

Architectural/Engineering Consultant Agreement

WS-1 A

NYSDOT PIN 4765.87 Municipal Contract No. _____

5A-1

Agreement made this _____ day of _____, 2022 by and

Town of Aurora, NY

Having its principal office at 575 Oakwood Ave, East Aurora, NY 14052 (the "Municipality")

And

Foit-Albert Associates, PC with its office at 295 Main Street, Suite 200, Buffalo, NY 14203 (the "Consultant").

WITNESSETH:

WHEREAS, in connection with a Bridge New York project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this agreement as Church Street over Tannery Brook, the Municipality has sought to engage the services of a Consultant Engineer to perform the scope of services described in Attachment "B" annexed hereto; and

WHEREAS, in accordance with required Consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration ("FHWA"), the Municipality has selected the Consultant to perform such services in accordance with the requirements of this Agreement; and

WHEREAS, **James J Bach, Town Supervisor**, is authorized to enter this Agreement on behalf of the Municipality, and

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT

This contract consists of the following:

- **Agreement Form** - this document titled "Architectural/Engineering Consultant Agreement";
- **Attachment "A"** - Project Description and Funding;
- **Attachment "B"** – Scope of Services;
- **Attachment "C"** - as applicable, Staffing Rates, Hours, Reimbursables and Fee.

ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS.

2.1 The Consultant shall render all services and furnish all materials and equipment necessary to provide the Municipality with plans, estimates and other services and deliverables more specifically described in Attachment "B".

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- 2.2 The Consultant shall ascertain the applicable practices of the Municipality, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B" – Scope of Services.
- 2.3 The Consultant will commence work no later than ten (10) days after receiving notice to proceed from the Municipality.
- 2.4 The Consultant will modify its work when necessary to meet the level of acceptability defined in the Attachment "B" - Scope of Services.
- 2.5 During the design process, the Consultant will provide the Municipality with reports, plans specifications and other documents as stated in Attachment B – Scope of Services for review, comment and approval.

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Municipality shall pay to the Consultant, and the Consultant agrees to accept compensation based on the methods designed and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

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3.1 COST PLUS FIXED FEE METHOD			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS:
Item I	<ul style="list-style-type: none"> ▪ Actual Direct Technical Salaries, regular time plus straight time portion of overtime compensation of all employees assigned to this PROJECT on a full-time basis for all or part of the term of this Agreement, plus properly allocable partial salaries of all persons working part-time on this PROJECT. ▪ The cost of Principals', Officers' and Professional Staffs' salaries (productive time) included in Direct Technical Salaries is eligible for reimbursement if their comparable time is also charged directly to all other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost, subject to the current limitations, generally established therefore by the Municipality. ▪ If, within the term of this Agreement, any direct salary rates are paid in excess of the maximums shown in Attachment B, the excess amount shall be borne by the CONSULTANT WITHOUT REIMBURSEMENT either as a direct cost or as part of the overhead allowance. 	<ul style="list-style-type: none"> ▪ Actual costs incurred in the performance of this Agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative. ▪ Not to exceed the maximum allowable hourly rates of pay described in Attachment C of this Agreement, all subject to audit. ▪ Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Municipality. 	<ul style="list-style-type: none"> ▪ The CONSULTANT shall be paid in Monthly progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C. ▪ Bills are subject to approval of the Municipality and the Municipality's Representative.
Item II	<ul style="list-style-type: none"> ▪ Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit 	<p>All reimbursement for travel, meals and lodging shall be made at the actual cost paid but such reimbursement shall not exceed the per diem rates established by the NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Department of Labor.</p>	

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Item III	<ul style="list-style-type: none"> ■ Items required to be purchased for this Project not otherwise encompassed in Direct Non-Salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality. 	Salvage value	
Item IV	<ul style="list-style-type: none"> ■ Overhead Allowance based on actual allowable expenses incurred during the term of this Agreement, subject to audit. Submitted overhead amounts will be audited based upon the Federal Acquisition Regulations, sub-part 1-31.2 as modified by sub-part 1-31.105 ("FAR"), and applicable policies and guidelines of the Municipality, NYSDOT and FHWA. ■ For the purpose of the Agreement, an accounting period shall be the Consultant's fiscal year. An audit of the accounting records of the Consultant shall be made by the Municipality for each accounting period. For monthly billing purposes, the latest available overhead percentage established by such audit shall be applied to the charges made, under Item 1A of the subdivision to determine the charge to be made under this item. 	The overhead allowance shall be established as a percentage of Item 1A only (Actual Direct Technical Salaries of the ARTICLE, and shall be FAR compliant rate initially established as 138%.	
Item V	<ul style="list-style-type: none"> ■ Negotiated Lump Sum Fixed Fee. ■ Payment of the Fixed Fee for the described scope of services is not subject to pre-audit and is not subject to review or modification based on cost information or unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	A negotiated Fixed Fee which in the AGREEMENT shall equal <u>\$17,152.44</u>	
Item VI	The Maximum Amount Payable under this Agreement including Fixed Fees unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work of the work to be performed.	Maximum Amount Payable under this Method shall be <u>\$ 191,400</u>	

ARTICLE 4. INSPECTION

The duly authorized representative of the Municipality, and on federally aided projects, representatives of the NYSDOT and the FHWA, shall have the right at all times to inspect the work of the Consultant.

ARTICLE 5. AUDITS

5.1 Payment to the Consultant is subject to the following audit rights of the Municipality:

- A. For Cost Plus Fixed Fee Method – All costs are subject to audit, i.e. labor, direct non-salary, overhead and fee.
- B. For Specific Hourly Rate Method – Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less the \$250,000, an audit may be waived by the Municipality.
- C. For Lump Sum Cost Plus Reimbursable Method – Only direct non-salary costs are subject to audit. If elements subject to audit are less the \$250,000, an audit may be waived by the Municipality.

5.2 In order to enable the Municipality to process the final payment properly and expeditiously, the Consultant is advised that all of the following documents and submissions, as the same may be appropriated to this contract, are considered to be necessary to enable the commencement of the audit.

- I. Records of Direct Non-Salary Costs;
- II. Copies of any subcontracts relating to said contract;
- III. Location where records may be examined; and
- IV. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

ARTICLE 6. FINAL PAYMENT

6.1 The Municipality will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 Intentionally Omitted

ARTICLE 7. EXTRA WORK

7.1 Consultant's performance of this Agreement within the compensation provided shall be continuously reviewed by the Consultant. The Consultant shall notify the Municipality of the

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results of those reviews in writing by submittal of a Cost Control Reports. Such Cost Control Report shall be submitted to the Municipality on a monthly basis or such alternative interval as the Municipality directs in writing.

- 7.2 If the Consultant is of the opinion that any work the Consultant has been directed to perform is beyond the scope of the PROJECT Agreement and constitutes extra work, the Consultant shall promptly notify the Municipality, in writing, of this fact prior to beginning any of the work. The Municipality shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the Municipality determines that such work does constitute extra work, the Municipality shall provide extra compensation to the Consultant in a fair and equitable manner. If necessary, an amendment to the PROJECT Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the Municipality. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Municipality to the Consultant for execution after approvals have been obtained from necessary Municipality officials, and, if required, from the FHWA.
- 7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the Consultant agrees to render to the Municipality all assistance required by the Municipality. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the Municipality's directions shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 8. CONSULTING LIABILITY

The Consultant shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Agreement.

Further, it is expressly understood that the Consultant shall indemnify and save harmless the Municipality from claims, suites, actions, damages and costs of every name and description resulting from the negligent performance of the services of the Consultant under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Municipality beyond such as may legally exist irrespective of this Article or this Agreement.

The Consultant shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per project, issued to and covering damage for liability imposed on the Consultant by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Agreement. The Consultant shall supply any certificates of insurance required by the Municipality and adhere to any additional requirements concerning insurance.

ARTICLE 9. WORKER'S COMPENSATION, AUTOMOBILE LIABILITY, COMPREHENSIVE GENERAL LIABILITY INSURANCE AND UNEMPLOYMENT INSURANCE

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The Consultant shall not commence work under this Contract until he/she/it has obtained all insurance required under this paragraph and the Municipality has approved such insurance. The Municipality requires the following insurance coverage and amounts:

- (A) Comprehensive General Liability, including personal injury coverage of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and property damage coverage in the amount of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
- (B) Automobile coverage with a combined single limit of \$1,000,000.00.
- (C) Statutory Worker's Compensation Disability Coverage
- (D) Unemployment Insurance Benefits as required by statute.

The Consultant shall submit at the time of the execution of this agreement, certificates of insurance properly executed by an authorized representative of its insurance underwriter, evidencing such insurance policies to be in full force and effect, naming the Municipality and its officers, employees, agents and representatives as additional insured.

Notice of termination of any such policies must be provided to the Municipality at least thirty (30) days in advance. Consultant shall, on or before this 30 day period, provide the Municipality with a prospective Certificate of Insurance with the above coverage and limits for the balance of the term of this agreement.

All insurance coverage required to be purchased and maintained by the Consultant under this agreement shall be primary for the defense and indemnification on any action or claim asserted against the Municipality and/or Consultant for work performed under this agreement, regardless of any other collectible insurance or any language in the insurance policies which may be to the contrary.

The Consultant shall furnish the above insurance to the Municipality and shall also name the Municipality as an additional insured in said policies.

Any accident shall be reported to the Municipality as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Municipality as soon thereafter as possible and not later than three (3) days after the date of such accident.

ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the Municipality or existing in the offices of the Consultant shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 11. RECORDS RETENTION

The Consultant shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Municipality, State, FHWA or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of the Consultant within the State of New York, or a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE 12. DAMAGES AND DELAYS

The Consultant agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Municipality may decide, it being understood however, that the permitting of the Consultant to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Municipality of any of its rights herein. Nothing in this ARTICLE will prevent the Consultant from exercising his rights under ARTICLE 7 of this Agreement.

ARTICLE 13. TERMINATION

The Municipality shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

- A. for convenience of the Municipality – if a termination is brought about for the convenience of the Municipality and not as a result of unsatisfactory performance on the part of the Consultant, final payment shall be made based on the basis of the Consultant's compensable work delivered or completed prior to and under any continuing directions of such termination.
- B. for cause – if the termination is brought about as a result of the Municipality's determination of unsatisfactory performance or breach of contract on the part of the Consultant, the value of the work performed by the Consultant prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the Consultant to the point of termination and acceptable to the Municipality, of the total amount of work contemplated by the PROJECT Agreement.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the persons herein referred to as Consultant, the rights and duties of the Consultant shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and the Municipality shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as Consultant, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Municipality or his duly authorized representative. In cases of the failure of the Consultant's successors or personal representatives to make such delivery on demand, then in that event the representatives of the Consultant shall be liable to the Municipality for any damages it may sustain by reasons thereof. Upon the delivery of all such data to the Municipality, the Municipality will pay to the representatives of the Consultant all amounts due the Consultant, including retained percentages to the date of the death of the last survivor.

ARTICLE 15. CODE OF ETHICS

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The Consultant specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

ARTICLE 16. INDEPENDENT CONTRACTOR

The Consultant, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of the Municipality by reason hereof, and that he will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Municipality, including but not limited to, Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Municipality shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 18. TRANSFER OF AGREEMENT

The Consultant specifically agrees that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of his right, title or interest therein, or his power to execute such Agreement, to any other person, company or corporate, without the previous consent in writing of the Municipality.

If this provision is violated, the Municipality may revoke and annul the Agreement and the Municipality shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the Consultant shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement with such consent in writing of the Municipality.

ARTICLE 19. PROPRIETARY RIGHTS

The Consultant agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant the United States Government and the State of New York and the Municipality a nonexclusive, nontransferable, paid-up license to make, use and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE 20. SUBCONTRACTORS/SUBCONSULTANTS

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All Subcontractors and Subconsultants performing work on this project shall be bound by the same required contract provisions as the Consultant. All agreements between the Consultant and a Subcontractor or other Subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the Municipality.

