

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, JUNE 8, 2023  
[www.somersny.com](http://www.somersny.com)**

6:00pm Executive Session

***I. PLEDGE OF ALLEGIANCE:***

7:00pm Regular Meeting

***II. ROLL CALL:***

**PUBLIC COMMENT**

Please limit your comments to no more than 3 minutes.

***III. 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 – Update
2. Community Benefit – Presentation - Kearney Realty & Development Group, Inc.
3. Westchester Power Electrical Supply Bid – Presentation - Nick Tedrow, Sr. Program Manager, Westchester Power
4. Library Teen Room Architectural and Engineering Services Agreement from Lothrop Associates LLP Architects - Discussion
5. Authorize the Supervisor to execute the documents for the DASNY Grant that will be used for the purchase and installation of a new security system at various Town locations per email dated May 23, 2023 from Steve Robbins, Woodard and Curran, Town Engineer.
6. Authorize the Supervisor to execute the change order for the installation of exterior security for all Town-owned buildings to install two additional outdoor cameras at the Town Hall / Court location in the amount of \$2,300.00 with Marshall Alarm Systems, Inc.
7. Authorize the Supervisor to execute the Community Choice Aggregation Memorandum of Understanding (MOA) and the Electric Service Agreement (ESA) with Sustainable Westchester, Inc. for the upcoming renewal.
8. Town of Somers Planning Department Petition to enact proposed zoning map amendments that were identified in the 2016 Comprehensive Plan Update:
  - a. Accept the petition.
  - b. Declare Notice of Intent to act as Lead Agency.
  - c. Authorize circulation of petition and Notice of Intent to other interested and involved agencies for review and recommendation.

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**B. PARKS & RECREATION:**

1. Authorize the Supervisor to accept with gratitude the following donations to provide scholarships for Day Camp participants per memo dated June 2, 2023 from Steven Ralston, Superintendent of Parks & Recreation:
  - a. Somers LION's Club - \$12,750.00
  - b. Somers Women's Club - \$2,550.00
  - c. Stephanie's Mission - \$5,950.00

**C. FINANCIAL: No additional business.**

**D. HIGHWAY: No additional business.**

**E. PERSONNEL:**

1. **Current Vacancies:**
  - a. Affordable Housing Board (1- 2-year term ending 7/11/2023.)
  - b. Affordable Housing Board (1- 2-year term ending 7/11/2024.)
  - c. Partners in Prevention (1- 3-year term ending 12/31/2023.)
  - d. Partners in Prevention (2- 3-year terms ending 12/31/2025.)
  - e. Veteran's Committee (2- 2-year terms ending May 31, 2025.)
2. **Upcoming Vacancies - Terms Expiring in 2023:**
  - a. Affordable Housing Board (2- 2-year term ending 7/11/2023.)
3. Authorize the status change for Erica Gentile from provisional to probationary as a Nutrition Site Manager full-time in the Nutrition Department per memo dated June 5, 2023 from Kim DeLucia, Executive Assistant to the Supervisor effective May 31, 2023.
4. Authorize the appointment of Kate O'Keefe as a member to the newly formed Somers Veteran's Committee to a two-year term effective June 1, 2023 and ending May 31, 2025.
5. Authorize the appointment of Gina Arena as a member to the newly formed Somers Veteran's Committee to a two-year term effective June 1, 2023 and ending May 31, 2025.
6. Authorize the appointment of Grace Zimmerman as a member to the newly formed Somers Veteran's Committee to a two-year term effective June 1, 2023 and ending May 31, 2025.

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7. Authorize the appointment of Kate O'Keefe as chairperson to the Somers Veteran's Committee to a term ending December 31, 2023.

**F. PLANNING & ENGINEERING:** No additional business.

**G. POLICE:** No additional business.

**H. CONSENSUS AGENDA:**

1. Authorize the following SEQRA/Professional Service Fee refund per May 17, 2023 memo from David B. Smith, Director of Planning:
  - a. \$1,757.50 Crown Castle Amended Special Use Permit,  
294 Route 100 TM: 17.19-1-1
2. Declare June 11, 2023 as Race Amity Day in the Town of Somers.
3. 259 Route 100 - Zoning Amendment from MFR-100 to OLI, per letter dated May 23, 2023 from McCullough, Goldberger & Staudt, LLP:
  - a. Declare itself lead agency.
  - b. Set a public hearing on the zoning amendment for July 13, 2023.
4. Authorize the Supervisor to execute:
  - a. The State Transportation Services Contract, for the period of April 1, 2023 through March 31, 2024 per memo dated May 23, 2023 from Barbara Taberer, Seniors and Nutrition Program Director.
  - b. The Tri-Town Nutrition Program Agreement for the period January 1, 2022 through December 31, 2022 between the Town of Somers, North Salem, and Lewisboro per email dated June 5, 2023 from Seniors and Nutrition Program Director.

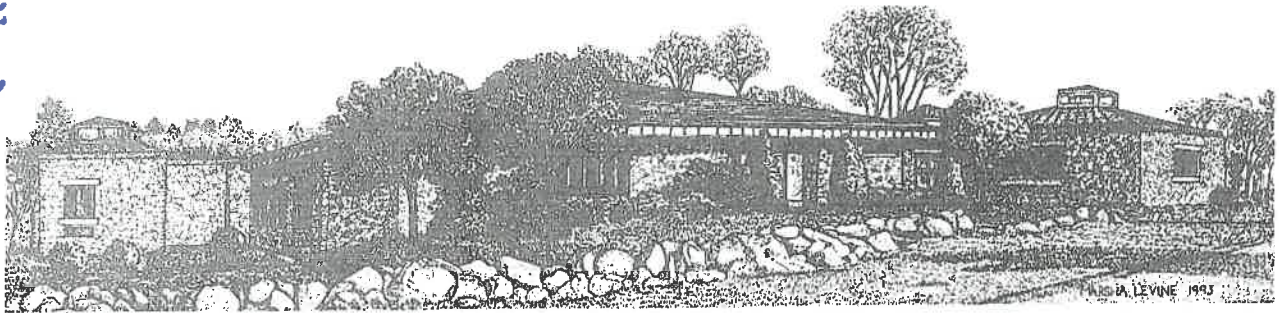
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**2023 Calendar**

June 8, 2023	7:00pm	Town Board Regular Meeting
July 13, 2023	7:00pm	Town Board Work Session/Regular Meeting
August 10, 2023	7:00pm	Town Board Work Session/Regular Meeting
September 7, 2023	7:00pm	Town Board Work Session
September 14, 2023	7:00pm	Town Board Regular Meeting

Sent to:  
TB, TA, TC  
5/29/23  
KD



## SOMERS LIBRARY

P.O. Box 443, Somers, New York 10589 • (914) 232-5717 • [www.somerslibrary.org](http://www.somerslibrary.org)

**MEMO TO:** Town Board

**FROM:** Jennifer Daddio, Library Director

**RE:** Proposals for Teen Room Renovation

**DATE:** March 20, 2023

Please find attached three proposals received for the Teen Room Renovation in the library.

Although Lothrop Associates is not the lowest proposal received, we would like very much to contract with them to do the work. We have been working with Lothrop Associates since October 2021 as they are working on the Long-Range Vision Plan for the library. In addition, they met with the Library Board of Trustees at their monthly meeting on March 15<sup>th</sup> to review and discuss their proposal. Building Inspector Tom Tooma was also present at the meeting as he was interested in hearing what their plans were. Everyone was most impressed with the proposal Lothrop Associates provided. It was very thorough and well thought out. Lothrop Associates works primarily with libraries, most of which are in the Northeast with some being in Westchester. Prior to securing them for the Long-Range Vision Plan for the library, I reached out to the libraries in Westchester that had worked with them and they were highly recommended by all.

attachments

December 2, 2022

Jennifer Daddio, Director  
The Somers Library  
Route 139 & Reis Park  
Somers, NY 10589

RE: The Somers Library  
Teen Room Expansion Area  
Architectural and Engineering Services Agreement

Dear Jennifer,

We are so pleased to submit our proposal for architectural and engineering services for the Teen Room Expansion Area of the Somers Library.

#### SCOPE OF WORK

We understand that the Scope of Work of the Project includes the following components, as represented in our sketch attached:

- Expansion of the Teen Room into one larger room which will include a movable partition wall.
- A new glass entry wall with separate entrances at each end to the new Teen Room.
- A new exterior exit door in the Teen Room.
- Modifications to the lighting layout in the new Teen Room and the Teen stacks area.
- Structural modifications to support the new movable partition and eliminate one structural column.
- HVAC modifications to accommodate for the new layout.
- MEP modifications to accommodate for the new layout.
- New finishes in the Teen space.

#### SCOPE OF SERVICES

To facilitate the Scope of Work outlined above, we will provide the following services for the Project:

##### General:

1. **Services:** We will provide Architectural, Structural, Mechanical, Electrical, Plumbing and Fire Protection (MEP/FP) Engineering and Cost Estimating Services. We will supply all labor, materials, supplies and out-of-pocket expenses and travel time necessary to complete the scope of services contained herein. This scope of services also includes any necessary meetings with the Library.
2. **Meetings:** We will meet with the Library throughout the performance of our services for the project. Meetings will be as mutually established by all involved parties. We will conduct all meetings and prepare meeting minutes of all meetings. Minutes will be distributed for review and comment. Revised minutes will be prepared and distributed for record. Meetings will include, but not be limited to, the following:
  - a. **Project Kickoff Meeting** – We meet with the Library Board and Staff to identify and confirm the project goals, objectives and project budget based upon available and/or anticipated funding for the Project.
  - b. **Existing Conditions Review Meeting** – We meet with the Library Board and Staff to review the existing conditions drawings for the purposes of identifying opportunities and potential obstacles for the Project.
  - c. **Schematic Design Phase Meetings** – We meet with the Library Board and Staff to review preliminary and revised Schematic Design Drawings, Outline Specifications, and Preliminary Cost Estimates.
  - d. **Design Development Phase Meetings** – We meet with the Library Board and Staff to review preliminary and revised Design Development Drawings, Preliminary Three-Part Specifications, and Cost Estimates.

- e. **Construction Documents Phase Meetings** – We meet with the Library Board and Staff to review preliminary and revised Construction Documents Drawings, Three-Part Specifications, and Cost Estimates.
- f. **Bidding Phase Meetings** – We meet with the Library to review preliminary and revised Bid Documents prior to issuance for Bid.
- g. **Construction Phase Meetings** – We meet with the Library and Contractor weekly throughout the construction period.
- 3. **Design:** We will prepare schematic design, design development and construction drawings and specifications to satisfy the goals and objectives for the Project. Our design will
  - a. Satisfy infrastructural and functional space needs,
  - b. Be sympathetic to the original Library aesthetic, and
  - c. Address accessibility non-compliances through the implementation of “Universal Design”.
- 4. **Work Products:**
  - a. **Drawings:** We will prepare schematic design, design development and construction drawings for the Project.
  - b. **Specifications:** We will prepare written three-part specifications for the Project.
- 5. **Cost Estimate:** We will prepare “Order of Magnitude” *“per square foot”* cost estimates to accompany schematic design, design development and construction drawings and specifications.
- 6. **Codes:** We will assure that all work shall meet or exceed Local and State Building Codes.
- 7. **Approvals and Permits:** We will identify any approvals and permits that are required for the Project. We will assist the Library in applying for a building permit.

#### **Architectural Services:**

- 1. We will:
  - a. Throughout all phases of service outlined below, we will:
    - i. Coordinate the performance of all services with the Library, and structural, mechanical, electrical, plumbing, fire protection engineering, and cost estimating consultants.
    - ii. Perform all administrative duties including scheduling, record keeping, and communications amongst all parties.
  - b. Perform all Architectural services required for the Project including:
    - i. The performance of all pre-design, schematic design, design development, construction documents, bidding, and construction phase services.
    - ii. The preparation of all architectural drawings and specifications.

#### **Mechanical, Electrical, Plumbing and Fire Protection (MEP/FP) Engineering Services:**

- 1. We will provide MEP/FP engineering services as follows:
  - a. Prepare all MEP/FP drawings and specifications that include:
    - 1. Preparation of drawings for MEP/FP systems related to the Work Area of the Project.
    - 2. Participation in meetings with the stakeholders to present options and develop a proposed approach that meets their needs.
    - 3. Heating, Ventilation and Air Conditioning plans, details, and schedules including:
      - a. Modification of the existing HVAC system.
    - 4. Electrical plans, details, and schedules including:
      - a. Modification to the following:
        - 1. Electrical power distribution system.
        - 2. Electrical Emergency and exit lighting.
        - 3. Electrical Lighting and Lighting controls.
        - 4. Fire Alarm system.
    - 5. Fire Protection plans, details, and schedules including:
      - a. Modifications to the existing fire protection system.
    - 6. Prepare ComCheck for applicable MEP Systems to ensure Energy Code Compliance.

#### **Structural Engineering Services:**

- 1. We will provide structural engineering services required for the project including the following:



- a. New footing for new column.
- b. New structural beam to support existing beams and new moveable partition.
- c. New lintel at new opening in stone wall for new exterior door.

#### **Schematic Design Phase Services:**

1. We will provide Schematic Design drawings for the project including:
  - a. Floor Plan
  - b. Reflected Ceiling Plan
  - c. Interior Elevations
2. We will prepare a written narrative scope of work for the project.
3. We will prepare an outline specification for the project.
4. We will prepare a "Order of Magnitude" *"per square foot"* cost estimate for the project.
5. We will meet with you to present the Schematic Design drawings, narrative, outline specification, and cost estimate for your review and approval.
6. We will receive and incorporate your comments into revised Schematic Design drawings that will constitute final Schematic Design Drawings.
7. We will update the "Order of Magnitude" *"per square foot"* cost estimate to correspond to the final Schematic Design Drawings.
8. We will meet with you to present the final Schematic Design drawings and cost estimate.
9. Upon approval of the final Schematic Design, we will proceed with Design Development Phase Services.

#### **Design Development Phase Services:**

1. We will prepare Design Development drawings for the project including:
  - a. Floor Plan
  - b. Reflected Ceiling Plan
  - c. Building and Wall Sections where necessary
  - d. Interior Elevations
  - e. Preliminary Schedules (Door, Window, Finish, Accessory, Electrical Fixture)
1. We will select and present for your approval, and "fix" all materials to be included in the Project.
2. We will prepare preliminary specifications.
3. We will update the "Order of Magnitude" *"per square foot"* cost estimate.
4. We will meet with you to present first draft of the Design Development Documents (drawings, outline specification and cost estimate).
5. We will receive and incorporate your comments into revised Design Development Documents that will constitute the final Design Development documents.
6. We will meet with you to present the final Design Development Documents.
7. Upon completion of Design Development Phase Services, we will proceed with Construction Documents Phase Services.

#### **Construction Documents Phase Services:**

1. Based on your approval of the Design Development Documents, we will prepare Construction Documents for your review and approval. Construction Documents include the drawings and specifications from which the project will be bid and built. The Construction Documents will illustrate and describe the further development of the approved Design Development Documents and shall consist of drawings and specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. We both acknowledge that in order to construct the work the Contractor will provide additional information, including shop drawings, product data, samples, and other similar submittals, which we will review and process/approve accordingly.
2. We will incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.
3. We will develop and prepare (1) bidding and procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary, and other Conditions).

4. We will update the "Order of Magnitude" *"per square foot"* cost estimate.
5. We will submit the Construction Documents and updated cost estimate to you for review and approval. At the end of this phase, we will:
  - a. Submit signed and sealed drawings and specifications to the Building Department for permit.
  - b. Furnish you with the Construction Documents, labeled "Bid Set" for your records.
6. Upon completion of Construction Documents Phase Services, we will proceed with Bidding Phase Services.

#### **Bidding Phase Services:**

1. We will prepare a Bid Package to include drawings and specifications.
2. We will issue a Bid Package to Single Prime General, Mechanical, Electrical and Plumbing Contractors for competitive public bidding purposes.
3. We will attend and conduct a Pre-Bid Site Visit with prospective Bidders.
4. We will answer Requests for Information from Bidders.
5. We will receive, Analyze and Tabulate Bids.
6. We will check Bidders references and qualifications.
7. We will prepare Recommendation of Award to Lowest Qualified Bidder.
8. We will assist you in the selection of a Single Prime General Contractor.

