PENFIELD TOWN BOARD AGENDA
Wednesday, December 17, 2014, 7:30 PM
Supervisor R. Anthony LaFountain, presiding

I Call to Order - Pledge of Allegiance - Roll Call

II Public Hearing #1 – To Consider the Establishment of Extension No. 57 to the Penfield Consolidated Sanitary Sewer – Waybridge Court Subdivision, 1469 Jackson Road
Public Hearing #2 – To Consider the Establishment of a Special Drainage Improvement District - Waybridge Court Subdivision

III Communications and Announcements

IV Public Participation

V Additions and Deletions to Agenda

VI Approval of Minutes – November 19, 2014

VII Petitions

VIII Resolutions by Function

Law and Finance
14T-200 2014 Budget Amendment – Highway Work at Monroe Community College
14T-201 2014 Budget Amendment – Highway Work at Monroe Community College
14T-202 Authorization for Supervisor to sign an Agreement with Immediate Mailing Services, Inc. (IMS) for Presort First Class Mail Services
14T-203 Authorizing the Town Supervisor to Execute and File Necessary Documents Releasing a Portion of a Sanitary Sewer Easement at 1900 Empire Boulevard
14T-204 Authorizing the Town Supervisor to Execute and File Necessary Documents Releasing a Storm Sewer Easement at 1994-B Empire Boulevard

TOWN OF PENFIELD
3100 Atlantic Avenue, Penfield, NY 14526-9798
Authorization for GASB 45 Professional Services

Adopting Local Law # 1 of 2014 – Establishing a Severability Clause; Confirming and Clarifying that any Uses Not Expressly Permitted are Prohibited; Articulating Certain Explicitly Prohibited Uses; Adding Certain New Definitions, and Changing Certain Existing Definitions; and Modifying, Clarifying, and Adding to the Provisions Regarding Variances (Ban on Hydrofracking)

Setting a Public Hearing to Consider Adoption of the Local Waterfront Revitalization Program Update

Setting a Public Hearing to Consider the Establishment of the Ashlyn Rise Subdivision Special Improvement District

Authorizing Supervisor to Sign Agreement to Accept Donation of a Portion of Land at 1454 Fairport Nine Mile Pt. Rd.

Authorization for Supervisor to sign an Intermunicipal Sewer Use Agreement with the Town of Irondequoit and Out of District User Agreements with certain Irondequoit Property Owners

Advertising for Bids for Department of Public Works Weekly Turf Mowing

Dump Truck Purchase

Authorization to Sign a Beaver Trapping Agreement

Public Safety - None

Authorization for Supervisor to Sign Recreation Contracts

Old Business

New Business

Public Participation

Adjournment
PENFIELD TOWN BOARD RESOLUTION NO._14T-214____ DATE 12-17-14

BY   LINDA KOHL  COMMUNITY SERVICES COMMITTEE

NAME     AUTHORIZATION FOR SUPERVISOR TO SIGN RECREATION CONTRACTS

BE IT RESOLVED, that the Town Board authorizes the Town Supervisor to sign the following recreation contracts:

Mike Ihrig, 2016 Penfield Road Penfield NY, 14526, Performance for Holiday Event and Pancake Dinner, 12/05/14, for fee of $250.00. Voucher to be submitted on 12/17/14.


Alyssa Bileschi, 7 Rutherfield Lane, Rochester, NY 14625, Jazzy Dance Instructor, 12/29/14-12/31/14, for a fee of $18.50 per day: Voucher to be submitted 1/9/15.

Amanda Bileschi, 7 Rutherfield Lane, Rochester, NY 14625, Jazzy Dance Instructor, 12/29/14-12/31/14, for a fee of $18.50 per day: Voucher to be submitted 1/9/15.


Pisces School of Dive, Inc., 783 Fairport Road, East Rochester, 14445, Discover Scuba Diving, 3/21/15 for a fee of 70% of the total revenue less expenses. Voucher to be submitted 3/18/15.

Sea Dragons Swim Club, P.O. Box 112, Penfield, NY 14526, Competitive Swimming Intro, 4/7/15-4/30/15, for a fee of 70% of the total program revenue. Voucher to be submitted 5/6/15.


Rose Santos, 25 Saybrooke Drive, Penfield, NY 14526, Learn Spanish, 1/26/15–6/1/15, for a fee of 70% of the total program revenue. Vouchers to be submitted 2/4, 3/18, 4/15 and 5/20/15.
Gymnastics Training Center, 2051 Fairport Nine Mile Point Road, Penfield, NY 14526, Gymnastics Camp, Gymnastics – Beginner and Gymnastics for Tiny Tumblers – 2/2/15–5/18/15 for a fee of 75% of the total program revenue. Vouchers to be submitted 2/18, 3/18, 4/1 and 5/20/15.

True North Equestrian Center, 3476 Atlantic Avenue, Penfield NY 14526, Horseback Riding Intro, 4/20/15–5/20/15, for a fee of 70% of the total program revenue. Voucher to be submitted 5/20/15.

Eagle Vale Golf Club, 4344 Nine Mile Point Road, Fairport NY 14450, Junior Golf, Golf – On Course Lessons, and Beginner – Intro to Golf, 4/25/15-5/21/15 for a fee of 70% of the total program revenue. Voucher to be submitted 5/20/15.

Maureen Ward, 46 Reynolds Road, Webster NY 14580, Great Handmade Cards, 3/24/15–5/19/15 for a fee of 70% of the total program revenue. Vouchers to be submitted 4/1 and 5/20/15.

Martha Sweeney, 74 Redwood Drive, Penfield, NY 14526, Painting and Drawing, 1/19/15–5/18/15, for a fee of 70% of the total program revenue. Vouchers to be submitted 2/4, 3/4, 4/1 and 5/20/15.


Kathryn Boone, KB Dog Training, 105 Highwood Road, Rochester NY 14609, Dog Obedience Classes – Beginner and Puppy Kindergarten, 1/17/15–6/13/15 for a fee of 70% of the total program revenue less expenses. Vouchers to be submitted 1/21, 2/18, 5/6 and 6/17/15.

Rees & Company, Inc., 147 Morgan Road, Scottsville, NY 14546, Remodeling Your Kitchen: Getting Started, 1/29/15 and 4/9/15 for a fee of 70% of the total program revenue. Vouchers to be submitted 2/4 and 4/15/15.

Alana Cahoon, 15 Summit Drive, Rochester NY 14620, Getting the Body I Want, 1/21/15–5/27/15, for a fee of 70% of the total program revenue. Vouchers to be submitted 2/4, 3/18, 4/15 and 5/20/15.