ARTICLE 20.1 PROMPT PAYMENT. While federal regulation (49 CFR 26.29¹) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not be indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS
Not in Contract

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

- A. The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this contract. The Consultant shall, without additional compensation, correct or revised any errors of deficiencies in its design, drawings, specifications, and other services. However, the Municipality may in certain circumstances, provide compensation for such work.
- B. Neither the Municipality's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of

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this contract, and the Consultant shall be and remain liable to the Municipality in accordance with applicable law for all damages to the Municipality caused by the Consultant's negligent performance or breach of contract of any of the services furnished und this contract.

- C. The rights and remedies of the Municipality provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The Consultant agrees to comply with all applicable Federal, State and Municipality Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also know as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture, sale contract for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Consultant agrees that neither it nor its Subconsultants shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Consultant is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.58

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- A. an existing contract for the PROJECT's ROW incidental work or construction engineering; or
- B. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the Consultant from being awarded a future contract covering the work describe in this Article or being awarded the Final Design after the EIS has been approved.

ARTICLE 26. BIDDING OR DIRECT NON-SALARY ITEMS (*unless more restrictive municipal laws apply*)

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For all contracts other than personal services in excess of \$5,000, the Consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$20,000 except printing contracts in excess of \$10,000, the Consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The Consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

ARTICLE 27. WAGE AND HOURS PROVISIONS

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Consultant's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Consultant and its Subconsultants must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Consultant agrees, as a material condition of the contract, that neither the Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations there under. If such Consultant, or any of the aforesaid affiliates of Consultant, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The CONTRACTOR shall so notify the MUNICIPALITY and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (See 2NYCRR 105.4).

ARTICLE 30. DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA.

At the time of completion of the work, the Consultant shall make available to the Sponsor all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the Sponsor. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Consultant shall make available to the Sponsor all the aforementioned engineering data and material. All original tracings of maps and other engineering data furnished to the Sponsor by the Consultant shall bear thereon the endorsement of the Consultant. All plans, estimates and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the Sponsor.

ARTICLE 31. MISCELLANEOUS

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Executory Contract. This Agreement shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the Municipality beyond the monies legally available for the purposes hereof.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement effective the day and year first above written.

Reference: Municipality Contract # _____

<u>Municipality</u> By: _____ James J Bach Title: <u>Town Supervisor</u> Date: _____	<u>Consultant</u> By: _____ Gerard J. Sentz, P.E. Title: <u>Vice President, Engineering</u> Date: _____
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ACKNOWLEDGEMENT OF THE TOWN OF AURORA

STATE OF NEW YORK

ss:

COUNTY OF ERIE

On this _____ day of _____, 20____ before me, the subscriber, personally came _____ to me known, who, being by me duly sworn, did depose and say; the he/she resides in _____, New York; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Municipality.

Notary Public, _____ County, N.Y.

ACKNOWLEDGEMENT OF THE CONSULTANT

STATE OF NEW YORK

ss:

COUNTY OF ERIE

On this _____ day of _____, 20 ____ before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he executed same.

Notary Public, _____ County, N.Y.

Architectural/Engineering Consultant Agreement

WS-1 B

NYSDOT PIN 5763.88 Municipal Contract No. _____

Agreement made this _____ day of _____, 2022 by and l

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Town of Aurora, NY

Having its principal office at 575 Oakwood Ave, East Aurora, NY 14052 (the "Municipality")

And

Foit-Albert Associates, PC with its office at 295 Main Street, Suite 200, Buffalo, NY 14203 (the "Consultant").

WITNESSETH:

WHEREAS, in connection with a Bridge New York project funded through the New York State Department of Transportation ("NYSDOT") identified for the purposes of this agreement as East Fillmore over Tannery Brook, the Municipality has sought to engage the services of a Consultant Engineer to perform the scope of services described in Attachment "B" annexed hereto; and

WHEREAS, in accordance with required Consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration ("FHWA"), the Municipality has selected the Consultant to perform such services in accordance with the requirements of this Agreement; and

WHEREAS, **James J Bach, Town Supervisor**, is authorized to enter this Agreement on behalf of the Municipality, and

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- 2.2 The Consultant shall ascertain the applicable practices of the Municipality, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this agreement shall be performed in accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B" – Scope of Services.
- 2.3 The Consultant will commence work no later than ten (10) days after receiving notice to proceed from the Municipality.
- 2.4 The Consultant will modify its work when necessary to meet the level of acceptability defined in the Attachment "B" - Scope of Services.
- 2.5 During the design process, the Consultant will provide the Municipality with reports, plans specifications and other documents as stated in Attachment B – Scope of Services for review, comment and approval.

ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT

As full compensation for Consultant's work, services and expenses hereunder the Municipality shall pay to the Consultant, and the Consultant agrees to accept compensation based on the methods designed and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

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3.1 COST PLUS FIXED FEE METHOD			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS:
Item I	<ul style="list-style-type: none"> ■ Actual Direct Technical Salaries, regular time plus straight time portion of overtime compensation of all employees assigned to this PROJECT on a full-time basis for all or part of the term of this Agreement, plus properly allocable partial salaries of all persons working part-time on this PROJECT. ■ The cost of Principals', Officers' and Professional Staffs' salaries (productive time) included in Direct Technical Salaries is eligible for reimbursement if their comparable time is also charged directly to all other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost, subject to the current limitations, generally established therefore by the Municipality. ■ If, within the term of this Agreement, any direct salary rates are paid in excess of the maximums shown in Attachment B, the excess amount shall be borne by the CONSULTANT WITHOUT REIMBURSEMENT either as a direct cost or as part of the overhead allowance. 	<ul style="list-style-type: none"> ■ Actual costs incurred in the performance of this Agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative. ■ Not to exceed the maximum allowable hourly rates of pay described in Attachment C of this Agreement, all subject to audit. ■ Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Municipality. 	<ul style="list-style-type: none"> ■ The CONSULTANT shall be paid in Monthly progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C. ■ Bills are subject to approval of the Municipality and the Municipality's Representative.
Item II	<ul style="list-style-type: none"> ■ Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit 	<p>All reimbursement for travel, meals and lodging shall be made at the actual cost paid but such reimbursement shall not exceed the per diem rates established by the NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Department of Labor.</p>	

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Item III	<ul style="list-style-type: none"> ▪ Items required to be purchased for this Project not otherwise encompassed in Direct Non-Salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality. 	Salvage value	
Item IV	<ul style="list-style-type: none"> ▪ Overhead Allowance based on actual allowable expenses incurred during the term of this Agreement, subject to audit. Submitted overhead amounts will be audited based upon the Federal Acquisition Regulations, sub-part 1-31.2 as modified by sub-part 1-31.105 ("FAR"), and applicable policies and guidelines of the Municipality, NYSDOT and FHWA. ▪ For the purpose of the Agreement, an accounting period shall be the Consultant's fiscal year. An audit of the accounting records of the Consultant shall be made by the Municipality for each accounting period. For monthly billing purposes, the latest available overhead percentage established by such audit shall be applied to the charges made, under Item 1A of the subdivision to determine the charge to be made under this item. 	The overhead allowance shall be established as a percentage of Item 1A only (Actual Direct Technical Salaries of the ARTICLE, and shall be FAR compliant rate initially established as 138%.	
Item V	<ul style="list-style-type: none"> ▪ Negotiated Lump Sum Fixed Fee. ▪ Payment of the Fixed Fee for the described scope of services is not subject to pre-audit and is not subject to review or modification based on cost information or unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed. 	A negotiated Fixed Fee which in the AGREEMENT shall equal <u>\$15,692.80</u>	
Item VI	The Maximum Amount Payable under this Agreement including Fixed Fees unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character or the work of the work to be performed.	Maximum Amount Payable under this Method shall be <u>\$ 195,000</u>	

ARTICLE 4. INSPECTION

The duly authorized representative of the Municipality, and on federally aided projects, representatives of the NYSDOT and the FHWA, shall have the right at all times to inspect the work of the Consultant.

ARTICLE 5. AUDITS

5.1 Payment to the Consultant is subject to the following audit rights of the Municipality:

- A. For Cost Plus Fixed Fee Method – All costs are subject to audit, i.e. labor, direct non-salary, overhead and fee.
- B. For Specific Hourly Rate Method – Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less the \$250,000, an audit may be waived by the Municipality.
- C. For Lump Sum Cost Plus Reimbursable Method – Only direct non-salary costs are subject to audit. If elements subject to audit are less the \$250,000, an audit may be waived by the Municipality.

5.2 In order to enable the Municipality to process the final payment properly and expeditiously, the Consultant is advised that all of the following documents and submissions, as the same may be appropriated to this contract, are considered to be necessary to enable the commencement of the audit.

- I. Records of Direct Non-Salary Costs;
- II. Copies of any subcontracts relating to said contract;
- III. Location where records may be examined; and
- IV. Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

ARTICLE 6. FINAL PAYMENT

6.1 The Municipality will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

6.2 Intentionally Omitted.

ARTICLE 7. EXTRA WORK

7.1 Consultant's performance of this Agreement within the compensation provided shall be continuously reviewed by the Consultant. The Consultant shall notify the Municipality of the

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results of those reviews in writing by submittal of a Cost Control Reports. Such Cost Control Report shall be submitted to the Municipality on a monthly basis or such alternative interval as the Municipality directs in writing.

- 7.2 If the Consultant is of the opinion that any work the Consultant has been directed to perform is beyond the scope of the PROJECT Agreement and constitutes extra work, the Consultant shall promptly notify the Municipality, in writing, of this fact prior to beginning any of the work. The Municipality shall be the sole judge as to whether or not such work is in fact beyond the scope of this Agreement and constitutes extra work. In the event that the Municipality determines that such work does constitute extra work, the Municipality shall provide extra compensation to the Consultant in a fair and equitable manner. If necessary, an amendment to the PROJECT Agreement, providing the compensation and describing the work authorized, shall be prepared and issued by the Municipality. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Municipality to the Consultant for execution after approvals have been obtained from necessary Municipality officials, and, if required, from the FHWA.
- 7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the Consultant agrees to render to the Municipality all assistance required by the Municipality. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Agreement for the additional services above described, the Municipality's directions shall be exercised by the issuance of a separate Agreement, if necessary.

ARTICLE 8. CONSULTING LIABILITY

The Consultant shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Agreement.

Further, it is expressly understood that the Consultant shall indemnify and save harmless the Municipality from claims, suites, actions, damages and costs of every name and description resulting from the negligent performance of the services of the Consultant under this Agreement, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Municipality beyond such as may legally exist irrespective of this Article or this Agreement.

The Consultant shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per project, issued to and covering damage for liability imposed on the Consultant by this Agreement or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Agreement. The Consultant shall supply any certificates of insurance required by the Municipality and adhere to any additional requirements concerning insurance.

ARTICLE 9. WORKER'S COMPENSATION, AUTOMOBILE LIABILITY, COMPREHENSIVE GENERAL LIABILITY INSURANCE AND UNEMPLOYMENT INSURANCE

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The Consultant shall not commence work under this Contract until he/she/it has obtained all insurance required under this paragraph and the Municipality has approved such insurance. The Municipality requires the following insurance coverage and amounts:

- (A) Comprehensive General Liability, including personal injury coverage of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and property damage coverage in the amount of \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate.
- (B) Automobile coverage with a combined single limit of \$1,000,000.00.
- (C) Statutory Worker's Compensation Disability Coverage
- (D) Unemployment Insurance Benefits as required by statute.

The Consultant shall submit at the time of the execution of this agreement, certificates of insurance properly executed by an authorized representative of its insurance underwriter, evidencing such insurance policies to be in full force and effect, naming the Municipality and its officers, employees, agents and representatives as additional insured.