#### **Construction Phase Services:**

1. We will prepare Contract Documents (AIA Contract for Construction or Owner approved equal).
2. We will visit the construction site to verify, in so far as intermittent visual inspections allow, that the work is being completed as required by the documents.
3. We will consult with you throughout construction until final payment to the Contractor is due.
4. We will review and approve submittals, shop drawings, product data, samples, and mockups.
5. We will review and certify contractor's applications for payment.
6. We will review and approve Proposed Change Orders.
7. We will prepare and execute approved Change Orders.
8. At substantial completion, we will visit the site and prepare a punchlist.
9. We will issue a Certificate of Substantial Completion.
10. We will make a final site visit to check completion of punchlist.
11. We will issue a certified final application for payment.
12. We will obtain as built drawings, warranties and close out documents from Contractor prior to issuance of final payment.
13. We will compile and distribute Owner's Operations and Maintenance Manuals for Owner's records. O&M Manuals will include all operations, maintenance and warranty information called for in the Project Manual.

#### **DELIVERABLES:**

Our Work Products will constitute our Deliverables for the Project and are outlined as follows:

1. Written documentation: 8 ½" x 11" size. Documentation includes the following:
  - a. Meeting Minutes/Conference Memoranda: in PDF Format
  - b. Product Information: in PDF Format
  - c. Specifications: in PDF Format
  - d. Cost Estimates: in PDF Format
2. Design Drawings: 22" x 34" size in PDF Format

#### **FEE STRUCTURE**

For the Architectural, Engineering and "Order of Magnitude" *"per square foot"* Cost Estimating Services outlined above, we propose a Lump Sum Fee of Twenty Thousand Dollars (\$20,000.00). This fee is itemized as follow:

1. Schematic Design Phase Services:	\$2,500.00
2. Design Development Phase Services:	\$3,500.00
3. Construction Documents Phase Services:	\$5,500.00
4. Bidding Phase Services:	\$1,000.00

5. Construction Phase Services:

\$7,500.00

**Reimbursable Expenses:** We estimate a \$950.00 Reimbursable Expense Allowance for the Project. This Allowance is not included in the Lump Sum Fee outlined above. Any costs incurred for the Project such as mileage costs, printing, photographs, delivery service, consultants, and building department consultant and filing fees are considered a Reimbursable Expense. Unforeseen expenses other than those listed here are not included in the Lump Sum Fee. Building Permit Application and Permit Fees would be borne by the Contractor and, as such, are not considered a Reimbursable Expense.

**Qualifications and Exclusions:**

1. Professional Detailed Cost Estimating is excluded. If a Professional Detailed Cost Estimate is needed for any reason, we will provide a proposal for these additional services for your review and approval. We will obtain proposals from NASCO Construction for these services. For budgeting purposes, we recommend a \$5,000.00 allowance for detailed professional cost estimating services performed by NASCO.
2. Survey of existing conditions and systems if limited to visually accessible areas only.
3. The performance of probes and destructive testing is excluded.
4. We include two (2) site visits/meetings during design phase services.
5. We include 2 (2) site visits/meetings during bidding phase services.
6. We include three (3) site visits/meetings during construction.
7. Geo-technical investigation and reporting is excluded.
8. Hazardous Materials investigation, sampling, testing, reporting and the preparation of abatement drawings and specifications are excluded.
9. The preparation of metes and bounds and/or topographic surveys is excluded. Required survey for approvals shall be provided by the Owner under direct separate contract with a licensed land surveyor.
10. Structural probes to verify all existing conditions drawings.

**Budgets:**

A note about budgets: Construction costs are all too subject to the vagaries of the marketplace, especially during these inflationary times. We will furnish our best "order of magnitude" estimates as early in the design process as we can. We may specify otherwise, but our "guesstimates" typically include the full scope of construction work including contractor's profit and overhead. They do not typically include our fees, building permit fees and other transaction costs for which you should budget separately.

If the foregoing meets with your approval and understanding, please sign in the place indicated below.

Sincerely,



Bob Gabalski, AIA  
Partner

AGREED TO AND ACCEPTED BY:

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(Printed Name)

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(Title)

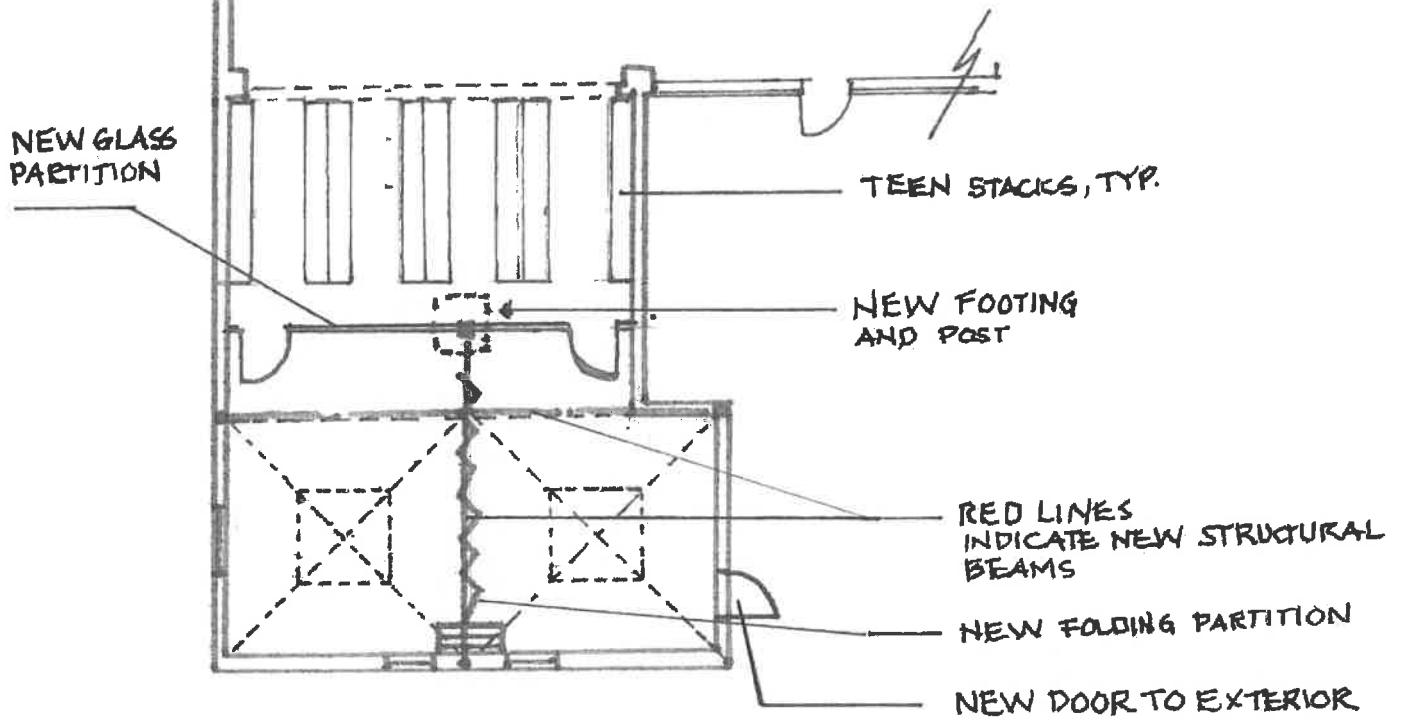
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(Signature)

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(Date)

LOTHROP ASSOCIATES LLP  
DECEMBER 2, 2022



SOMERS PUBLIC LIBRARY  
TEEN ROOM EXPANSION AREA

NOT TO SCALE  
22-379



**DASNY**

**KATHY HOCHUL**  
Governor

**ALFONSO L. CARNEY, JR.**  
Chair

**REUBEN R. MCDANIEL, III**  
President & CEO

May 15, 2023

**VIA EMAIL**

Steven Robbins  
Consulting Town Engineer  
Town of Somers  
335 Route 202  
Somers, New York 10589

Re: *State and Municipalities ("SAM")  
Purchase & Installation of a New Security System at Various Town Locations  
Project ID: 24838*

Dear Steven Robbins:

As you know, the State has awarded the Town of Somers ("Grantee") a State and Municipalities ("SAM") grant for the above-referenced project in the amount of \$100,000.00 (the "Grant").

This letter outlines the documentation you will need to complete and return to DASNY in order to start the Grant Administration process.

- ***Please return the completed documentation electronically, as described below within thirty (30) days. If you are not able to meet this timeframe, please send an email to [callcenter@dasny.org](mailto:callcenter@dasny.org) with your requested timeline for submission.***
- ***If the information is not returned in a timely manner, or documentation is incomplete, your Grant will be delayed as DASNY generally reserves the right to request updated documentation throughout the administrative process to ensure the required reviews are based on accurate information.***
- ***If there are any changes to the contact information for the primary contact for your organization, the authorized officer contact information, or change in your organizational address – please email ([grants@dasny.org](mailto:grants@dasny.org)).***

***Please also read the attached Frequently Asked Questions (FAQs) as it relates to the following requested documents and other questions that you may have regarding the Grant Process.***

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**ALBANY (HEADQUARTERS):** 515 Broadway, Albany, NY 12207 | 518-257-3000  
**BUFFALO:** 6047 Transit Road, Suite 103 East Amherst, NY 14051 | 716-884-9780  
**NEW YORK CITY:** 28 Liberty Street, Fl 55, New York, NY 10005 | 212-273-5000  
**ROCHESTER:** 3495 Winton Place, Building C, Suite 1, Rochester, NY 14623 | 585-450-8400

**DORMITORY AUTHORITY STATE OF NEW YORK**  
**WE FINANCE, DESIGN & BUILD**  
**NEW YORK'S FUTURE.**  
[www.dasny.org](http://www.dasny.org)



The following documents must be completed and returned to DASNY so the required reviews can be conducted and State approvals obtained:

- ☒ Completed Project Information Sheet signed by an authorized officer;
- ☒ Completed Grantee Certification signed by two (2) authorized officers;
- ☒ Completed Project Certification signed by an authorized officer;
- ☒ The Grantee Questionnaire (GQ) requested by DASNY expires after one (1) year;
  - o The GQ on file has expired or is about to expire. Please provide the names, titles and email addresses of two authorized officers so that a GQ may be sent out by the Processor that will be assigned to review your paperwork:  
Authorized Officer #1: Name: Robert Scorrano Title: Supervisor  
Email: rscorrano@somersny.com Phone: 914-277-3637 Ext:         
Authorized Officer #2: Name: Rick Morrissey Title: Deputy Supervisor  
Email: rmorrissey@somersny.com Phone: 914-277-3637 Ext:
- ☒ Evidence of Site Control;
  - o Certificate of Municipal Site Control
- ☒ Financial documentation.

If your organization is a non-for-profit please also see the 'Prior to Final Approval' section in attached FAQs for information regarding the prequalification requirement through NY State Grants Gateway.

Grantees are also advised that grant-funded projects are subject to the State Environmental Quality Review Act (SEQRA) and State Historic Preservation Act (SHPA). Information regarding the SEQRA and SHPA process is included in the FAQs.

Should you have any questions concerning the enclosed documentation please either call (518) 257-3177 or email [callcenter@dasny.org](mailto:callcenter@dasny.org).

Sincerely,

Sarah D. Antonacci  
Assistant Director, Grants Administration

**GRANTEE CERTIFICATION**

**Town of Somers**

Purchase & Installation of a New Security System at Various Town Locations

Project ID: 24838

WE HEREBY WARRANT, REPRESENT AND CERTIFY TO DASNY that:

- The Town of Somers (the "Grantee") has applied for a ("SAM") Grant in the amount of \$100,000.00 (the "Grant"). This Grant will be used for the Purchase & Installation of a New Security System at Various Town Locations (the "Project"). We understand that the Grant funds may be used only for certain community improvement purposes as set forth in the enabling legislation and that the Grant Disbursement Agreement (GDA) to be executed in connection with this Grant contains a provision that states that Grant funds may not be used to finance a program or Project that will in any way promote or facilitate religious worship, instruction or proselytizing. We have been informed that this provision exists to ensure compliance with Federal and State law. Therefore, as Authorized Officers of the Grantee, we hereby certify the following in connection with the Project to be financed by the Grant:
  - no religious purpose shall be advanced or promoted by the Project or program funded by the Grant;
  - the Project or program will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of services or the use of facilities or furnishings assisted in any way by public funds;
  - the Project or program shall be open to all without regard to religion; and
  - the Grantee shall take affirmative steps to ensure that information is widely disseminated with respect to the following aspects of the Project or program:
    - the Project or program is publicly funded;
    - the Project or program is open to all, regardless of religious affiliation; and
    - the Project or program beneficiaries are not limited to any particular sect or group.
  - the Grantee shall exercise care to make sure the facilities and/or services to be supported in whole or in part by Grant proceeds are available and accessible to all members of the public by ensuring Project location(s) and/or service areas are in proximity to public transportation; sufficient parking; and by choosing Project location(s) and/or service areas that do not restrict use to a certain subset of the population defined by religion;
- We understand that the State of New York, DASNY and other entities that may be involved in the Grant process are relying on the above information in making the determination whether to award the Grant to the Grantee.
- By signing this document, we certify that we are authorized officers for the Grantee and have the authority to submit this Certification.

Please sign and return this document to DASNY by either signing pen to paper and sending the pdf OR by typing your full name into signature line(s) below as indicated. Please return these documents to [callcenter@dasny.org](mailto:callcenter@dasny.org) from the Grantee's organizational email address and retain the original copies for production to DASNY if requested. By providing electronic signature(s), the Grantee's designee will be providing validly binding legal documents, just the same as a pen-and-paper signature.

\_\_\_\_\_  
Authorized Officer (sign or type)

Robert Scorrano

\_\_\_\_\_  
Printed Name (print or type)

Supervisor

\_\_\_\_\_  
Title (print or type)

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Authorized Officer (sign or type)

Rick Morrissey

\_\_\_\_\_  
Printed Name (print or type)

Deputy Supervisor

\_\_\_\_\_  
Title (print or type)

\_\_\_\_\_  
Dated

**PROJECT CERTIFICATE OF THE**  
**Town of Somers**  
State and Municipalities (the "SAM")  
For the Purchase & Installation of a New Security System at Various Town Locations  
(Project ID: 24838)

I, the undersigned, an Authorized Officer of Town of Somers (the "Grantee"), DO HEREBY CERTIFY that:

- All contractors and vendors retained to perform services in connection with the Purchase & Installation of a New Security System at Various Town Locations (the "Project") shall be authorized to do business in the State of New York and shall possess and maintain all professional licenses and/or certifications required to perform the tasks undertaken in connection with the Project.
- To the extent that SAM Grant proceeds are used to reimburse the Grantee for the cost of any portion of the Project noted above, the Grantee certifies that no other external funding source, including but not limited to, State or Federal restructuring loans, State or Federal grants, or grants, loans, or other funding from any other public or private source (currently or within the last six (6) years), will be used for substantially the same Project costs at the same location as described in the Preliminary Application or Project Information Sheet provided to DASNY.
- If the Project includes vehicle purchase(s), removable equipment, or furnishings including but not limited to, computer hardware and software, air conditioning units, lab equipment, security cameras, office furniture and telephone systems, the Grantee has or will develop, implement, and maintain an inventory system for tracking such items, and items will be installed, stored, or secured on property owned by and/or under the control of the Grantee; the Grantee has or will develop, implement, and maintain a usage policy for items in compliance with all State and Federal regulations or privacy laws, including use, retention, storage, or deletion of any data, images, or videos stemming from Grant funded purchase of such items if applicable.
- The Grantee has informed DASNY via the Preliminary Application, Project Information Sheet, or other correspondence if Grantee is a state related entity, or if the Project location is owned by a state related entity. Furthermore, if the status of the Grantee or Project location changes, the Grantee will inform DASNY of any changes that would impact the tax-exempt status of the Grant.
- The Grantee acknowledges that Grant proceeds cannot be utilized to pay for:
  - Deposits advance payments, or progress payments until work is completed, or goods received by Grantee;
  - to pay down long term debt;
  - internal labor costs;
  - rental or leased equipment, or equipment with an anticipated useful life of less than three (3) years;
  - stockpiled materials;
  - recurring software costs, including licensing or maintenance fees;
  - materials and/or services provided by another entity other than a licensed contractor or vendor.
- The Grantee will maintain accurate books and records through Project completion/payout of the Grant as well as for six (6) years from the date the Project is completed and will make those books and records available to DASNY, its agents, officers and employees during the Grantee's business hours upon reasonable request.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

By signing these documents, I certify that I am an authorized officer for the Grantee.

