County</i>) | 2½ |
| St. Lawrence County (outside the following) | 4 |
| Ogdensburg School District | 7 |
| Suffolk County | 2½ |
| Sullivan County ¹ | 4 |
| Tioga County | 3 |
| Tompkins County (outside the following) | 4 |
| Ithaca (city) | 4 |
| Westchester County (outside the following) | 4 |
| Mount Vernon School District (outside city) | 7 |
| Mount Vernon School District (inside city) | 7 |
| New Rochelle School District | 6 |
| Peekskill School District | 7 |
| Rye City School District | 7 |
| White Plains School District | 6 |
| Yonkers (city) | 4½ |
| New York City | 4½ |

Part 2 – Jurisdictions that tax residential coal, fuel oil, and wood (for heating)

| Taxing jurisdiction (county names added for clarification) | Tax rate % |
|--|------------|
| Allegany County | 4½ |
| Cattaraugus County (outside the following) | 3 |
| Olean (city) | 3 |
| Salamanca (city) | 3 |
| Cayuga County (outside the following) | 4 |
| Auburn (city) | 4 |
| Chemung County | 4 |
| Norwich (city) (<i>Chenango County</i>) | 3 |
| Cortland County | 4 |
| Erie County | 4¾ |
| Franklin County | 2 |
| Oneida (city) (<i>Madison County</i>) | 2 |
| Niagara County | 4 |
| Orleans County | 4 |
| Oswego (city) (<i>Oswego County</i>) | 4 |
| Rockland County | 4 |
| Schenectady County | 4 |
| St. Lawrence County | 4 |
| Suffolk County | 2½ |
| Sullivan County ¹ | 4 |
| Tioga County | 3 |
| Tompkins County (outside the following) | 4 |
| Ithaca (city) | 4 |
| Westchester County (outside the following) | 4 |
| Mount Vernon (city) | 4 |
| New Rochelle (city) | 3 |
| Yonkers (city) | 4½ |
| New York City | 4½ |

¹ Additional local rate of 4% will expire on February 28, 2023.

Need help?



Visit our website at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: 518-485-2889

To order forms and publications: 518-457-5431

Text Telephone (TTY) or TDD Dial 7-1-1 for the
equipment users New York Relay Service

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: Carpet Tiles in the Library's Main Room and Teen Room

DATE: May 9, 2022

Permission was granted to solicit Requests for Proposal (RFP's) to place carpet tiles in the Library's Main Room and Teen Room. Only one RFP was received from the company who had already submitted a proposal to do this work. It is recommended that Kanters Carpet be awarded the RFP at a total of \$10,095.

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: Rewiring of the Data Cables in the Library RFP

DATE: May 9, 2022

Permission was granted to solicit Requests for Proposal (RFP's) for the rewiring of the data cables in the Library. Only one RFP was received from the company who had already submitted an E-Rate proposal to do this work. It is recommended that Select Telecom be awarded the RFP at a total of \$15,505.

Sent to:
TB, TA, TC
5/6/2022
KD

INTEROFFICE MEMORANDUM

TO: TOWN SUPERVISOR AND MEMBERS OF THE TOWN BOARD
FROM: SENIORS DEPARTMENT DIRECTOR, BARBARA TABERER
SUBJECT: NEW HIRE
DATE: MAY 3, 2022
CC: DIRECTOR FINANCE, TOWN CLERK

The Director of Senior Programs requests Don Spinelli be hired as a Part time, as needed availability Chauffer at an hourly rate of \$17.50 to begin 05/05/2022. He will transport Seniors and deliver meals. His hours will not exceed 17 per week.

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

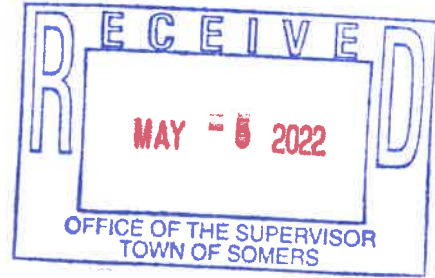
Phone: (914)-232-8441
Fax: (914)-232-8548
Email: parks@somersny.com
Web: www.somersny.com

Steven Ralston
Superintendent

*Sent to:
TB, TA, TC,
CC: Finance
5/6/22
KD*



May 5, 2022



To: Town Board

From: Steven Ralston
Superintendent of Parks and Recreation

I am requesting authorization to hire Farah Cleary to the Recreation Leader 0268-01 competitive class position full-time in the Parks and Recreation Department effective May 20, 2022 with a delayed start date of June 6, 2022 and in accordance with the CSEA Contract Appendix B at Grade 4A Step 6 at an annual salary of \$57,742.00 contingent upon the successful results of a physical, drug test, reference, background, and driver license checks.

Farah is reachable on the eligibility list.

Thank you for your consideration

C: Park Board
Director of Finance
Town Clerk

Sent To:
TB, TA, TC
5/11/2022
KO

Kim DeLucia

From: Christopher McCormack <
Sent: Friday, April 1, 2022 7:27 PM
To: Kim DeLucia
Cc: Denise Schirmer; Robert Scorrano; Steve Ralston
Subject: Re: Town of Somers - Expired Term - Parks and Rec Board

I am still interested, i would like to continue on the Parks board Thank you

On Fri, Apr 1, 2022 at 14:45 Kim DeLucia <kdelucia_somersn.com> wrote:

Good afternoon Mr. McCormack,

The attached letter was sent to you on February, 24, 2022.

Please let us know if you are still interested in serving another term on the Parks and Recreation Board.

Thank you,

Kim

Kim DeLucia

Executive Assistant to

Robert Scorrano, Town Supervisor

TOWN OF SOMERS

335 ROUTE 202

SOMERS, NY 10589

Phone: 914-277-3637

Fax: 914-276-0082

WWW.SOMERSNY.COM

TOWN POLICE
BRIAN LINKLETTER
CHIEF

Town of Somers

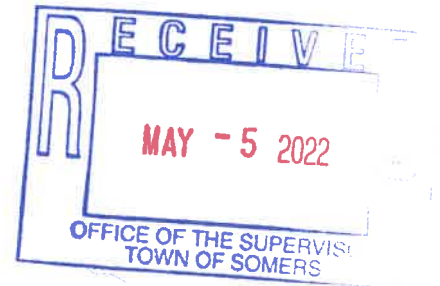
WESTCHESTER COUNTY, N.Y.

PO BOX 342
SOMERS, N.Y. 10589
T.914-232-9622
F.914-232-1795
Email: Police@SomersNY.com

Sent to:
TB, TA, TC
5/6/22
LD



May 4, 2022



To: Town Board
From: Chief Brian Linkletter
Subject: Request for Approval

I request to purchase a Ver-Mac variable message board with radar model PCMS-548/HYD-LE in the amount of \$18,500.00. This item was not available on State bid contract or Westchester shares portal. 3 estimates are attached for your review. This item was approved in this Departments 2022 Budget. This purchase was discussed and vetted with the Director of Finance

Chief Brian Linkletter

Respectfully
Brian Linkletter
Chief
Somers Town Police Department

TOWN POLICE
BRIAN LINKLETTER
CHIEF

Town of Somers

WESTCHESTER COUNTY, N.Y.

PO BOX 342
SOMERS, N.Y. 10589
T.914-232-9622
F.914-232-1795
Email: Police@SomersNY.com



May 3, 2022

Town of Somers
335 Route 202
Somers NY 10589

To: Town Board

From: Brian Linkletter
Chief of Somers Town Police Dept.

Subject: Request for Approval

The undersigned requests approval to purchase a Variable Message Sign with Trailer and Radar in the amount of **\$18,500.00**. This equipment will be used to inform Town Residents of Town events that will effect traffic. This Variable message sign will also be used as a speed sign when not in use for informational purposes. There is no State Bid Contract for this item. There is no similar item on the Westchester Shares Portal. NY SourceWell Cost exceeded cost of Traffic Lane Closures for equipment. Traffic Lane Closures already has an existing account with the Town of Somers and its facility is in close proximity if there is any issue with equipment. The purchase has been discussed and vetted with the Director of Finance.

| Company | Product | Cost |
|----------------------------------|-------------------------|--------------------|
| Traffic lane Closures | Ver-Mac PCMS-548/HYD-LE | \$15,900.00 |
| | Ver-Mac radar | \$ 1,600.00 |
| | Shipping | \$ 1,000.00 |
| | Total | \$18,500.00 |
| TRANSSUPPLY | SMC 4000 W/ Radar | \$15,995.00 |
| | Shipping | \$2,950.00 |
| | Total | \$18,945.00 |
| TrafficLogix • SourceWell | VMS30 Solar Trailer | \$16,122.00 |
| | Radar | \$7,500.00 |
| | Shipping | No charge |
| | Total | \$23,622.00 |

For your consideration and approval.

Chief Linkletter

Somers Police Department



PRINTED ON RECYCLED PAPER



Office of General Services (/)



OGS Centralized Awards List

CURRENT CONTRACT AWARDS

Commodities | Services | Technology

Search:

variable message signs

Search by Award Number, Group Number, or Title.

| Award # | Group | Award Title | Type |
|---------|-------|-------------|------|
|---------|-------|-------------|------|

No matching records found

Previous

Next



VARIABLE MESSAGE SIGN

Sort by

Relevance

Viewing: 0 Products for "VARIABLE MESSAGE SIGN"



Sorry! No results found for this search, try fewer or different filters

Didn't find what you are looking for? Try creating an Joint Procurement.