Notice of termination of any such policies must be provided to the Municipality at least thirty (30) days in advance. Consultant shall, on or before this 30 day period, provide the Municipality with a prospective Certificate of Insurance with the above coverage and limits for the balance of the term of this agreement.

All insurance coverage required to be purchased and maintained by the Consultant under this agreement shall be primary for the defense and indemnification on any action or claim asserted against the Municipality and/or Consultant for work performed under this agreement, regardless of any other collectible insurance or any language in the insurance policies which may be to the contrary.

The Consultant shall furnish the above insurance to the Municipality and shall also name the Municipality as an additional insured in said policies.

Any accident shall be reported to the Municipality as soon as possible and not later than twenty-four (24) hours from the time of such accident. A detailed written report must be submitted to the Municipality as soon thereafter as possible and not later than three (3) days after the date of such accident.

ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the PROJECT existing in the office of the Municipality or existing in the offices of the Consultant shall be made available to the other party to this Agreement without expense to such other party.

ARTICLE 11. RECORDS RETENTION

The Consultant shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Municipality, State, FHWA or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of the Consultant within the State of New York, or a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ARTICLE 12. DAMAGES AND DELAYS

The Consultant agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Municipality may decide, it being understood however, that the permitting of the Consultant to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Municipality of any of its rights herein. Nothing in this ARTICLE will prevent the Consultant from exercising his rights under ARTICLE 7 of this Agreement.

ARTICLE 13. TERMINATION

The Municipality shall have the absolute right to terminate this Agreement, and such action shall in no event be deemed a breach of contract:

- A. for convenience of the Municipality -- if a termination is brought about for the convenience of the Municipality and not as a result of unsatisfactory performance on the part of the Consultant, final payment shall be made based on the basis of the Consultant's compensable work delivered or completed prior to and under any continuing directions of such termination.
- B. for cause -- if the termination is brought about as a result of the Municipality's determination of unsatisfactory performance or breach of contract on the part of the Consultant, the value of the work performed by the Consultant prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the Consultant to the point of termination and acceptable to the Municipality, of the total amount of work contemplated by the PROJECT Agreement.

ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the persons herein referred to as Consultant, the rights and duties of the Consultant shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and the Municipality shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as Consultant, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Municipality or his duly authorized representative. In cases of the failure of the Consultant's successors or personal representatives to make such delivery on demand, then in that event the representatives of the Consultant shall be liable to the Municipality for any damages it may sustain by reasons thereof. Upon the delivery of all such data to the Municipality, the Municipality will pay to the representatives of the Consultant all amounts due the Consultant, including retained percentages to the date of the death of the last survivor.

ARTICLE 15. CODE OF ETHICS

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The Consultant specifically agrees that this Agreement may be canceled or terminated if any work under this Agreement is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

ARTICLE 16. INDEPENDENT CONTRACTOR

The Consultant, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of the Municipality by reason hereof, and that he will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Municipality, including but not limited to, Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Municipality shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 18. TRANSFER OF AGREEMENT

The Consultant specifically agrees that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Agreement or of his right, title or interest therein, or his power to execute such Agreement, to any other person, company or corporate, without the previous consent in writing of the Municipality.

If this provision is violated, the Municipality may revoke and annul the Agreement and the Municipality shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the Consultant shall purport to assign, transfer, convey, sublet or otherwise dispose of the Agreement with such consent in writing of the Municipality.

ARTICLE 19. PROPRIETARY RIGHTS

The Consultant agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant the United States Government and the State of New York and the Municipality a nonexclusive, nontransferable, paid-up license to make, use and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

ARTICLE 20. SUBCONTRACTORS/SUBCONSULTANTS

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All Subcontractors and Subconsultants performing work on this project shall be bound by the same required contract provisions as the Consultant. All agreements between the Consultant and a Subcontractor or other Subconsultant shall include all standard required contract provisions, and such agreements shall be subject to review by the Municipality.

ARTICLE 20.1 PROMPT PAYMENT. While federal regulation (49 CFR 26.29¹) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Agreement, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not be indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS
Not in Contract

ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT

- A. The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Consultant under this contract. The Consultant shall, without additional compensation, correct or revised any errors or deficiencies in its design, drawings, specifications, and other services. However, the Municipality may in certain circumstances, provide compensation for such work.
- B. Neither the Municipality's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of

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this contract, and the Consultant shall be and remain liable to the Municipality in accordance with applicable law for all damages to the Municipality caused by the Consultant's negligent performance or breach of contract of any of the services furnished und this contract.

- C. The rights and remedies of the Municipality provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the Consultant is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS

The Consultant agrees to comply with all applicable Federal, State and Municipality Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also know as the Human Rights Law) and all other State and Federal Statutory and constitutional non-discrimination provisions, the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work for the manufacture, sale contract for the construction, alteration or repair of any public building or public work for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Consultant agrees that neither it nor its Subconsultants shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Consultant is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.58

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- A. an existing contract for the PROJECT's ROW incidental work or construction engineering; or
- B. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

This does not preclude the Consultant from being awarded a future contract covering the work describe in this Article or being awarded the Final Design after the EIS has been approved.

ARTICLE 26. BIDDING OR DIRECT NON-SALARY ITEMS (*unless more restrictive municipal laws apply*)

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For all contracts other than personal services in excess of \$5,000, the Consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$20,000 except printing contracts in excess of \$10,000, the Consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The Consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

ARTICLE 27. WAGE AND HOURS PROVISIONS

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Consultant's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Consultant and its Subconsultants must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Consultant agrees, as a material condition of the contract, that neither the Consultant nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations there under. If such Consultant, or any of the aforesaid affiliates of Consultant, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The CONTRACTOR shall so notify the MUNICIPALITY and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (See 2NYCRR 105.4).

ARTICLE 30. DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA.

At the time of completion of the work, the Consultant shall make available to the Sponsor all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the Sponsor. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Consultant shall make available to the Sponsor all the aforementioned engineering data and material. All original tracings of maps and other engineering data furnished to the Sponsor by the Consultant shall bear thereon the endorsement of the Consultant. All plans, estimates and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the Sponsor.

ARTICLE 31. MISCELLANEOUS

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Executory Contract. This Agreement shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the Municipality beyond the monies legally available for the purposes hereof.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement effective the day and year first above written.

Reference: Municipality Contract # _____

<u>Municipality</u> By: _____ James J Bach Title: <u>Town Supervisor</u> Date: _____	<u>Consultant</u> By: _____ Gerard J. Sentz, P.E. Title: <u>Vice President, Engineering</u> Date: _____
--	---

ACKNOWLEDGEMENT OF THE TOWN OF AURORA

STATE OF NEW YORK

ss:

COUNTY OF ERIE

On this _____ day of _____, 20__ before me, the subscriber, personally came _____ to me known, who, being by me duly sworn, did depose and say; the he/she resides in _____, New York; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she is the authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Municipality.

Notary Public, _____ County, N.Y.

ACKNOWLEDGEMENT OF THE CONSULTANT

STATE OF NEW YORK

ss:

COUNTY OF ERIE

On this _____ day of _____, 20__ before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he executed same.

Notary Public, _____ County, N.Y.

TOWN OF AUROR

SITE PLAN REVIEW APPL

Date submitted: 4/11/2022

WS-2 5B

Applicant name: Sammie Trent, 716- Sprouting Minds Montessori

Applicant address: 1276 Mill Road

Property owner: Current: Tyler Geberl Under Contract: Sprouting Minds

Owner's address Montessori School

Property address: 976 Davis Road

SBL # (s) _____

Prior owner Tyler Geberl

Is site adjacent to or within 500 feet of an 'R' District? in RR

Proposed Project: SMMS Move

Commercial Multi family _____ Number of dwelling units _____

Zone: RR Total property Acreage: 19.5 Acreage covered by bldg 1

Square footage of building: 8000 Cubic footage of building: 80,000

Aggregate square footage of other buildings on property: N/A

FEE SCHEDULE

Up to 5000 cu ft (20 x 25 x 10) - \$50 plus (+) \$100 per acre or fraction of acre.
Up to 10,000 cu ft - \$75 plus (+) \$100 per acre or fraction of acre.
Over 10,000 cu ft - \$75 plus (+) \$5 per 1,000 cu ft over 10,000 cu ft plus (+) \$100
per acre or fraction of acre. 70 x 5 = 350

75
+ 100

175
+ 350

525

Fee: \$ 525⁰⁰
Receipt: # 385712

Received by [Signature]
Town Clerk/Deputy Clerk

Base fee for cu ft \$ 75
Each 1,000 cu ft over 10,000 \$ 350
Acres \$ 100

SEQR action: _____ Type I (Long EAF) _____ Type II (Long EAF) Unlisted (Short EAF)



976 DAVIS ROAD SITE PLAN

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Statement of Intent

Sprouting Minds Montessori School (SMMS) is a school established within the East Aurora community for over 5 years. As interest and need spreads for our school we are finding that our current building at 1276 Mill Road is not sufficiently big enough. SMMS is currently under contact to purchase the property at 976 Davis Road and we have a pending closing within the next 45 days. Attached you will find the current owners approval for this submission.

We are a year round school and operate from July 1st to June 30th, and offer various programs for ages 15 months to grade 6 in both part day and full day capacities depending on age. SMMS is an approved non-public school as identified by NYS Department of Education. We are hoping to relocate our nature centric school to this new location and gorgeous 19.5 acres during our summer session. This will allow us to settle prior to the full school year commencing.

This property on Davis houses a roughly 8,000 square foot barn. We hope to convert this barn to the standards and codes needed to use the building in a Group E (educational) occupancy capacity. 976 Davis road is located in an RR residential district. In town code 116-8.4.A.3, it indicates that a school is an appropriate and approved use of the land.

Utilities such as water, gas and electric are all currently at the building and need not be run at this time. We have discussed with the town building inspector about the ability for conversion, along with state fire safety regulators and structural engineers in regard to an E occupancy and find it will need minimal changes structurally to comply. There will need to be insulation, electrical, plumbing, septic, windows and finishes to consider in conjunction with working with the building department.

This property has 19.5 acres with about 4 acres a wooded area and the rest mostly open field space. The driveway spans from Davis to Snyder road creating a one lane space with a known culvert at each entrance of the driveway. There is currently no known septic system on site and will need to be placed in conjunction with the Erie county department of health. The nearest fire hydrant to the building is on the south-east corner of the property as well as at the corner of Ellicott and Davis roads.

Garbage will be kept in an enclosed area of the barn to avoid animals getting into it. We are an eco-conscious school and create little waste for our school.

We do not feel this building will need any noise or visual screening from abutting properties due to the nature of the previous use of the building along with the use of many buildings in the local area. Please see the last page for potential neighbor apprehension and mitigation strategies.

Aurora Town Board,

I, Tyler Geberl, the property owner of 976 Davis Road, give Sprouting Minds Montessori School permission to submit a site plan application while under contract for purchase of said property.

No physical work shall commence until ownership of said property has been fully transferred to Sprouting Minds Montessori School.