Please sign and return this document to DASNY by either signing pen to paper and sending the pdf OR by typing your full name into signature line(s) below as indicated. Please return these documents to [callcenter@dasny.org](mailto:callcenter@dasny.org) from the Grantee's organizational email address and retain the original copies for production to DASNY if requested. By providing electronic signature(s), the Grantee's designee will be providing validly binding legal documents, just the same as a pen-and-paper signature.

By (sign or type): \_\_\_\_\_

Name (print or type): Robert Scorrano

Title (print or type) Supervisor



## CERTIFICATE OF MUNICIPAL SITE CONTROL

We, the undersigned, an Authorized Officer of the Town of Somers and the Municipal Attorney for Town of Somers under the penalties of perjury, hereby certify, warrant, represent and confirm to the DORMITORY AUTHORITY OF THE STATE OF NEW YORK ("DASNY"), the following:

- 1) The Town of Somers is a municipal corporation constituting a county, town, city or village within the meaning of §2 of Article 1 of the General Municipal Law.
- 2) The Town of Somers has applied for a Grant and acknowledges that Grant funds may be used only for certain purposes as set forth in the Grant's enabling legislation.
- 3) The Grant Disbursement Agreement (GDA) to be entered into by and between the Town of Somers and DASNY shall require the Grantee to certify that Town of Somers has the requisite control over the Project Site.
- 4) The Grant project will be located at the following **Project Site**:

**Name:** *Town Wide Security System*  
**Street Address:** *Various (attach list hereto)*  
**Town / Village** *Somers*  
**County:** *Westchester County*

- 5) The fee title of the Project Site is owned by the Grantee (**choose one**):

☒ Pursuant to deed identifying the Grantee as the fee owner, which deed was recorded in the Office of the Clerk of the County of Westchester.

☐ Pursuant to Executive or Legislative action granting title. **Provide citation:** \_\_\_\_\_

☐ As referenced by a copy of the most recent tax bill provided by the tax assessor's office which indicates ownership of the Project Site is vested in the Grantee, **attached hereto**.

☐ The Project Site will be located within a right of way or easement under the jurisdiction of the Grantee.

- 6) The Grant project to be constructed, built, reconstructed and/or operated and located on the Project Site is permitted by, does not and will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default under any deed restriction, encumbrance, restrictive covenant, agreement, easement and/or other lien. The Grant project shall comply in all respects with any and all applicable governmental laws, rules, regulations and ordinances.

- 7) Grantee further warrants and represents:
- a. There are no actions pending or threatened which may affect title to the Project Site or which may affect Grantee's ability to complete the Grant project;
  - b. There are no judgments filed against the Grantee or any liens filed against the Project Site or any portion thereto; and
  - c. There are no facts or circumstances which could affect title to the Project Site that have not been set forth herein.
- 8) We understand and agree that it is the Grantee's responsibility to comply with all deed restrictions, restrictive covenants, encumbrances, easements and other liens and any applicable laws, rules, regulations or ordinances concerning the Project Site.
- 9) We understand that the State of New York, DASNY and other entities that may be involved in the Grant process are relying on the above representations in making the determination whether to award a Grant to the Grantee and as an inducement to enter into the Grant Disbursement Agreement (GDA).
- 10) We have the authority to submit this certification on behalf of the Grantee.

Please sign and return this document to DASNY by either signing pen to paper and sending the pdf OR by typing your full name into signature line(s) below as indicated. Please return these documents to [callcenter@dasny.org](mailto:callcenter@dasny.org) from the Grantee's organizational email address and retain the original copies for production to DASNY if requested. By providing electronic signature(s), the Grantee's designee will be providing validly binding legal documents, just the same as a pen-and-paper signature.

**Grantee: Town of Somers**

By:  
Name (sign or type): \_\_\_\_\_

Name (print or type): Robert Scorrano

**Title: Authorized Officer**

Dated: \_\_\_\_\_

By:  
Name (sign or type): \_\_\_\_\_

Name (print or type): Roland Baroni

**Title: Municipal Attorney**

Dated: \_\_\_\_\_

## **ATTACHMENT 1**

### **Certificate of Municipal Site Control Question 4**

#### **List of Project Site Locations**

- 1. Town Hall/Court: TaxID 17.11-1-20, 335 Route 202, Somers NY 10589**
- 2. Annex/Building Department: TaxID 17.11-1-19, 337 Route 202, Somers NY 10589**
- 3. Highway Department: TaxID 28.10-2-2, 250 Route 100, Somers NY 10589**
- 4. Police Department: TaxID 27.12-2-2, 100 Primrose Street/Rt 139, Katonah, NY 10536**
- 5. Van Tassel House: TaxID 27.12-2-2, 98 Primrose Street/Rt 139, Katonah, NY 10536**
- 6. Park & Rec Building: TaxID 27.16-2-2, 82 Primrose Street/Rt 139, Katonah, NY 10536**
- 7. Library: TaxID 27.16-2-2, 80 Primrose Street/Rt 139, Katonah, NY 10536**
- 8. Angle Fly Preserve: TaxID 37.08-1-2.2, Primrose Street/Rt 139, Katonah, NY 10536**
- 9. Wright Reis Homestead: TaxID 27.16-2-2, 94 Primrose Street/Rt 139, Katonah, NY 10536**
- 10. Mt. Zion Church: TaxID 27.16-2-1, 76 Primrose Street/Rt 139, Katonah, NY 10536**

**STATE AND MUNICIPAL FACILITIES CAPITAL PROGRAM  
(SAM)  
PROJECT INFORMATION SHEET**

**SECTION 1: GENERAL INFORMATION**

**A. Project Name:** Town Wide Security System

Project Location(s) (e.g. DASNY campus):  
335 Route 202, Somers, NY 10589

Project Address(es) (e.g. 515 Broadway):  
All Town Buildings, Somers, NY 10589:  
Town Hall, Town Annex, Reis Homestead, Mount Zion, AngleFly Preserve,  
Van Tassle, Highway Garage, and the Parks and Recreation Department.

**B. Organization / Grantee:** Town of Somers  
Legally Incorporated Name:

Street (not P.O. Box): 335 Route 202

City: Zip: County: Somers: 10589: Westchester

Phone: (914) 277-3637

Ext:

Fax: (914) 276-0082

E-mail: supervisor@somersny.com

Contact Name & Title: Robert Scorrano, Supervisor

Federal Taxpayer I.D. 13-6007329

Charity Reg.# (Non-profits Only):

**1. Type of Organization:**

- ☐ Business Corporation  
☐ State  
☒ Municipal Corporation  
☐ Water District  
☐ University / Educational Organization (SUNY, Community College, Private)  
☐ Sewer District  
☐ Metropolitan Transportation Authority Public  
☐ School District  
☐ Public Benefit Corporation est. Titles 11, 11-A-D or as defined in S 4 of Ch. 1016 if the laws of 1969

- ☐ Public Housing Authority  
☐ Public Library or Library System  
☐ Fire District / Commission / Department / Volunteer Rescue & Ambulance Squad  
☐ Public Park Conservancy or Not-for-Profit Investment in Parks  
☐ Special Act School Districts  
☐ School for the Blind and Deaf and Other Students with Disabilities (4201 Schools)  
☐ Private School for Students with Disabilities (853 Schools)  
☐ Non-Profit  
☐ Other

Please provide a copy of the Grantee's incorporation papers or charter from the NYS Education Department if applicable

2. a) Is the organization currently seeking or receiving any other New York State assistance for this project? ☒ No ☐ Yes  
b) Is the SAM Grant a match to receiving the Other New York State Assistance? ☒ No ☐ Yes  
If either a or b is Yes, please provide a detailed explanation on an attached separate sheet.

**SECTION 2: PROJECT DESCRIPTION****Project Description and Amount**

1. Please attach a **separate sheet** with a detailed description of the specific capital project that will be undertaken and funded pursuant to this Grant. If multiple project locations and addresses, please list in project description.

2. Project Start Date: 6/15/23 Anticipated Date of Project Completion: 12/31/23

3. Please list the anticipated amount of funding to be received from the SAM Program for this project.  
\$ 100,000.00

4. Will any entity other than the Grantee set forth in Section 1, above, be paying any project related costs?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
<u>If Yes</u> , please attach a separate sheet setting forth the costs to be paid by another entity, as well as a description of the relationship between the Grantee and the other entity.	
5. Does the Applicant own the site where the project will be located?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
<u>If Yes</u> , please provide the deed.	
<u>If No</u> , please attach a separate sheet describing the control the Applicant has over the Project site and include lease if applicable.	
6. Does the applicant plan to occupy 100% of the project facility?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
<u>If No</u> , attach a schedule explaining the planned occupancy.	
7. If an organization other than the Grantee will have an interest in the equipment or real property purchased with Grant funds, please attach a separate sheet describing the legal relationship between the Grantee and the organization.	
8. Does the project require environmental or other regulatory permits? <u>If Yes</u> , please specify type:	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
Have they been secured?	<input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> NA
<u>If No</u> , please specify why:	
9. Has any State or local government agency reviewed the project under the State Environmental Quality Review Act (SEQRA)?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> NA
<u>If Yes</u> , please set forth the lead agency for the review and provide a copy of the negative declaration, findings statement, or Type II memo issued by the lead agency.	
<b>SECTION 3: ELIGIBILITY FOR TAX-EXEMPT FINANCING</b>	
1. Has the applicant previously received financing from the sale of tax-exempt bonds for <u>this project</u> ?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
<u>If Yes</u> , attach a schedule describing the details of such financing.	
2. Does the applicant anticipate applying for financing for <u>this project</u> from the sale of other bonds?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
3. Have any funds been expended or obligations incurred to date on that portion of the project for which this application is made?	
	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
<u>If Yes</u> , attach a schedule showing details of such disbursements (date, purpose, payee, etc.).	
4. Will the Grantee be utilizing internal labor for any portion of the project?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes
<u>If Yes</u> , attach a narrative summarizing the usage and dollar value of internal labor on the project. Internal labor costs will <u>not</u> be reimbursed from SAM Grant proceeds.	
5. Is the grantee or project location(s) owned or affiliated with a state related entity (e.g. public benefit corporation, entity with governance appointed by Governor of NYS)? If yes please attach explanation.	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes

**SECTION 4: PROJECT BUDGET**

Complete the following Project Budget detailing the proposed sources and uses of funds (attach additional sheets if necessary) that will be utilized to complete the Project. State the source of the funding, and any contingencies that need to be satisfied prior to accessing the funds.

**Please include evidence of committed funding sources to be used to complete the project as described.** This may include a copy of letter(s) of credit, award letters, a resolution from the governing board of the Grantee committing to provide the balance of the funds, or a combination of the above.

<u><i>USE OF FUNDS</i></u>	<u><i>SOURCES</i></u>						<u><i>TOTAL</i></u>
	State		In-Kind /Equity /Sponsor		Other sources (Please specify each source and include commitment letter or other evidence that funds have been secured)		
Tasks	Entity Name	Amount	Source Name	Amount	Entity Name	Amount	
Security System	DASNY Grant	\$ 97,100.00					\$ 97,100.00
Contingency	DASNY Grant	\$ 2,900.00					\$ 2,900.00
							\$ 0.00
							\$ 0.00
							\$ 0.00
							\$ 0.00
							\$ 0.00
							\$ 0.00
Total:		\$ 100,000.00		\$ 0.00		\$ 0.00	\$ 100,000.00

I hereby certify that the information in this Project Information Sheet is true and correct in all material respects, and I understand that the Dormitory Authority of State of New York and other entities that may be involved in the grant process are relying on this information in the course of the reviews that are required under Federal and State law.

*Please sign and return these documents to DASNY at [grants@dasny.org](mailto:grants@dasny.org). Please send them from the Grantee's organizational email address and retain the original copies for production to DASNY if requested. By providing electronic signature(s), the Grantee's designee will be providing validly binding legal documents, just the same as a pen-and-paper signature.*

Signature of Authorized Officer

**Robert Scorrano**

Print Name

**Supervisor**

Title

Date

Print Form

### BUDGET JUSTIFICATION TEMPLATE

Project Costs <u>Not</u> Incurred to Date					
Project Costs / Tasks	Documentation Type (Quote, Appraisal, Est.)	Expert / Vendor / Contractor	Date of Est.	Cost Est.	
1 Town Hall/Court	Quote	Marshall Alarm Systems	4/5/2023	\$ 11,800.00	
2 Annex Building/Building Department	Quote	Marshall Alarm Systems	4/5/2023	\$ 6,200.00	
3 Highway Department	Quote	Marshall Alarm Systems	4/5/2023	\$ 7,600.00	
4 Police Department	Quote	Marshall Alarm Systems	4/5/2023	\$ 9,100.00	
5 Van Tassell House	Quote	Marshall Alarm Systems	4/5/2023	\$ 10,400.00	
6 Parks & Rec Building	Quote	Marshall Alarm Systems	4/5/2023	\$ 11,000.00	
7 Library	Quote	Marshall Alarm Systems	4/5/2023	\$ 21,300.00	
8 Angle Fly Preserve	Quote	Marshall Alarm Systems	4/5/2023	\$ 6,800.00	
9 Wright Reis Homestead	Quote	Marshall Alarm Systems	4/5/2023	\$ 8,500.00	
10 Mt. Zion Church	Quote	Marshall Alarm Systems	4/5/2023	\$ 4,400.00	
11 Contingency	Estimate	Estimate by Town for project unforeseen conditions		\$ 2,900.00	
Project Costs Incurred to Date					
Project Costs / Tasks	Documentation Type (Invoice, AHC/Check #)	Expert / Vendor / Contractor	Date of Cost Incurred	Amount Paid	
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
Total				\$ 100,000.00	
Notes					
Yellow cell on Budget Justification Template should = Yellow cell on Project Budget Template (i.e. the total project cost)					
If project has not started, all costs should be listed under project costs <u>not</u> incurred to date					
If the project is complete, all costs should be listed under project costs incurred to date					
If project has started but is not complete, costs will be listed under both					

**PROJECT FUNDING SOURCES DOCUMENTATION NEEDED BY FUNDING SOURCE TYPE**

*If other sources of funding will be utilized to fully fund the project, we must see evidence that all funding sources have been secured, committed and available to complete the project.*

Type of Other Funding Source	Documentation Needed
Grantee Equity	We would expect to see a letter from the Grantee's Financial Officer committing the funds necessary to complete the project. The letter should be accompanied by a bank statement or recently audited financial statements specifically lining out the accounts that will fund the project.
Adopted Budget	If any portion of the Project will be funded by a line item from an adopted budget, provide copy of account that will fund the project along with a letter from the Grantee's Financial Officer along with an adopted board resolution must be provided. The resolution should commit the funds necessary to complete the project and identify the source of such funds.
Bonds	Grant funds may not be used to reimburse Project costs initially paid from bond proceeds. Therefore, the amount of bonds issued for this project cannot equal the total project budget. There must be a gap of non-bonded project funding at least equal to the Grant. We would expect to see a letter from the Grantee's Financial Officer confirming that Grant proceeds will not be used to reimburse any costs financed by bonds. The allocation of bond proceeds applicable to the Project should also be included (i.e. sources and uses from Official Statement, or account balances).
Bond Anticipation Notes	Grant funds may be used to reimburse project costs paid from bond anticipation notes before issuance of long term debt. We would expect to see written confirmation that the Grant funds will be used in this capacity. The allocation of bond anticipated notes applicable to the Project should also be included (i.e. sources and uses from Official Statement, or account balances).
Capital Campaign / Fundraising / Donations	Please show the amount that has been committed to date and the amount that has been received in the Grantee's accounts. You may only show the amount received to date as committed to the Project and you must demonstrate how the gap will be bridged until such time all monies are received.
Other Grants	If the project will be funded by other Grants, we would like to see the executed agreement or contract. If the agreement or contract has not yet been executed, please provide an explanation regarding timing of execution and submit any award letters or indicia of Grant awards.
Loans / Line of Credit	Short term loans (2 years or less) or lines of credit may be paid off with Grant proceeds. Please provide the executed loan documents if available. If the loan has not closed yet, please provide the executed commitment letter along with an estimated timeline for satisfying any conditions to closing.