TRAFFIC LANE CLOSURES

P.O Box 726
Brewster NY 10509
United States

Estimate

Date 3/11/2022
Estimate # QUO1764
Expires 4/10/2022
Exp. Close 3/11/2022
Project
Shipping Method Manufacturer Shipping

Bill To

John Maguire
Town Of Somers Police Dept
335 Rt 202
Somers NY 10589
United States

Ship To

John Maguire
Town Of Somers Police Dept
335 Rt 202
Somers NY 10589
United States

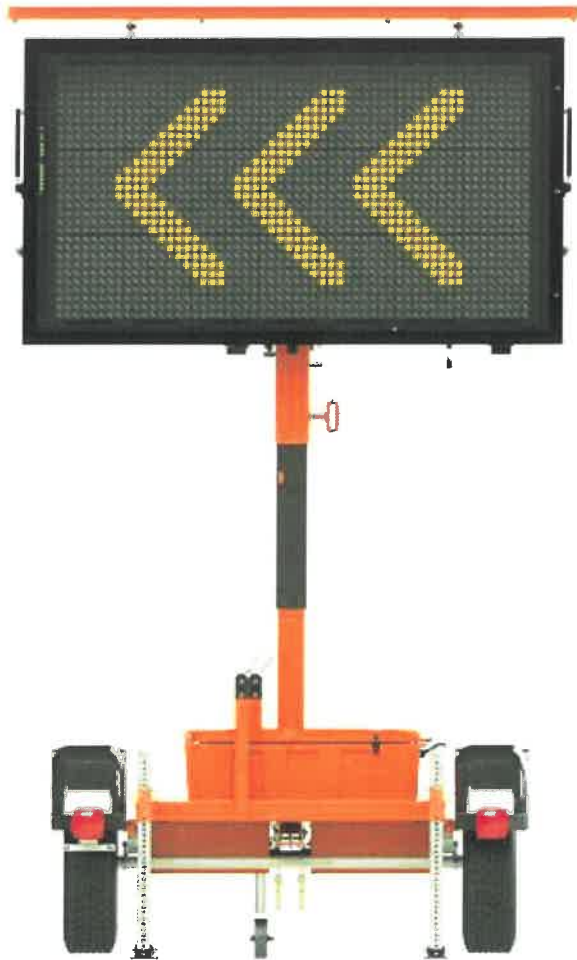
| Item | Description | Quantity | Units | Rate | Amount |
|-------------------|---|----------|-------|-----------|-----------|
| VERM-PCMS-548/HYD | ***OPTION*** Ver-Mac, PCMS-548/HYD-LE, 45"x80" Display, 30x56 Pixels, 2 LED's per Pixel,, Hydraulic Lift, 3x85 Watt Solar Panels, Tilt & Rotate, 2 Batteries, Refresh/alerts, V-synch Wifi Nticip Touchscreen, 4g Jamlogic 10 Yr, 30 Amp Charger. - Painted White - Hitch & Power Harness Types To Be Confirmed Upon Releasing Order - | 1 | Ea | 15,900.00 | 15,900.00 |
| VERM-OPT-MS-Radar | Ver-mac - Radar, Houston | 1 | Ea | 1,600.00 | 1,600.00 |
| | ***SPECIAL ORDER ITEMS, NOT STOCKED. MFRs CURRENT LEAD TIMES ARE 8-10 WEEKS ARO*** ***MFRs LTL FREIGHT TO TLC FOR EITHER UNIT \$1,000.00*** | | | | |
| QUOTE | * All Quotes Good For 30 Days ** If No Freight Charges Are Present They Will Be Added When Location Is Supplied *** Contractor/customer Is Responsible For Quantities **** State And Local Taxes May Apply | 1 | Ea | 0.00 | 0.00 |
| QUOTE1 | ***** Pricing Subject To Availability If Item Is Out Of Stock And Is Unable To Be Added To A Stocking Order, Additional Freight Charges May Apply ***** All Pricing Is Subject To Engineer Approval | 1 | Ea | 0.00 | 0.00 |
| QUOTE2 | **** Returns **** **** Signs - No Returns **** Stock Items - 30 Days From Date Of Invoice Assuming Products In New Condition, Unopened, Etc, No Returns Over 30 Days **** Non Stock/special Order Items - Absolutely No Returns | 1 | Ea | 0.00 | 0.00 |

Subtotal 17,500.00
Shipping Cost (Manufacturer Shipping Charge) 1,000.00
Total \$18,500.00

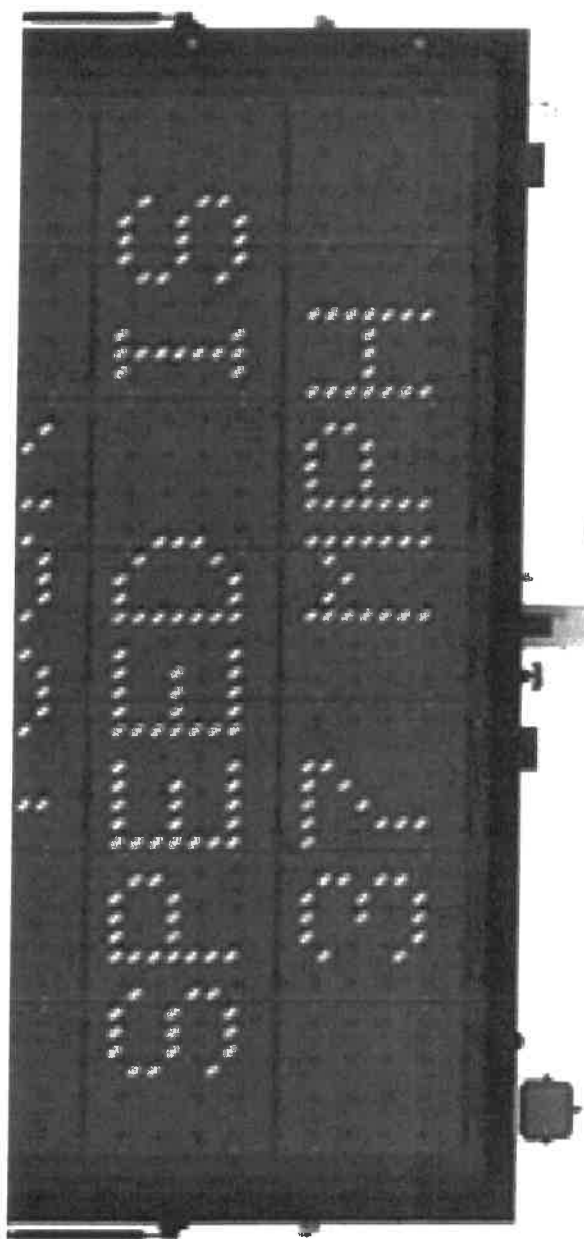


QUO1764

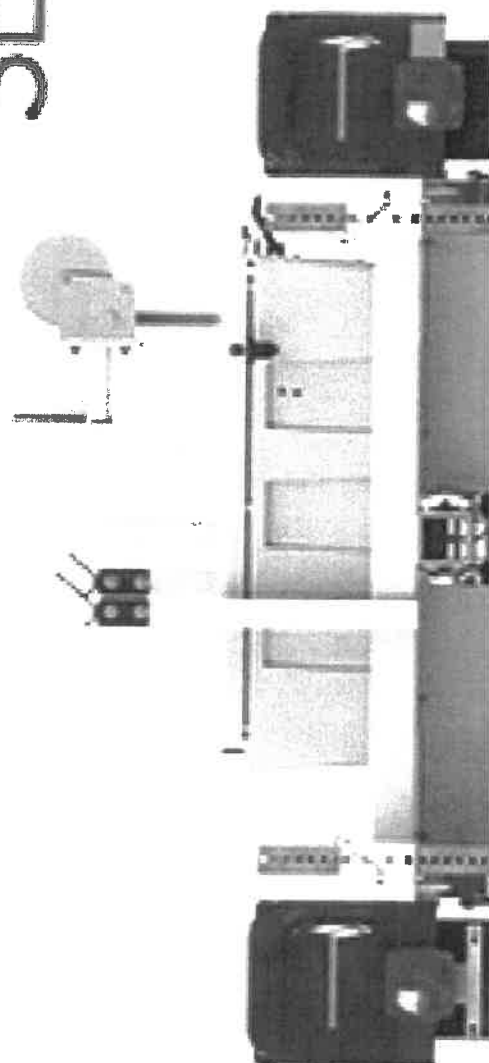


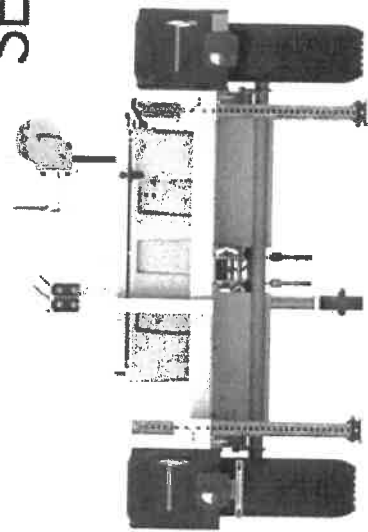




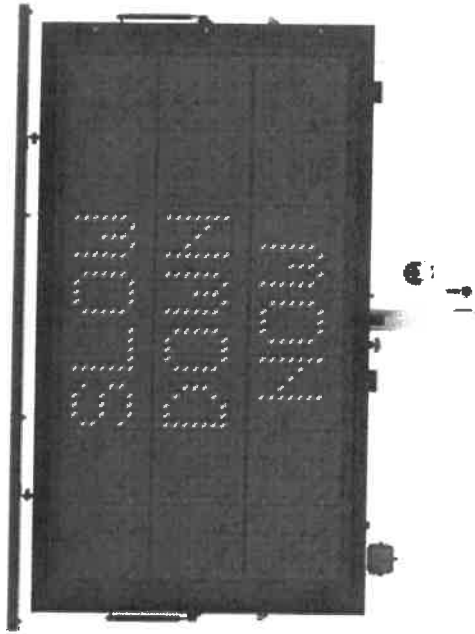


PRO SERIES





PRO SERIES



**TRANSSUPPLY Transportation Supply LLC**

14622 Ventura Blvd
#813
Sherman Oaks, CA 91403

Estimate

Date 3/14/2022
Estimate # 3277

Name / Address

Town of Somers NY Police Dept
Sgt. John Maguire

P.O. #

Terms

Due Date 3/14/2022

Other

| Description | Qty | Rate | Total |
|---|-----|-----------|--------------------|
| SMC 4000 4' x 8' Display Mini Full Matrix Message Board w/ Radar SKU: SMC4000R | 1 | 15,995.00 | 15,995.00 |
| Shipping to a commercial address, customer has forklift to unload | 1 | 2,950.00 | 2,950.00 |
| Total | | | \$18,945.00 |

Transportation Supply LLC

Phone # (323) 633-9530

Fax # (347) 332-1636

sales@trans-supply.com

www.trans-supply.com

**TRANSUPPLY**

Transportation Supply | 4701 Natick Ave. Suite 215, Sherman Oaks, CA 91403
 (866) 930-4604 | sales@trans-supply.com | www.trans-supply.com

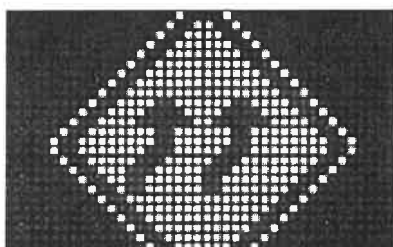
SMC 4000 Mast-Mini

Full-Matrix Solar Message Center (4' x 8' Display)

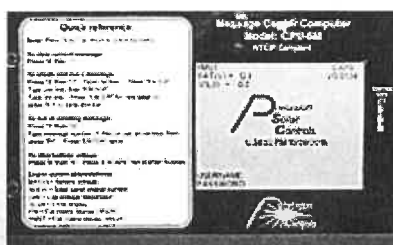
Manufactured to the same quality standards Precision Solar Controls is recognized for, the SMC 4000 Mast-Mini message center deploys in places larger signs cannot. The 4' x 8' Display Only, including all Electronics, CPU and AC power cables, can be purchased for truck and trailer-mounted applications.