Property Owner Signature Tyler Geberl Tyler Geberl

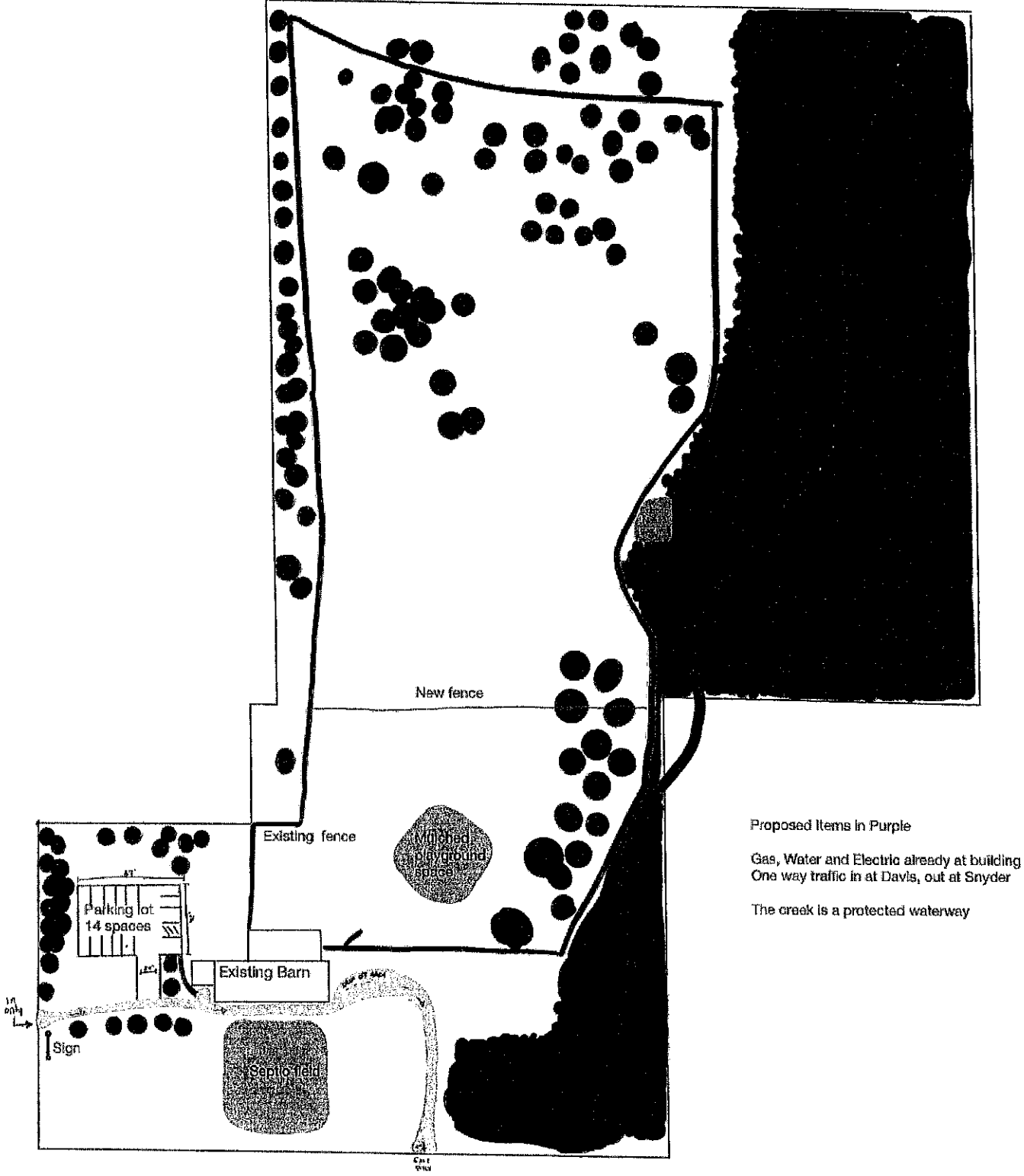
04/18/22

Survey

Please note the first survey was obtained through Erie Counties GIS survey system to represent the parcel of land in question as part of a larger survey on the next page.



Site Plan



Exterior Changes to the building and property

Building Changes:

For the exterior of the building we intend to place one motion activated flood light (ring camera light system in file) towards the main entrance for staff and students to have a safe and lit arrival in the winter months. We also intend to power wash and stain the barn in a neutral tone.

Windows and doors will be replaced or added with energy efficient materials generally where indicated on the plans attached. We will also be removing the upward facing exterior lights to be dark sky compliant.

Property Changes:

The driveway will be topped with regrind to keep it up without holes and part of the driveway will be expanded to allow for student drop-off and passage to exit the property. We will also add one parking lot as indicated on the exterior site plan attached. This parking lot will be mostly hidden from the road by foliage to keep the beautiful images of the property itself.

A septic system and field will need to be put in place in an area as determined by the Department of Health. This area is yet to be fully determined but a best estimate has been placed on the site plans. The size of the septic system will be determined through the department of health and septic engineering company at a later date.

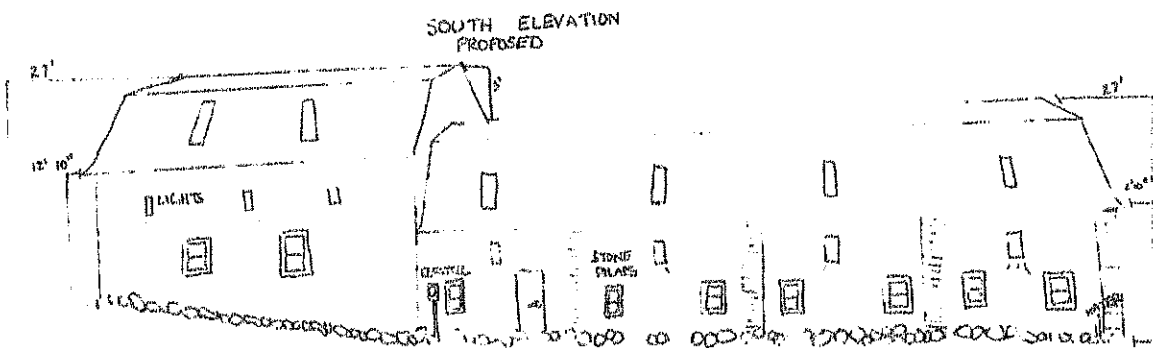
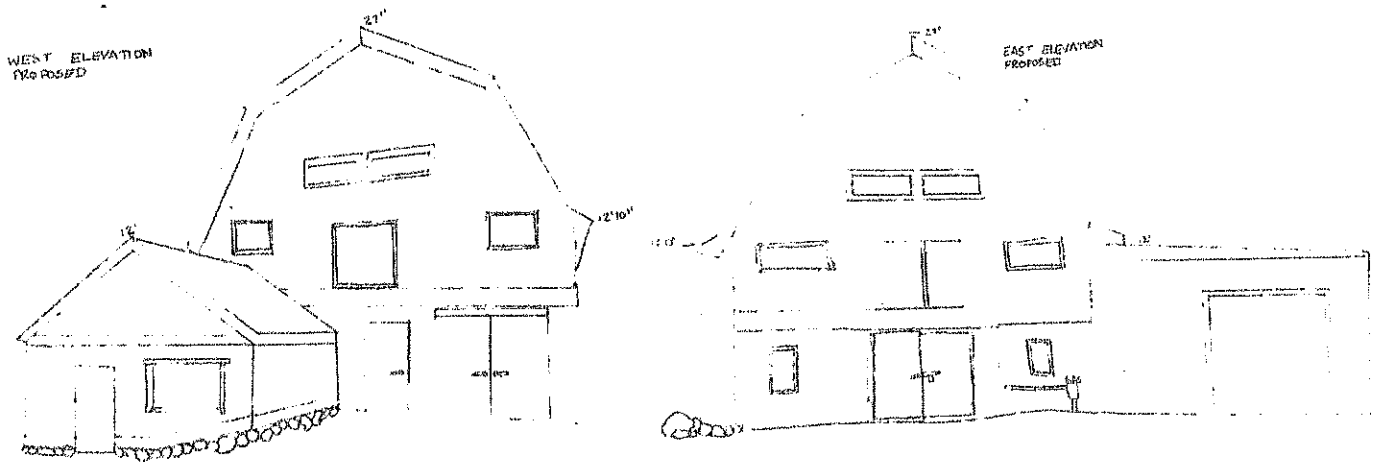
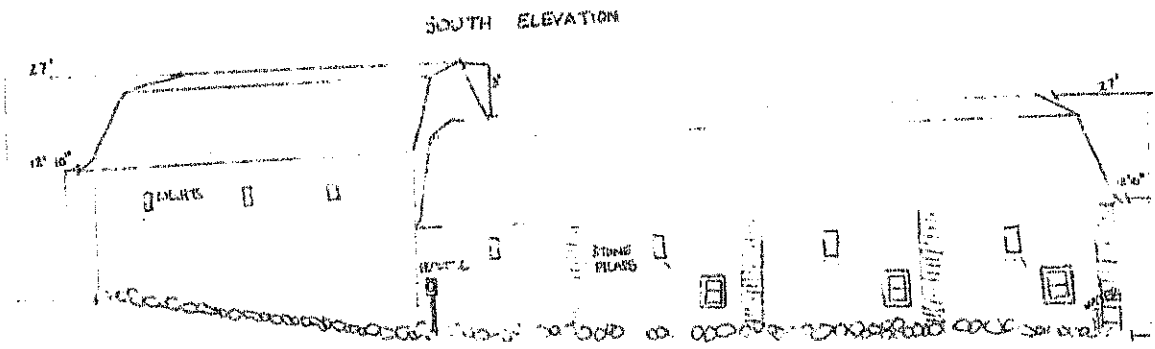
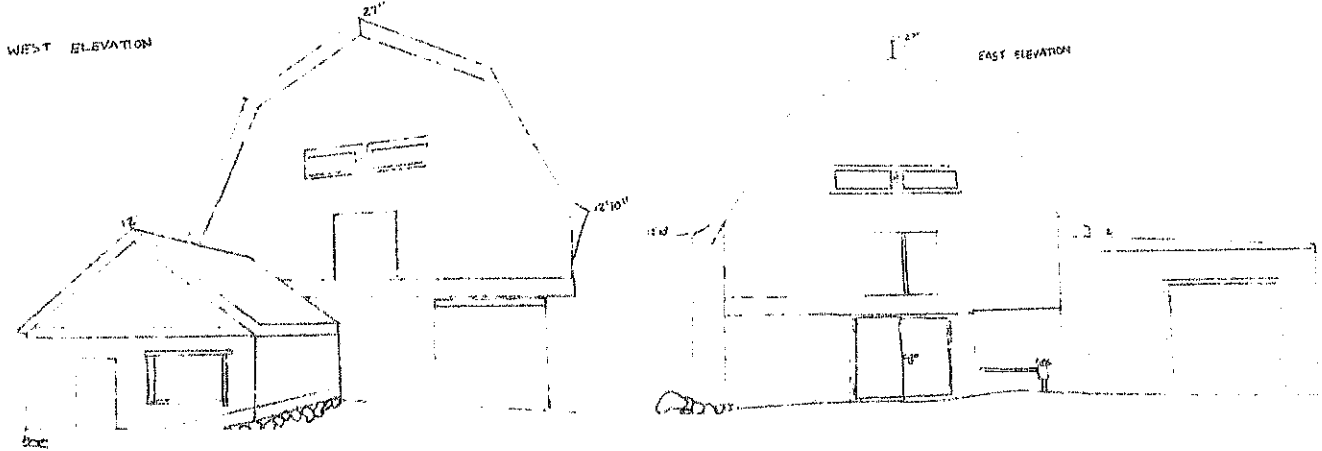
A sign for the school is intended to be placed on the main entrance (Davis Road). The opposing end of the one way driveway will contain a 'exit only' sign. We will proceed through all required permitting for signage.

Playground space will be found within the current fenced in area set back from the majority of neighbors to reduce any disruption. Smaller areas will be divided with temporary fence while the long term plans for the play areas will be determined at a later date.

Attached you will find all supporting documentation.