# Marshall Alarm Systems, Inc.

1767 Front Street • Yorktown Heights, NY 10598

Tel – 914-962-4699 • Fax – 914-962-7227

[www.marshallalarm.com](http://www.marshallalarm.com) email: [marshall@marshallalarm.com](mailto:marshall@marshallalarm.com)

ESTABLISHED 1979 License # 12000042586

Sent to:  
TB, TA, TC  
6/5/23  
KD

Town of Somers  
335 Route 202  
Somers, NY 10589

RE: Town Hall / Court

Proposal #: 230185CO  
Proposal Date#: May 26, 2023  
Salesperson: Marshall J. Marinace  
Site Contact: Denise Schirmer  
Work #: 914-277-3637  
Email: [dschirmer@somersny.com](mailto:dschirmer@somersny.com)

## Installation of Video Surveillance System consisting of the following:

- (2) Hikvision DS-2CD2387G2-LU, 8-megapixel outdoor dome cameras

Installation: \$2,300.00

*The system is guaranteed for a period of one year.*

*Capital Improvement is not subject to sales tax*

*We are pleased to submit the above quotation for your consideration. Should you place an order be assured it will receive our prompt attention. This quotation is valid for 30 days*

## ACCEPTANCE

In accepting this Proposal, customer acknowledges and accepts the terms and conditions attached to this Proposal Offered by:  
MARSHALL ALARM SYSTEMS, INC.

Signature: \_\_\_\_\_  
Marshall Marinace

Customer Signature: \_\_\_\_\_ Company: \_\_\_\_\_

Print Name: \_\_\_\_\_ PO #: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

\*The impacts of COVID-19 cannot be reasonably determined at this time. This quote/proposal does not account for any potential adverse impacts COVID-19 may have on Marshall Alarm Systems performance or obligations herein. In the event of any delays or adverse impacts. Marshall Alarm reserves the right for an equitable adjustment of the delivery schedule and prices herein to offset the effects of COVID-19 delays, without fault or penalty of any kind

## MEMORANDUM OF UNDERSTANDING 2023

This Memorandum of Understanding is entered into by and between:

**Sustainable Westchester, Inc., a New York non-profit corporation ("Sustainable Westchester"), and the City/Town/Village of \_\_\_\_\_ (the "Municipality"), a local government member of Sustainable Westchester (each a "Party" and collectively, the "Parties").**

### 1. Background:

- a. In February 2015, the New York Public Service Commission issued an Order for Case 14-M-0564 as follows: "The Petition of Sustainable Westchester is granted to the extent that its municipal members are authorized to undertake a Community Choice Aggregation demonstration project consistent with the discussion in the body of this Order..."
- b. The PSC subsequently issued an Order for Case 14-M-0224 on April 21, 2016, which authorized Community Choice Aggregation ("CCA") throughout New York State. On November 15, 2018, the PSC issued the "Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program" reauthorizing the Sustainable Westchester CCA program under a Master Implementation Plan.
- c. Sustainable Westchester's CCA Program enrolled Participating Customers from an initial group of 20 participating municipalities in April 2016. Since then, nine additional municipalities have joined and several other municipalities are actively working towards participation.
- d. For participating municipalities in the New York State Electric and Gas ("NYSEG") utility territory, the current Electric Service Agreement for the Sustainable Westchester CCA Program will terminate on the Participating Customers' first meter read date after November 30, 2023.
- e. In compliance with the CCA Orders, the **Municipality** has adopted local legislation to enable Community Choice Aggregation.
- f. As a member of Sustainable Westchester in good standing and participant in the Sustainable Westchester CCA Program, the **Municipality** wishes to continue to engage the services of Sustainable Westchester as the Program Manager for Community Choice Aggregation for the Operation and Maintenance of the Program.

### 2. Definitions:

- a. **2022 ESA:** The ESA which implements the Sustainable Westchester CCA Program during the period from March 1, 2022 to November 30, 2023.
- b. **2023 ESA:** The ESA which will implement Sustainable Westchester CCA Program commencing on or about December 1, 2023 for the NYSEG service territory. The 2023 ESA shall have substantially the same terms outlined in the attached 2023 ESA Template (Attached as Exhibit 1). The 2023 ESA Template generally tracks the 2022 ESA in its content, with minor changes as reflected in the attached 2023 ESA Template Redline (Attached as Exhibit 2).
- c. **CCA Orders:** Collectively, the February 26, 2015 "Order Granting Petition in Part" issued by the PSC in Case 14-M-0564; the April 21, 2016 "Order Authorizing Framework for Community Choice Aggregation Opt-out Program" issued by the PSC in Case 14-M-0224 (the "CCA Framework Order"), which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; the November 15, 2018 "Order Approving Renewal of the

Sustainable Westchester Community Choice Aggregation Program” issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan; and the January 19, 2023 “Order Modifying Community Choice Aggregation Programs and Establishing Further Process” issued by the PSC in Case 14-M-0224 (the “CCA Framework Modification Order”), which implements certain changes to the administration of CCA Programs in New York State.

- d. **Community Choice Aggregation Program or CCA Program or Program**– A municipal energy procurement program, which replaces the incumbent utility as the default supplier for all Eligible Customers within the Participating Municipality, as defined in the PSC CCA Orders.
- e. **Competitive Supplier:** An entity duly authorized to conduct business in the State of New York as an energy service company (“ESCO”) that procures electric power for Eligible Customers in connection with this CCA Program.
- f. **Compliant Bid:** Electric power supply bid from a Competitive Supplier that meets the requirements specified in this MOU and the 2022 ESA. A Compliant Bid price must be inclusive of fees owed to Program Manager and be less than:
  - i. Residential accounts: 12.5 cents/kwh;
  - ii. Small commercial accounts: 12.5 cents/kwh
- g. **Default Product** – The product selected by the Municipality for supply to its Eligible Customers upon enrollment, unless they take action to select a different product or opt out. The Default Product for the Municipality shall be (1) the 50% Renewable Clean Power Product or (2) the Standard Product [select one and initial].
- h. **Distribution Utility:** Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.
- i. **Electric Service Agreement (“ESA”):** An agreement that implements a CCA Program and contains all the terms and conditions of the Program.
- j. **Eligible Customers** – Customers of electricity and/or natural gas eligible to participate in the CCA Program, either on an Opt-out or Opt-in basis, as delineated in the CCA Framework Order and the CCA Framework Modification Order. Competitive Supplier may provide Firm Full-Requirements Power Supply to Eligible Customers who are not Opt-out Eligible Customers at Competitive Supplier’s sole discretion on an opt-in basis. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality and served by the Distribution Utility, as such boundaries exist on the Effective Date of the 2023 ESA.
- k. **Opt-out Eligible Customers:** Eligible Customers that are eligible for Opt-out treatment as delineated in the CCA Framework Order and the CCA Framework Modification Order. For the avoidance of doubt, Opt-out Eligible Customers shall not include customers that have previously opted-out of the Program.
- l. **Participating Customers:** Eligible Customers enrolled in the Program, including Opt-out Eligible Customers who have been enrolled subsequent to the opt-out process and other customers who have been enrolled after opting in.
- m. **Participating Municipality:** A dues-paying municipal member of Sustainable Westchester, which has adopted the applicable local legislation for the Community Choice Aggregation Program.

- n. **Program Manager:** Sustainable Westchester, a non-profit corporation of which the Municipality is a member.
  - o. **Public Service Commission (“PSC”):** The New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission, or any successor state agency.
  - p. **Qualifications Review:** A verification of the status of the Competitive Supplier as an electricity supplier in the Distribution Utility’s service territory. A precondition for attaining such status is that Competitive Supplier has met the credit requirements established by the New York Independent Systems Operator.
3. **Purpose:** The purpose of the Memorandum of Understanding is as follows:
- a. To establish participation by **the Municipality (hereafter, the “Participating Municipality”)** in a Community Choice Aggregation Program (hereafter, the “Program”) that will be managed on its behalf by **Sustainable Westchester, (hereafter, the “Program Manager”)** under the 2023 ESA.
  - b. To affirm that the Participating Municipality and Program Manager agree to adhere to the terms and conditions of the 2023 ESA in the event they execute it.
  - c. To affirm that the Participating Municipality and Program Manager agree to execute the 2023 ESA, subject to the conditions of review and approval outlined in 4(c) and 5(a), below.
4. **Roles and responsibilities of the Program Manager:** As Program Manager, Sustainable Westchester agrees to perform all duties outlined in the 2023 ESA and, prior to execution of that agreement, Program Manager agrees to:
- a. Provide the involved agencies and parties to the CCA Orders, including, but not limited to, the Public Service Commission and Distribution Utility, requested information about and documentation of the actions undertaken by the Participating Municipality in furtherance of enabling participation in the Program;
  - b. Manage the energy procurement bidding process including:
    - i. the identification and notification of potential firms seeking to be the Competitive Supplier,
    - ii. the management of the Request for Proposals (“RFP”) process from preparation of the content to the publication of the RFP and management of firms responding to the RFP,
    - iii. the preparation of the 2023 ESA that will be included in the RFP,
    - iv. the acceptance, secure opening, and review of the responses to the RFP, and
    - v. the organization of the Qualifications Review, bid evaluation, and selection of a Competitive Supplier, all in a manner that is consistent with this MOU and transparent to the Participating Municipality and firms seeking to be the Competitive Supplier;
  - c. Sign the 2023 ESA for the Default Product selected by the Participating Municipality in a timely fashion subject to the conditions that:
    - i. the Competitive Supplier is deemed qualified for the duration of the 2023 ESA by the Qualifications Review, and
    - ii. such Competitive Supplier’s response to the RFP is deemed by the Program Manager to be a Compliant Bid as defined in Section 2 above.
  - d. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager’s inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities.

- 5. Roles and responsibilities of the Participating Municipality:** the Participating Municipality agrees to:
- a. Sign the 2023 ESA for the Default Product selected by the Participating Municipality in a timely fashion subject to the conditions that:
    - i. the Competitive Supplier is deemed qualified for the duration of the 2022 ESA by the Qualifications Review, and
    - ii. such Competitive Supplier's response to the RFP is deemed by the Program Manager to be a Compliant Bid as defined in Section 2 above.
- 6. Term and Termination:** This Memorandum of Understanding shall expire on the earlier of November 30, 2023 or the date on which the 2023 ESA is signed by the Participating Municipality, the Program Manager, and the selected Competitive Supplier. Participating Municipality shall have the right to terminate this Memorandum of Understanding for any of the reasons set forth in the Termination section of the 2023 ESA Template attached hereto as Exhibit 1.

IN WITNESSETH WHEREOF, the Parties have signed this MEMORANDUM OF UNDERSTANDING on the day and year appearing below their respective signatures.

**City/Town/Village of** \_\_\_\_\_

Authorized Official Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone(s): \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Address for Notices: \_\_\_\_\_

**Sustainable Westchester, Inc.**

Authorized Official Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: 40 Green Street, Mount Kisco, NY 10549

Telephone(s): (914) 242-4725

E-Mail Address: \_\_\_\_\_

Address for Notices: 40 Green Street, Mount Kisco, NY 10549

**Attachments:**

Exhibit 1, 2023 ESA Template

Exhibit 2, 2023 ESA Template Redline

Sent to:  
TB, TA, TC  
6/8/23  
KD

**Electric Service Agreement**

Exhibit 1 to accompany the Memorandum of Understanding  
on Community Choice Aggregation  
between local government members of Sustainable Westchester,  
[ Supplier ], and Sustainable Westchester

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## RECITALS

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

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

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

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

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

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

WHEREAS, the Sustainable Westchester Community Choice Program enrolled Participating Customers from an initial group of 20 participating municipalities in April 2016, and nine additional municipalities have joined in the years since its inception;

WHEREAS, Sustainable Westchester, Inc. has been authorized by the Municipality to act as Program Manager for a Community Choice Program, pursuant to Local Law and Memorandum of Understanding 2023, issue a request for proposals (“RFP”) to suppliers to provide energy to Participating Customers, and to award supply contracts;

WHEREAS, the Program executed the first electric service contracts in 2016 (the “2016 ESA”) with four municipalities in the Westchester New York State Electric and Gas (“NYSEG”) utility territory, and added one more municipality in 2018, and the most recent contracts expire on November 30, 2023;

WHEREAS, [Supplier], an entity duly authorized to conduct business in the State of New York as an energy service company (“ESCO”) (the “Competitive Supplier”), desires to provide Full-Requirements Power Supply to customers located within the Municipality, pursuant to the terms and conditions of this Electric Service Agreement (“ESA”);

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



WHEREAS, Competitive Supplier is willing to provide two distinct electric supply products and two corresponding pricing levels, (1) a Standard Product and price, and (2) a 50% Renewable Clean Power Product comprised of the Standard Product plus New York Voluntary Clean Power RECs and price as set out in Exhibit A herein;

WHEREAS, Municipality has chosen the 50% Renewable Clean Power Product as the Default Product for Participating Customers;

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

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

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

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

# **ELECTRIC SERVICE AGREEMENT**

## **ARTICLE 1 DEFINITIONS**

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

1.1 Associated Entities – Any and all of the employees, officers, agents, representatives, and independent contractors and subcontractors of the Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, the Competitive Supplier in meeting its obligations under the ESA, but specifically excluding the Distribution Utility.

1.2 Bankruptcy - With respect to a Party, (i) such Party ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, provided that, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.3 CCA Orders – Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by the PSC in Case 14-M-0564; the April 21, 2016 “Order Authorizing Framework for Community Choice Aggregation Opt-out Program” issued by the PSC in Case 14-M-0224 (the “CCA Framework Order”), which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; the November 15, 2018 “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan; and the January 19, 2023 “Order Modifying Community Choice Aggregation Programs and Establishing Further Process” issued by the PSC in Case 14-M-0224 (the “CCA Framework Modification Order”).

1.4 50% Renewable Clean Power Product - Firm Full-Requirements Power Supply matched with New York Voluntary Clean Power RECs (hydropower, solar energy or wind energy) as defined in, and subject to the Attribute delivery rules set forth in, the New York Generation Tracking System (“NYGATS”) Operating Rules, supporting the Public Service Commission’s Environmental Disclosure Program, as further described and defined in Exhibit A—Part 2.

1.5 Commercially Reasonable - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations, as defined in the Uniform Business Practices or without limitation in additional applicable law and regulations, provided that in no event shall increased costs or economic hardship be an excuse for not performing a Party’s obligations under this ESA.

1.6 Community Choice – Municipal electricity procurement program, purchasing supply for the aggregated demand for all Participating Customers within the Municipality.

1.7 Competitive Supplier or Energy Services Company (“ESCO”)– An entity duly authorized to conduct business in the State of New York as an ESCO.

1.8 Consolidated Billing - A billing option that provides Participating Customers with a single bill issued by the Distribution Utility combining delivery and supply charges from the Distribution Utility and Competitive Supplier respectively.

1.9 Default Product – The product selected by the Municipality for supply to its Participating Customers, unless they take action to select a different product or opt out.

1.10 Default Service – Supply service provided by the Distribution Utility to customers who are not currently receiving service from a Competitive Supplier.

1.11 Delivery Term - The period for which prices for Firm Full-Requirements Power Supply have been established, as set forth in Exhibit A.

1.12 Distribution Utility - Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Municipality.

1.13 Electronic Data Interchange (“EDI”) - The exchange of business data in a standardized format between business computer systems.

1.14 Effective Date - The date upon which this ESA has been executed by the Parties (to be determined by the later date if the Parties execute on different dates).