Rhonda Flint, 560 Helendale Road, Rochester NY 14609, Pilates Mat Class, Vinyasa Yoga and Yoga for Beginners, 1/19/15 – 6/9/15 for a fee of 75% of the total program revenue per class for 10 or less registrants or a fee of 70% of the total program revenue per class for over 10 registrants. Vouchers to be submitted 2/4, 3/18, 4/15, and 6/3/15.
Sandra Sanzotta, 911 Lothario Circle, Webster NY 14580, Saturday Low Impact Aerobics, 1/10/15 – 6/6/15 for a fee of 70% of the total program revenue. Vouchers to be submitted 1/21, 3/4, 4/15, and 6/3/15.


Cathy Downs, 2120 Clover St., Rochester, NY 14618, Sporty Sprouts, 01/24/15 – 06/01/15, for a fee of 70% of program revenue per session. Vouchers to be submitted on 03/04/15, 04/15/15, and 06/03/15.

Kelly Bilow, 489 Spring Meadow Lane, Webster, NY 14580, Sports ABCs for Tots, 02/21/15 – 03/21/15, for a fee of 70% of program revenue. Voucher to be submitted 03/18/15.

Bushido Kai Judo Club, c/o Heiko Rommelman, 240 Curtice Park, Webster, New York 14580, to supervise and provide instruction for the Bushido Kai Judo programs for youth 01/17/15-03/28/15 & 04/11/15-06/20/15 and adults 01/12/15-03/25/15 & 04/06/15-06/17/15 for the fee of 70% of program revenues. Voucher to be submitted on 03/18/15 & 06/17/15.

Sports Officials of the Rochester Area (SORA), c/o Gary Godden, 3 Edmar Ct., Rochester, NY 14467, to provide officials for the Adult Basketball League, 1/18/15-4/12/15, for the fee of $25.50 per official per game plus league registration. Vouchers to be submitted each month.

Dave Coin, 280 Liberty Ave, Rochester, NY 14622, Director for Youth Instructional Sports program, 01/17/15-03/07/15 for the fee of $35.00 per session. Voucher to be submitted 03/04/15.

Dave Coin, 280 Liberty Ave, Rochester, NY 14622, Scorekeeper for adult basketball league, 01/18/15-04/12/15 for the fee of $14.00 per game. Voucher to be submitted 04/01/15.

Mike Fusare, 6 Chamberlain Road, Honeoye Falls, NY 14472, Youth Volleyball, 0/31/15-02/28/15 and 03/14/15-04/04/15, for a fee of 75% of the total program revenue after all other program expenses are deducted. Voucher to be submitted 04/01/15.

Scott Kropman, 1596 Qualtrough Rd. Rochester, NY 14625 Co-Director of Wrestling Program, 01/07/15 – 02/17/15, for the fee of 70% of program revenues after all expenses have been deducted. Voucher to be submitted 02/04/15.
Moved: ________________________
Seconded: ________________________
Vote:
   Kohl  __________________
   LaFountain ________________
   Metzler  _________________
   Moore  __________________
   Quinn  _________________
PENFIELD TOWN BOARD RESOLUTION NO._14T-213_ DATE: December 17, 2014

BY: Councilwoman Paula Metzler ____________ _______________ Public Works COMMITTEE

NAME: Authorization to Sign a Beaver Trapping Agreement

WHEREAS, from time to time, positive drainage is affected by Dams built by Beavers that cause flooding and property damage and,

WHEREAS, the Town of Penfield desires to eliminate flooding and property damage by removal said Dams and Beavers from drainage ways and,

WHEREAS, Donald C. Newcomb, 532 Kirk Road Rochester, NY 14612 is licensed by the NYS DEC to handle Wildlife Nuisances and

Now, Therefore Be It Resolved, That the Town Supervisor, be and hereby is authorized to execute a one year agreement acceptable to the Town Attorney beginning January 1, 2015 through December 31, 2015 with Donald C. Newcomb to trap and remove Beavers as directed by the Penfield Department of Public Works and,

Now, Therefore Be It Further Resolved, that Donald C. Newcomb will be responsible to obtain any permits required from the NYS DEC for the trapping and removal of said Beavers and supply a copy of his NYS DEC license and copy of any required permits to the Town of Penfield with an invoice for services rendered.

Moved: _________________
Seconded: _________________

Vote: Kohl ________________
LaFountain ________________
Metzler ________________
Moore ________________
Quinn ________________
The Director of Public Works desires to purchase, two 2016 Dump Trucks, one MACK GU712 six wheeler for a contract price of approximately $220,244.75 and one MACK GU713 ten wheeler for a contract price of approximately $238,794.21 from contract #7823, Onondaga County Heavy Truck Class 8 Statewide Contract and $6,000 for troubleshooting software, troubleshooting equipment and,

WHEREAS, the installation of dump bodies, Sanders, Sander controls and plow equipment are included in the price of the trucks and will be the responsibility of TANCO Equipment Company to install per specifications and

WHEREAS, the funds for said purchase are included in the 2015 adopted Highway Equipment Reserve Fund for a total price of approximately $465,038.96 and,

Now, Therefore Be It Resolved, The Director of Public Works be and hereby is authorized to purchase said vehicles and attachments.

Moved: ____________________
Seconded: __________________________

Vote: Kohl ______________
      LaFountain ______________
      Metzler ________________
      Moore _________________
      Quinn ________________
PENFIELD TOWN BOARD RESOLUTION NO._14T-211_____ DATE: December 17, 2014

BY:___ Councilwoman Paula Metzler ___________ ___ Public Works COMMITTEE

NAME: Advertising for Bids for Department of Public Works Weekly Turf Mowing

BE IT RESOLVED, that the Director of Public Works, be and hereby is authorized to advertise in the manner prescribed by law for sealed proposals to furnish the Town of Penfield Department of Public Works the following:

“Weekly Turf Mowing” in areas designated within the Town of Penfield per Town Maps and Mowing Specification” and,

BE IT FURTHER RESOLVED, that the Weekly Turf Mowing covered by such proposals shall be in accordance with specifications prepared by the Director of Public Works. Sealed proposals are to be received in the office of the Town Clerk until January 14, 2015 at 11:00am Local time and there and then are to be opened by the Town Clerk.