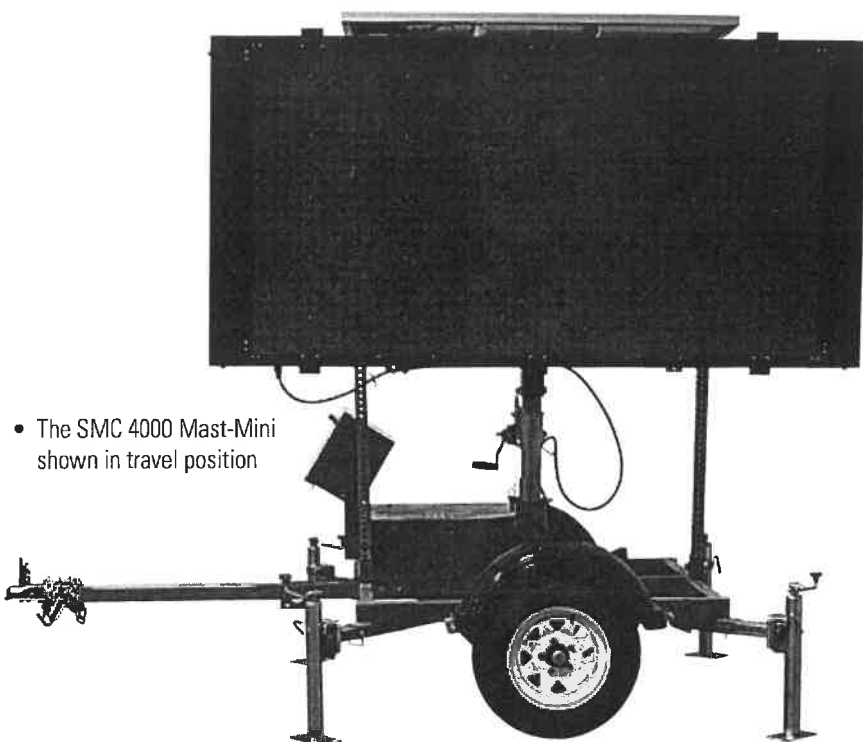
You'll get just the features you want, in a compact design.

- Energy-efficient LED display provides minimal battery maintenance and long operational life
- Automatic intensity control provides optimum LED intensity
- Industrial-grade trailer provides stable platform
- 4 leveling jacks with slide out extensions provide stability when deployed
- Powder-coat paint for improved fade and scratch resistance
- Calendar programming capability
- Full-Matrix display provides graphic messages and arrow board capability
- Graphic and Arrow Board displays available



- On-board dedicated NTCIP controller provides easy programming with secure password protection





Sign Flexibility

The SMC 4000 Mast-Mini is designed for use in areas where space is limited, and provides variable character fonts with both 12" and 18" character heights.

Standard NTCIP-Compliant Controller

A user-friendly, NTCIP-compliant, dedicated computer designed by Precision Solar Controls reduces the number of keys required to program the SMC 4000 Mast-Mini.

Full Matrix Display

The SMC 4000 Mast-Mini provides 250 text, 60 graphic and 20 arrow board display messages preprogrammed and stored in the controller. Additionally, 100 user-created messages can be programmed and stored.

Industrial-Grade Structural Steel Trailer

The SMC 4000 Mast-Mini uses a durable trailer system designed to provide years of dependable service. The trailer's high-quality, powder-coat paint; 2"x 3" 11-gauge steel frame; and a 2,000-pound axle enhance the overall durability of the unit.

Modular Electronic Componentry

The entire system was developed with the operator/end user in mind. Electronic components are easily replaced, reducing downtime and maintenance costs. This modularity also improves system diagnostics.

SMC 4000 Mast-Mini Unit Specifications

- Raised height – 134" (3.4 m)
- Travel height – 102" (2.6 m)
- Width – 68" (1.73 m)
- Length with tongue – 107" (2.72 m)
- Length w/o tongue – 55" (1.4 m)
- Weight – 850 lbs. (385.5 Kg)
- Energy Source – (2) 4D Deep Cycle batteries
- Generator – solar panel array
- Operating Temperature Range –
-20 to +120 degrees F (-29 to +49 degrees C)
- Lift Mechanism – 1,500 lbs. brake winch
- Main Frame – 2" x 3" x .120" high grade steel

Sign Case Specifications

- Height – 48" (1.22 m)
- Width – 96" (2.43 m)
- Character Height – 12" (30.48 cm) and 18" (46 cm)
- Lamp – LED (4 per pixel)
- Legibility – 1000 ft. (304 m)

SMC Computer Specifications

- Control Console Display: LCD
- Pre-programmed messages: 250
- User-programmed messages: 100
- NTCIP-compliant software
- Update speed: 100 Milliseconds
- Removable Solid State Design
- Off-the-shelf QWERTY keyboard

Specifications are subject to change without notice.



John Maguire

From: Mark Gregory <mgregory@trafficlogix.com>
Sent: Thursday, April 21, 2022 11:01 AM
To: John Maguire
Subject: RE: TL Speed Sign selection
Attachments: TL Guardian Camera Tri Fold.pdf

Hi John – VMS30 Solar Trailer is \$16,122.00 delivered.

GPRO Speed Rear Plate Camera was just shown for marketing – those can be put on VMS if you want – they run independent of sign – they are about \$7500 and have \$1500/yr/camera image and data fee (includes ticket software). Not an ALPR – no hot list feature. Plate Images are yours – you then take worst violators and get details from DMV.

NOTE: non-officer witness use for points or fee is not permitted in NY, only in NYC School Zones. Can be non-officer present, but currently cam Only can be used for warning notices.
See attached.

Best regards,

Mark W. Gregory



Sr. Reg. Sales Mngr.

NY NJ MA ME VT CT RI NH /D.O.T.

Cell: 1-518-744-8568

Ask about - Demo's and In-person meetings.

Order Status: customerservice@trafficlogix.com

Support: support@trafficlogix.com

Training: cloudteam@trafficlogix.com

Website: www.trafficLogix.com

SourceWell 070821-LGX

CANOE CAN 2021-009 TLI

NCPA

From: John Maguire <jmaguire@somersny.com>
Sent: Thursday, April 21, 2022 10:53 AM
To: Mark Gregory <mgregory@trafficlogix.com>
Subject: RE: TL Speed Sign selection

THIS EMAIL ORIGINATES FROM OUTSIDE LOGIX ITS - USE CARE WHEN OPENING LINKS & ATTACHMENTS

If you are unsure of this external email please contact the IT department to verify.

Hey Mark,

Thanks for Quick reply! I really like this system. Just to be clear- The trailer and sign is \$16,122.00 and Radar unit is \$9,000.00? Total would be approx. \$25,122.00 and that includes delivery?

Thanks,
John

From: Mark Gregory [mailto:mgregory@trafficlogix.com]
Sent: Thursday, April 21, 2022 10:04 AM
To: John Maguire <jmaguire@somersny.com>
Subject: TL Speed Sign selection

Officer Maguire – VMS 30 Solar on Trailer is our best sign for your needs. We have over 16 models, but VMS 30 would be best.

"Please email quote for a Variable message sign 4' X 8' Display message Board with Radar and Trailer. Please also include shipping costs."

Pricing:

Somers NY (as you see below) is current member of Sourcwell.
Traffic Logix just won the Public Bid for the next 3 yrs for everything we make: Rubber, Signs, Cameras, etc.
So you can basically pick from all our products (no min. no max \$)
You do not need 3 quote or do not have to go to bid.
Pick what you want and send PO as prices include delivery and are good for 3 more years.

Town of Somers

335 Route 202
Somers, NY 10589-3226

ID# 119846

Using SourceWell

Delivered Price is Shown below.

Signs include: data collection/reports, 1yr cloud, 2yr warranty

| | |
|----------------------|-----------|
| VMS 30 Solar Trailer | \$ 16,122 |
|----------------------|-----------|

Multi-Units:

As of March 2022 – we now offer Cloud Multi-year and Multi-unit discounts as shown below.

Radar Signs

| Quantity | Contract length | Price per unit/per year |
|-----------|-----------------|-------------------------|
| 1-3 units | 1 year | \$ 500.00 |
| 1-3 units | 2 year | \$ 450.00 |
| 1-3 units | 3 year | \$ 400.00 |
| 4+ units | 1 year | \$ 450.00 |
| 4+ units | 2 year | \$ 425.00 |
| 4+ units | 3 year | \$ 350.00 |

| Quantity | Contract length | Price for 7 year |
|-----------|-----------------|------------------|
| 1-3 units | 7 year | \$ 2,500.00 |
| 4+ units | 7 year | \$ 2,150.00 |

- VMS30 Trailer – for all Approach Speeds. Day/Date/Time/Volume/Speed Collector / Messaging > Remote Cloud Capture
 - <https://trafficlogix.com/cruiser-vms-trailer/>
- Guardian Pro Speed Camera – Image/Day/Date/Time/Volume/Speed > Remote Cloud Capture
 - ~\$9000 System (AC is best, sometimes we can accommodate Solar)
 - <https://trafficlogix.com/speed-awareness-cameras/>

Let me know how we can help.

Best regards,

Mark W. Gregory



Sr. Reg. Sales Mngr.

Ontario/ N.E. USA /D.O.T.

Cell: 1-518-744-8568

Ask about - Demo's and In-person meetings.

Order Status: customerservice@trafficlogix.com

Support: support@trafficlogix.com

Training: cloudteam@trafficlogix.com

Website: www.trafficlogix.com

ask about **SourceWell** and **NCPA**

Sent to:
TB, TA, TC
4/29/2022
KD

PLANNING AND ENGINEERING DEPARTMENTS

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: April 21, 2022

TO: Town Board
Director of Finance

FROM: Steve Woelfle *SW*
Engineering Department

RE: Algonquin Gas Transmission LLC – Atlantic Bridge Project
Refund of SEQRA/Professional Service Fee

The above-mentioned project has been completed. Please refund the SEQRA/Professional Service Fee in the amount of \$5,000.00, as follows:

Ms. Tammy Keith
Enbridge
Sr. ROW Coordinator
Rights of Way and Land – US Gas Projects
70 East Johnson Avenue
Cheshire, CT 06410

SW/wg
cc: Town Clerk
Ms. Tammy Keith, Enbridge



1430 Broadway
10th Floor
New York, NY 10018

212.221.7822 PHONE
212.221.7840 FAX

www.TRCSolutions.com

RECEIVED

APR 18 2022

PLANNING-ENGINEERING
TOWN OF SOMERS

ORIGINAL VIA EMAIL: wgetting@somersny.com

April 15, 2022

Ms. Wendy Getting
Town of Somers, Engineering Department
335 Route 202
Somers, NY 10589

Re: Algonquin Gas Transmission LLC – Atlantic Bridge Project

Dear Ms. Getting:

On June 16, 2016, on behalf of Algonquin Gas Transmission LLC (Algonquin), I transmitted to Ms. Syrette Dym, Director of Planning, a check in the amount of \$5,000 to cover the Town's outside engineer's fees and expenses in reviewing the Atlantic Bridge Project Stormwater Pollution Prevention Plan ("SWPPP"). Based on our recent discussion, I understand that these escrow funds were unspent and are to be returned now that the project has concluded.

As you requested in our recent phone conversation, please accept this letter as confirmation of my authorization to release these funds directly to the following Algonquin representative:

Ms. Tammy Keith
Enbridge
Sr. ROW Coordinator
Rights of Way and Land – US Gas Projects
70 East Johnson Avenue
Cheshire, CT 06410

TEL: 203-651-2962 | CELL: 203-996-5233 | FAX: 203-439-9370 |
tammy.keith@enbridge.com

Please be in touch if I can be of assistance.