1.15 Eligible Customers – Customers of electricity eligible to participate in the CCA Program, either on an opt-out or opt-in basis, as delineated in the CCA Framework Order and the CCA Framework Modification Order

Competitive Supplier may provide Firm Full-Requirements Power Supply to Eligible Customers who are not Opt-out Eligible Customers at Competitive Supplier's sole discretion on an opt-in basis. For the avoidance of doubt, all Eligible Customers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality and served by the Distribution Utility, as such boundaries exist on the Effective Date of this ESA.

1.16 ESA - This Electric Service Agreement.

1.17 Environmental Disclosure Label – The fuel mix purchased by an ESCO and the related emissions of those fuels compared to a statewide average, which is required to be reported under the DPS's Environmental Disclosure Program.

1.18 Federal Energy Regulatory Commission ("FERC") - The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.

1.19 Firm Full-Requirements Power Supply - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply at a fixed contract price including all those components regardless of changes in kWh usage or customer grouping during the contract term to Participating Customers at the Point of Sale.

1.20 Force Majeure - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of any Party shall not constitute an event of Force Majeure.

1.21 General Communications - The type of communications described and defined in Article 5.7 herein.

1.22 Governmental Authority - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Municipality.

- 1.23 Governmental Rule - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.
- 1.24 kWh, kW - Kilowatt-hour and kilowatt, respectively.
- 1.25 Local Law – A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Sustainable Westchester Community Choice Program.
- 1.26 Memorandum of Understanding 2023 – Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.
- 1.27 Newly Opt-Out Eligible Customers – Residential and small commercial customers of electricity that become Opt-out Eligible Customers after the Effective Date, including those that move into Municipality and those who complete or terminate other 3<sup>rd</sup> party supply contracts and have returned to Default Service, provided these customers have not previously opted out of the Program.
- 1.28 New Taxes - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Customers.
- 1.29 Nominal Start Date – December 1, 2023.
- 1.30 NYISO - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.
- 1.31 Opt-out Eligible Customers - Eligible Customers that are eligible for Opt-out treatment as delineated in the CCA Framework Order and the CCA Framework Modification Order. For the avoidance of doubt, Opt-out Eligible Customers shall not include customers that have previously opted out of the Program.
- 1.32 Participating Customers - Eligible Customers enrolled in the Program, including Opt-out Eligible Customers who have been enrolled subsequent to the opt-out process and other customers who have been enrolled after opting in.
- 1.33 Parties - The Municipality, the Program Manager, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.
- 1.34 Point of Delivery - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.

1.35 Point of Sale - The electric meter for each Participating Customer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.

1.36 Program - Sustainable Westchester Community Choice Aggregation Program.

1.37 Program Manager – Sustainable Westchester, Inc., a non-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by the PSC to put out for bid the total amount of electricity being purchased by Participating Customers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

1.38 PSC or DPS - The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.

1.39 Qualifying Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation. To meet the threshold of being a Qualifying Regulatory Event, the impact of the event must impact the majority of customers in the same service class, but not including a Regulatory Event that applies uniquely to Competitive Supplier. Notwithstanding anything to the contrary in this ESA or the RFP, any changes to the Purchase of Receivables (POR) approved by the PSC shall be deemed a Qualifying Regulatory Event hereunder.

1.40 Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.

1.41 Retail Price - As set forth in Exhibit A.

1.42 Service Commencement Date - The date of the first meter read date for Participating Customers on or after the Nominal Start Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.

1.43 Standard Product - Firm Full-Requirements Power Supply consisting of the standard generation mix, meeting the minimum Clean Energy Standard for electric power established by New York State.

1.44 Term - As defined in Article 4.1.

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

## **ARTICLE 2 RIGHTS GRANTED**

### **2.1 GENERAL DESCRIPTION AND LIMITATIONS**

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

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

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

### **2.2 NO THIRD-PARTY BENEFICIARIES**

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

## 2.3 COMPLIANCE WITH LAWS

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

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

## 2.4 CONDITIONS PRECEDENT

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

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

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

## 2.5 OWNERSHIP AND USE OF ELIGIBLE CUSTOMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Customer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm



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

### **ARTICLE 3 CUSTOMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT**

#### **3.1 CUSTOMER CHOICE**

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

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

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a Newly Opt-out Eligible Customer and has provided to Competitive Supplier such Newly Opt-out Eligible Customer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such Newly Opt-out Eligible Customer (i) of the date on

which such Newly Opt-out Eligible Customer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such Newly Opt-out Eligible Customer as of the same date, subject to the opt-out provisions of the PSC Orders, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such Newly Opt-out Eligible Customer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A; (iii) state how such Newly Opt-out Eligible Customer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Customers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the Municipality.

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

### 3.3 CUSTOMER AWARENESS

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

### 3.4 ENROLLMENT

3.4.1 Participating Customers –All Opt-out Eligible Customers as of the Effective Date will be enrolled in the Program, thus becoming Participating Customers, under the terms of this ESA unless they opt-out during the 30-day period specified in the PSC Orders. Participating Customers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Manager who has agreed in writing to a data security agreement, a list of Participating Customers as of the Effective Date, as well as such Participating Customer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Customers as of the Service Commencement Date.

#### 3.4.2

3.4.2 Newly Opt-out Eligible Customers - If Newly Opt-out Eligible Customers elect not to opt-out of the Program as provided in Article 3.2, such Newly Opt-out Eligible Customers will be automatically enrolled by Competitive Supplier in the Program. These Newly Opt-out Eligible Customers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at a price as defined in Exhibit A. For the avoidance of doubt, Participating Customers that have opted into the Program shall also be enrolled in the Program at a price as defined in Exhibit A. Competitive Supplier shall enroll such Newly Opt-out Eligible Customers and opt-in customers in accordance with applicable PSC and Distribution Utility rules. The Parties agree and acknowledge that on or about the customer meter read dates each April, August, and December during the term of this ESA, Competitive Supplier shall perform a refresh or new customer sweep to create a list of Newly Opt-Out Eligible Customers. As a result of

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

**3.4.3 Eligible Customers Who Have Previously Opted Out** - At any time during this ESA, Eligible Customers who would otherwise be Opt-out Eligible Customers but who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such Eligible Customers at a price as set forth in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Customers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter. For the avoidance of doubt, Eligible Customers in service classes that are not eligible for opt-out treatment as delineated in the CCA Framework Order and the CCA Framework Modification Order may be enrolled in the Program at Competitive Supplier's discretion.

**3.4.4 Customers Served by Third Parties** - Customers being served under other competitive supply programs offered by third parties will not be automatically enrolled as Participating Customers under this ESA until such program terminates or is otherwise completed. Competitive Supplier agrees that Eligible Customers with an opt-out eligible service class in the NYSEG territory under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Customers. Competitive Supplier further agrees that customers being served under other competitive supply programs that terminate or are otherwise completed become Newly Opt-out Eligible Customers and may be automatically enrolled as Participating Customers under the CCA Orders in accordance with Section 3.2 above. Eligible Customers who opt-in as provided in this Article 3.4.4 or who enroll following the termination or completion of another competitive supply program offered by a third party shall be enrolled in the Program at the rates reflected in Exhibit A. For the avoidance of doubt, Eligible Customers in service classes that are not eligible for Opt-out treatment as delineated in the CCA Framework Order and the CCA Framework Modification Order may be enrolled in the Program at Competitive Supplier's discretion.

**3.4.5 Termination Fees.** There shall be no termination fees for any residential, small commercial, or municipal Participating Customers to disenroll from the Program.

## **ARTICLE 4 TERM OF CONTRACT AND TERMINATION**

### **4.1 TERM**

This ESA shall commence on the Effective Date, provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate as delineated in Exhibit A, unless this ESA is terminated earlier under Article 4.2 below ("Term").

### **4.2 TERMINATION**

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

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

#### 4.3 OBLIGATIONS UPON TERMINATION

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

Upon termination of this ESA, Competitive Supplier shall have all Participating Customers switched back to obtaining supply from the Distribution Utility by submitting drop requests of all Participating Customers via EDI to the Distribution Utility in a form acceptable to the Distribution Utility. Competitive Supplier shall provide written notice to Program Manager at least sixty (60) days prior to submitting any such Participating Customer drop requests in accordance with Section 4.3, which notice shall include the timing of submission of such requests to the Distribution Utility, that Competitive Supplier intends to be executed before or in anticipation of the termination of this ESA; provided, however, that Competitive Supplier's notice obligation shall not apply to any Participating Customer drop that is initiated by a Participating Customer.

#### 4.4 EXTENSION

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

### ARTICLE 5 CONTINUING COVENANTS

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

#### 5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

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

#### 5.2 CUSTOMER SERVICE ACCESS

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

#### 5.3 RESPONDING TO REQUESTS FOR INFORMATION

To the extent authorized by the Participating Customer(s) and to the extent such individual permission is required by law, the Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge therefore to reasonable requests of the Municipality for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Customers. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s).

Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Customers, or to comply with any regulation of PSC regarding customer service.

#### 5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

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

#### 5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Customers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established service classes (e.g., residential and small commercial as defined by the Distribution Utility) or by such other categories as appear in Exhibit A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the New York General Laws, the regulations of PSC, and other applicable provision of law. To the extent required by law and/or the conditions of any PSC approval of this ESA, the Competitive Supplier may not deny service to an Eligible or Participating Customer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Customer's failure to pay bills from the Competitive Supplier, subject to any provisions of law or applicable PSC orders or regulations. Provision of electric energy supply shall be subject to Competitive Supplier's Standard Credit Policy, to the extent permitted by law, as described in Exhibit A.

#### 5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Customers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General

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

## 5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier shall, without increasing the prices reflected Exhibit A, print and mail one letter or postcard per year to all active Participating Customers, the design of which shall be determined by the Municipality or Program Manager. The letter or postcard shall be limited to one page, double-sided, and printed in color with each Municipality's identification. Any additional expenses outside of the limitations set forth above shall be paid by Program Manager.

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

notice.

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

## **5.8 PARTICIPATING CUSTOMER LISTS**

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

## **5.9 COMPLIANCE WITH LAWS**

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

## **5.10 CONSENT**

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

# **ARTICLE 6 ROLE OF THE MUNICIPALITY**

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Firm Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under the PSC Orders and Local Law and may include negotiating the terms and conditions under which Firm Full-Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full-Requirements Power Supply to Participating Customers. The Parties agree that, with regards to electricity, Municipality is not a "public utility company" or providing any "public utility service" within the meaning of GML 360 and Article 4 of Public Service Law as a result of this ESA. Should a court, PSC, or other lawful authority adjudicate to the contrary, the provisions of 4.2 a) shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to the PSC Orders and Local Law. The Competitive Supplier



hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Customer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Firm Full-Requirements Power Supply.

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

## ARTICLE 7 ROLE OF PROGRAM MANAGER

### 7.1 PROGRAM MANAGER DUTIES

Sustainable Westchester Inc, as Program Manager, agrees to:

- a. Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b. Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Manager in furtherance of establishing the Program;
- c. Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the PSC Orders, including but not limited to the following:

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

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

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

### 7.2 PROGRAM MANAGER FEE

Competitive Supplier shall pay Program Manager \$0.00175 for each kWh delivered, invoiced and paid for by Participating Customers during the Term ("Program Manager Fee" or "Fee"). The Parties agree that Competitive Supplier will remit the Program Manager Fee to the Program Manager, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Sustainable Westchester, Inc. for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

The Parties acknowledge that on May 19, 2023, DPS issued a Proposal for Modification to Outreach and Education Requirements in PSC Case 14-M-0224 (the "DPS Outreach and Education Proposal"). In the event that the DPS Outreach and Education Proposal is finalized or other changes are made to the CCA Orders after the Effective Date that materially increase Program Manager's expenses in administering the Program during the Term, such changes shall be deemed a Regulatory Event as defined herein, such that Program Manager may recover such increased costs in the form of an increased Program Manager Fee that may be allocated to and collected from Participating Customers on a per kWh basis through applicable monthly invoice(s).

### 7.3 PAYMENT OF FEE

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

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

### 7.4 INDEPENDENT CONTRACTOR

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

### 7.5 AUCTION SERVICE FEE

Competitive Supplier shall, for the duration of this ESA, pay the auction service company, Transparent Energy ("Auction Service Company"), \$0.00020 for each kWh delivered, invoiced and paid for by Participating Customers during the Term ("Auction Service Fee"). This provision shall be

binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

Payment to the Auction Service Company shall be made monthly by ACH to the account indicated by the Auction Service Company, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Customers.

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

## **ARTICLE 8 PRICES AND SERVICES; BILLING**

### **8.1 SCHEDULE OF PRICES AND TERMS**

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

### **8.2 OBLIGATION TO SERVE**

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full-Requirements Power Supply for all of the Participating Customers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Customers, regardless of their location or energy needs provided such Participating Customers are eligible under the applicable regulations and tariffs of the Distribution Utility.

### **8.3 METERING**

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

### **8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE**

#### **8.4.1 Title**

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

#### **8.4.2 Billing and Payment**

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

#### **8.4.3 Regional and Local Transmission**

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

#### **8.4.4 Taxes**

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

### **ARTICLE 9 COMPLIANCE WITH THE PSC ORDERS**

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

### **ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CUSTOMERS**

#### **10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE**

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its

Associated Entities agree to comply with any code of conduct or policies the PSC may adopt in accordance with the PSC Orders and to all related Orders of Case 14-M-0564 and 14-M-0224 to which the Program Manager is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

## **10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES**

The Competitive Supplier shall, at least fourteen days prior to the Nominal Start Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Customers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Customer(s) so permit(s) or to the extent such permission is required by law or the terms of any PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any customer complaints received from a Participating Customer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

## **10.3 DISPUTE RESOLUTION**

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

## **ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT**

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

## **ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION**

### **12.1 POWER SUPPLY INFORMATION**

#### **12.1.1 Monthly Report of Sales**

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

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

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

#### 12.1.2 Customer-Related Data

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

#### 12.1.3 Standard of Care

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

### 12.2 POWER SUPPLY REPORT

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

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

### 12.3 BOOKS AND RECORDS

Competitive Supplier shall keep their books and records in accordance with any applicable regulations or guidelines of PSC, FERC, and any other Governmental Authority. The Municipality will have electronic access to any reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by

the Municipality and at the Municipality's reasonable expense, Competitive Supplier or its Associated Entities shall provide reasonable back up for any charge under this ESA questioned by the Municipality.

#### **12.4 COPIES OF REGULATORY REPORTS AND FILINGS**

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

#### **12.5 ADDITIONAL REQUESTS FOR INFORMATION**

Upon reasonable request, Competitive Supplier shall provide Program Manager or Municipality with information necessary to comply with the CCA Orders, including but not limited to information concerning Participating Customer complaints and reasons for opting out of the Program. Competitive Supplier shall make Commercially Reasonable efforts to maintain Participating Customer records in a manner that facilitates the Parties compliance with the CCA Orders.

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

#### **13.1 CHOICE OF LAW AND FORUM**

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

#### **13.2 DISPUTE RESOLUTION**

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

### **ARTICLE 14 INDEMNIFICATION**

#### 14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

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

#### 14.2 NOTICE OF INDEMNIFICATION CLAIMS

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

#### 14.3 SURVIVAL

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

#### 14.4 DUTY TO MITIGATE

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

### **ARTICLE 15 REPRESENTATIONS AND WARRANTIES**

#### 15.1 BY THE COMPETITIVE SUPPLIER

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

- a) This ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with the ESA's terms, subject to applicable law, and the Competitive Supplier can and will perform its obligations hereunder to the Municipality in conformance with the terms and conditions of this ESA, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity.
- b) Subject to the conditions set forth in Article 2.4:



- i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
- ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- iii) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- iv) no bankruptcy is pending against it or to its knowledge threatened against it;
- v) none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- vi) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

## 15.2 BY THE MUNICIPALITY

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

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

## 15.3 BY THE PROGRAM MANAGER

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

- a) This ESA constitutes a legal, valid and binding contract of Program Manager enforceable in accordance with its terms, subject to applicable law;
- b) The execution, delivery and performance of this ESA are within Program Manager's powers, have been or will be duly authorized by all necessary action;

- c) Program Manager has all authorizations from any local or state Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- d) No Bankruptcy is pending or threatened against Program Manager.