Moved: _________________
Seconded: _________________

Vote: Kohl _______________
LaFountain _______________
Metzler _______________
Moore _______________
Quinn _______________
Town of Penfield
Turf Mowing Request For Bid Information

All Sealed Bids must be submitted to:
Penfield Town Clerk
3100 Atlantic Avenue
Penfield, New York 14526
No Later Than 11:00 AM on January 14th 2015
1. **SCOPE (Turf Mowing)**

1.1 It is the intention of the Town of Penfield to enter into contracts with competent and responsive contractors for the mowing of the Town of Penfield Fine Turf areas in the manner described herein.

1.2 Contractors proposing their services under this contract must supply: Well-maintained Mowing equipment in good operating conditions that meets the equipment specification, plus a skilled operator for each piece of equipment. All equipment intended for use in mowing contracts for the Town of Penfield will be subject to passing an inspection in the month of February 2015. **All equipment and operators shall be owned and employed by the contractor placing the bid. Hiring of subcontractors will not be allowed.**

1.3 Overall, the mowing service can be described as follows:

1.3.1 The contractor will be paid the amount bid for each type of mowing, upon satisfactory completion of the route. To be considered completed all turf areas shown on the maps must be mowed to the satisfaction of the Town of Penfield Mowing Representative.

1.3.2 The specific areas for each type of mowing are shown in Appendix “A” attached to these specifications. The Town expects the contractor to follow the Mowing Route site by site as given for each type of mowing. The Town reserves the right to increase or decrease the size of the turf areas as shown on each map by up to five (5%) percent while still paying the price bid per area.

1.3.3 The Town reserves the right to treat each mowing site independently and to order service on one or more without necessarily mowing all sites at any given time.

2. **TERM OF CONTRACT**

2.1 The term of the contract will be for one season, commencing on the date of the award and expiring on Nov 15, 2015 with the option to extend for up to two (2) additional seasons, starting on or about April 1 of each season and ending on Nov 15th of the extension period.

2.2 If a contract is extended the prices for each different mowing route shall be adjusted annually per the consumer price index (CPI) and will be established as of the date of the contract extension. The Town will calculate the adjustment and notify the contractor at the time of contract extension.

2.3 The Town reserves the right to extend the contract (1) additional season (not to exceed a total of three (3) seasons past the initial contract), for any route.
3. METHOD OF AWARD

3.1 The Town will award the work to the contractor with the lowest bid for each type of mowing providing that the contractor meets the equipment specifications.

3.2 The Town will calculate the actual lowest bid per pass based on the data supplied by each bidder.

3.3 The Town reserves the right to reject any individual bid or bids.

4. REJECTION OF PROPOSALS AND LIMIT OF AWARDS

4.1 Because the quality of mowing services directly impacts the appearance of, the Town of Penfield and the bidder acknowledge the importance of obtaining quality service under the terms of this contract. Therefore, the Town may reject any proposal for the following reasons:

4.1.1 Equipment that does not comply with the specifications.
4.1.2 Equipment that may pose a hazard due to the structural integrity.
4.1.3 Financial instability of the contractor or principals of the company
4.1.4 Contractor is in violation of any Federal, State or local law, code, etc
4.1.5 By submitting a bid, the bidder accepts the responsibility for proving the ability to meet the contract requirements.

5. DISQUALIFICATION FROM REBID

A bidder who fails to make submissions as required by this bid document will not be eligible to bid on this or any other bid offering for the current season.

6. RESPONSIBILITIES OF THE CONTRACTOR

6.1 To fulfill the requirements of this contract, the contractor must provide equipment and operators as specified herein to properly mow the various turf areas within the Town upon request. To help insure that a contractor can carry out this responsibility, the Town sets forth the following specific responsibilities which the contractor accepts as conditions of this contract. The list provided below is not intended to be all-inclusive of the terms required to perform this contract properly, but to emphasize essential requirements.

6.2 Responsibilities During the Bid/Award Process
6.2.1 Become completely familiar with the bid documents.
6.2.2 Submit a properly completed bid, which includes the telephone numbers to be used during the contract season
6.2.3 Submit with the Proposal, bid security of $500 for each Mowing Route, which will be converted to a performance security upon contract award. The security can be in the form of certified or bank check, or irrevocable letter of credit. If a letter of credit is used, the language must indicate that it is to be used as bid security which then converts to performance security upon contract award, and is valid for the term of the contract. Personal checks or uncertified checks will result in rejection of the bid.

6.2.4 Prior to award, submission of evidence satisfactory to the Director of the DPW that the contractor can fulfill the requirements of this contract for turf mowing. Such evidence may include but may be not limited to:
A. The size and condition of the contractor’s facilities, including all relevant equipment which will be used on the bids.
B. Satisfactory completion of contracts similar in size and nature.
C. Satisfactory performance must, upon request of the Town, be confirmed by at least three (3) references.
D. Any documentation requested by the Town must be submitted within three (3) days of request or the Town may reject the bid.

6.3 Responsibilities For Vehicle and Equipment Inspections

6.3.1 The contractor accepts full responsibility to provide all equipment needed to complete all work awarded and to have the equipment available to be inspected by the Director of the DPW of the Town of Penfield.

6.3.2 The contractor must supply the items listed below to the Town of Penfield Representative.

6.3.3 A Certificate of Insurance showing Worker’s Compensation Insurance, Disability Insurance, Contractor’s General Liability Insurance, and Motor Vehicle Insurance for each vehicle in the amounts stated in Section 15 of this contract.

6.4 RESPONSIBILITIES DURING A MOWING TRIP
6.4.1 Arrive with the equipment in excellent condition, prepared to work.

6.4.2 Mow in the designated sequence as shown in the sequence listing and on the route map. Failure to mow in the designated sequence resulting in the inability of the Town Representative to easily find the contractor’s equipment may cause the Town to presume that the run was not started.

6.4.3 If for any reason an area cannot be mowed, the contractor will notify the Town Representative during the mowing run. On occasion when wet conditions
occur the contractor when mowing athletic fields may be required to use smaller equipment such as walk behinds to mow excessively wet areas.

6.4.4 Meet the Town Representative and receive sign-off for areas completed prior to leaving the route.

6.4.5 If defects in mowing are discovered following sign-off, the contractor may be called back to correct the defects.

6.4.6 A route will not be satisfactorily completed unless it meets the standards set forth in Section 5 Scope of Work, as witnessed and acknowledged by the Town Mowing Representative at the final sign-off for the mowing run. If there are portions of the route which were not satisfactorily completed the contractor must correct the problems upon notification by Town Mowing Representative.

6.5 RESPONSIBILITIES FOR DAMAGES

6.5.1 The contractor is liable for damages done to sod, shrubbery, trees, or other Town owned property which they may have caused while mowing under this contract.