Sincerely,
TRC ENVIRONMENTAL CORP.

Steven D. Meersma, P.E.
Principal

cc: Ms. Tammy Keith, Enbridge
Mr. Richard Paquette, SWCA

Sent to:
TB, TA, TC
4/29/2023
KD

INTEROFFICE MEMORANDUM

TO: TOWN SUPERVISOR AND MEMBERS OF THE TOWN BOARD
FROM: SENIORS DEPARTMENT DIRECTOR, BARBARA TABERER
SUBJECT: IIIB CONTRACT
DATE: APRIL 18, 2022
CC: DIRECTOR FINANCE, TOWN CLERK

The Director of Senior Programs requests the Town Supervisor execute the IIIB contract.
See attached. PY 2022

George Fattorusso
County Executive

Department of Senior Programs and Services

Maureen Miller
Commissioner

April 16, 2022

Ms. Barbara Taberer
Director Somers Nutrition Program
Town of Somers
Wayne Van Tassel Memorial Park
Lincolndale, NY 10540

RE: Title III-B Transportation Services Contract, PY 2022

Dear Ms. Taberer:

Attached is an electronic blank copy of the Title III-B Transportation Services contract. The contract is comprised of an Agreement and Schedules "A", "B", "C", and "D" to cover the program period commencing on January 1, 2022 and continuing through December 31, 2022. Funding for the program will be in an amount not to exceed **\$3,483** for actual services provided and data entered in the NYSOFA Client Statewide Data System (PeerPlace) with the Town of Somers required to contribute **\$2,420** in matching funds to the Program. The Department may reduce the amount payable to its contractors if the New York State Office for the Aging reduces the Department's Federal and/or State funding, in which case you will be notified. It should be noted that the Board Act authorizing the County to enter into agreement with your municipality is pending the approval of the Westchester County Board of Legislators. This means that although your municipality can sign off on the agreement that Commissioner Carpenter cannot do so until the required approval has been granted.

You MUST use the original contract documents that we have provided. NO ALTERATIONS may be made to the contract without the prior consent of the Dept. With the exception of the applicable Excel Pages, **DO NOT fill out the contract electronically as we want to maintain the integrity of the document.** Noncompliance with these requests will result in the contract returned to your agency. We recommend that you keep a blank copy of the contract in the event that you need to reprint a page.

Printout a hard copy of the contract and fill it out making sure that where signatures are required on all documents that they are original. Return the ENTIRE originally signed contract to me at the address in the footer below. Contracts with COPIED signatures are unacceptable. We also suggest that you keep a completed copy of the contract for your records.

Please refer to the "Standard Insurance Provisions" in Schedule "A" for detailed information regarding ALL required insurances. The Westchester County Office of Risk Management has provided instruction in Schedule "A" for Municipalities and their Insurance Broker regarding a choice of one (1) of two (2) options for filling out the Certificate of Liability Coverage on the ACORD form. ALL required insurances should be submitted with the contract, or it will be on hold pending receipt of any missing insurance form or any form that is not adequately filled out. Remember to list the County of Westchester as "Additional Insured" on the Certificate of Liability Insurance.

Transportation Program Contractors are required to mail in the completed PeerPlace MONTHLY REPORT signed by the staff member responsible for the report. The reports should be received by the County no later than the tenth (10th) day of the following month. The County reserves the right to withhold payment to Contractor for its failure to submit the monthly report by the deadline until the monthly report is received by the County.

Please direct program-related questions to your program liaison Meleita Jones at 914-813- 6420, or via e-mail at mmf2@westchestergov.com. You may also contact me at 914-813-6058 or via e-mail at ssj3@westchestergov.com for questions pertaining to the processing of the contract.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon Johnson".

Sharon Johnson
Program Administrator

Encl.

Sent to:
TB, TA, TC
4/29/2022
KD

INTEROFFICE MEMORANDUM

TO: TOWN SUPERVISOR AND MEMBERS OF THE TOWN BOARD
FROM: SENIORS DEPARTMENT DIRECTOR, BARBARA TABERER
SUBJECT: IIIB CONTRACT
DATE: APRIL 18, 2022
CC: DIRECTOR FINANCE, TOWN CLERK

The Director of Senior Programs requests the Town Supervisor execute the IIIC/NISEP Nutrition Services Contract . See attached. PY 2022



George Lattin
County Executive

Department of Social Programs and Services

Case Carpenters
A COMMUNITY

April 18, 2022

Ms. Barbara Taberer
Director, Somers Senior Services
TOWN OF SOMERS
P.O. Box 236
Lincolndale, NY 10540

RE: Title III-C/NSIP: Nutrition Services Contract, PY 2022

Dear Ms. Taberer:

Attached to the e-mail that was sent with this letter is an electronic blank copy of the III-C1, III-C2 and Nutrition Services Incentive Program (NSIP) contract for Nutrition Services to be provided by the TOWN OF SOMERS. The contract is comprised of an Agreement and Schedules "A", "B", "C", "D", "G" and "H" and covers the program period January 1, 2022 through December 31, 2022 for the III-C Programs and October 1, 2021 through September 30, 2022 for NSIP. Please be advised that the Board Act authorizing the County to enter into agreement with your municipality is pending approval of the Westchester County Board of Legislators (BOL). This means that Commissioner Carpenter cannot sign the agreement until the Board Act has been approved.

Funding for the programs will be in the amounts indicated below for actual services provided and data-entered in the New York State Office for the Aging's (NYSOFA'S) electronic reporting system: PeerPlace. The Department may reduce the amount payable to its contractors if the New York State Office for the Aging reduces the Department's federal funding, in which case you will be notified.

| PROGRAM | FEDERAL FUNDS | CONTRACTOR MATCH |
|-----------------------|---------------|------------------|
| III-C-1 | \$18064 | \$6022 |
| Estimated III-C1 NSIP | \$3213 | N/A |
| III-C-2 | \$15417 | \$5139 |
| Estimated III-C2 NSIP | \$2742 | N/A |

Please be aware that the NSIP funding listed on the allocation are high estimates to cover your program for the projected annual NSIP allocation. Please also be aware that the Board Act authorizing the County to enter into agreement with municipalities has not been approved by the County's Board of Legislators. This means that although your municipality can sign off on the agreement that Commissioner Carpenter cannot sign it until the appropriate approval has been granted.

You **MUST** use the original contract documents that we have provided. **NO ALTERATIONS** may be made to the contract without the prior consent of the Dept. We also recommend that you keep an electronic copy of the contract on hand in the event that you need to reprint a page. With the exception of the applicable Excel Pages, **DO NOT fill out the contract electronically as we want to maintain the integrity of the document. Noncompliance with these requests will result in the contract returned to your agency.**

Please **print a hard copy of the contract** and fill it out making sure that where signatures are required on all documents that they are original. Return the ENTIRE originally signed contract to me at the address in the footer on the first page. Contracts with COPIED signatures are unacceptable.

Please refer to the "Standard Insurance Provisions" in Schedule "A" for detailed information regarding ALL required insurances. The Westchester County Office of Risk Management has provided instruction in Schedule "A" for Contractors/Municipalities and their Insurance Broker regarding a choice of one (1) of two (2) options for filling out the Certificate of Liability Coverage on the ACORD form. ALL required insurances should be submitted with the contract, or it will be on hold pending receipt of any missing insurance form or any form that is not adequately filled out. Remember to list the County of Westchester as "Additional Insured" on the Certificate of Liability Insurance.

All Nutrition Program Contractors are required to mail in the completed PeerPlace Monthly Nutrition Report signed by the staff member responsible for the report. The reports should be received by the County no later than the tenth (10th) day of the following month. The County reserves the right to withhold payment to Contractor for its failure to submit the monthly report by the deadline, until the monthly report is received by the County.

Please direct program-related questions to your program liaison Patricia Szeliga at 914-813-6432 or via e-mail at pls3@westchestergov.com. You may also contact me at 914-813-6058 or via e-mail at ssj3@westchestergov.com for questions pertaining to the processing of the contract.

Sincerely,



Sharon Johnson
Program Administrator

Encl.

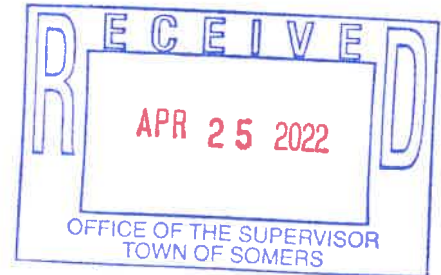
Telephone
(914) 277-3539

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: Library Generator Bid Recommendation

DATE: April 25, 2022

Permission was granted at the January 2022 Town Board to solicit bids for a 100-kw generator for the Library. The bid package was sent to six electricians and two were returned, one from A-Amp Electric in the amount of \$110,254 and another from Light Electric in the amount of \$80,000. I recommend awarding the generator installation to Light Electric.

Sent to:
TB, TA, TC
5/2/2022
KO

AGREEMENT

THIS AGREEMENT made the ____ day of _____ 2022, by and between the **TOWN OF SOMERS**, a municipal corporation of the State of New York, having offices at the Town House, 335 Route 202, Somers, New York 10589 (hereinafter referred to as the "Town"), and

Light Electric
PO Box 745
Mahopac, NY 10541
hereinafter referred to as the "Contractor"

WHEREAS, the Town has received a proposal from the Contractor to perform certain work, generally consisting of **providing and installing a 100kw auto start, auto transfer industrial Generac generator at the Somers Library, 82 Primrose St, Katonah, NY 10536**; as follows:

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

1. The Contractor shall provide, furnish and perform all of the work specified above including all labor, materials, tools and equipment to satisfactorily complete the work in accordance with this Agreement. All work shall be performed by competent and skilled workers and in accordance with good trade practices and all applicable codes. All materials and articles furnished shall be new unless otherwise specified, and shall be of the appropriate grade for the particular purpose. The Contractor warrants that it is experienced in, is capable of, and is fully familiar with the work to be performed and the work site.
2. For the performance of all of the work in accordance with the provisions of this Agreement, the Town will pay the Contractor a sum not to exceed: **Eighty Thousand dollars (\$80,000.00)** Payment will be made by the Town to the Contractor after the completion of all of the work and the acceptance of the work by the Town, unless a different payment schedule is required by Section 106-b of the General Municipal Law. Payment shall be made after the submission of a properly itemized claim by the Contractor (including all supporting documentation) to the Town. All claims submitted by the Contractor for payment shall be subject to audit and approval by the Town.
3. The Contractor shall promptly commence work after the full execution of this Agreement, upon the written directions of the Town and complete the work under this Agreement within four (4) day of commencement weather permitting. The time for completion of the work may be extended, in the discretion of the Town, upon the request of the Contractor, for good cause shown, with the grant of any extension by the Town to be in writing. The Contractor shall issue progress reports concerning the performance of the work, and will meet with representatives of the Town, as the Town may, from time to time, direct. The Contractor shall promptly inform the Town in writing of any cause for delay in the performance of the Contractor's obligations under this Agreement.
4. The Contractor shall prosecute the work without undue interference with the operations

of the Town or the comfort, repose, health, safety and welfare of the inhabitants of the Town. Unless otherwise authorized by the Town in writing, the Contractor's use or operation of construction equipment in performing the work shall be limited to the hours between 7:00 a.m. in the morning and 6:00 p.m. in the evening. All work shall be performed during regular business days and hours of operation of the Town, unless otherwise directed by the Town.