## **ARTICLE 16 INSURANCE**

16.1 In order to help support the indemnifications provided in Article 14, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, before the Nominal Start Date and throughout the term of this ESA, unless otherwise specified, commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of New York. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event the Competitive Supplier's insurance carrier is downgraded to a rating of lower than Best's A-, Competitive Supplier shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-. A certificate that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before fourteen days prior to the Nominal Start Date and thereafter whenever renewed or requested by the Municipality. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Nominal Start Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.

16.3 Competitive Supplier, to the extent required by law, must provide worker's compensation insurance meeting all applicable state and federal requirements.

## **ARTICLE 17 REGULATORY EVENT/NEW TAXES**

### **17.1 REGULATORY EVENT**

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If despite such best efforts, a Regulatory Event affects Competitive Supplier and Program Manager and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such

costs, such amount shall be allocated to and collected from Participating Customers on a per kWh basis through applicable monthly invoice(s).

## 17.2 QUALIFYING REGULATORY EVENT

If a Qualifying Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Qualifying Regulatory Event affects Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Customers on a per kWh basis through applicable monthly invoice(s).

## 17.3 NEW TAXES

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

# ARTICLE 18 MISCELLANEOUS

## 18.1 NO ASSIGNMENT WITHOUT PERMISSION

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

## 18.2 DIRECT MARKETING

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

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

### 18.3 NOTICES

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

If to Competitive Supplier:

*Address*

If to Municipality:

*Address*

and if to Program Manager:

Executive Director  
Sustainable Westchester Inc  
40 Green Street  
Mount Kisco, NY 10549

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent

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

#### 18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

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

#### 18.5 ENTIRE ESA; AMENDMENTS

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

#### 18.6 FORCE MAJEURE

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

## 18.7 EXPENSES

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

## 18.8 NO JOINT VENTURE

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

## 18.9 JOINT WORK PRODUCT

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

## 18.10 COUNTERPARTS

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

## 18.11 WAIVER

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

## 18.12 ADVERTISING LIMITATIONS

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

trade name is granted to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

#### **18.13 PRESS RELEASES**

The Parties agree to joint review and approval prior to issuance of all media press releases regarding this Agreement. Approval of press releases will not be unreasonably withheld. The Parties agree to cooperate in good faith prior to the issuance of any formal press release with respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

#### **18.14 HEADINGS AND CAPTIONS**

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

#### **18.15 SURVIVAL OF OBLIGATION**

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

### **ARTICLE 19 REMEDIES**

#### **19.1 GENERAL**

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

#### **19.2 LIMITATIONS OF LIABILITY**

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

#### **19.3 DISCLAIMER**

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

*//Signatures Follow//*

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

**COMPETITIVE SUPPLIER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

**MUNICIPALITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

**PROGRAM MANAGER**

By: \_\_\_\_\_

Name:

Title:

Address: 40 Green Street, Mount Kisco, NY 10549

Dated: \_\_\_\_\_



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

Firm Full-Requirements Price by Service Classification for all Participating Customers located in **New York State Electric & Gas** territory commencing service on the first customer meter-read date on or after December 1, 2023.

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

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

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

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

Table 1:

Service Class	Fixed price per kWh	
Residential & Small Commercial	\$0.#####	

### **Terms for System Supply Service**

The Price and Terms stated on this Exhibit A will commence on the first customer meter read date on or after December 1, 2023 for each Participating Customer and continue until the first customer meter read date on or after \_\_\_\_\_ (“End Date”) for each Participating Customer, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

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

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of each Participating Customer’s first meter read dates on or after December 1, 2023. Service shall continue until the first customer meter read date on or after \_\_\_\_\_ for each Participating Customer.

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

Eligible Customer Opt-In or Opt-Out: Eligible Customers are free to opt-in or opt-out of the Program, or change their product selection. Competitive Supplier shall process such requests by notifying Distribution Utility of such change utilizing established EDI protocols within five (5) business days. There are no fees or charges for Participating Customers to opt-in, opt-out, or change their product selection.

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

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

## EXHIBIT A – PART 2 PRICES AND TERMS – 50% RENEWABLE CLEAN POWER PRODUCT

Firm Full-Requirements Price for 50% Renewable Clean Power Product by Service Classification for all Participating Customers located in New York State Electric & Gas territory commencing service on the first customer meter-read date on or after December 1, 2023.

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

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

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

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

Table 2:

Service Class	Fixed price per kWh
Residential & Small Commercial	\$0.#####

### Terms for System Supply Service

The Price and Terms stated on this Exhibit A will commence on the first customer meter read date on or after December 1, 2023 for each Participating Customer and continue until the first

customer meter read date on or after \_\_\_\_\_ (“End Date”) for each Participating Customer, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of 50% Renewable Clean Power Product shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: 50% Renewable Clean Power Firm Full-Requirements Power Supply will commence at the prices stated above as of each Participating Customer’s first meter read dates on or after December 1, 2023. Service shall continue until the first customer meter read date on or after \_\_\_\_\_ for each Participating Customer.

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

50% New York Voluntary EDP Eligible RECs -- This Exhibit A-Part 2 includes a voluntary purchase of Renewable Energy Certificates (“RECs”) which comply with the attribute delivery rules set forth in the New York Generation Tracking System (“NYGATS”) Operating Rules, supporting the NY EDP Program that are sourced from NY EDP Eligible Renewable Resources in an amount equal to 50% of the Participating Customers’ electricity usage, in addition to any necessary adjustments due to transmission losses, as well as any then-current REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier. In the event that the DPS or other governmental authority determines that a 50% Renewable Clean Power Product may be provided through the voluntary purchase of NY Tier 2 Voluntary RECs in an amount equal to 50% of the Participating Customers’ electricity usage less any then-current Tier 1 REC purchase associated with the Clean Energy Standard requirements applicable to Competitive Supplier in New York, such change shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event. Competitive Supplier anticipates that the RECs provided hereunder will be generated primarily by hydroelectric facilities, but some portion of the RECs may be generated by wind, solar or other facilities, and Competitive Supplier reserves the right to source the RECs from any qualifying NY EDP Eligible Renewable Resource. Each REC represents environmental attributes associated with one MWh of electricity generated by a renewable fuel type defined by NYGATS Operating Rules, dated May 1, 2020, but does not include any tax credits, depreciation allowances or third-party subsidies of any kind. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program. For purposes of this Agreement:

- i. “NY EDP Eligible Renewable Resource” means any electric power generator meeting the NY EDP Program eligibility criteria of a NY renewable energy generating source which comply with the attribute delivery rules set forth in the NYGATS Operating Rules, supporting the NY EDP Program, as of the Effective Date of this Agreement. RECs will be retired for all participants collectively at the Program level.
- ii. “NY EDP Program” means the environmental disclosure program administered by the New York State Department of Public Service, through which load serving entities periodically inform their customers of the fuel source, emissions and other characteristics of the electricity resources supplied to them.

Eligible Customer Opt-In or Opt-Out: Eligible Customers are free to opt-in or opt-out of the

Program, or change their product selection. Competitive Supplier shall process such requests by notifying Distribution Utility of such change utilizing established EDI protocols within five (5) business days. There are no fees or charges for Participating Customers to opt-in, opt-out, or change their product selection.

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

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

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

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

### KWH Sales Template

UsageEndYrMo	Municipality	Zone	CustType	RateClass	Product	Count	Consump_kWh
202101	[MUNI NAME]	I	Residential	SC1	100% renewable	##,###	###,###
202101	[MUNI NAME]	I	Residential	SC1	Standard	##,###	###,###
202101	[MUNI NAME]	I	Small Coml	SC2	100% renewable	##,###	###,###
202101	[MUNI NAME]	I	Small Coml	SC2	Standard	##,###	###,###
202101	[MUNI NAME]	H	Residential	SC1	100% renewable	##,###	###,###
202101	[MUNI NAME]	H	Residential	SC1	Standard	##,###	###,###
202101	[MUNI NAME]	H	Small Coml	SC2	100% renewable	##,###	###,###
202101	[MUNI NAME]	H	Small Coml	SC2	Standard	##,###	###,###
etc..							

### Add-Drop Report

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

## **EXHIBIT C - PAYMENT**

### **PROGRAM MANAGER BANK INFORMATION FOR PAYMENTS BY ACH**

Bank Name:

Bank Routing Number:

Bank Account Number:

Federal ID:

## **EXHIBIT D - DATA REQUIREMENTS**

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

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

1. Newly\_Opt-out Eligible\_Customer file - Competitive Supplier will obtain this data from the Utility as set out in 3.4.2 above and the notification mailing is made from the list following procedures described elsewhere in this ESA. The Program Manager requires a matching dataset as defined below in order to perform its duties for customer service during the opt out period.
2. Post-enrollment file\* – Weekly, and after the Competitive Supplier sends enrollments to the Utility, either at the beginning of this contract or after a Newly Opt-out Eligible Customer opt out period, the Competitive Supplier will send this file to the Program Manager to update its records.
3. Overnight file\* – basic status update for all transactions occurring since the last overnight file.
4. Commission file - Standard practice for aggregation suppliers.

\* Competitive Supplier shall use Commercially Reasonable effort to provide the files within the timeframe stated above to support Program Manager's customer service needs, provided, however, that transmission frequencies for the Post-enrollment file and Overnight file may deviate from those in subsections 2 and 3 above until such time as Competitive Supplier has systems or processes that are fully automated and capable of creating such files.

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



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

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

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

Competitive Supplier shall provide power to Participating Customers, including through the purchase of REC's, throughout the term of this ESA and from sources selected in Competitive Supplier's own discretion. However, Program Manager desires to build or contract with a third party to supply renewable sources of energy (a "Renewable Power Source") after the Effective Date of the Program for the benefit of the Participating Customers or a subset of Participating Customers within the Municipality, should the Municipality elect to do so. Upon completion of any such Renewable Power Source or identification of a third-party Renewable Power Source, the Program Manager may offer to procure or sell output from the Renewable Power Source to Competitive Supplier, either directly or through an Associated Entity, under a separate Power Purchase Agreement ("PPA"). Competitive Supplier may also propose alternative PPA opportunities for a Renewable Power Source, or Program Manager and Competitive Supplier may elect to solicit offers from the free market for like quantities of power, RECs, or capacity.

Program Manager understands and acknowledges that (i) Competitive Supplier shall have no obligation to enter into a PPA during the term of this ESA; and (ii) if Competitive Supplier agrees to enter into a PPA, then completion of a PPA is contingent upon (without limitation) Competitive Supplier's confirmation (in its sole determination) that (a) the terms are in compliance with all rules, laws and regulations; (b) it has internal senior management approval after completion of financial, credit, legal and operation due diligence; and (c) the Parties have executed an amended ESA to incorporate terms of the PPA, including any necessary pricing adjustments agreed to by all Parties. In the event that Competitive Supplier elects not to enter into a PPA as described above and Program Manager enters into a third-party agreement, then the terms of this ESA shall remain unmodified and in full force and effect.

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

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

Sent to:  
TB, TA, TC  
6/5/23  
KD

PLANNING AND ENGINEERING DEPARTMENTS

**Town of Somers**

WESTCHESTER COUNTY, N.Y.

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

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

Steven Woelfle  
Principal Engineering Technician  
swoelfle@somersny.com



David B. Smith  
Town Planner  
directorofplanning@somersny.com

June 5, 2023

To: Hon. Robert Scorrano, Supervisor and  
Town Board Members

From: David B. Smith

Re: Petition Zoning Map Amendments – Lincolndale

Cc: Roland Baroni  
Patty Kalba

As a follow up to our discussion at the last Town Board meeting regarding zoning map amendments for the Lincolndale area of the Town contained in the 2016 Comprehensive Plan Update, please accept this memo petition identifying the specific parcels and their designations, existing and proposed.

Property Address	Tax Lot Designation	Current zoning	Proposed Rezoning
26 Lincoln Avenue	16.16-1-1	NS	R-10
22 Lincoln Avenue	16.16-1-2	NS	R-10
24 Lincoln Avenue	16.16-1-3	NS	R-10
138 Route 202	16.16-1-4	NS	R-10
140 Route 202	16.16-1-5	NS	R-10
142 Route 202	16.16-1-6	NS	R-10
115 Route 202 partial	16.15-1-1 partial	NS	R-120
166 Route 202 partial	16.16-1-21 partial	NS	R-40
154 Route 202	16.16-1-14	NS	OLI
1 Maple Avenue	16.16-1-12	NS	OLI
5 Maple Avenue	16.16-1-11	NS	OLI
7 Maple Avenue	16.16-1-10	NS	OLI
9 Maple Avenue	16.16-1-9	NS	OLI
25 Lincoln Avenue	16.16-1-7	NS	OLI
148 Route 202	16.16-1-8	NS	OLI/R-10

For reference purposes, Figure 6 from the Town of Somers Comprehensive Plan is attached herewith.

Sent to:  
TB, TA, TC  
6/6/23  
KD

Date:

Resolution #:

RESOLUTION  
SOMERS TOWN BOARD  
SEQR NOTICE OF INTENT TO ACT AS LEAD AGENCY  
ZONING MAP AMENDMENTS

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

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

WHEREAS, the Town Board has received a petition from the Town of Somers Planning Department related to specific zoning map amendments identified in Figure 6 of the Comprehensive Plan (the "Proposed Action"); and

WHEREAS, the nature of the map amendments relates to a stated goal of refocusing and strengthening this specific neighborhood business node by better recognizing existing land uses; and

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

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

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

Moved: \_\_\_\_\_

Seconded: \_\_\_\_\_

Vote: \_\_\_\_\_

Sent to:  
Tb, TA, TC  
6/6/23  
RD

## Short Environmental Assessment Form

### Part 1 - Project Information

#### Instructions for Completing

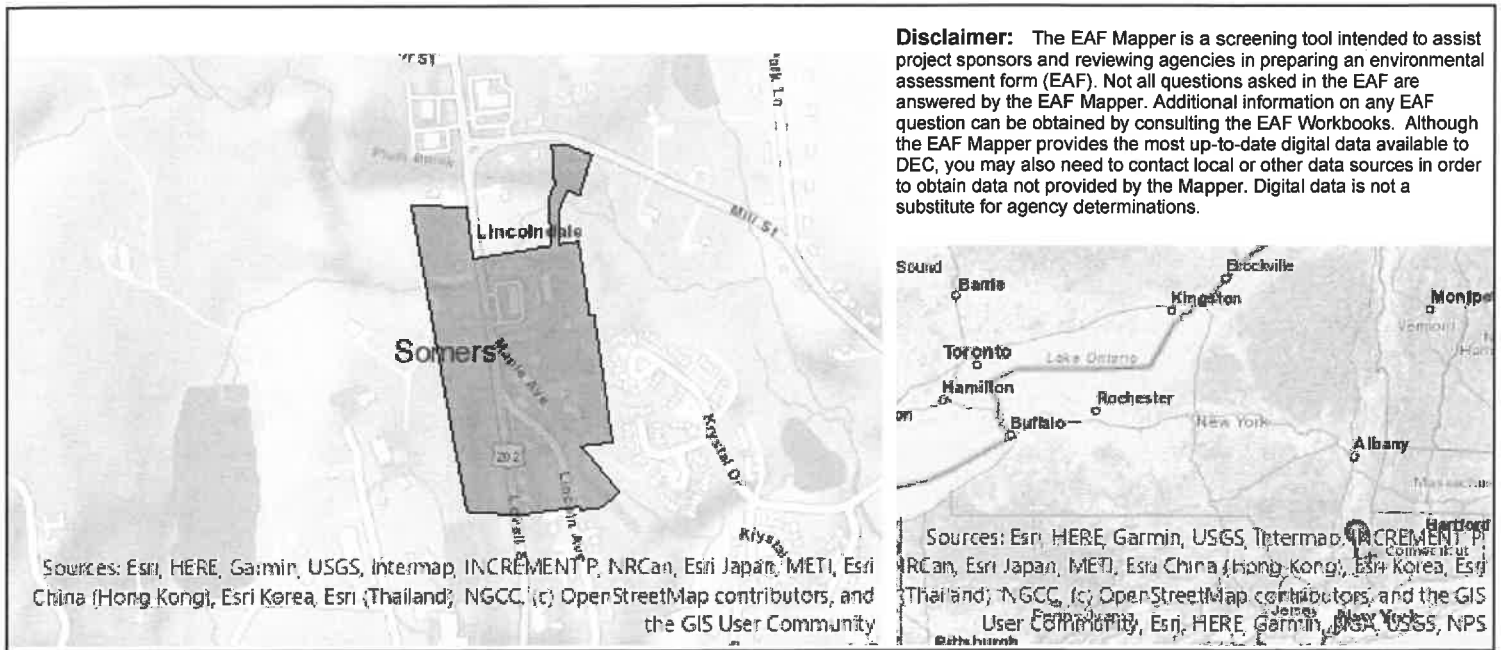
**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available.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