6.5.2 The contractor must repair all damage for which they are liable as determined by the Director of the DPW.

6.5.3 If repairs are not completed satisfactorily the Town will have the right to cause repairs to be made and proceed against the contractor’s performance security to recover its costs, and otherwise retain amounts from the last trip owed the contractor to cover the Town's costs.

7. RIGHTS OF THE TOWN

7.1 The Town of Penfield considers its Turf Mowing operations to be of high importance in providing for the safety, well-being and appearance of all Town residents. Therefore, the Town reserves the right to immediately terminate any contract in whole or in part for the following violations upon the recommendation of the Director of the DPW:

7.1.1 Contractor has directly or indirectly placed anyone in jeopardy through illegal, negligent, or insolent actions, behavior, or language. The contractor shall be held responsible for the actions of his employees while performing the services described herein.

7.1.2 Contractor has abandoned the work to be performed under this contract.

7.1.3 Contractor has assigned this contract to others without Town consent.
7.1.4 Contractor has unnecessarily or unreasonably delayed any of the work to be performed under this contract.
7.1.5 Contractor has failed to furnish enough properly skilled equipment operators or enough equipment to perform the work.
7.1.6 Contractor has disregarded the instructions of the Director of the DPW or his authorized representative.
7.1.7 Contractor has failed to perform properly on the route as determined by the performance rating or other performance measures.
7.1.8 Contractor has failed to repair damages properly in a timely manner.
7.1.9 Contractor has otherwise been guilty of any substantial violation of any provision of the contract.
7.2 Whenever possible, the Town will give written notice of impending termination. Contract termination may result in substantial penalties, forfeiture of performance bonds, limitation of routes in future contracts, or default proceedings.
7.3 All services performed under this contract are at the direction and supervision of the Director of the DPW and his/her authorized representatives. The contractor shall only be paid for services authorized by the Director and performed in a manner satisfactory to the Director.
7.4 If the contractor’s equipment fails, at any time, to meet the approval of the Director of the DPW, the Director will have the right to order such equipment off the job.
7.5 Should the Director of the DPW or an authorized representative notify the contractor that any contractor’s employee is insolent, disorderly, careless, unobservant of instructions, or in any way a detriment to the satisfactory performance of these services, such employee shall be ordered off the job at once and thereafter shall not be allowed to engage in any part of the services.
7.6 At any time during the term of the contract, the Director of the DPW or his authorized representative will have the right and privilege to inspect the equipment of the contractor and such equipment shall be made available for inspection within twenty-four (24) hours after request. The equipment shall be kept and maintained by the contractor in excellent working order.
7.7 The decision of the Director of the DPW as to the suitability of equipment or employees shall be final.

8. RESPONSIBILITIES OF THE TOWN

The Town acknowledges its role in fulfilling the following obligations to the best of its ability:
8.1 Maintain and encourage full communication with the contractor.
8.2 Inspect the equipment in a timely manner at times mutually agreed upon with the contractor.
8.3 Provide properly trained Town Mowing Representative who is to meet the contractor’s equipment during and at the completion of each mowing run, and who is to maintain and fully complete the inspection report for each mowing run.

8.4 Make payment within thirty (30) days of receipt of an invoice. If there is a dispute about the amount owed, the Town will approve payment of the amount not in dispute within thirty (30) days and withhold the disputed amount until resolution of the dispute. However, the Town will retain the final mowing run payment until all contract provisions have been met.

8.5 Return performance securities within ten (10) days of approval of contract completion.

9. EQUIPMENT SPECIFICATIONS

9.1 The equipment furnished under this contract must be in accordance with the following specifications and fully comply with any and all applicable Motor Vehicle Laws of the State of New York, including showing a valid New York State registration.

9.2 All mowing equipment must be in excellent condition complete with required safety devices in place.

9.3 The Town reserves the right to reject any equipment that does not pass Town administered inspection.

9.4 The bid price shall include the cost of furnishing the operator, insurance, repairs, operating expendables and all other costs related to the operation of the equipment.

10. PERFORMANCE RATING

10.1 The contractor’s performance shall be rated for each trip by Town Mowing Representative using a standard performance report form. The standard form will be distributed to contractors prior to the start of the season to familiarize them with the method of evaluating performance.

10.2 Failure to perform a run and receive a satisfactory rating shall result in the contractor not being paid until the rating issues have been resolved.

11. LIQUIDATED DAMAGES, PENALTIES, AND PROCEDURES

11.1 The contractor agrees that the Town has the right to retain all or a portion of monies owed the contractor as liquidated damages for the contractor’s failure to comply with the requirements in this contract.

11.1.1 Liquidated damages shall not exceed the Town’s reasonable costs of completing these contractual requirements.

11.1.2 Imposition of liquidated damages will not preclude the Town from seeking performance of the contract through the performance security or taking other legal recourse to recover any and all damages as a result of contractor non-performance, breach of contract or default.
11.2 Failure to provide the services required in this contract may lead to imposition of penalties.

11.3 Penalties involving fines and/or partial payments and/or limiting routes will be imposed by the Director of the DPW and will depend on the severity of the failure, the frequency of the failure, and other circumstances.

11.4 The contractor will be notified in writing of any penalties imposed by the Director of the DPW.

11.5 If a penalty is imposed by the Director, the contractor may appeal his/her penalty by presenting additional facts to the Director. The appeal may be in person or in writing. However, a request for an appeal must be made in writing within five (5) days of the date of the Director’s letter notifying the contractor of the penalty. The Director will schedule the appeals hearing, if requested. Failure to request an appeal within five (5) days will indicate full acceptance of the Director’s determination.

11.6 After reviewing the appeal, the Director will make a final determination, which is not subject to further appeal.

11.7 Penalties involving a breach of contract or default will be imposed by the Director of the DPW. Appeals of his/her decision are made through an administrative hearing, held before another Town official, usually the Finance Director. The ruling of this official is the last step in the administrative appeal process.

11.8 Following is a list of examples of failure to perform and the range of penalties applied. The penalties are listed in order of severity, and any or all or a combination may be applied. The list of failures is not intended to be all inclusive.

11.8.1 Failure to Complete Contract Award Requirements:
By submitting a completed bid, the contractor acknowledges responsibility for fulfilling all contract obligations, including award requirements, if awarded the route. If a contractor fails to comply with any of the requirements of Section 6, the contractor will forfeit the bid security for the route and the route will not be awarded to the contractor. The contractor may also be subject to additional penalties, which may be imposed at the discretion of the Director of the DPW. The additional penalties may include, but are not limited to, prohibiting a contractor from bidding on other Town of Penfield work during the term of the contract and/or suing for damages which result from the Town of Penfield’s inability to obtain a replacement contractor at a reasonable price.