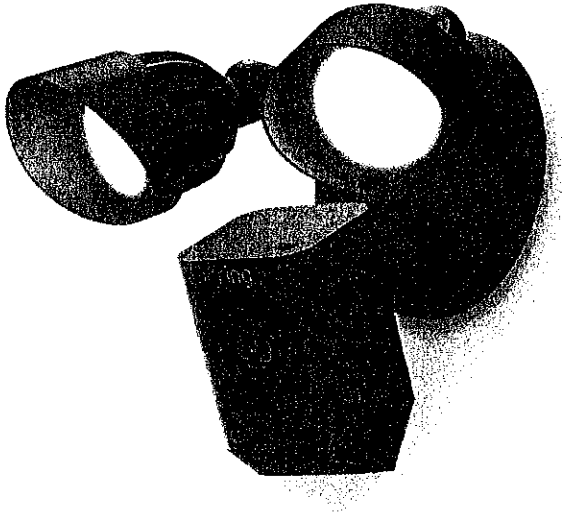
Elevation Drawings

Existing



Proposed Light to be added

Light will be both security camera and motion activated LED floodlight for early morning entrances. Lights will be pointed downward towards the walkway in such a way to avoid shining towards or near the neighbors.



Proposed Signage

All proposed signage will go through the permit and if necessary the ZBA for sign placement, size and type.

A stained round wood sign is to be placed at the driveway entrance on Davis Road, and will be a 3 foot diameter circle on two 4x4 posts with a garden beneath.



This sign will be placed on the Snyder entrance of the driveway it is roughly 15 inches by 18 inches

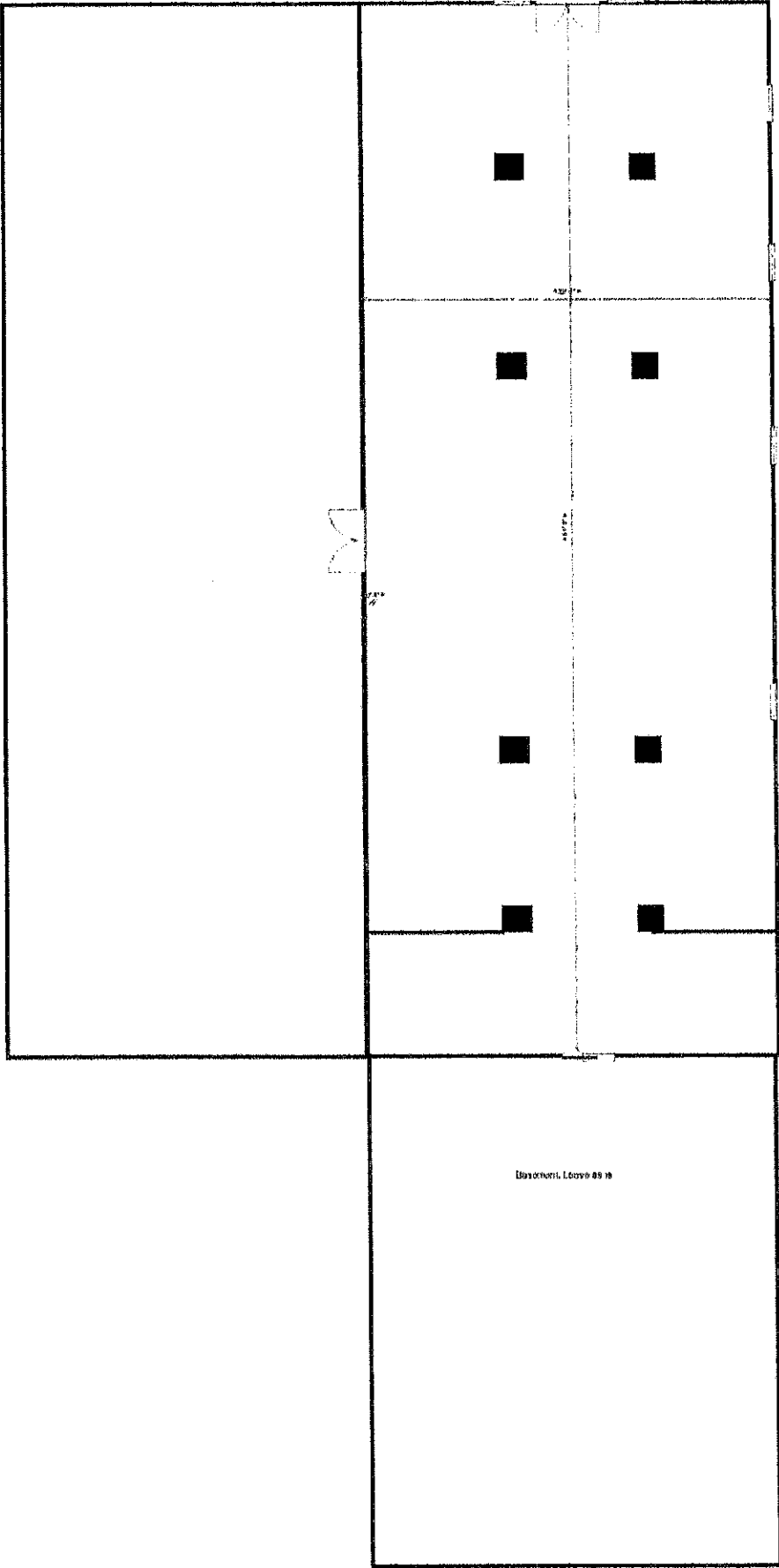


Interior Changes to the building

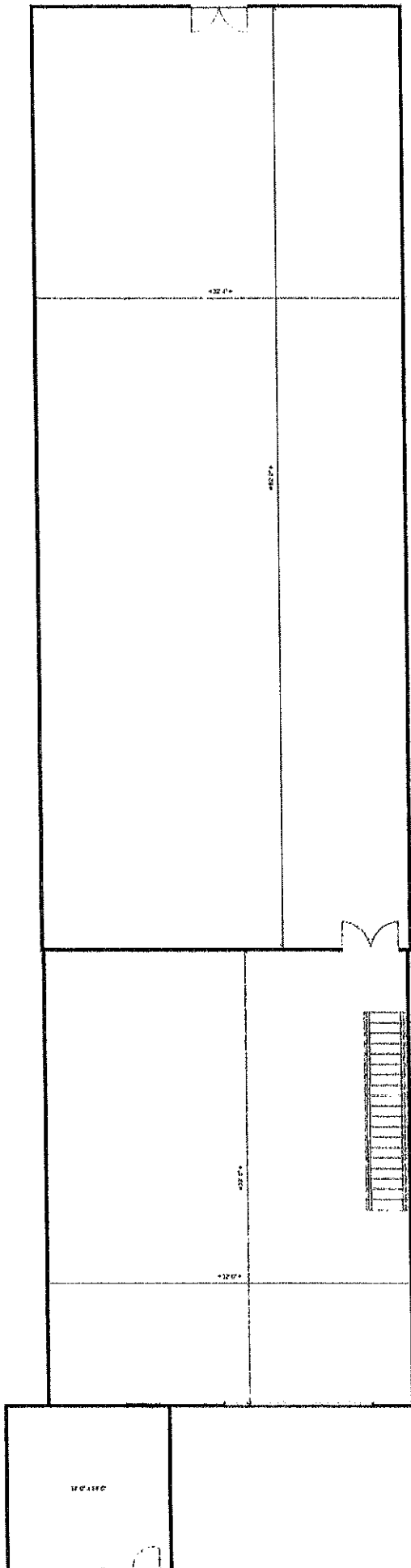
Building Changes:

Our intentions are to install radiant floor heating system, fully insulate and finish all used area of the building leaving some beams exposed to a rustic look. We also intend to add bathrooms to each classroom, as indicated in the interior drawings. There will be some walls for divisions of the classroom space. Electric will be added to the areas where there is none found. These items will follow the Aurora permit process through the building department.