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

<b>Part 1 – Project and Sponsor Information</b>			
Name of Action or Project: Zoning Map Amendments - Town of Somers			
Project Location (describe, and attach a location map): Generally in the vicinity of Route 202 and Lovell Street Town of Somers, refer to Figure 6 from Comprehensive Plan			
Brief Description of Proposed Action: Implementation of recommendations from the Town's adopted Comprehensive Plan affecting approximately 19 acres rezoning portions from NS-Neighborhood Shopping to R-120, R-10, R-40 and OLI-Office Light Industrial			
Name of Applicant or Sponsor: Town Board Town of Somers		Telephone: 914-277-5366 E-Mail: directorofplanning@somersny.com	
Address: 335 Route 202			
City/PO: Somers		State: NY	Zip Code: 10589
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:		NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? b. Total acreage to be physically disturbed? c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		19+/- acres NA acres NA acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input checked="" type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input checked="" type="checkbox"/> Other(Specify): School (private) <input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?	NO	YES	
If Yes, identify: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
b. Are public transportation services available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements?	NO	YES	
If the proposed action will exceed requirements, describe design features and technologies:			
Not Applicable	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply?	NO	YES	
If No, describe method for providing potable water: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities?	NO	YES	
If No, describe method for providing wastewater treatment: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
private septic systems			
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			
_____			
_____			

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input checked="" type="checkbox"/> Wetland <input checked="" type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? Northern Long-eared Bat	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES
a. Will storm water discharges flow to adjacent properties?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment:	NO	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe:	NO	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe:	NO	YES
_____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>  Applicant/sponsor/name: <u>Town Board Town of Somers</u> Date: <u>6/6/23</u>  Signature: <u>David B. Smith</u> Title: <u>Planning Director</u>		



Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	Yes
Part 1 / Question 15 [Threatened or Endangered Animal - Name]	Northern Long-eared Bat
Part 1 / Question 16 [100 Year Flood Plain]	Yes
Part 1 / Question 20 [Remediation Site]	No



**LINCOLNDALE** (see Figure 6) - The neighborhood commercial node located at the strategic intersection of Lovell Street and Route 202 (Mill Street) provides a variety of local business services. The mapped NS Neighborhood Shopping district encompasses uses that include local services in small retail strips, residential uses, contractor's yards, a preschool and an unused railroad station building.



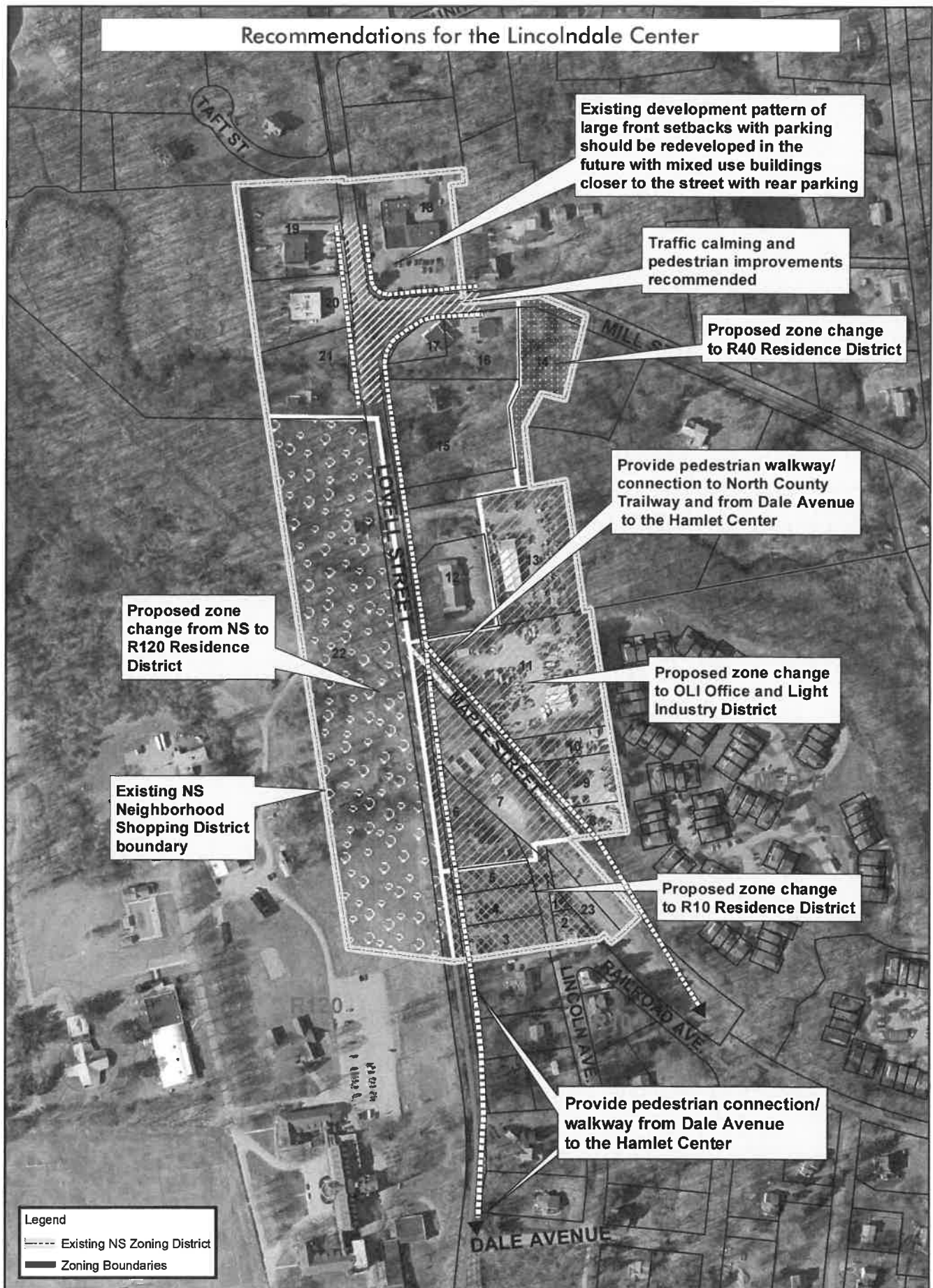
**Lincolndale Plaza**

*Town of Somers*

To refocus and strengthen this neighborhood business node, zoning should better recognize the existing land uses. Several lots with existing homes, including that at the easternmost edge along Route 202 (Mill Street) and the southernmost edge along Route 139, should be rezoned to R40 in line with surrounding residential zoning. Lots to the east of Route 202 (Lovell Street) and east and west of Maple Street are adjacent to a vacant former railroad station building that

served as station to the Mahopac Branch of the Harlem River line of the New York Central Railroad and which has a right-of-way that extends southeast of this area along Railroad Avenue. Three large lots are longstanding contractor's yards, and the building fronting Lovell Street is utilized as a day care center. These lots, including the former railroad building, are recommended for rezoning to the existing OLI Office and Light Industry District. Whereas the contractor's yards are currently pre-existing non-conforming uses in the NS district, they would remain so in the OLI district and would still have the opportunity to change to other permitted uses over time. The frontage of the Lincoln Hall property along Lovell Street, now included in the NS district, is recommended for rezoning to the R120 designation of the remaining Lincoln Hall property.

These changes would result in a smaller land area in the "Retail Mixed Use-Neighborhood Business" function area and a strengthened residential neighborhood. In the areas designated for "Retail Mixed Use-Neighborhood Business" function areas, it is recommended that a mix of retail shopping, professional office uses, restaurants and second-floor apartments over retail uses be encouraged, as permitted by the existing mapped district. Opportunities for reuse of the historic, but not officially designated, train station building should be explored since a refurbished building with an appropriate use could serve as a new anchor for this neighborhood business area. Design guidelines should be developed to provide standards for façade, awning, sign and landscaping improvements that enhance the visual character from the roadway and help to buffer businesses from adjacent residential uses. Opportunities for outdoor seating should be explored and enhanced to improve the local neighborhood experience. Safe pedestrian and cycling connections should be developed to provide opportunities for non-automotive accessibility to neighboring residences. Where appropriate, joint driveways between two separate but adjacent uses should be provided to reduce traffic conflicts on adjacent through streets. At a minimum, pedestrian cross-access between adjacent but separate uses should be developed.



# **Somers Department of Parks & Recreation**

**PO Box 46 Somers, New York 10589**

**OFF: (914)-232-8441**

**FAX: (914)-232-8548**

**Steven Ralston  
Superintendent**

*Sent to:  
TB, TA, TC  
6/5/23  
KD*



June 2, 2023

**To: Town Board**

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

**Re: Request for Approval**

Request permission to accept with gratitude the following donations to provide scholarships for Day Camp participants.

Somers LIONS Club \$12,750.00

Somers Women's Club \$2,550.00

Stephanie's Mission \$5,950.00

**C: Town Clerk  
Park Board  
Director of Finance**

Sent to:  
TB, TA, PC  
cc: B. Taberer & B. Kehoe  
6/5/23  
KD

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

OFFICE OF THE SUPERVISOR

**Town of Somers**

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE  
335 ROUTE 202  
SOMERS, NY 10589

ROBERT SCORRANO  
SUPERVISOR



June 5, 2023

**Memo**

**TO:** Town Board

**FROM:** Kim DeLucia, Executive Assistant to the Supervisor KD

**RE:** Erica Gentile

---

We've received the resident only canvas list for Erica Gentile, provisional Nutrition Site Manager in the Nutrition Department. Erica is the only candidate on the list and is reachable by the rule of three. She is eligible for a status change to probationary for a minimum of twelve weeks to a maximum of fifty-two weeks, at her current annual salary of \$52,283.00 effective May 31, 2023 which is when the County issued the certified eligibility list.

Thank you.

Cc: Robert Kehoe – Finance Director  
Patty Kalba - Town Clerk  
Roland Baroni – Town Attorney  
Barbara Taberer – Seniors and Nutrition Program Director

PLANNING AND ENGINEERING DEPARTMENTS

**Town of Somers**

WESTCHESTER COUNTY, N.Y.



Telephone  
(914) 277-5866  
Fax  
(914) 277-4098

SOMERS TOWN HOUSE  
335 ROUTE 202  
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Steven Woelfle  
Principal Engineering Technician  
[swoclfle@somersny.com](mailto:swoclfle@somersny.com)

David B. Smith  
Town Planner  
[directorofplanning@somersny.com](mailto:directorofplanning@somersny.com)

DATE: May 17, 2023

TO: Town Board  
Director of Finance

FROM: David B. Smith *DBS*  
Director of Planning

RE: **Crown Castle Amended Special Use Permit**  
**294 Route 100**  
**Refund of SEQRA/Professional Service Fee**  
**TM: 17.19-1-1**

---

The above-mentioned project has been completed. Please refund the remaining SEQRA/Professional Service Fee in the amount of \$1,757.50, as follows:

Crown Castle USA, Inc.  
Attn: Jenifer Bachi  
3200 Horizon Drive, Suite 150  
King of Prussia, PA 19406

SW/wg

cc: Town Clerk  
Jenifer Bachi, Crown Castle USA, Inc.



Sent to:  
TB, TA, TC  
5/30/23  
KD

**Race Amity Day**, observed annually on the **second Sunday** in June, is an opportunity to celebrate interracial friendship and showcase the power of interracial partnerships to foster lasting and powerful social change.



## Local Celebrations

A wide range of grassroots observances are held in dozens of localities around the country, including fairs, picnics, festivals, arts and music presentations, and leadership luncheons. Each year, more than 100 local observances are estimated to take place in nearly every state of the union.

## State and Local Proclamations

At the state level, four states have established Race Amity Day in perpetuity, while three other states have proclaimed Race Amity Day on at least one occasion. Nearly 60 cities and counties in 17 states have also issued Race Amity Day proclamations.

## A National Commemorative Day

NCRA continues its long-standing advocacy efforts to secure a joint Congressional resolution establishing Race Amity Day in perpetuity, building on the U.S. Senate's 2016 resolution "designating June 12, 2016, as a national day of racial amity and reconciliation."

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

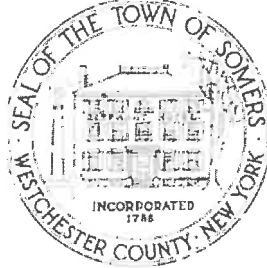
TOWNCLERK'S OFFICE

## Town of Somers

WESTCHESTER COUNTY, N.Y.

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

PATRICIA KALBA  
TOWN CLERK



### RESOLUTION

RESOLVED, that the Town Board does hereby declare June 12, 2022 as Race Amity Day in the Town of Somers.

I hereby certify that the foregoing copy of resolution was unanimously adopted by the Town Board of the Town of Somers at a Regular Meeting held on June 9, 2022.

Dated: June 13, 2022

Patricia Kalba

Town Clerk

Ec: Supervisor  
Director of Finance

Sent to:  
TB, TA, TC  
5/30/23  
KD

McCULLOUGH, GOLDBERGER & STAUDT, LLP  
*Attorneys at Law*  
1311 Mamaroneck Ave., Suite 340, White Plains, NY 10605  
TEL (914) 949-6400 FAX (914) 949-2510  
mcculloughgoldberger.com

STEVEN WRABEL  
*Partner*  
swrabel@mgslawyers.com

May 23, 2023

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

Re: 259 Route 100  
Zoning Amendment

Dear Supervisor Scorrano and Members of the Town Board:

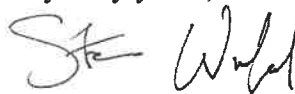
This office represents Gleneida Realty Inc., ("Petitioner"), the owner of an approximately 2.28-acre lot identified as 259 Route 100, Town of Somers, County of Westchester (hereinafter referred to as the "Property"). As you will recall, the Property was recently rezoned from R-80 to the new MFR-100 Zoning District, with the intention to eventually develop multifamily dwellings. You may also recall this zoning was informed by a conceptual site plan for the construction of a 24-unit multifamily development comprised of two buildings, to be served by 46 parking spaces, stormwater facilities, and related site improvements.

In lieu of this residential development, Petitioner is now proposing a new, high end self-storage facility, designed to be in keeping with the character of the neighborhood. To further this proposal, a Zoning Amendment Petition was filed with the Town Board to re-map the Property to the nearby OLI District, and to amend the Somers Zoning Ordinance to create a permitted use for self-storage facilities within the OLI District. This Petition was discussed with your Board at its May 4<sup>th</sup> work session, at which time the Board referred this matter to the Somers Planning Board for review and recommendation.

We are pleased to report that the Applicant met with the Planning Board at its May 10<sup>th</sup> meeting and was generally received positively. It is anticipated that the Planning Board's memorandum to your Board will be forthcoming shortly, with their notes and feedback.

We respectfully request this matter be placed on the Town Board's June 1, 2023 Work Session agenda and June 8, 2023 regular meeting agenda for the Board declare itself Lead Agency, and to consider setting the public hearing for the Petition. We look forward to discussing this important matter with you further.

Very truly yours,



Steven Wrabel

cc: David B. Smith  
Gleneida Realty Inc.