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

complete the work by such means and methods as it may deem appropriate.

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

parties hereto stating the intent to amend or modify this Agreement.

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

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

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

TOWN OF SOMERS

By: _____

By: Robert Scorrano, Supervisor
Printed

The CONTRACTOR

By: _____
Signed

By: _____
Printed

Town Acknowledgment

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

On the _____ day of _____ in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Scorrano, Supervisor of the Town of Somers, on behalf of the Town of Somers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

Contractor Acknowledgment

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

On the _____ day of _____ in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC

Schedule A
Insurance and Indemnification

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

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

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

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

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

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

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

(b) **Employer's Liability Insurance** with a minimum limit of \$1,000,000.

(c) **General Liability Insurance** with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$1,000,000 for property damage or a combined single limit of \$2,000,000. **The General Liability Insurance policy shall name the Town of Somers as an additional insured** using ISO endorsement form CG 20 10 or its equivalent and ISO endorsement CG 20 37 or its equivalent. Coverage shall be evidenced using Acord 25 (2014/01) including the **ACORD 855 NY (2014/05) addendum**. Policy shall not contain any exclusions regarding building height, type of construction or location nor shall it exclude claims involving injury to employees of the named insured or subcontractor. Coverage shall be primary and noncontributory using ISO Form CG 20 01. This insurance shall indicate on the certificate of insurance the following coverages:

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

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

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

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

(e) Umbrella Liability with a minimum limit of liability per occurrence of \$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

(f) If work involves use or removal of hazardous materials, Contractor shall carry and provide evidence of insurance showing pollution coverage with a limit of not less than \$5,000,000.00. Policy shall be endorsed to name the Town of Somers as additional insured.

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

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

(b) The clause "other insurance provisions" in a policy in which the Town of Somers

is named as an insured, shall not apply to the Town of Somers.

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

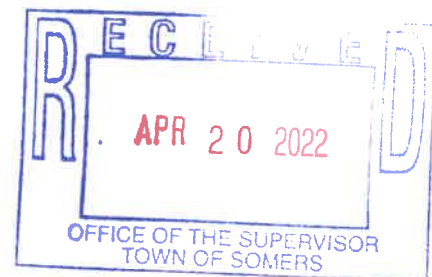
(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Contractor.

4. The Contractor shall protect, defend, indemnify and hold the Town of Somers, its boards, officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this agreement and/or the performance hereof; without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agreed to bear all other costs and expenses related thereto, even if it (claims, etc.), is groundless, false or fraudulent. In any case in which such indemnification would violate Section 5-322.1 of the New York General Obligations Law, or any other applicable legal prohibition, the foregoing provisions concerning indemnification shall not be construed to indemnify the Town for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Town, or its employees. This paragraph shall survive any termination or completion of performance of this Agreement.

Sent to:
TB, TA, TC
4/29/22
KD

ACTS 75,76 - 2019

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**



Your Committee is in receipt of a communication from the County Executive recommending the adoption of an Act which, if approved by this Honorable Board, would authorize release from the East of Hudson Water Quality Investment Program Fund (the "EOH WQIP Fund"), of which the County of Westchester ("County") serves as custodian under the New York City Watershed Memorandum of Agreement (the "Watershed MOA") (as defined below), in an amount not to exceed ONE HUNDRED SEVENTY-FIVE THOUSAND (\$175,000) DOLLARS (the "EOH Funds"). The EOH Funds would be provided to the Town of Somers (the "Municipality") to partially fund the Municipality's costs ("Eligible Costs") as defined in the Watershed MOA to construct a facility to receive, process and store salt at the Somers Highway Garage which is located off of NYS Route 100 adjacent to the Muscoot Reservoir (the "Project"). The total estimated cost for this Project is Six Hundred Twenty Thousand (\$620,000) Dollars, of which One Hundred Seventy-Five Thousand (\$175,000) Dollars is being requested from the EOH WQIP Fund. Also transmitted herewith is a proposed Act, which, if adopted, will authorize the County to enter into an inter-municipal agreement ("the "IMA") with the Municipality, which sets forth the terms under which the County will distribute the EOH Funds, all as further described herein.

By way of background, your Honorable Board will recall that, pursuant to Act Nos. 145-1996 and 165-1996, which were approved by your Honorable Board, the County and the Municipality are parties to the 1997 Watershed MOA, along with the City of New York (the "City"), the State of New York (the "State"), USEPA, the Catskill Watershed Corporation, the Coalition of Watershed Towns, certain environmental parties, and the Towns of Bedford, Cortlandt, Lewisboro, Mount Pleasant, New Castle, North Castle, North Salem, Pound Ridge, Yorktown, and the Town/Villages of Harrison and Mount Kisco. It should be noted that the chief elected official (or appointed designee) of each of the aforementioned eleven (11) municipalities, in addition to the Municipality, along with representatives of the County, comprise the Northern Westchester Watershed Committee (the "NWWC").

Your Committee will further recall that, pursuant to Article V, paragraph 140 of the Watershed MOA and the East of Hudson Water Quality Investment Program Contract (which is incorporated into and made a part of the Watershed MOA), the City paid the County THIRTY EIGHT MILLION (\$38,000,000) DOLLARS to create a fund, known as the EOH WQIP Fund, to support a program of water quality investments east of the Hudson River in order to protect New York City's drinking water supply. Pursuant to the Watershed MOA, the EOH WQIP Fund monies may be distributed by the County to fund specified water quality improvement projects (each an "Eligible Project") as enumerated therein and/or as the New York City Department of Environmental Protection ("NYCDEP") may authorize.

Additionally, your Committee has been advised that, pursuant to Article V, paragraph 140 subsection (b)(vi) of the Watershed MOA, "New or upgraded Sand and Salt Storage Facilities so as to enable local governments to comply with the Watershed Regulations" are Eligible Projects defined in the Watershed MOA.

Your Committee has been further advised that because the County acts as custodian of the EOH WQIP Fund, and because such funds are not currently included within any County operating or capital budget, the first annexed Act, if approved by your Honorable Board, will provide for the transfer of ONE HUNDRED SEVENTY-FIVE THOUSAND (\$175,000) DOLLARS from the County's general custodial account for the EOH WQIP Fund to a County Trust Account created for the specific purpose of funding the Project. As the Administrator of the Watershed MOA, the Department of Planning ("Planning") will manage the expenditure of the EOH Funds also in accordance with the terms outlined herein, in the IMA and in the Watershed MOA.

The second annexed Act will authorize the County to enter into the IMA with the Municipality, which IMA will outline the terms and conditions under which the EOH Funds will be released. Specifically, the proposed IMA will have a term of five (5) years, and will authorize the release of up to ONE HUNDRED SEVENTY-FIVE THOUSAND

(\$175,000) DOLLARS in EOH Funds. In no event will the County's obligation to provide funding exceed the EOH Funds.

Your Committee has been further advised that, in order to properly spend the EOH WQIP Fund, the County must comply with certain other procedures as set forth in the Watershed MOA, and all State and local laws, rules and regulations, including the Laws of Westchester County. This includes, among other things, compliance with the right of objection procedures specified in paragraph 107(c) of the Watershed MOA. Planning, as the Administrator of the Watershed MOA and any program initiated pursuant thereto, issued a right-of-objection letter to the requisite parties on February 20, 2019 stating the County's intent to access and distribute the EOH Funds to the Municipality for purpose of funding the Project. Pursuant to the provisions of Paragraph 107(f), such parties have fifteen (15) days from the date of mailing of the right-of-objection letter, to object to this decision, or to petition for an additional fifteen (15) day period to raise an objection. Planning has advised that no objections have been received during the applicable timeframe. Accordingly, subject to receipt of the approval of your Honorable Board, the EOH Funds may now be expended in accordance with the Watershed MOA.

Your Committee has also been advised that the NWWC supports the expenditure of the EOH Funds for the Project, and, on January 15, 2019, adopted a resolution formalizing that support. The resolution was adopted supporting the allocation of up to \$175,000 of the EOH WQIP Fund to the Municipality, to be used for the Project.

As your Honorable Board is aware, no action may be taken with regard to the proposed legislation until the requirements of SEQR, which requires your Honorable Board to comply with the regulations promulgated thereunder (6 NYCRR Part 617) have been met. Planning has advised that, based on its review, the allocation of EOH funds for the project may be classified as a Type II action pursuant to section 617.5(c)(26), "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment." Additional environmental review will be conducted by the Town for the project in accordance with SEQR and the

conditions of the IMA. Your Committee has reviewed the annexed SEQR status sheet prepared by Planning and concurs with this conclusion.

It should be noted that the foregoing Acts require no more than an affirmative vote of the majority of the Board. Your Committee has carefully considered the Project and recommends approval of both of the Acts.

Dated: 4/23, 2019
White Plains, New York

COMMITTEE ON

May James Murphy
Yancy E. Bane
Kitty Scarl
Benjamin Boylston
Cathy Porter

Catherine E.
Yancy E. Bane
May James Murphy
Kitty Scarl
Benjamin Boylston
Cathy Porter

Catherine E.
Yancy E. Bane
Benjamin Boylston
Wyll M.
Alfred L. Wilkins
Cathy Porter

Public
Works

Environment Health
& Energy

Budget & Appropriations

FISCAL IMPACT STATEMENT

SUBJECT: EOH WQIP Somers Salt Storage

☒ NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

☐ GENERAL FUND

☐ AIRPORT FUND

☐ SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ -

Total Current Year Revenue \$ -

Source of Funds (check one): ☐ Current Appropriations ☐ Transfer of Existing Appropriations

☐ Additional Appropriations

☒ Other (explain)

Identify Accounts: Department: 19; Fund 713; Balance Sheet Account : 5650

Potential Related Operating Budget Expenses:

Annual Amount \$0

Describe: _____

Potential Related Operating Budget Revenues:

Annual Amount \$0

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \$0

Next Four Years: \$0

Prepared by: Debra Ogden 

Title: Sr. Budget Analyst

Department: Budget

Date: April 3, 2019

Reviewed By: 

Budget Director

Date: 4/3/19

TO: Lynne Colavita
Senior Assistant County Attorney

FROM: David S. Kvinge, AICP, RLA, CFM
Director of Environmental Planning



DATE: April 1, 2019

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR THE ALLOCATION
OF EOH FUNDS FOR THE TOWN OF SOMERS SALT STORAGE
FACILITY PROJECT**

PROJECT/ACTION: Approval of the Board of Legislators to authorize the release of \$175,000 from the East of Hudson Water Quality Investment Program Fund (EOH Fund) into a County Trust Account to partially finance the construction of salt receiving, processing, and storing structure at the Town of Somers Highway Garage, and to enter into an Intermunicipal Agreement (IMA) with the Town of Somers setting forth the terms under which the County will distribute the EOH funds.