11.8.2 Failure to Complete Equipment Inspection Requirement:
Possible Penalties:
A. Cancellation of the contract for that route
B. Forfeiture of performance security

11.8.3 Failure to Complete a Mowing Run:
Possible Penalties:
A. Partial or no payment for the run
B. Cancellation of the contract
C. Forfeiture of performance security
D. Default of contract
11.8.4 Failure to Start a Mowing Run on Time:
   Possible Penalties:
   A. No payment for the Mowing Run
   B. Cancellation of contract for that route
   C. Forfeiture of performance security
   D. Limit of routes in future contracts
   E. Default of contract

11.8.5 Failure to Perform a Mowing Run Satisfactorily:
   Possible Penalties:
   A. Partial or no payment for the route
   B. Cancellation of the contract for that route
   C. Forfeiture of performance bond for that route
   D. Default of contract

11.8.6 Failure to Obtain Sign-off for a Mowing Run:
   Possible Penalties:
   A. Partial or no payment for the route
   B. Cancellation of the contract for that route
   C. Forfeiture of performance bond for that route
   D. Default of contract

11.8.7 Failure to Repair Damage to Sod, Trees, or Structures:
   Possible Penalties:
   A. Forfeiture of performance bond
   B. Claims for damages
   C. Forfeiture of all payments due

12.  FINAL PAYMENT
12.1 The contractor must bill for any remaining balance by November 30 of the current contract year or be subject to the loss of all or part of his security deposit for that route.
12.2 The Town will retain payment for the last trip of the year until all contractual requirements have been met.

13.   INSURANCE AND BID SECURITY PERFORMANCE REQUIREMENTS
13.1 The insurance requirements for this season are as follows:
13.1.1 The contractor shall procure and maintain at his/her own expense, until final acceptance of the work covered by the contract documents, insurance for liability for damages imposed by law of the kinds and in the amounts hereinafter provided from insurance companies authorized to do such business in the State of
New York, covering all operations under the contract documents, whether performed by him/her or his/her subcontractors.

13.1.2 Insurance policies must be in effect at least from March 15 through December 15 of the contract year. **INSURANCE CERTIFICATES THAT DO NOT CONTINUOUSLY COVER THE ENTIRE PERIOD FROM March 15 THROUGH DECEMBER 15 WILL NOT BE ACCEPTED**

13.1.3 Notice of insurance or an insurance certificate must be supplied within ten (10) days of notification by the Town of Penfield. Such notification can be issued by the Town of Penfield at any time during the life of the contract.

13.1.4 Before executing the agreement, the contractor shall furnish to the Town of Penfield a certificate or certificates of insurance in a form satisfactory to the Town of Penfield Agent showing that he/she has complied with this Section, which certificate or certificates shall provide that the policies shall not be materially changed or canceled until ten (10) days’ written notice has been given to the Town of Penfield’s Agent. In each policy of insurance except insurance for Workers’ Compensation and Disability Insurance, the Town of Penfield shall be named as an additional insured for liability arising under this agreement. Except for Workers’ Compensation and Disability Insurance, no insurance required herein shall contain any exclusion of municipal operations performed in connection with the project. The kinds and amounts of insurance are as follows:

**A. WORKERS’ COMPENSATION AND DISABILITY INSURANCE**

The agreement shall be void and of no effect unless the person or corporation making or executing same shall secure, and keep insured during the life of said agreement, Compensation and Disability coverage, covering all operations under the contract, whether performed by him/her or his/her subcontractors, for the benefit of employees in compliance with the provisions of the Workers’ Compensation Law.

1. **Workers’ Compensation Insurance**
   A policy covering the operations of the contractor in accordance with the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Workers’ Compensation Law.

2. **Disability Insurance**
   A policy covering the operations of the contractor in accordance with the provisions of Article 9 of the Workers’ Compensation Law, known as the Disability Benefits Law (Chapter 600 of the Laws of 1949) and amendments thereto.

**14.1.5 CONTRACTOR’S COMPREHENSIVE GENERAL LIABILITY INSURANCE**

Issued to the contractor and covering the liability for damages posed by law upon the contractor with respect to all work performed by him/her under the within agreement. The Contractor’s Comprehensive General Liability Insurance shall include: Independent contractor’s insurance, completed operations insurance and broad form property
damage insurance. The comprehensive general liability policy shall furnish limits of not less than: $1,000,000

**BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

- Combined Single Limit
  - $500,000

14.1.6 MOTOR VEHICLE INSURANCE issued to the contractor and covering public liability and property damage on the contractor’s vehicles in the amount of: $500,000

**BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

- Combined Single Limit
  - $1,000,000

14.2 BID SECURITY - MUST BE SUBMITTED WITH THE BID

14.2.1 The bid security for this contract is $500 per route multiplied by the maximum number of routes specified by the Contractor in the Proposal. The bid security must be cash, certified check, bank check, or irrevocable letter of credit payable to the Town of Penfield.

14.2.2 The bid security will guarantee that a bidder will supply valid proof of ownership, certificate of insurance and a vehicle in excellent condition which conforms to this specification, according to the time frames set forth herein. Failure to provide all of these items by the time specified in the Notice of Award will result in forfeiture of the bid security and loss of contract.

14.2.3 The bid security will convert to performance security, where applicable, upon contract award and will be held by the Town of Penfield for the life of the contract. No further performance security will be required.

15. PERFORMANCE SECURITY

The total of $500 per route Performance Security shall be held as security for the faithful performance by the contractor of all items and conditions of the contract and will be released within ten (10) days of receipt of approval of contract completion, or by June 30 of that year.

16. PREPARATION OF PROPOSAL

16.1 This package contains the proposal in which your bid is to be entered. This Proposal must be submitted, sealed, in the envelope which has been provided. By submitting a bid on this proposal, you agree to accept as a contract all terms and conditions set forth in these Turf Mowing specifications.

16.2 Be sure to provide all information required.

16.3 Be sure to sign any page on which you have entered a price and include your company name.

16.4 Be sure to include bid security in the amount of $500 per route, multiplied by the maximum number of routes specified in Section 1 of the Proposal page.
The bid security shall be rolled over and become PERFORMANCE SECURITY and will be held for the term of the contract. If a letter of credit is submitted, it must clearly indicate that it is valid for the term of this contract.