PLANNING AND ENGINEERING DEPARTMENTS

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

**Town of Somers**  
WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE  
335 ROUTE 202  
SOMERS, NY 10589  
[www.somersny.com](http://www.somersny.com)

Steven Woelfle  
Principal Engineering Technician  
[swoelfle@somersny.com](mailto:swoelfle@somersny.com)



David B. Smith  
Town Planner  
[directorofplanning@somersny.com](mailto:directorofplanning@somersny.com)

May 18, 2023

To: Honorable John Currie, Chair and  
Planning Board Members

From: David B. Smith

Re: Proposed Zoning Amendment Self-Storage

Cc: Gerry Reilly  
Steve Robbins

On May 10, 2023 at the regularly scheduled meeting of the Town of Somers Planning Board (the Planning Board) did discuss a referral from the Town of Somers Town Board (the Town Board) for proposed zoning amendments including:

- Creating a new definition of "Self-Storage Facility";
- Establishing development criteria for "Self-Storage Facilities" including parking and loading requirements, building coverage and floor area ratio (FAR);
- Allowing "Self-Storage Facility" as a permitted use in the Office-Light Industrial (OLI) District; and
- Rezoning the subject property located 259 Route 100 (the Subject Site) from MFR-100 to OLI.

The Planning Board discussed the Town Board's Notice of Intent to Act as Lead Agency under SEQRA and had no objection to the Town Board assuming the role of Lead Agency.

The Applicant presented conceptual level plans which helped illustrate how the proposed zoning amendments could be applied to the subject site.

The Planning Board inquired about all of the other locations for OLI Districts within the Town and how this proposed use would be compatible with the other districts. Beyond the existing OLI District located adjacent to the Subject Site, there is one additional area zoned OLI, with a local address of 135 Mahopac Avenue which appears to be home of Jilco Window Corp.

The Planning Board asked how the FAR implications (0.45) for site related to building coverage (25%), particularly with a proposed two-story building. The Applicant indicated that they had a

comfort level with the conceptual level plans prepared to date and that the proposed building program can be adequately accommodated as part of the proposed zoning.

The Planning Board recognized the less intense nature of the proposed use compared to the prior proposal for multi-family residential.

The Planning Board asked how the Applicant would address the potential for illegal storage uses.

The Planning Board recommended that there be no outside storage and no truck storage on site.

The prior plan included a decorative stone wall which the Applicant indicated they would include as part of an eventual site plan application.

The Planning Board was complimentary over the façade design and the improved look along this portion of the Route 100 corridor.

Save sent to:  
T&FA  
6/1/23  
KO



## Westchester County Planning Board Referral Review

Pursuant to Section 239 L, M and N of the General Municipal Law and  
Section 277.61 of the County Administrative Code

George Latimer  
County Executive

June 1, 2023

David B. Smith, Director of Planning  
Town of Somers  
335 Route 202  
Somers, NY 10589

**County Planning Board Referral File SOM 23-002 – 259 Route 100 Self-Storage Facility  
259 Somerstown Road/Route 100  
Zoning Text and Map Amendment, Site Plan Approval**

Dear Mr. Smith:

The Westchester County Planning Board has received a proposed local law to amend the text of the Somers Zoning Ordinance to add self-storage facilities as a permitted use within the OLI – Office and Light Industry district. The maximum building coverage for such uses would be 25%, with a maximum floor area ratio of 0.45. Other dimensional regulations would match the other uses permitted in the zone. Parking regulations would require one space per 3,000 square feet of gross floor area, and one loading dock per 40,000 square feet of gross floor area.

The applicant then proposes to re-zone the 2.28-acre property located at 259 Somerstown Road (NYS Route 100) (SBL 28.06-1-15) from the Multifamily Residence Route 100 (MFR-100) district to the OLI district, in order to construct a new two-story self-storage building. A site plan (dated April 25, 2023) and related materials were provided for this application. The site is located near the corner of Somerstown Road and Highview Terrace, and is at the northern end of a small commercial and industrial corridor that is zoned OLI. To the north of the site lies a large vacant wooded property, and to the west lies a single-family residential neighborhood. The site contains a vacant single-family residence, which would be demolished.

The proposed building would contain 40,000 square feet of gross floor area, and would include a driveway that encircles the building and connects to Somerstown Road. Two parking lots located on either side of the building would contain a total of 15 parking spaces, and would utilize permeable pavement. The building would be designed to emulate a traditional carriage house, and a stone wall would be constructed along the front of the property. Vegetation would be used to screen the rear of the building from the nearby residences.

We have no objection to the Somers Town Board assuming Lead Agency status for this review.

We have reviewed this matter under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code and we offer the following comments:

### **1. Prior zoning amendment and site plan application.**

We note that this site underwent a prior zoning text and map amendment, as well as site plan review, which would have enabled the construction of 24 apartments within two 2.5-story buildings, with 15% of the units being set as affordable. That application was referred to the County Planning Board, and we submitted a letter dated January 29, 2021, with our comments. We wish to state our regret that this new application would forego the construction of much needed housing, despite the Town adopting the new MFR-100 zoning regulations that would have specifically permitted multifamily residential buildings on this property. We recommend that the Town analyzes other sites that could utilize the MFR-100 district, in order to promote these locations for future residential development.

### **2. Sidewalks.**

While the site would no longer host residential units, we still recommend the Town to work with the applicant to construct a sidewalk along the site frontage on Somerstown Road, as this area has developed into a small commercial and industrial center. Safe pedestrian access should be provided to the various buildings within the neighborhood, in order to not force employees and visitors to drive to each location separately. While the development of a pedestrian network will take time, beginning with this site would act as a catalyst for the creation of additional sidewalks in the neighborhood as other development projects along Somerstown Road are initiated.

### **3. NYS DOT review.**

Somerstown Road (NYS Route 100) is a State highway. The Town should forward a copy of the application to NYS DOT to identify any required permits for the proposed project and to evaluate potential traffic impacts to Route 100. The Town and the applicant should also work with NYS DOT concerning the provision of the sidewalk as mentioned above.

### **4. Recycling.**

While we note that the plans show a specific refuse area to handle waste generation, the Town should request the applicant to verify that sufficient space will be available to store recyclables under the County recycling program, which includes plastics numbered 1 through 7. County regulations for plastic recycling may be found at: <http://environment.westchestergov.com>.

### **5. Croton Watershed protection.**

The site is located in the Croton Watershed. We note that the site plans indicate that impervious surfaces will be increased on the site, but no stormwater management practices were included in the application to mitigate this increase. We recommend the applicant utilize the expansive open space within the site to install aboveground stormwater management features, including retention ponds and rain gardens, in order to retain stormwater on-site.

Components of the site development may be subject to compliance with the New York City Department of Environmental Protection (NYC DEP) *Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources*, including the preparation

of a Stormwater Pollution Prevention Plan. Adequate erosion and sediment control and stormwater runoff water quality protection, both during and after construction, are of critical importance.

**6. Green building technology.**

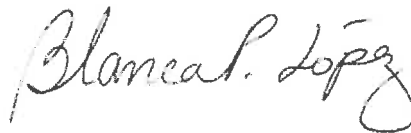
We commend the applicant for including permeable pavement within the parking areas, and we encourage the applicant to include as much additional green, or sustainable building technology as possible within the proposed development. We note that no indication has been provided towards the utilization of the rooftop. We recommend that the applicant considers incorporating a solar array or a green roof in order to provide further environmental remediation within the site. In addition, the Town and the applicant should give consideration towards the provision of electric vehicle parking capabilities within the proposed parking area.

Please inform us of the Town's decision so that we can make it a part of the record.

Thank you for calling this matter to our attention.

Respectfully,  
WESTCHESTER COUNTY PLANNING BOARD

By:



Blanca P. Lopez  
Acting Commissioner

BPL/MV

cc: Anne Darelius, NYS Department of Transportation, Region 8  
Christopher Lee, NYS Department of Transportation, Region 8  
Cynthia Garcia, Bureau of Water Supply, SEQR Coordination Section, NYC DEP

Sent to:  
TB, TA, TC  
5/23/23  
KO

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**INTEROFFICE MEMORANDUM**

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**TO:** TOWN SUPERVISOR AND MEMBERS OF THE TOWN BOARD  
**FROM:** SENIORS DEPARTMENT DIRECTOR, BARBARA TABERER  
**SUBJECT:** STATE TRANSPORTATION CONTRACT  
**DATE:** MAY 23, 2023  
**CC:** DIRECTOR FINANCE, TOWN CLERK

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The Director of Senior Programs requests the Town Supervisor execute the State Transportation Services Contract : PY 2023-2024.



George Latimer  
County Executive

Department of Senior Programs and Services

Mae Carpenter  
Commissioner

May 19, 2023

Ms Barbara Taberer  
Director Somers Nutrition Program  
Town of Somers  
Wayne Van Tassel Memorial Park  
PO Box 236  
Lincolndale, NY 10540

**RE: State Transportation Services Contract: PY 2023 - 2024**

Dear Ms Taberer:

Attached to the e-mail that was sent with this letter is a blank copy of the New York State Transportation Program contract for various Transportation services. The contract is comprised of an Agreement and Schedules "A", "B", "C" and "D," for the program period commencing retroactively on April 1, 2023 and continuing through March 31, 2024. State funding for the contract will be in an amount not-to-exceed \$1,962. Please be advised that the Department of Senior Programs and Services ("Department") may reduce the funding for the contract if the New York State Office for the Aging reduces the Department's grant funding, in which case you will be notified.

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 Department. **ADDITIONALLY, DO NOT fill-out the contract electronically as we want to maintain the integrity of the document.** Non-compliance with these requests will result in the contract returned to your agency. Please print a copy of the contract and fill it out making sure that where signatures are required on all documents that they are original. Contracts with COPIED signatures are unacceptable. We also recommend that you keep a blank copy of the contract in the event that you need to reprint a page and also keep a completed copy of the agreement for your records.

Return the ENTIRE completed originally signed agreement and all supporting schedules to me at the address in the footer below.

Please refer to the "Standard Insurance Provisions" in Schedule "B" for detailed information regarding ALL required insurances. 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

Please direct program related questions to your program liaison Meleita Jones at 914-813-6420 or via e-mail at mmf2@westchestercountyny.gov. Questions pertaining to the processing of the contract should be directed to me at 914-813-6058 or via e-mail at ssj3@westchestercountyny.gov.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Johnson".

Sharon Johnson  
Program Administrator



Sent to:  
TB, TA, TC  
6/5/23  
RD

OFFICE OF THE SUPERVISOR

**Town of Somers**

WESTCHESTER COUNTY, N.Y.

SOMERS TOWN HOUSE  
335 ROUTE 202  
SOMERS, NY 10589

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

Robert Scorrano  
SUPERVISOR



**2022**  
**MEMORANDUM OF AGREEMENT AMONG THE**  
**TOWNS OF SOMERS, LEWISBORO, AND NORTH SALEM,**  
**with regard to**  
**THE SENIOR CITIZEN NUTRITION PROGRAM**

The Town of Somers will provide a Senior Citizen Nutrition Lunch Program meeting the requirements of the Older Americans Act and the rules and regulations of the New York State Office for the Aging for the persons qualifying in the Towns of Somers, Lewisboro and North Salem. Such services will be provided in accordance with the Town of Somers' agreement with the County of Westchester.

The Town of Somers may terminate this Agreement if its arrangement with Westchester County is terminated. If the program is terminated by Westchester County, Somers will promptly notify the supervisors of Lewisboro and North Salem.

The Towns of Lewisboro and North Salem will furnish (1) appropriate insurance in accordance with the requirements of Westchester County, if applicable and (2) proof of insurance and indemnities to Westchester County as might be required by Westchester County.

The Towns of Lewisboro and North Salem will provide the Town of Somers with proof of existing General Liability Insurance containing Broad Form Contractual Liability coverage in the amounts listed below:

\$500,000 per occurrence for bodily injury  
\$100,000 per occurrence for property damage

The Town of Somers will provide the Towns of Lewisboro and North Salem with certificates of insurance in like amounts and naming each as an additional insured with respect only to the activities at the congregate site.

If transportation is furnished by the Town of Lewisboro or the Town of North Salem, that town will provide proof of existing Automobile Liability Insurance coverage in the amounts listed below and in which the Town of Somers is named as an additional insured with respect to the Nutrition Program:

\$1,000,000 per occurrence for bodily injury  
\$ 100,000 per occurrence for property damage

Nothing arising out of this agreement shall create or give to any third parties a claim or right of action.

The Town of Lewisboro agrees to pay the Town of Somers the sum of \$26,548.95 and the Town of North Salem agrees to pay the Town of Somers the sum of \$19,482.89 as indicated in the schedule below:

*WIN - Wellness in Nutrition*

<i>Lewisboro</i>	<i>\$26, 548.95</i>
<i>North Salem</i>	<i>\$19,482.89</i>
<i>Somers</i>	<i>\$127,339.27</i>

It is further understood that the attendance from each town impacts the cash amounts provided for in this Agreement.

In the event extraordinary and unanticipated expenses are incurred by the Nutrition Program, these expenses will be apportioned among the three towns according to percentage of attendance as indicated in the attached schedule for both the WIN, Wellness in Nutrition Program.

The period of time covered by this agreement is from January 1, 2022 to December 31, 2022.

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Robert Scorrano, Town Supervisor  
Town of Somers

---

Tony Gonçalves, Town Supervisor  
Town of Lewisboro

---

Warren Lucas, Town Supervisor  
Town of North Salem

**2022 NUTRITION PROGRAM**  
**LEWISBORO, NORTH SALEM, SOMERS**  
**S.N.A.P.**

**SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM - S.N.A.P.**

**1. SALARIES**

Program Director	64,929
Site Manager	33,198
Food Svc Help - F.T.	33,257
Chauffeur - 14.285%	4,259
<b>Total Salaries</b>	<b>135,643</b>

**2. EMPLOYEE BENEFITS**

Program Director	
Health Insurance	9,473
Dental Insurance	432
Optical Insurance	27
Life Insurance	250
Retirement (Tier 4 at 12.9%)	8,376
Social Security (6.2%)	4,026
Medicare (1.45%)	941
MTA (.34%)	221
Workers' Compensation (1.559%)	1,012
Site Manager	
Health Insurance	0
Dental Insurance	1,366
Optical Insurance	67
Life Insurance	250
Retirement (Tier 6 at 8.10%)	2,689
Social Security (6.2%)	2,058
Medicare (1.45%)	481
MTA (.34%)	113
Workers' Compensation (1.5%)	518
Food Svc Helper - F.T.	
Health Insurance	9,473
Dental Insurance	432
Optical Insurance	27
Life Insurance	250
Retirement (Tier 4 at 12.9%)	4,290
Social Security (6.2%)	2,062
Medicare (1.45%)	482
MTA (.34%)	113
Workers' Compensation (1.675%)	518
Chauffeur - 14.285% of time	
Health Insurance	3,033
Dental Insurance	113
Optical Insurance	10
Life Insurance	36
Retirement (Tier 4 at 12.9%)	549
Social Security (6.2%)	264
Medicare (1.45%)	62
Workers' Compensation (4.181%)	178
MTA (.34%)	14
<b>Total Benefits</b>	<b>54,208</b>

<b>3. CONTRACTUAL</b>					
6773.401 Subcontractor - Food					140,008
.402 Telephone					538
.404 Tray Goods/Utensils					14,394
.406 Miscellaneous					1,167
.407 Cold Food - Milk					0
.408 Janitorial Supplies					46
.775 Transportation - Transportation of Food from Central Kitchen					1,998
			Total Contractual		158,151
<b>TOTAL S.N.A.P. EXPENSES</b>					<b>348,002</b>
<b>LESS REVENUES:</b>					
FED GRANT IIIC-2					15,417
PROGRAM CONTRIBUTIONS WIN					40,897
STATE GRANT					74,915
NSIP					5,800
HDC3 MEALS 1 TIME GRANT					37,602
		TOTAL REVENUES			<b>174,631</b>
<b>S.N.A.P.</b>		<b>TOTAL EXPENSES TO BE SHARED BY TOWNS</b>			<b>173,371</b>
Towns participated at the following rates:			<u>Number of Meals</u>	<u>Participation</u>	
Somers			18,634	73.45%	
North Salem			2,851	11.24%	
Lewisboro			3,885	15.31%	
			<u>25,370</u>	<u>100%</u>	
<b>Somers' Share</b>			<b>\$ 127,339.27</b>	<b>73%</b>	
<b>North Salem's Share</b>			<b>\$ 19,482.89</b>	<b>11%</b>	
<b>Lewisboro's Share</b>			<b>\$ 26,548.95</b>	<b>15%</b>	
			<b><u>\$173,371</u></b>		