With respect to the State Environmental Quality Review Act and its implementing regulations 6 NYCRR Part 617, the Planning Department recommends that no further environmental review is required because the project/action:

- ☐ **DOES NOT MEET THE DEFINITION OF AN "ACTION" AS DEFINED UNDER SECTION 617.2(b)**
- ☒ **MAY BE CLASSIFIED AS TYPE II PURSUANT TO SECTION 617.5(c)(26):**
routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment.

COMMENTS: The County of Westchester serves as a custodian of the EOH Fund under the New York City (NYC) 1997 Watershed Memorandum of Agreement (MOA), which was created to protect the NYC water supply. As custodian, the County is responsible for allocating funds and ensuring that projects requesting EOH funds comply with the criteria outlined in the MOA. Under the proposed IMA, the Town will be responsible for conducting and coordinating the required environmental review of the project. The County will not disburse the designated EOH funds to the municipality until the environmental review and the construction of the salt structure have been completed.

DSK/mm

**cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Norma Drummond, Commissioner
Tami Altschiller, Assistant Chief Deputy County Attorney
Claudia Maxwell, Associate Environmental Planner**

ACT NO. 75 - 2019

AN ACT authorizing the transfer of \$175,000 of the East of Hudson Water Quality Investment Program Fund, for which the County of Westchester as custodian under the 1997 Watershed Memorandum of Agreement, into a County Trust Account in order to fund a portion of the costs associated with the construction of a facility to receive, process and store salt

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The County of Westchester (the “County”), as custodian of the East of Hudson Water Quality Investment Program Fund (the “EOH WQIP Fund”) pursuant to the New York City Watershed Memorandum of Agreement (the “MOA”), dated January 21, 1997, is hereby authorized to transfer ONE HUNDRED SEVENTY-FIVE THOUSAND (\$175,000) DOLLARS of monies currently held in such fund into a County Trust Account for distribution to the Town of Somers (the “Municipality”) to fund a portion of the Municipality’s “Eligible Costs” as defined in the MOA, to construct a facility to receive, process and store salt; and

§ 2. The Department of Planning (“Planning”) is hereby designated as the Administrator of said County Trust Account for the implementation of the funding in order to ensure that Planning may comply with its obligations as administrator under the MOA, with respect to expenditure of the EOH Funds; and

§ 3. The County Executive or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Executive deems necessary or desirable to accomplish the purposes hereof; and

§ 4. This Act shall take effect immediately.

ACT NO. 76- 2019

AN ACT authorizing the County of Westchester to enter into an inter-municipal agreement with the Town of Somers in order to distribute \$175,000 of the East of Hudson Water Quality Investment Program Fund, for which the County is custodian under the 1997 Watershed Memorandum of Agreement, in order to fund a portion of the costs to construct a facility to receive, process and store salt

BE IT ENACTED by the County Board of Legislators of the County of Westchester as follows:

Section 1. The County of Westchester (the “County”), is hereby authorized to enter into an inter-municipal agreement (the “IMA”) with the Town of Somers (the “Municipality”) in order to distribute funds from the County Trust Account established by Act No. 76 -2019, noting that said funds originally formed a part of the East of Hudson Water Quality Investment Program Fund (the “EOH WQIP Fund”), for which the County is custodian under the 1997 Watershed Memorandum of Agreement (the “Watershed MOA”), in an amount not to exceed ONE HUNDRED SEVENTY-FIVE THOUSAND (\$175,000) DOLLARS (the “EOH Funds”) to fund a portion of the Municipality’s “Eligible Costs”, as defined in the Watershed MOA, to construct a facility to receive, process and store salt; and

§ 2. The IMA will have a term of five (5) years commencing upon execution; and

§3. The County Executive or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Executive deems necessary or desirable to accomplish the purposes hereof; and

§ 4. This Act shall take effect immediately.

THIS INTERMUNICIPAL AGREEMENT, dated _____, 2019
by and between,

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (“Westchester” and/or the “County”); and

THE TOWN OF SOMERS, a municipal corporation of the State of New York, having an office and place of business at 335 Route 202, Somers, New York 10589 (the “Municipality”)

W I T N E S S E T H:

WHEREAS, Westchester and the Municipality are parties to the 1997 Watershed Memorandum of Agreement, including as an attachment thereto the East of Hudson (“EOH”) Water Quality Investment Program Contract (the “Program Contract”) by and between the New York City Department of Environmental Protection (“NYCDEP”) and the County, (together the “MOA”), along with the City of New York, the State of New York, the United States Environmental Protection Agency, the Catskill Watershed Corporation, the Coalition of Watershed Towns, and certain other municipal and environmental parties; and

WHEREAS, pursuant to the MOA, the City paid Westchester THIRTY-EIGHT MILLION (\$38,000,000) DOLLARS to create a fund, known as the East of Hudson Water Quality Investment Program Fund, which now includes earnings thereon (the “EOH WQIP Fund”), to support a program of water quality investments east of the Hudson River in order to protect New York City’s drinking water supply; and

WHEREAS, pursuant to the MOA, including without limitation the surviving clauses of the Program Contract, the EOH WQIP Fund monies may be distributed by the County for specified water quality improvement eligible projects as enumerated therein and/or as NYCDEP may authorize; and

WHEREAS, the land area of the Municipality is located wholly or partially within the Croton Watershed; and

WHEREAS, the Municipality has requested that the County release up to ONE HUNDRED SEVENTY FIVE THOUSAND (\$175,000) DOLLARS from the EOH WQIP Fund to partially fund the Municipality's eligible costs to construct a salt receiving, processing, and storing structure at the Somers Highway Garage which is located off of NYS Route 100 adjacent to the Muscoot River (the "Project") as described in Schedule "A" attached hereto; and

WHEREAS, the Municipality has conducted a suitable review of the Project and represents that the Project constitutes an eligible project under the MOA and the right of objection process has been completed by the County as set forth below; and

WHEREAS, the Northern Westchester Watershed Committee ("NWWC") supports the expenditure of ONE HUNDRED SEVENTY FIVE THOUSAND (\$175,000) DOLLARS in EOH Funds for the Project, and on January 15, 2019 adopted a resolution formalizing that support; and

WHEREAS, in order to properly spend monies from the EOH WQIP Fund, Westchester and the Municipality must comply with the procedures as set forth in the MOA and all federal, state and local laws, rules and regulations, including the Laws of Westchester County. This includes, among other things, compliance with the right of objection procedures specified in paragraph 107(c) of the MOA, which require that Westchester notify a designated group, consisting of EOH parties to the MOA, State agencies, and environmental organizations, of its intention to use a portion of the EOH WQIP Fund, and requires that Westchester consider any comments or objections raised by those parties before it proceeds to spend the EOH WQIP Fund monies; and

WHEREAS, the Westchester County Department of Planning, which acts as the Administrator of the EOH WQIP Funds, issued the right of objection letter to the requisite parties on February 20, 2019 stating Westchester's intent to access and distribute the EOH WQIP

Funds to the Municipality for the purpose of partially funding the Project, and no objections were received during the objection period as defined in Section 107(f) of the MOA. Therefore, Westchester has complied fully with this procedure as required by the MOA; and

WHEREAS, the Westchester County Board of Legislators (the “Board”), on _____ by Act ____ - _____ authorized the transfer of the EOH WQIP Funds, into a County Trust Account in order to fund a portion of the cost of the Project; and

WHEREAS, the Board, on _____ by Act No. ____ - _____, and pursuant to Section 119-o of the General Municipal Law, authorized the County to enter into this inter-municipal agreement (the “IMA”), with the Municipality for the purpose of using the EOH WQIP Funds to fund a portion of the cost of the Project; and

WHEREAS, on _____, the Westchester County Board of Acquisition & Contract (“BAC”) authorized the County to enter into this IMA, for the purpose of using the EOH WQIP Funds to fund a portion of the cost of the Project; and

WHEREAS, the Municipality represents that it has received all necessary approvals from its governing body; and

WHEREAS, having received all necessary approvals from their respective governing bodies, the County and the Municipality desire to set forth the procedures and their respective rights and responsibilities relative to the distribution of the EOH WQIP Funds for purpose of funding a portion of the cost of the Project, as described herein.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, the parties agree as follows:

I. RIGHTS AND RESPONSIBILITIES OF WESTCHESTER:

A. The County, acting by and through its Department of Planning (“Planning”) will disburse from the EOH WQIP Fund an amount not-to-exceed ONE HUNDRED SEVENTY FIVE THOUSAND (\$175,000) DOLLARS (the “EOH Funds”).

The EOH Funds will be disbursed pursuant to the terms hereof, in order to fund eligible costs incurred by or on behalf of the Municipality in connection with the Project as more fully set forth in Schedule “A” which is attached hereto and forms a part hereof.

Such disbursement will be made pursuant to the below “Project Approval and Funding Procedures” section below.

B. It is expressly acknowledged and agreed that Westchester shall have no further responsibility for the funding, approval, implementation or completion of the Project, it being further acknowledged and agreed that Westchester’s sole obligation pursuant to the MOA, and this IMA, other than the administrative obligations described below, shall be the distribution of the EOH Funds. The County does not provide or extend any warranty of fitness or workmanship for any work undertaken in connection with, or paid under, this IMA.

In no event is the County obligated to extend any funds beyond those included in the EOH Funds. Payment hereunder by the County shall operate as a release to the County from any and all obligations or liabilities in connection herewith to the Municipality, or any property owner(s), contractor(s) or subcontractor(s) hereunder.

II. PROJECT APPROVAL AND FUNDING PROCEDURES:

The EOH Funds shall be paid to the Municipality on a reimbursement basis, upon completion of the Project, the EOH Funds in an aggregate amount not-to-exceed ONE HUNDRED SEVENTY FIVE THOUSAND (\$175,000) DOLLARS, to partially fund administration, design, construction management and construction costs associated with the Project, pursuant to the terms hereof. Eligible Project costs shall be determined in the sole discretion of the Commissioner of the County’s Department of Planning (“Commissioner of Planning”) and shall in no event be deemed to include the Municipality’s overhead or soft costs.

Disbursement of such funds shall be made within 30 days of submission by the Municipality, at its sole costs and expense, of a duly issued and valid Certificate of Occupancy for the structure, other documentation detailed herein and any and all additional documentation as the Commissioner of Planning may require. In addition, any and all requests for disbursement of the EOH Funds to the Municipality, shall be submitted by the Municipality to the Commissioner of Planning on properly executed payment vouchers of the County. The Municipality shall append all appropriate receipts, invoices, bills or other documentation evidencing the expenditures to the payment vouchers, the sufficiency of which shall be determined in the Commissioner of Planning's sole discretion. All payment vouchers must be accompanied by a numbered invoice. The parties acknowledge and agree that any funds provided hereunder and not used for the eligible Project costs will be returned to the County pursuant to Section IV(B) hereof.