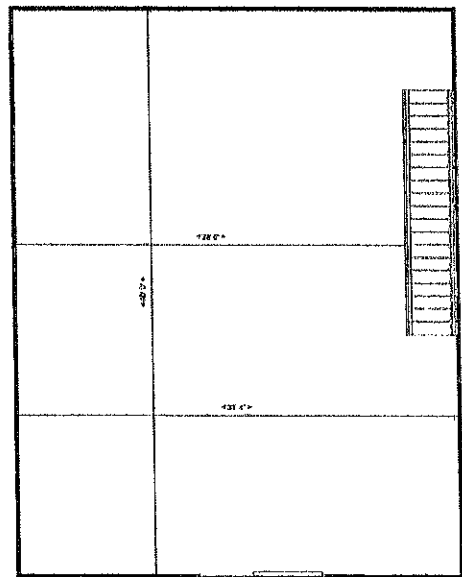
Floor Plans
Existing



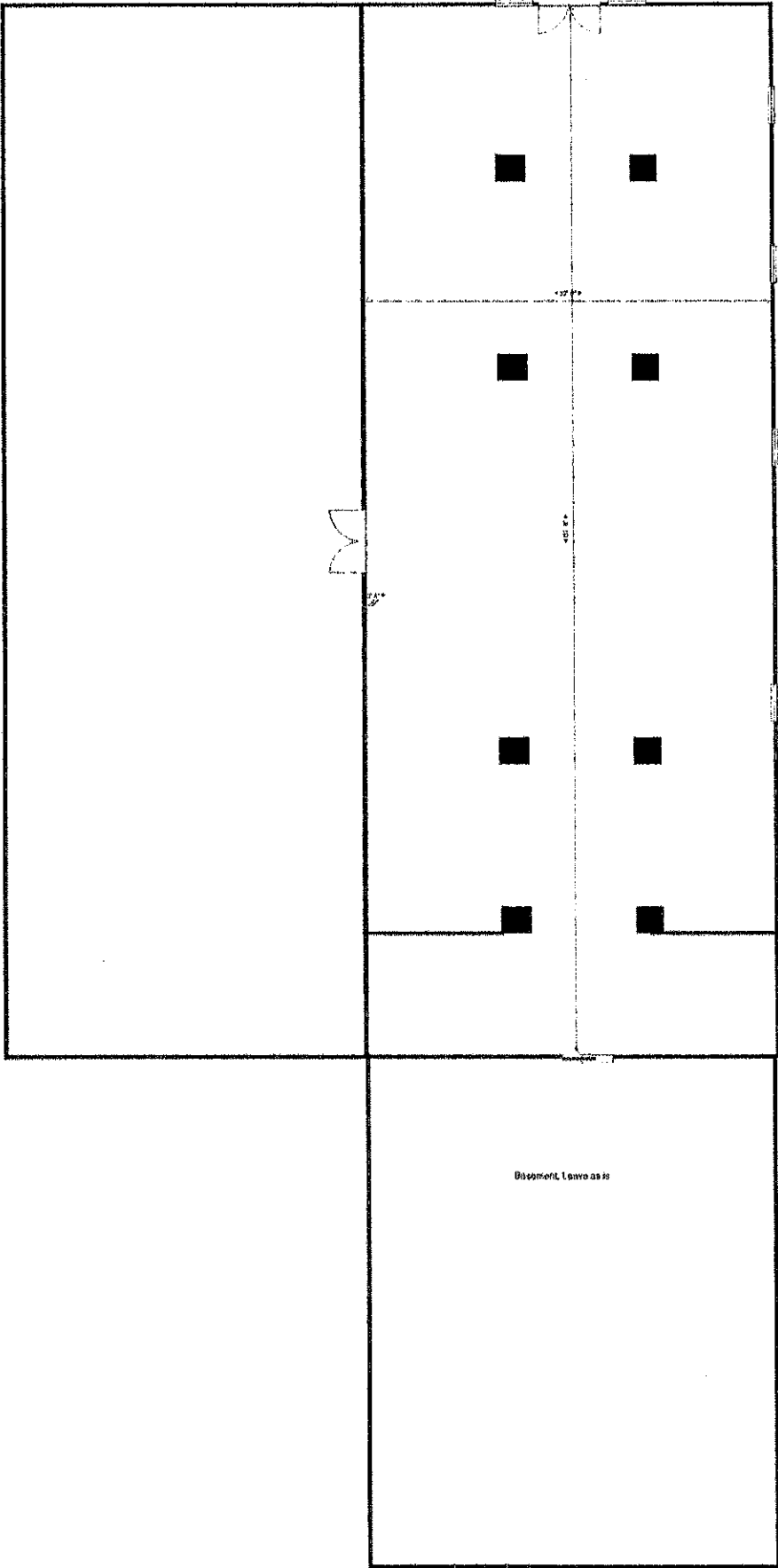
Second Floor

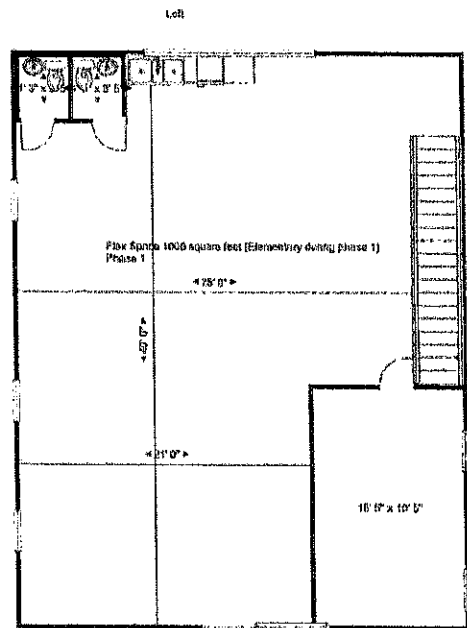
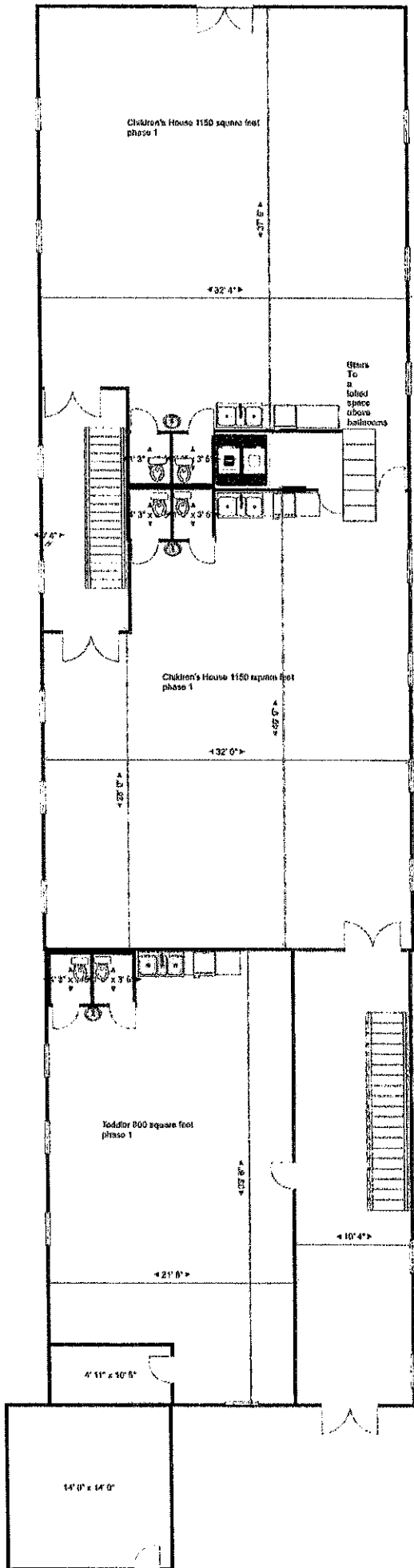


Lot



Proposed





Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

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

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

Part 1 – Project and Sponsor Information				
Sprouting Minds Montessori School				
Name of Action or Project: SMMS Relocation				
Project Location (describe, and attach a location map): 976 Davis Road East Aurora, NY 14052				
Brief Description of Proposed Action: Adding a parking lot, and septic system to a barn conversion. Changing the occupancy code to group E in an existing structure.				
Name of Applicant or Sponsor: Sammie Trent on behalf of Sprouting Minds Montessori School		Telephone: 716-714-9526 E-Mail: school@sproutingmidsny.com		
Address: 1276 Mill Road				
City/PO: East Aurora		State: NY	Zip Code: 14052	
1. <u>Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?</u> 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. <u>Does the proposed action require a permit, approval or funding from any other government Agency?</u> If Yes, list agency(s) name and permit or approval: Erie County Department of Health for septic system Town of Aurora for building permit			NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>
3. a. <u>Total acreage of the site of the proposed action?</u>		19.5 acres		
b. <u>Total acreage to be physically disturbed?</u>		.25 acres		
c. <u>Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?</u>		19.5 acres		
4. <u>Check all land uses that occur on, are adjoining or near the proposed action:</u>				
<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)				
<input type="checkbox"/> Forest <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):				
<input type="checkbox"/> Parkland				

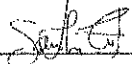
		NO	YES	N/A
5. Is the proposed action,	a. <u>A permitted use under the zoning regulations?</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	b. <u>Consistent with the adopted comprehensive plan?</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. <u>Is the proposed action consistent with the predominant character of the existing built or natural landscape?</u>			NO	YES
		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. <u>Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?</u>			NO	YES
If Yes, identify: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. <u>Will the proposed action result in a substantial increase in traffic above present levels?</u>			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 checked="" type="checkbox"/>	<input type="checkbox"/>	
		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. <u>Does the proposed action meet or exceed the state energy code requirements?</u>			NO	YES
If the proposed action will exceed requirements, describe design features and technologies: _____ _____		<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. <u>Will the proposed action connect to an existing public/private water supply?</u>			NO	YES
If No, describe method for providing potable water: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. <u>Will the proposed action connect to existing wastewater utilities?</u>			NO	YES
If No, describe method for providing wastewater treatment: _____		<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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 checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. <u>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?</u>			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: _____ no alterations will be made to the wetlands located on the eastern portion of the property, see attached document. _____ _____				

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 checked="" type="checkbox"/> Forest <input checked="" type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input 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?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources?	NO	YES
If Yes,	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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)?	NO	YES
If Yes, explain the purpose and size of the impoundment:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

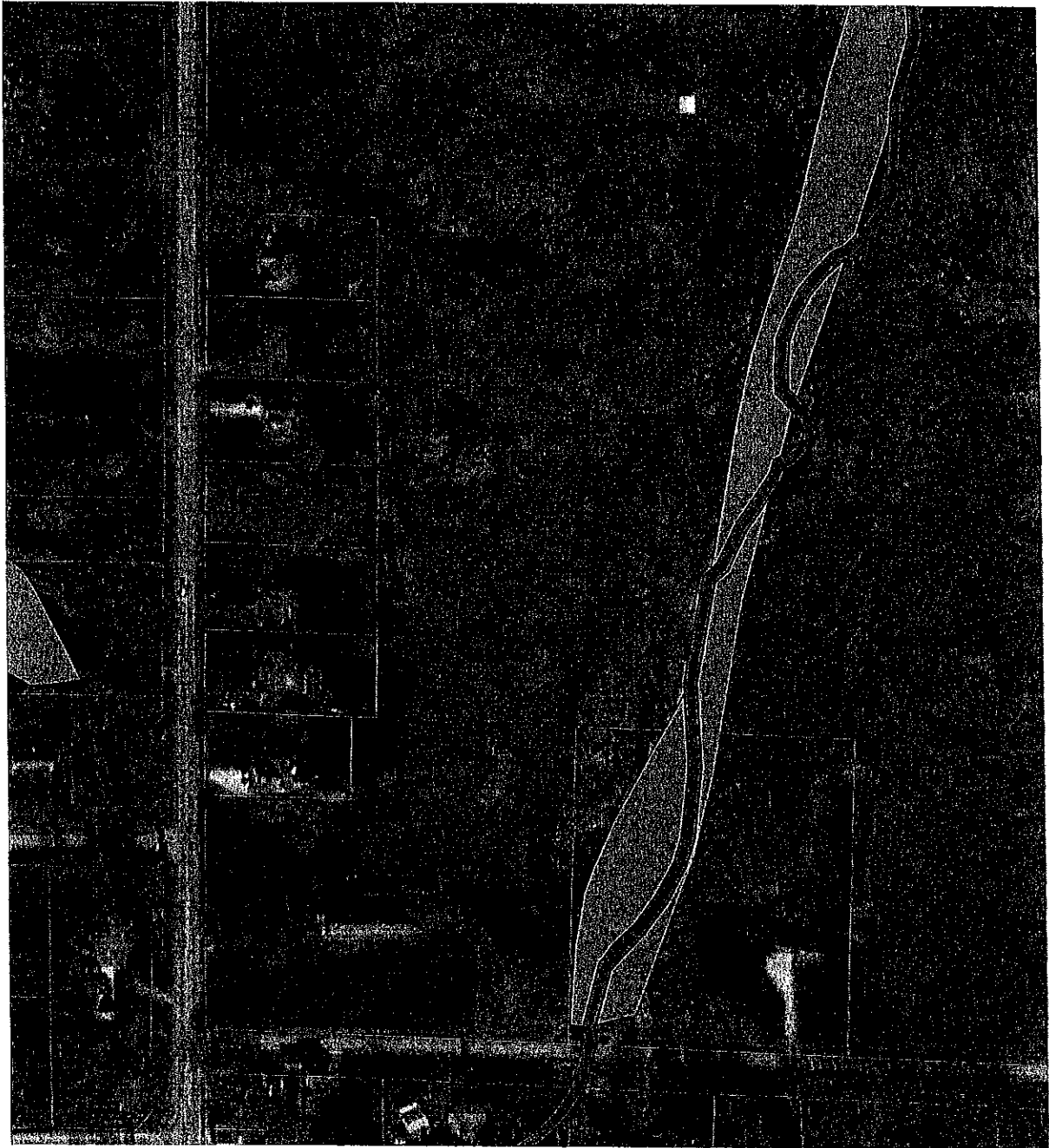
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?	NO	YES
If Yes, describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?	NO	YES
If Yes, describe:	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor/name: <u>Sammie Trent</u> Date: <u>04/09/2022</u>		
Signature: <u></u> Title: <u>Head of School</u>		

Federal Wetlands and Protected Waterway

Please note that the stream/creek running through the property is part of a protected waterway and considered federal wetlands. Attached is an image of the property from the NY DEC Environmental Resource Mapper.



Site Plan Purpose

We would like to touch base on each point of intent of a site plan as indicated in the Town of Aurora code to be sure we have addressed all items.

These items are taken from town code: 95-1 Intent

“

- A. To evaluate the intended building design in its arrangement to and its suitability to natural site conditions and the compatibility with surrounding land uses.
- B. To permit the Town of Aurora to analyze development proposals in terms of their impacts on local growth and the need for facilities and services.
- C. To protect and provide for the public health, safety and general welfare of the Town.
- D. To conform with current zoning restrictions, the Table of District Regulations^[1] and the Official Map and Master Plan, if any, now or in the future.
- E. To protect the value of land throughout the Municipality, to encourage orderly and beneficial development upon the land, and to minimize misunderstandings in the interpretation of intended land uses set forth in current zoning restrictions.^[2]
- F. To prevent the pollution of air and water, to assure the adequacy of proper drainage methods, and to safeguard the natural water table through responsible sewage removal/treatment.
- G. To provide for the preservation of open spaces through the most-efficient design and layout of buildings, including but not limited to the use of cluster development of buildings on a parcel of land.”