CHECKS WHICH ARE NOT CERTIFIED WILL RESULT IN BID REJECTION

16.5 Be sure to write in the telephone number(s) where you may be reached during the bidding and contract period.

17. NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

17.1 The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.

17.2 Unless otherwise required by law, the prices which have been quoted in this bid have not knowingly been disclosed by the bidder and will not knowingly be disclosed prior to the bid opening, directly or indirectly, to any other bidder or to any competitor.

17.3 No attempt has been or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
NON-COLLUSIVE BIDDING CERTIFICATE

Pursuant to Section 103-d of the New York State – General Municipal Law, by submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or competitor.

2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

3. No attempt has been made or will be made by this bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Name of Bid: ________________________________

Name of Bidder: ______________________________

Authorized Signature: ________________________

Date: ________________________________
TOWN OF PENFIELD

SPECIFICATIONS FOR MOWING SERVICES
2015 SEASON

1. GENERAL

It is the intent of these specifications to secure the services for turf mowing at various locations within the Town of Penfield.

2. RESPONSIBILITY

2.1 The bidder is responsible for examining the sites and conditions of work. No claims for additional payment, or pleas regarding an inability to perform, shall be entertained if based on alleged ignorance of existing conditions.

2.2 The contractor must have a supervisor or foreman available by phone at all times to direct operations. This person shall report to the Town of Penfield Mowing Representative.

3. PREBID MEETING

No prebid meeting will be held. Contact Richard Giesselman at 585-340-8693 or Robert Garbeck at 585-340-8712 for questions.

4. SUBMITTAL

4.1 All bids must be sealed, addressed to the Penfield Town Clerk and marked "Turf Mowing Service Bid". Said bids will be publicly read aloud by the Town Clerk, or her designee, on January 14th 2015 at 11:00 a.m. at the Penfield Town Hall.

4.2 All bids submitted must include a non-collusive bidding certificate, Section 103 of the General Municipal Law of the State of New York. A form of the required certificate is enclosed for your convenience.
5. **SCOPE OF WORK**

**Weekly mowing:** Mow all established turf areas as illustrated on the attached list and maps. Cutting height shall be 2.50” to 3”. for all athletic fields; and for all other weekly mown areas. Clippings will be left on the lawn, but will be dispersed as much as possible with the mower itself. All string trimming will be completed on the same day in which the turf is mowed.

- **FOR Athletic Fields only:** String trimming must be completed both inside and outside the fence lines each week. Athletic fields may require twice per week mowing during spring conditions. Contractor may, on occasion due to wet conditions be required to utilize walk behind mowers for wet spots. The Mowing Representative will notify the supplier when this will be necessary.
- Contractor(s) shall mow with equipment capable of completing the weekly mowing in a 5 day cycle.

- Mowing should take place between 7:00 A.M. and 6:00 P.M., Monday through Friday. No cutting will be allowed on Saturday or Sunday unless approved by the Town Mowing Representative.
- The supplier is responsible for the removal of all paper, litter and debris prior to the mowing of any given area. If papers and litter are mowed over it is the responsibility of the supplier to clean/pick up the area prior to moving on to the next section of turf.

- Trim mowing and/or string trimming shall be done within the same day that the larger area is finished mowed. String trimming shall be done around all obstacles including but not limited to culverts, pavement edges, curbing, fence lines, fire hydrants, trees, rocks, and posts.

- The weekly mowing season will commence approximately April 15th and run through approximately October 30th. The town reserved the right to skip weekly mowing during the summer dry season. The town also reserves the right to request additional mowing for various recreation fields or other areas if needed.

- The supplier at the end of every day shall email to the Town Mowing Representative a list of all areas that were completed that day. If at this time the Town Mowing Representative finds areas which have been indicated as complete but not meeting the specifications he will inform the supplier of the issues and request repair prior to the supplier starting new mowing.

- Any damage to buildings, fencing, gardens, trees, turf etc. is the responsibility of the supplier to repair at their expense. All damage is to be reported to the Town Mowing Representative when said damage occurs.
The use of any pesticide, unless otherwise directed by the Town Mowing Representative, is prohibited on all town property.

The supplier shall not blow the grass clippings into any planting areas, sidewalks or paved areas.

**Biweekly mowing:** Mow all established turf areas as illustrated on the attached list and maps. Cutting height shall be 3.50”- 4.00” Clippings will be left on the lawn, but will be dispersed with the mower as best as possible. All string trimming will be completed on the same day in which the turf is mowed. All of the specifications listed above in the weekly mowing section shall be adhered to for the biweekly mowing.

### 6. EQUIPMENT

- The Town of Penfield reserves the right to inspect and approve any and all equipment (owned or leased) that the contractor intends to use in regard to type and conditions, before bid award. All machines used shall be in good working condition and remain that way for the life of the contract. The Town reserves the right to require the supplier to sharpen and/or replace blades as necessary.

### 7. COOPERATION WITH OTHER USERS:

- The supplier must be able to coordinate his mowing schedule with the scheduled events so as not to disrupt the use of the athletic fields.
Weekly Turf Mowing
Pricing Sheet

Proposal and Labor Rates

1. Weekly Finish Mowing
   $__________ *per pass

2. Biweekly Finish Mowing
   $__________ *per pass

(Price based on single cutting, per visit)

Out of Scope Rates

1. Spot Mowing – single deck
   $__________ per hour

2. Spot Mowing – multi deck
   $__________ per hour

3. 2-man crew: for string trimming, weed control
   and general clean-up type work.
   $__________ per hour

NOTE: For add-ons or deletions to the square footage of mowing, it is assumed that the
per trip cost divided by the total square footage or acreage will determine the rate to be
used for calculating the new rate.
NAME: Authorization for Supervisor to sign an Intermunicipal Sewer Use Agreement with the Town of Irondequoit (LaSalles Landing Sewer District) and Out of District User Agreements with certain Irondequoit Property Owners.