III. REPRESENTATIONS, WARRANTIES AND GUARANTEES OF THE MUNICIPALITY:

The Municipality expressly represents warrants and guarantees that:

(a) it is a municipal corporation duly organized, validly existing under the laws of the State of New York; the execution and performance of this IMA by the Municipality has been duly authorized by its governing body; this IMA, and any other documents required to be delivered by the Municipality when so delivered, will constitute, the legal, valid and binding obligations of the Municipality enforceable against the Municipality in accordance with their respective terms; and the Municipality's governing body has adopted a resolution authorizing execution of this IMA, and any other documents required to be delivered by the Municipality;

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

(c) it is financially and technically qualified to perform its obligations hereunder;

(d) it is familiar and will comply with the MOA, as well as, all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this IMA, including without limitation, General Municipal Law Section 103;

(e) the Municipality shall obtain all necessary approvals for the Project;

(f) the Municipality shall fully comply with the requirements of the New York State Environmental Quality Review Act ("SEQRA") and shall perform an environmental review pursuant to SEQRA, include the County as an Involved Agency, and conduct a coordinated review by circulating a Lead Agency Notice to all Involved Agencies, unless the action is determined to be a Type II action. The Municipality shall submit to the County copies of all SEQRA documentation for the Project within 30 days of request by the County.

(g) the Municipality is fully able to comply with its obligations hereunder, including without limitation, the obligation to provide defense and indemnity to the County and the consummation of the transactions contemplated by this IMA and the performance of the Municipality's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Municipality is a party or by which it may be bound or affected.

The Municipality acknowledges the County is acting in reliance on the above statements.

IV. RIGHTS AND RESPONSIBILITIES OF THE MUNICIPALITY:

A. In connection with implementation of the Project, the Municipality hereby acknowledges and agrees that:

- (a) it shall expend the EOH Funds allocated to it pursuant to this IMA solely for the purposes of funding eligible costs related to the Project and that it shall further comply with all terms of this IMA and the MOA; and
- (b) it shall be responsible for the implementation and timely completion of the Project, including the obtaining of all necessary approvals; and
- (c) it shall ensure that the design, supervision and workmanship furnished with respect to construction of the Project shall be in accordance with sound and currently accepted scientific standards and best engineering practices; and
- (d) the Municipality shall be responsible for compliance with all applicable requirements of the MOA and the Municipality agrees to participate and comply with the VENDEX approval process as defined in the MOA and Program Contract; and
- (e) it shall be responsible for the implementation and timely completion of the Project, including the obtaining of all necessary approvals, including without limitation, compliance with SEQRA in accordance with Section III(f) herein.

B. The Municipality hereby acknowledges and agrees that, in the event it is unable to expend all of the monies distributed hereunder by the termination hereof, all such unexpended monies, included interest earned thereon, shall be remitted to the County, within thirty (30) days of receipt of a written request from the County, to be returned to the EOH WQIP Fund or the County Trust Account established by Act No. __-__, as appropriate.

C. The Municipality hereby acknowledges and agrees that, should the County make a determination that EOH Funds were expended by the Municipality in an improper manner or for purposes other than as set forth herein, the Municipality shall repay to the County the total amount of such improperly expended funds within thirty (30) days of receipt of the written request of the County. Notwithstanding the foregoing, it is expressly

acknowledged and agreed that the County is neither obligated to seek such repayment, nor is required to institute collection proceedings against the Municipality.

D. The Municipality shall maintain copies of all invoices and other such information which details the expenditures made for a period of 7 years after the Project has been completed.

E. The Municipality hereby acknowledges and agrees that for purposes of compliance with this IMA, the Supervisor of the Municipality or his duly authorized designee shall serve as liaison to Westchester and shall be available to provide status information on the Project.

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

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the sole negligence of the County, it shall indemnify and hold harmless the County, its elected officials, officers, employees and agents from and against any and all liability, damage, claims, actions, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of this IMA, including without limitation, the acts or omissions hereunder by the Municipality or third parties under the direction or control of the Municipality; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this IMA and to bear all other costs and expenses related thereto; and

(c) in the event the Municipality does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Municipality shall reimburse the County's reasonable attorney's fees incurred in connection with

the defense of any action, and in connection with enforcing this provision of this Agreement.

(d) in addition to the foregoing, the Municipality shall ensure that all of the contractors, subcontractors and/or independent contractors (individually, a "Contractor" or collectively the "Contractors") that are engaged to construct the Project shall provide such insurance coverage as described in Schedule "B" naming as additional insureds the Municipality and the County (collectively, the "Additional Insureds"). The Municipality shall require, before the commencement of the Project, that each such insurance policy be endorsed to contain the following clauses: (a) the insurer shall no right to recovery or subrogation against the Additional Insureds (including their employees and other agents), it being the intention that the insurance policy shall protect both the insured and the Additional Insureds and be primary coverage for any and all losses covered by such insurance; (b) the clause "other insurance provisions" in any such insurance policy shall not apply to the Additional Insureds or their insurance policies; (c) the insurer issuing the policy shall have no recourse against the Additional Insureds (including their employees and other agents) for payment of any premiums or for assessments under any form of policy, and (d) any and all deductibles in such insurance policy shall be assumed by and be for the account of, and at the sole risk of the Contractor.

G. The Municipality hereby acknowledges and agrees that it shall defend and indemnify the County for any environmental damages arising out of or in any way connected with this IMA, including without limitation, construction of the Project, which environmental damages shall include, without limitation, all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense if any, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind of nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorney's fees and disbursements and consultants' fees, any of which are incurred as a result of the existence of Hazardous Waste, as that term is defined in 6 NYCRR Part 371, upon, beneath, or about the site

of the Project or migrating or threatening to migrate to or from the site of the Project, or any violation of applicable present and future statutes, regulations, rules, ordinance, codes, licenses, permits, orders, approvals, plans, authorization, concessions, franchises, and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United State, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, regardless of when any such environmental damages arose.

H. In full compliance with Section 107(e) of the MOA, the Municipality hereby acknowledges and agrees that it shall keep, maintain, and preserve at its principal office throughout the term of this Agreement, full and detailed books, accounts, and records pertaining to the performance of this Agreement including, without limitation, all bills, invoices, payrolls and other data evidencing and create and maintain at its principal office throughout the term of this IMA a repository of information regarding the undertaken Project, as may be necessary for a fair public assessment of the Project. The Municipality shall ensure that the County or its designee shall have the right to inspect and audit said repository.

All of the provisions of this Section IV shall survive the expiration or other termination of this IMA.

V. TERM:

This IMA shall commence upon execution (the “Commencement Date”) and terminate five (5) years after the Commencement Date, unless terminated sooner in accordance with the provisions hereof.

VI. MISCELLANEOUS:

A. This IMA, including all attachments hereto, contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings, if any, with respect thereto. This IMA may not be modified, changed or

supplemented except by written instrument signed by the parties hereto, subject to receipt of all necessary legal approvals. This IMA shall apply to and bind any successor(s) in interest of the respective parties.

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

C. It is acknowledged and agreed that any defined terms contained in the initial “Whereas Clauses” are incorporated by reference into the body of this IMA.

D. No party hereto shall make any assignment of their respective rights and responsibilities hereunder, without the prior written consent of all other parties hereto. Any assignment or attempt to assign, without the prior written consent of the parties hereto shall be void.

E. This IMA shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this IMA shall be brought in the County of Westchester.

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

The Municipality acknowledges and agrees that Westchester maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractor(s) or others.

G. This IMA shall not be enforceable until executed by all of the parties and approved by the Office of the Westchester County Attorney.

H. In the event of any material noncompliance with the terms hereof, including without limitation, use of the funds disbursed hereunder for ineligible costs, or failure to submit required reports, which remains uncured for thirty (30) days after service on the Municipality of written notice thereof (the "Cure Period"), the County, at its option, may seek any and all appropriate legal and/or equitable remedies, including, but not limited to, damages, reasonable attorney's fees, disbursements and court costs in such amounts as shall be allowed by the court.

The Commissioner of Planning, in her sole discretion, may agree to stay any such enforcement beyond Cure Period, provided however that the County determines that the Municipality is diligently and continuously acting to cure said noncompliance. Without limiting the foregoing, upon written notice to the Municipality, repeated non-compliance by the Municipality of any particular duty or obligation under this Agreement will be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure. Notice will be effective as set forth herein.

I. It is recognized and understood that the Municipality is not an agent of the County and in accordance with such status, the Municipality, any contractor(s), and all of their respective officers, agents, employees, representatives and servants shall at all times during the term of this IMA neither hold themselves out as, nor claim to be acting in the capacity of officers, employees, agents, representatives or servants of the County, nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges derived from workers compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

J. The Municipality hereby acknowledges that any provision of this IMA which requires consent of the County shall be subject to receipt by the County of any and all necessary legal approvals.

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

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

M. Except as may be expressly set forth herein, nothing herein is intended or shall be construed to confer upon or give any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this IMA. Notwithstanding the foregoing, it is expressly acknowledged and agreed that the NYCDEP is an express third party beneficiary hereunder.

N. The parties each agrees to execute and deliver such further instruments and to seek such additional authority as may be required to carry out the intent and purpose of this IMA.

O. The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this IMA nor the intent of any provision thereof.

VII. NOTICES:

All notices of any nature referred to in this IMA shall be in writing and either sent by registered or certified mail postage pre-paid, or delivered by hand or overnight courier, (with acknowledgment received and a copy of the notice sent by registered or certified mail, postage

pre-paid), as set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt. Notices shall be sent to all of the following:

To the County:

Commissioner
Department of Planning
Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

with a copy to:

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

To the Municipality:

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

Any changes or additions to the designations made in this Section VII. shall be made in writing and delivered to the other parties in accordance herewith.

IN WITNESS WHEREOF, the parties have executed this IMA as of the day and year first above written.

COUNTY OF WESTCHESTER

By: _____
Name:
Title:

TOWN OF SOMERS

By: _____
Name:
Title:

Approved by the Westchester County Board of Legislators of the County of Westchester by Act
No. ____-____.

Approved by the Westchester County Board of Acquisition & Contract at a meeting duly held on
the ____ day of _____, _____.

Approved by the Town Board of Somers at a meeting duly held on the ____ day of
____ 201__.

Approved as to form and
manner of execution:

Senior Assistant County Attorney
County of Westchester

MUNICIPALITY'S ACKNOWLEDGEMENT

STATE OF NEW YORK)

ss.:

COUNTY OF WESTCHESTER)

On the ____ day of _____ 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he 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, Westchester County

CERTIFICATE OF AUTHORITY

I, _____ certify that I am the _____ of the _____, New York (the "Municipality") a corporation duly organized in good standing under the laws of the State of New York named in the foregoing agreement, that _____, who signed said agreement on behalf of the Municipality was, at the time of execution, _____ of the Municipality, that said agreement was duly signed for on behalf of said Municipality by authority of the _____, thereunto duly authorized, and that such authority is in full force and effect at the date hereof.