SMMS response to each item:

- A. As the building is pre-existing it is already part of the natural landscape of the area. Our use as a school is in direct relation to residential, agricultural and business land uses in the surrounding areas.
- B. As there is a natural gas well, and private septic there is only the need for public water and electricity, both of which are readily available at the building already. Other public services such as police force and firefighting are already rendered to SMMS at a different location, adding no additional burden for a move.
- C. Private schools, especially those with a desire to be eco-friendly, agriculturally driven and nature conscious generally increase the health and safety of the surrounding properties by contributing to positive care of the land, and other local resources. Schools have not been shown to decrease health or wellness of those around them and overall increase general welfare and safety as a highly monitored building.
- D. Zoning does permit its use as indicated in code 116-8.4.A.3
- E. Statistics from the National Association of Realtors study in 2017 actually show that a school appreciates surrounding property values.
- F. **Disturbances of land will occur with the parking lot and septic system. The septic system will be done through the erie county department of health to ensure proper placement for the safety of the use and care of the land. SMMS's activity gives off less carbon per square foot than a residential home, and substantially less than a fully functionable farm of this lands size. Creating low pollution to the local area.**
- G. **As buildings are not going up, it is a pre-existing building this is not an applicable item.**

Potential Concerns and Response

As with our previous move, change can bring apprehension and doubt. We have brought back concerns we may have heard of potential neighbors at that time in anticipation that new neighbors may have similar concerns. We have a friendly relationship with our current neighbors and they have assured us their initial concerns they had were unwarranted.

Potential Concern	Response
Traffic	<p>Davis is a heavily trafficked area with the diagonal corner from this property having a post office, Moog building and a gas station just down the way. Additional cars or bus for dropping off or picking up students would more than likely go unnoticed.</p> <p>Traffic will flow in one direction from Davis to Snyder. This will allow families to turn in either direction onto a street with less traffic before going their respective ways, leaving the exit of the property safer for everyone. The drive can also fit 41-48 cars depending on size, meaning that our families would not be backing into the road during dropoff to create a road block.</p> <p>Our classrooms have staggered drop off and pickup times, meaning that not all of our students are dropped off at once, allowing for a slow movement of traffic to and from the property and not a barrage of vehicles all at once. We currently have a much smaller driveway and do not cause any traffic issues. The noise of cars or car doors is also not noticed by neighbors, who are in closer proximity than neighbors would be on Davis road.</p>
Security	<p>We have a security system ready to install, including video surveillance of the property (not to include any neighboring property), and monitored security and fire alarm systems will be in place. Also important to note that the property will be used the majority of the year, and will have monitoring during times of inactivity.</p>
Noise Levels	<p>As Per the CDC: The noise levels generated from a group of 20-30 children running and playing outside is roughly 70-80 dB at 1 meter. This would obviously decrease while moving through a distance of 200+ ft to the abutting properties.</p> <p>For perspective these other common sounds that can be at this area at one meter are: Shotgun 160 dB Lawn Mower 80-85 dB Road Noise 75-100 dB 3 dogs barking - 95-105 dB Loud Music from Speakers for Party- 90dB Chainsaw- 109 dB</p> <p>In general our students are quite serene and respectful. We enjoy both inside and outside play and education, and can be found outside in all weather. Occasionally a game of tag may get loud, but nothing unseemly. We do not have organized sports that would create loud noises or bright lights to disturb the neighbors.</p>
Decreasing property value	<p>Statistics from the National Association of Realtors study in 2017 actually show that a school appreciates surrounding property values. Determining this concern to be invalid.</p>



FONTANESE FOLT
6395 WEST QUAKE

WS-3

5C

p: 716/662-2200 | f: 716/662-0072 | Email: pernst@rae.biz

December 23, 2021 Revised April 13, 2022

Chuck Snyder
Town of Aurora – Deputy Supervisor
575 Oakwood Avenue
East Aurora, NY 14052

RE: Architectural Proposal of Schematic Design services for renovations to the Aurora Community Pool and New Public Restroom Addition @ 690 South St.

Dear Chuck,

It has been a pleasure working with the Town of Aurora Town Board and we thank you for the opportunity to furnish this revised proposal to provide architectural services for Schematic Design of renovations to the Aurora Community Pool and New Public Restroom Addition.

The Community Pool and Park have been well established with a long history in our community. We are enthused to support you in the continued improvement and investment in this location with developing a plan to renovate and enhance the existing facilities. FFAE Architects is pleased to submit the attached Scope of Services and proposal outlining our comprehensive Architectural services, for your consideration.

Again, we appreciate your continued consideration to have us be an integral part of assisting in meeting the Town's needs, both present and future.

Sincerely,

FONTANESE FOLTS AUBRECHT ERNST ARCHITECTS, P.C.

Paul A. Ernst, R.A.
President

William A. Heidt, R.A.
Associate

Attachments

Scope of Services

Fontanese, Folts, Aubrecht, Ernst Architects, P.C. Is pleased to submit a Scope of Work for Schematic Design services for renovations to the Aurora Community Pool and New Public Restroom Addition @ 690 South Street, East Aurora, NY 14052.

I. Scope of Work:

- A. Existing Pool Building Renovations and Curb Appeal Enhancement:
 1. Measure and Draw up the existing Pool Buildings
 2. Develop Elevations and new aesthetic for the Pool entrance and front façade to improve the curb appeal.
 3. Generate a plan and notes on how to best renovate the existing Toilet Rooms.
 4. Deliverables:
 - a. Existing Plan and Elevations
 - b. Proposed Plan with notes on proposed renovation work
 - c. Proposed 3D rendered images of the Pool buildings as seen coming up the driveway from South Street

- B. Proposed Public Toilet Room Addition:
 1. Develop a concept to add two Toilet Rooms onto the Pool buildings, that would serve the general public using the park.
 - a. The Toilet Rooms to consist of at least two water closets and two lavatories.
 2. Incorporate the design of the new toilet room addition into the enhanced Pool building façade concept.
 3. Deliverables:
 - a. Proposed Plan of the new Toilet Room layouts and their integration with the existing pool buildings.
 - b. Proposed Elevations of the new addition and inclusion in the proposed 3D rendering listed above.
 - c. Proposed Section showing the integration of the addition with the existing building.

- C. Proposed Park Pavilion
 1. Develop a concept for a new picnic pavilion to serve the pool and park visitor alike.
 2. Deliverables:
 - a. Proposed Site Plan locating the Pavilion in relation to the Pool and Park
 - b. Proposed Floor Plan of the Pavilion to show size and capacity
 - c. Proposed Elevations of the Pavilion with features that relate and connect it with the enhanced pool building aesthetic.

- D. Proposed Public Toilet Room Addition – Bid Documents
 1. Document and Specify the scope of work.
 2. Deliverables:
 - a. Proposed Floor Plan, Exterior Elevations and Building Section of new Toilet Room Addition
 - b. Interior Elevations of new Toilet Rooms
 - c. Outline Specifications on Drawings with Basis of Design products called out



II. Fee Proposal and Compensation:

FFAE Architects proposes to perform the Architectural services on a hourly basis, with a not to exceed value, to be invoiced monthly. Costs and Services provided will not be exceeded without prior authorization from the Town of Aurora. Amounts invoiced are due and payable upon receipt of the invoice.

Our Fee for Architectural Services shall be as follows:

1. Existing Pool Building Renovations and Curb Appeal Enhancement: ~\$5,025 – Concepts Completed – As of 04/13/22:
 - a. Amount billed = \$2,747.50
 - b. Amount paid = \$2,747.50
 - c. Amount to be invoiced = \$972.50
2. Proposed Public Toilet Room Addition: ~\$4,750 – Design Completed – As of 04/13/22:
 - a. Amount billed = \$1,255.00
 - b. Amount paid = \$1,255.00
 - c. Amount to be invoiced = \$0.00
3. Proposed Park Pavilion: ~\$3,785 – Concept Completed – As of 04/13/22:
 - a. Amount billed = \$1,137.50
 - b. Amount paid = \$1,137.50
 - c. Amount to be invoiced = \$237.50
4. Proposed Public Toilet Room Addition Bid Documents: ~\$7,210
5. Total: \$13,560

III. Hourly Rates Schedules:

The following are the hourly rates for our assigned personnel, for any additional services requested.

Architectural:

Principal:	\$165 / Hr.
Associate:	\$130 / Hr.
Project Architect:	\$ 95 / Hr.
Technical Support:	\$ 80 / Hr.
Clerical:	\$ 66 / Hr.

IV. Service – Not Included:

The following professional services are excluded for the scope of services and Fee(s) identified above. FFAE Architects, P.C is prepared to provide these services, at your request. Associated Scope of Work(s) and Fee(s) will be presented in an additional services request memo, for your review and authorization prior to commencing with the work:

1. Renovation or Demolition of any existing buildings (including but not limited to existing conditions survey, town board site plan review, Contract Documents, etc.)
2. Surveying Work – Town of Aurora to provide a survey locating the water and sanitary lines.
3. Construction Cost Estimating
4. Testing, Core Samples, Destructive Testing, Laboratory Analysis.
5. Environmental Hazardous Materials, Testing, Sampling, Design and Contract Documents for all Asbestos, PCB's, Lead, Etc.
6. Securing of Building Permits, Fees, Applications, with Municipalities/Agencies, Etc.
7. LEED design and documentation
8. Traffic Studies
9. Bidding and Negotiations
10. Printing, Reproduction and Distribution – will be billed as reimbursable expense.
11. Special Inspections
12. Renderings & 3D Modeling



FONTANESE FOLTS AUBRECHT ERNST, ARCHITECTS
6395 WEST QUAKER STREET, ORCHARD PARK, NY 14127

p: 716/662-2200 | f: 716/662-0072 | Email: pernst@ffae.biz


V. Acceptance:

If the above listed Scope of Services and associated Fee(s) are acceptable, please sign below and return to FFAE Architects, P.C. If you have any questions, please do not hesitate to call.

Very truly yours,


**FONTANESE FOLTS AUBRECHT ERNST
ARCHITECTS, P.C.**

ACCEPTED BY:
Town of Aurora



Paul A. Ernst, R.A.
President

Chuck Snyder
Deputy Supervisor



William A. Heidt, R.A.
Associate

WS-4

TOWN OF AURORA

575 OAKWOOD AVENUE, EAST AURORA, NY 14052

BUILDING DEPARTMENT

(716) 652-7591

FAX (716) 652-3507

MEMO

TO: Jim Bach & Town Board Members
FROM: Don Owens, Chairman, Planning Board
DATE: April 19, 2022

=====

The following actions were taken at the April 18, 2022 meeting of the Planning & Conservation Board:

Doug Crow moved to recommend the Town Board approve the updates to Town Code Chapter 116, Chapter 65 and the new West Falls Overlay and Design Standards, as proposed with the following suggestions:

1. 116-17 D: change garage door height maximum to 10'
2. 116-60 D: change reference to "I Industrial" to C3
3. West Falls Overlay should be numbered as 116-8.10 (116-8.6 is general commercial)
4. 116-8.6 B and West Falls Overlay (116-8.10 B) should both reference "Regional Comprehensive Plan of 2004" for consistency

Seconded by Laurie Kutina

Upon a vote being taken:

ayes – seven

noes – none

Motion Carried.

5-E



BUDGET TRANSFER REQUEST FORM

Please note the following guidelines:

- A shortage of less than \$750 per line can be satisfied with this form requesting a budget transfer(s) between lines that are within the responsibility of a single Department Head. These will require the approval of the Supervisor.
- A shortage of \$750 or more per line can be satisfied with this form requesting a budget transfer(s) between lines that are within the responsibility of a single Department Head. These will require the approval of the Town Board.
- A shortage of any amount can be satisfied with this form requesting a budget transfer(s) between lines which fall under the responsibility of different Department Heads. These will require the approval of the Town Board.
- Budget transfers must be made PRIOR to the expenditure.
- All budget transfers must be submitted to the Supervisor's Office using this form.