WHEREAS; the Town of Penfield owns and operates sanitary sewer facilities within Sewer District #12, along the southern end of Irondequoit Bay, and

WHEREAS; during design of these sewer facilities provisions were made and capacity reserved to provide future service to properties within the Town of Irondequoit along Empire Boulevard, and

WHEREAS; the Town of Penfield has received a letter from the Town of Irondequoit (dated 9/16/2014), on behalf of their property owners Nick Masters owning 935, 975 & 995 Empire Boulevard and Demosthenes & Eleni Gitsis owning 1075 & 1077 Empire Boulevard, requesting that they be allowed to connect to and utilize the sanitary sewer facilities installed as part of Sewer District #12, and

WHEREAS; the Penfield Engineering Department has confirmed that the anticipated sewer flow rates proposed by these properties are within flow rate allocations originally set aside for the Town of Irondequoit,

WHEREAS; Sewer District No. 12, being a Special District formed under provisions of Town Law does carry certain annual Capital and Operation & Maintenance charges, which are apportioned back to all properties within said district, and

WHEREAS; within the Intermunicipal Sewer Use Agreement and Out of District User Agreement(s) are requirements that the above mentioned properties pay said annual district charges, apportioned in a like manner as they are apportioned to Penfield properties within said district, and that such sewer charges shall be collected from the properties by the Town of Irondequoit and reimbursed to the Town of Penfield on an annual basis.
NOW, THEREFORE, BE IT RESOLVED; the Town Board of the Town of Penfield acting as Commissioners of Penfield Sanitary Sewer District #12 hereby approve the Out of District sewer connections for 935, 975 & 995 Empire Boulevard (Nick Masters) and 1075 & 1077 Empire Boulevard (Demosthenes & Eleni Gitsis) to the sanitary sewer facilities within District #12, the physical connection to be approved by the Penfield Sewer Department, and

BE IT FURTHER RESOLVED; that the Town Board authorizes the preparation Intermunicipal Sewer Use Agreement with the Town of Irondequoit (LaSalles Landing Sewer District) and Out of District Users Agreements with both aforementioned property owners containing provisions for equitable apportionment and reimbursement of district charges, sewer use and flow rates, stipulation for review of any future development as it may impact sewer flow rate and to be in a form and substance as approved by Town Council, and

BE IT FURTHER RESOLVED; that Supervisor, R. Anthony LaFountain be and hereby is authorized to execute said agreements.

Moved: ____________

Seconded: ____________

Vote: Kohl ____________

LaFountain ____________

Metzler ____________

Moore ____________

Quinn ____________
WHEREAS, Paul L. Amish, Richard A. Amish, James B. Amish, Barbara J. Barrell, and Patricia L. Amish have offered to donate to the Town of Penfield an 18 acre portion of the 69 acre parcel located at 1454 Fairport Nine Mile Point Road in memory of the Amish family; and

WHEREAS, the Town Board is supportive and very appreciative of the donation of the 18 acres offered, to be known as “The Four Mile Creek Nature Preserve”; and

WHEREAS, the Penfield Town Board is best suited to act as “lead agency” within the meaning of the State Environmental Quality Review Act (SEQRA) and thus does hereby designate itself as “lead agency” pursuant to SEQRA; and be it further

RESOLVED, that the subject action is determined to be an Unlisted action pursuant to the State Environmental Quality Review Act (SEQRA) and the Town Board has determined that acceptance of the donation of the subject property will not create an adverse impact to the environment;

NOW, THEREFORE, BE IT

RESOLVED, that the Supervisor is hereby authorized to sign an Agreement for the acceptance and transfer of the 18 acre portion of property on the west side of Fairport Nine Mile Point Road as part of 1454 Fairport Nine Mile Point Road from Paul L. Amish, Richard A. Amish, James B. Amish, Barbara J. Barrell, and Patricia L. Amish, to the town of Penfield, subject to all requirements as prescribed by the Town Attorney.
Moved:  
Seconded:  

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PENFIELD TOWN BOARD RESOLUTION No. 14T-208

DATE December 17, 2014

BY Councilman Moore                                           Law & Finance COMMITTEE

NAME: Setting a Public Hearing to Consider the Establishment of the Ashlyn Rise Subdivision Special Improvement District

WHEREAS; a written Petition has been received by the Penfield Town Board, duly dated and verified to contain the required signatures, and having been presented to and filed with the Town Board of the Town of Penfield, Monroe County, New York, for the establishment of Ashlyn Rise Subdivision Special Improvement District, and

WHEREAS; the proposed improvements consist of maintenance of all public areas and betterments such as the water retention facility, subdivision identification signs and other such items as deemed appropriate within the Ashlyn Rise Subdivision that solely benefit the residents thereof; and

WHEREAS; the boundaries of said improvement district and general layout of facilities within are shown on the Map and Plan attached to and made a part of said Petition which is filed in the office of the Penfield Town Clerk, and

WHEREAS; the cost of the installation of improvements associated with the Ashlyn Rise Subdivision Special Improvement District were borne by the developer of said subdivision.

NOW, THEREFORE, BE IT RESOLVED; that the Town Board of the Town of Penfield shall hold a Public Hearing at the Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on the 21st day of January, 2015 at 7:00 p.m. on said date, to consider said Petition and to hear all persons interested in the subject thereof and concerning the same, and for such other action on the part of the Town Board with relation to said Petition as may be required by Law, and

BE IT FURTHER RESOLVED; that a copy of this resolution, certified by the Town Clerk, shall be published at least once in the official newspaper of the Town, the first publication thereof to be not less than ten (10) nor more than twenty (20) days before the date of the aforesaid Public Hearing, and that a copy of this resolution shall be posted on the official sign board of the Town as prescribed by Law.

Moved: ____________

Seconded: ____________

Vote: Kohl ____________

LaFountain ____________

Metzler ____________

Moore ____________

Quinn ____________
WHEREAS, the Town of Penfield originally adopted a Local Waterfront Revitalization Program (LWRP) on July 3, 1991, and initiated preparation of a LWRP Amendment in cooperation with the New York State Department of State in accordance with the provisions of Executive Law, Article 42; and

WHEREAS, the Town of Penfield has received a grant from the Department of State to update the LWRP, as it is now 23 years old; and

WHEREAS, the LWRP update has been prepared under the guidance of the Town and LWRP committee, with consultant planning assistance; and

WHEREAS, the subject application is determined to be a Type 1 action pursuant to the criterion set forth in the State Environmental Quality Review Act (SEQRA) and is subject to a coordinated review;

NOW, THEREFORE, BE IT

RESOLVED, that the Town Board of the said Town of Penfield shall hold a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on January 21, 2015, at 7:00 PM on said date, to consider the said proposal and to hear all persons interested on the question of consider adoption of the proposed update to the Local Waterfront Revitalization Program which will be made available for public review and comment on the Town’s webpage at www.penfield.org and will be available for review at the Penfield Town Clerk’s office and the Penfield Public Library; and be it further