STATE OF NEW YORK)

COUNTY OF WESTCHESTER) ss.:

On the ____ day of _____ 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he 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, Westchester County

SCHEDULE "A"

PROJECT DESCRIPTION

The Municipality shall construct a salt receiving, processing and storing structure at the Somers Highway Garage located off of Route 100 in the Municipality, in accordance with the plans and budget attached hereto (the "Project"). Upon completion of the Project, and after a Certificate of Occupancy has been issued for the structure, the Municipality shall submit to the County properly executed payment voucher(s) of the County for eligible costs as defined in the MOA (as defined in the body of this agreement) in an amount(s) up to \$175,000. The voucher(s) shall match the plans and budget attached hereto. The Municipality further agrees to provide the County with any and all documentation as may be required by the Planning Commissioner for approval of the voucher(s) in her sole discretion. Upon approval by the Planning Commissioner, the County shall reimburse the Municipality in accordance with the voucher(s) within thirty (30) days after such approval and only for eligible costs as defined in the MOA. Changes to the scope of the Project are subject to approval by the Planning Commissioner and must be in accordance with the Watershed MOA.

SCHEDULE "B"
STANDARD INSURANCE PROVISIONS
(Municipality)

1. Prior to commencing work, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

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

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

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
 - i. Premises - Operations.
 - ii. Broad Form Contractual.
 - iii. Independent Contractor and Sub-Contractor.
 - iv. Products and Completed Operations.
- c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

- d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated

in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:

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

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

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

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

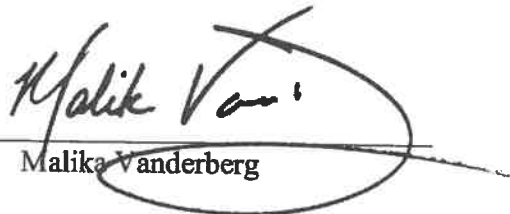
(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

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

STATE OF NEW YORK)
)
WESTCHESTER COUNTY) ss.

I HEREBY CERTIFY that I have compared the foregoing Acts, Act No's. 75, 76 - 2019, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of the said original Acts, which was duly adopted by the County Board of Legislators, of the County of Westchester on April 23, 2019, and approved by the County Executive on April 29, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said County Board of Legislators on this 2nd day of May, 2019.


Malika Vanderberg

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York



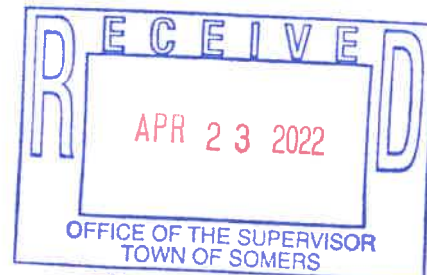
Telephone
(914) 277-3539

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: Annex (Original Section) Roof and Chimney Caps

DATE: April 22, 2022

Permission is being requested to solicit bids to replace the original section of the Annex roof and chimney caps. It is estimated that the roof is at least 30 years old.

As the Annex is in the Business Historic Preservation District, the Architectural Review Board will review and recommend the colors of the roof shingles.

Sent to:
TB, TATC
4/29/22
KD

Woodard & Curran Engineering
and Geological Services P.A. P.C.
800 Westchester Avenue
Suite N507
Rye Brook, New York 10573
www.woodardcurran.com

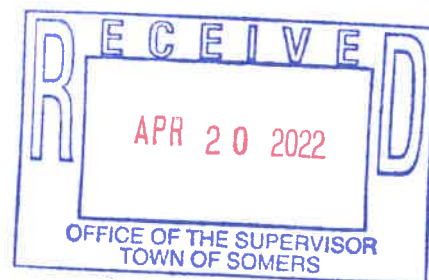
T 800.426.4262
T 914.448.2266
F 914.448.0147



Via Electronic Mail

April 20, 2022

Supervisor Robert Scorrano
Town of Somers
335 Route 202
Somers, New York 10589



Re: Professional Services Proposal for Town House HVAC System Design and Project Oversight
Elephant Hotel

Dear Supervisor Scorrano:

Woodard & Curran is pleased to provide this proposal for professional services for System Design and Project Oversight of the Elephant Hotel's new Heating, Ventilation, and Air Conditioning (HVAC) system.

BACKGROUND

Replace the mix of window-mounted air conditioning units and cast-iron radiators with a new variable refrigerant flow (VRF) air source heat exchanger and new interior air handlers in the Town House. The existing boiler would remain to provide auxiliary heating.

The general project delivery approach is to retain an engineer for design oversight, coordinating with a vendor's engineer for equipment recommendations. Construction will be conducted by a construction manager who can implement the HVAC system installation as well as modifications to the building's interior and exterior.

The Town of Somers received a \$100,000 SAM grant from New York State and a \$13,581 Court grant; the Town has an estimated local match of \$54,000. The total project budget is \$167,581.

SCOPE OF SERVICES

Facilitate Project Permitting

Woodard & Curran will prepare a short form Environmental Assessment Form (SAF) for use by the Town Board in declaring a lead agency and administering State Environmental Quality Review Act (SEQR).

We will submit a project notification to the State Historic Preservation Office (SHPO) for their review.

Develop System Approach and Equipment Specifications



Woodard & Curran will work with an industry leader VRF system vendor, such as Daikin or Mitsubishi/Trane, to develop the HVAC system approach and VRF equipment specifications. This will include identification of any equipment that can be pre-procured.

Review Installation and Rehabilitation Requirements

Woodard & Curran will initiate and lead a site walk-through with Gordian and the Town to review project installation and building rehabilitation requirements. We will work with Gordian to develop an approach for construction sequencing and how it will impact Town staff operations.

Solicit and Review Construction Manager Proposal

Woodard & Curran will coordinate with Gordian to receive a project construction pricing and will review for completeness and conformity with the overall project scope and budget.

Conduct Periodic Coordination Calls

Woodard & Curran will lead periodic project coordination calls with the Town of Somers and Gordian to inform the Town on the project progress and any challenges or opportunities.

Conduct Periodic Site Visits to Review Installation Progress

Woodard & Curran will conduct periodic site visits during the project installation to review installation progress and keep the Town informed of any challenges.

Project Close-out and Documentation

Woodard & Curran will compile all project close-out documentation, including Operations & Maintenance manuals from the equipment vendor and installing contractor.

We will also prepare all grants management reports.

SCHEDULE

- April 2022: Town contracting for professional services
- May-July 2022: Project permitting (SEQR)
- May 2022: Initial discussions with vendor's representative and contractor
- June 2022: Purchase major equipment
- September 2022: Installation begins
- December 2022: System commissioning – winter
- May 2023: System recommissioning – summer
- June 2023: Project completion

Note: The Court funding must be spent within 180 days of February 23, 2022 (August 22, 2022).

BUDGET

The proposed budget for completion of the work described herein is on a time and materials basis, to be billed monthly, and not to exceed \$35,000.



TERMS AND CONDITIONS

The Scope of Services will be completed in accordance with the terms of the Consultant/Professional Services Agreement between Woodard & Curran and the Town of Somers dated March 11, 2009.

ASSUMPTIONS AND UNDERSTANDINGS

The following assumptions and understandings apply to the scope of work, schedule, and budget described herein.

- The Town of Somers will leverage the City of White Plains Contract with Gordian to provide construction management rather than to put the project out for public bid.
- The SEQR process will be limited to the short-form EAF.
- The SHPO will not require an archeological survey or will have comments that will substantially modify the overall project scope.

CLOSING

We greatly appreciate this opportunity to offer our environmental services. If you accept this proposal and wish to proceed with the Scope of Services, please sign in the space indicated below and return a copy for our files. Please feel free to call the undersigned at 914.380.3011 if you have any questions regarding this proposal or require any further information.

Sincerely,

WOODARD & CURRAN ENGINEERING AND GEOLOGICAL SERVICES P.A. P.C.

A handwritten signature in black ink, appearing to read "Steven C. Robbins".

Steven C. Robbins, P.E., LEED AP
Project Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized agents as of the date indicated below.

AUTHORIZATION BY:

TOWN OF SOMERS

Robert Scorrano, Supervisor Date

Sent to:
TB, TA, TC
5/2/2022
KD

THIS AGREEMENT is made on this 01 day of May, 2022, between GARDEN STATE FIREWORKS, INC., hereinafter known and designated as The Party of the First Part; SOMERS TOWN NY hereinafter known as the designated Party of the Second Part.

WITNESSETH: For and in consideration of all mutual covenants and agreements hereinafter entered into, the Party and Parties hereinafter agree as follow:

- 1 The Party of the First Part agrees to furnish to the Party of the Second Part on 82 Primrose St. Grounds on 25 of June 2022 in a location to be designated by the Party of the Second Part and approved by the Party of the First Part, an exhibition of fireworks.
2. The Party of the First Part agrees to pay all expenses for the freight and cartage for the said display, all Necessary labor and equipment, and experienced Pyrotechnic Operators to discharge the said display.
- 3 The Party of the First Part and The Party of the Second Part agree to a postponement of the said display in the event of inclement weather June 26, 2022 additional cost of FIFTEEN PERCENT of the total contract amount. Postponements may be scheduled only within the period terminating January 1, 2023 after the original scheduled date of the display, thereafter the display will be considered to be cancelled. In the event of cancellation, the Party of the Second part agrees to additional payment of FIFTY PERCENT to bring the total of payments to ONE HUNDRED PERCENT of the total contract amount.
4. The Party of the First Part agrees to supply to the Party of the Second Part, insurance coverage in the amount of FIVE MILLION DOLLARS for public liability and/or property damage. The Party of the First Part agrees to hold harmless the Party of the Second Part. The Party of the Second Part agrees to hold harmless the Party of the First Part of all and any claims, legal fees incurred outside the operations or the control of the Party of the First Part.
5. The Party of the Second Part agrees to furnish ample security or police protection and barricades to prevent any persons from coming into the safety zone area designated for discharging said fireworks display. With the exception of conditions stated in paragraph 4 above, the Party of the Second Part also agrees to assume sole responsibility for spectator safety, including seating, lighting, and ground surfaces, and agrees to conduct an inspection of the site approximately 24 hours in advance of the display to ensure a safe spectator environment.
6. The Party of the Second Part agrees to produce any and all permits which may be required by municipal authorities for the discharging of the said fireworks display at their own expense.
7. The Party of the Second Part agrees that any and all publicity, media coverage, announcements, and advertising shall name GARDEN STATE FIREWORKS, INC. as the primary contractor for the said display.
8. Upon signing of this document, a deposit of FIFTY PERCENT of the total contract price shall be paid to the Party of the First Part.
9. Upon delivery of the said display, the full balance for the contract amount shall be paid to the Pyrotechnic Operator in a sealed envelope before of immediately following the discharging of the display.
10. Total contract amount 10,000.00 United State dollars (excluding permit fees)

WITNESS:

GARDEN STATE FIREWORKS, INC.

BY _____
August N. Santore – Vice President

WITNESS

Town of Somers