DEPARTMENT HEAD NAME (printed): KATHLEEN MORFAT
 SIGNATURE: Kathleen Morfat DATE: 4/12/11

1. \$ <u>1,000.00</u>	FROM: <u>WH 599</u> <small>ACCT NO.</small>	<u>FUND BALANCE</u> <small>ACCT TITLE</small>	<u>30,750.58</u> <small>CURRENT BALANCE</small>
	TO: <u>WH 9710.6</u> <small>ACCT NO.</small>	<u>BOND PRINCIPAL</u> <small>ACCT TITLE</small>	<u>-1,000.00</u> <small>CURRENT BALANCE</small>
	REASON: <u>To correct Overdrawn Appropriation Account</u>		
2. \$ _____	FROM: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	TO: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	REASON: _____		
3. \$ _____	FROM: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	TO: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	REASON: _____		
4. \$ _____	FROM: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	TO: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	REASON: _____		
5. \$ _____	FROM: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	TO: _____ <small>ACCT NO.</small>	_____ <small>ACCT TITLE</small>	_____ <small>CURRENT BALANCE</small>
	REASON: _____		

APPROVALS:
 SUPERVISOR SIGNATURE : _____
 TOWN BOARD MEETING APPROVAL DATE: _____

Date: _____
 Action #: _____

SUPERVISOR
JAMES J. BACH
(716) 652-7590
jbach@townofaurora.com



M

5-F

(716) 652-5200
townclerk@townofaurora.com

TOWN OF AURORA

575 Oakwood Avenue, East Aurora, NY 14052

www.townofaurora.com

MEMO

TO: Aurora Town Board

FROM: Kathleen Moffat

RE: Budget Amendment: EA Baseball & Softball, Inc. Annual Payment

DATE: 4/25/22

I respectfully request approval to amend the budget to record the \$1,000 annual payment received from the East Aurora Baseball & Softball Inc. as per the agreement approved at the 4/11/22 town board meeting. The amendment is as follows:

- Increase revenue line A 2705.2 Donations EA Baseball Supplies by \$1,000
- Increase appropriation line A 7110.444 Parks Landscaping & Supplies by \$1,000

56

SUPERVISOR
James J. Bach
(716) 652-7590
jbach@townofaurora.com



TOWN CLERK
Martha L. Libroc
(716) 652-328
townclerk@townofaurora.com

TOWN OF AURORA
Aurora Municipal Center
575 Oakwood Avenue, East Aurora, NY 14052
www.townofaurora.com
April 20, 2022

To: Town Board
Re: Request to hire seasonal help

Please approve hiring Steven Kaminski Jr. as a seasonal employee. He resides at 174 West Falls Rd., West Falls, NY 14170. His hourly rate will be \$15/ hour. He will be starting on or after May 16, 2022.
Thank You,
Elizabeth Deveso
Highway Secretary

5H



TOWN OF AURORA
Aurora Municipal Center
575 Oakwood Ave, East Aurora, NY 14052
www.townofaurora.com

April 20, 2022

To: The Town Board

Re: Ten-hour workday

Please approve a ten-hour, four-day work week for highway employees from May 2, 2022 to September 2, 2022

Thank You,

Elizabeth Deveso
Highway Secretary

**Amendment to 2022 284 Agreement
AGREEMENT FOR THE EXPENDITURE
OF HIGHWAY MONEYS
(DA Fund)**

SI-1

-2

AGREEMENT between the Town Superintendent of the Town of Aurora, Erie County, New York, and the undersigned members of the Town Board.

Pursuant to the provisions of Section 284 of the Highway Law, we agree that moneys levied and collected in the Town for the repair and improvement of highways, and received from the State for State Aid for the repair and improvement of highways, shall be expended as follows:

1. GENERAL REPAIRS. The sum of \$ 0 shall be set aside to be expended for primary work and general repairs upon _____ miles of town highways, including sluices, culverts and bridges having a span of less than five feet and boardwalks or the renewals thereof.

2. PERMANENT IMPROVEMENTS. The following sums shall be set aside to be expended for the permanent improvement of Town highways:

- (a) On the road commencing at E. Fillmore Rd. and leading to Girard Ave., a distance of less than .10 miles, there shall be expended not over the sum of \$863,771
- | | |
|----------------------------|--|
| Type <u>culvert repair</u> | Width of traveled surface <u>20 feet</u> |
| Thickness <u>8 inches</u> | Subbase <u>2 feet</u> |

For: Demolition, removal and reconstruction of Church Street Bridge in the Village of East Aurora.

Executed in duplicate this _____ day of _____, 20____

Supervisor

Councilman

Councilman

Councilman

Councilman

Councilman

Councilman

Councilman

Town Superintendent

NOTE: This Agreement should be signed in duplicate by a majority of the members of the Town Board and by the Town Superintendent. One copy must be filed in the Town Clerk's office and one in the County Superintendent's office. *COPIES DO NOT HAVE TO BE FILED IN ALBANY.*

2022 Pay Rates

As of 1/1/2022

Seasonal Employees

Assuming NYS minimum Wage \$13.20 per hour (from \$12.50 2021)

Position/Year	1	2	3	4	5	6
Recreation Attendants, Sports, Program Assistants, Junior (HS)	\$ 13.30	\$ 13.55	\$ 13.80	\$ 14.05	\$ 14.30	\$ 14.55
Day Camp (HS), Tennis (HS) Senior (Other)	\$ 13.40	\$ 13.65	\$ 13.90	\$ 14.15	\$ 14.40	\$ 14.65
STAR, Theater, Best of Broadway	\$ 13.40	\$ 13.65	\$ 13.90	\$ 14.15	\$ 14.40	\$ 14.65
Lifeguards	\$ 13.60	\$ 13.85	\$ 14.10	\$ 14.35	\$ 14.60	\$ 14.85
Certified Water Safety Instructors (Only when teaching)	\$ 14.60	\$ 14.85	\$ 15.10	\$ 15.35	\$ 15.60	\$ 15.85
Day Camp Counselors (College), Excl. Little (College), STAR (College), Track (College), Tennis (College)	\$ 13.80	\$ 14.05	\$ 14.30	\$ 14.55	\$ 14.80	\$ 15.05
Head Lifeguard, Adult Supervisors, Head Tennis Coach	\$ 14.85	\$ 15.10	\$ 15.35	\$ 15.60	\$ 15.85	\$ 16.10
Swim Lesson Coordinator, Facility Manager	\$ 15.60	\$ 15.85	\$ 16.10	\$ 16.35	\$ 16.60	\$ 16.85
Day Camp Program Coordinator	\$ 14.85	\$ 15.10	\$ 15.35	\$ 15.60	\$ 15.85	\$ 16.10
Exclusively Little Teacher	\$ 14.60	\$ 14.85	\$ 15.10	\$ 15.35	\$ 15.60	\$ 15.85

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Town of Aurora
Department of Parks & Recreation

575 Oakwood Avenue
East Aurora, New York 14052

866
i646
5K
recreation.com
www.aurorarec.com

To: Town Board
From: Chris Musshafen
Date: 4/20/2022
Re: Summer employees

Approval is requested to hire seasonal pool and recreation staff as presented. The rates are based on the board approved 2022 rate chart attached. In 2022 the minimum wage increased from \$12.50 to \$13.20 per hour. Program costs were raised to offset the rate increase.

2022 Personnel Recommendations – Pool/EAST

Community Pool		Address	Position	Year	Summer 2021	New Rate
Calvin	Roberts	525 South St.	FM	7/2	\$14.80	\$15.85
Jessie	Faulker	4154 N. Buffalo St. OP ▲	SLC	1	N/A	\$15.60
Mary	Brinker	201 Glenridge Rd	LG/HG	5/1	\$13.55	\$14.60/\$14.85
Parker	Brod	1465 Boies Rd	LG/HG	5/2	\$13.55/\$14.05	\$14.60/\$15.10
Trevor	Egloff	986 Center St	LG/HG	5/2	\$13.55/\$14.05	\$14.60/\$15.10
Charles	Cich	428 Fillmore	LG/WSI/HG	4/3/1	\$13.30/\$14.05	\$14.35/\$15.10/\$14.85
Will	Herr	1754 Grover Rd	LG/WSI/HG	4/3/1	\$13.30/\$14.05	\$14.35/\$15.10/\$14.85
Grace	Kwitek	1289 Center St	LG/WSI	4/3	\$13.30/\$14.05	\$14.35/\$15.10
Charles	Wangelin	23 Glenridge	LG/WSI/HG	4/3/1	\$13.30/\$14.05	\$14.35/\$15.10/\$14.85
Jessica	Drozdowski	758 Jewett Holmwood Rd	LG/WSI	3/2	\$13.05	\$14.10/\$14.85
Joshua	Trometer	Apple Blossom Rd ▲	LG/WSI	3/2	\$13.05	\$14.10/\$14.85
Alex	Herr	1754 Grover Rd	LG	2	\$12.80	\$13.85
Katie	Schulz	163 South Grove	LG	2	\$12.80	\$13.85
Weston	Valentine	365 South St	LG	2	\$12.80	\$13.85
Sam	Wangelin	23 Glenridge	LG	2	\$12.80	\$13.85
Lillian	Mruzik	218 Olean St	LG	2	\$12.80	\$13.85
Edward	Randall	1100 Center St	LG	2	\$12.80	\$13.85
Gregory	Wilber	100 Byeberry Cr	LG	1	N/A	\$13.60

FM Facility Manager

SLC Swim Lesson Coordinator

LG Lifeguard

HG Head Guard- will be paid head guard rate only while working as a head guard

WSI Water Safety Instructor- will be paid WSI rate only while working as a WSI

▲ NON-RESIDENT

TOWN OF AURORA DEPARTMENT OF PARKS & RECREATION

2022 PERSONNEL RECOMMENDATIONS - DAYCAMP/SPORTS/SPECIAL PROGRAMS

RECREATION ATTENDANTS	ADDRESS	TITLE	# Years	2021	2022
Oliver Biggs	780 Warren Drive, EA	Camp Program Dir	6th /2nd	\$14.05	\$15.10
Dylan Fee	54 Castle Hill Rd, EA	Arts & Crafts	3rd Yr	\$12.85	\$14.30
Ellie George	201 South Grove St, EA	Camp Supervisor	5th/3rd	\$12.95	\$14.30
Nick Montgomery	43 First Avenue, Frank	Camp Supervisor	6th yr	\$13.70	\$15.05
Jordyn Mucklewee	267 Greenwood Ct, EA	Camp Supervisor	3rd yr	\$12.95	\$14.30
Alissa Dixon	148 Blake Hill Rd, EA	Camp Supervisor	4th/1st	\$13.80	\$14.55
Madeline Wasner	617 Crescent Ave, EA	Track Super/Badmn	4th yr	\$13.20	\$14.55
Colin Cassidy	357 South Park Pl., EA	Track Super/Badmn	1st yr	New	\$13.80
Abbey Siener	4 Reed Hill Drive, EA	Ex.Little/office/sub	3rd/1st	\$12.75	\$14.60
Paige Siener	4 Reed Hill Drive, EA	Ex.Little/office/sub	3rd/1st	\$12.75	\$14.60
Gabriel D'Angelo	7976 Ellicott Rd, W.Falls	sports/lax	3rd yr	\$12.85	\$13.80
Kathy Aures	533 Snyder Rd, EA	Program Assistant	17thyr	\$14.15*	\$14.90
Michelle Bedard	1414 Emery Rd, EA	Theater Supervisor	21styr	\$14.65*	\$14.90
Amelia Sexton	301 Porterville Rd, EA	Theater/sports/sub	1st yr	New	\$13.40
Jada Tresmond	160 Blake Hill Rd, EA	Sports/sub	1st yr	New	\$13.30
Celia Koselney	265 Sycamore St, EA	Volleyball/sub	1st yr	New	\$13.30
James Tresmond	160 Blake Hill Rd, EA	Sports/sub	1st yr	New	\$13.30
Malena Mercurio	129 Center St, EA	Theater/sub	1st yr	New	\$13.80
Charlie Moffat	677 Oakwood St, EA	Sub	2nd yr	\$12.50	\$13.55

Notes: Nick Montgomery is a non-resident, he lived in town when he was first hired and has worked for the day camp program the last 5 years.

Gabriel D'Angelo is a non-resident, he worked at our sports program in 2020 and 2021

*Current pay rate