RESOLVED, that a copy of this Resolution, certified by the Town Clerk, shall be published at least once in the official newspaper of the town, the first publication thereof to be not less than three (3) nor more than thirty (30) days before the date set for said hearing as aforesaid. A copy of this Resolution shall be posted on the official signboard of the Town as prescribed by Law.
Moved:  

Seconded:  

Vote:  

Kohl  
LaFountain  
Metzler  
Moore  
Quinn  
PENFIELD TOWN BOARD RESOLUTION NO. 14T-206           DATE December 17, 2014

BY Councilman Moore               Law & Finance COMMITTEE

NAME Adopting Local Law No. 1 of 2014 - Establishing a Severability Clause; Confirming and Clarifying that any Uses Not Expressly Permitted are Prohibited; Articulating Certain Explicitly Prohibited Uses; Adding Certain New Definitions, and Changing Certain Existing Definitions; and Modifying, Clarifying, and Adding to the Provisions Regarding Variances (Ban on Hydrofracking)

WHEREAS, the Town Board of the Town of Penfield wishes to amend the Penfield Zoning Ordinance through the adoption of Local Law No. 1 of 2014 which establishes a Severability Clause; confirming and clarifying that any uses not expressly permitted are prohibited; articulating certain explicitly prohibited uses; adding certain new definitions, and changing certain existing definitions; and modifying, clarifying, and adding to the provisions regarding variances; and

WHEREAS, the Penfield Town Board is best suited to act as “lead agency” within the meaning of the State Environmental Quality Review Act (SEQRA) and has designated itself as “lead agency” pursuant to SEQRA; and

WHEREAS, the subject application has been determined to be an Unlisted action pursuant to the State Environmental Quality Review Act (SEQRA), and is determined not to result in any significant adverse impact on the environment; and

WHEREAS, the Town Board of the said Town of Penfield held a public hearing at the Penfield Town Hall, 3100 Atlantic Avenue, in the Town of Penfield, New York on December 3, 2014, at 7:30 PM on said date, to consider the said proposal and to hear all persons interested on the question of the adoption of Local Law No. 1 of 2014, and the public hearing was closed and decision was reserved;

NOW, THEREFORE, BE IT

RESOLVED, AND HEREBY IS ENACTED BY THE TOWN BOARD OF THE TOWN OF PENFIELD AS FOLLOWS: Local Law No. 1 of 2014, hereinafter set forth in Schedule A, attached hereto; and

BE IT FURTHER

RESOLVED, This Local Law shall be effective upon filing with the office of the Secretary of State, and the Town Clerk is directed to immediately file a copy of this Local Law with the New York State Secretary of State as required by law.
Moved: ______
Seconded: ______
Vote: Kohl ______
     LaFountain ______
     Metzler ______
     Moore ______
     Quinn ______
SCHEDULE A

Town of Penfield
Local Law No. 1 of the Year 2014

A local law to amend and supplement
The Town of Penfield Zoning Ordinance adopted in 1981
(as heretofore amended),
By:

Establishing a Severability Clause;
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Articulating Certain Explicitly Prohibited Uses;
Adding Certain New Definitions, and Changing Certain Existing Definitions; and
Modifying, Clarifying, and Adding to the Provisions Regarding Variances.

Be it enacted by the Town Board of the Town of Penfield as follows:

Article I. General Provisions

Section 1.1. Authority for Adoption

The Town Board hereby adopts this Local Law pursuant to the authority described at Section 1. of Appendix A attached hereto, which Appendix A is hereby incorporated and made a part of this Local Law for all purposes by this reference.

Section 1.2. Findings of Fact

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Local Law, and a copy of the text of such findings, determinations, and declarations is set forth at Section 2. of Appendix A attached hereto.

Section 1.3. Purpose & Intent

The Purposes and Legislative Intent underlying the Town Board’s passage of this Local Law are set forth at Section 3. of Appendix A attached hereto.

Section 1.4. Definition of “Existing Zoning Law,” this “Local Law,” and “this “Law”

As used in this Local Law, the term “Existing Zoning Law” shall mean and be the Town of Penfield Zoning Ordinance adopted in 1981, as amended to date.
As used herein, the term this “Local Law” shall mean and be this Local Law No. 1 of 2014.

As used in Article II of this Local Law, the term “this Law,” “this chapter,” this “Chapter,” “this Zoning Chapter,” and “herein” shall mean, be, and refer to the Existing Zoning Law as amended by this Local Law.

Section 1.5. Interpretation

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Existing Zoning Law effected by this Local Law. They are intended as a legal guide to the administration and interpretation of this Local Law and shall be treated as legislative history.

This Local Law is intended to supersede any provision of the New York State Town Law that is inconsistent herewith.

Article II. Amendments of Existing Zoning Law

2.1. Amendments to Article I of the Existing Zoning Law

A. § 1-3 of the Existing Zoning Law is hereby amended, so as to delete the words “master plan” from the second paragraph thereof, and to substitute the words “comprehensive plan” therefor.

B. Article I of the Existing Zoning Law is hereby further amended, so as to add a new Section thereto (to be numbered ’§ 1-4’), said new Section to be inserted immediately after the text of present § 1-3 of the Existing Zoning Law, and immediately prior to Article II of the Existing Zoning Law:

“§ 1-4. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and
persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.”

2.2. Amendments to Article II of the Existing Zoning Law

A. § 2-2 of the Existing Zoning Law is hereby amended so as to delete the present defined term “Accessory Facility or Structure”, and to substitute the defined term “Accessory Facility or Structure (Communication Tower)” therefor.

B. § 2-2 of the Existing Zoning Law is hereby amended so as to delete the present definition of “Accessory Structure or Use” in its entirety, and to substitute the following text therefor:

“Accessory Structure - a structure customarily incidental and subordinate to the principal building on the same lot, where the principal building is lawful and where there is unity of ownership between the principal building and accessory structure. A structure which dominates the principal building in area is not eligible to qualify as an accessory structure.

“Accessory Use - a use customarily incidental and subordinate to the principal use, where the principal use is lawful, where there is unity of ownership between the principal and accessory use, and where the principal and accessory uses are located on the same lot. A use which dominates the principal use in area, extent or purpose is not eligible to qualify as an accessory use. Under no circumstances shall any Explicitly Prohibited Use qualify as an accessory use.”

C. The second sentence of the definition of “Authorized Official” set forth at § 2-2 of the Existing Zoning Law (beginning “Building and Zoning Administrator…”) is hereby amended, so as to insert the words “This term includes without limitation” immediately before the (present) words “Building and Zoning Administrator…”).

D. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Commercial; Commercial Uses” therein, said text to be inserted immediately after the definition of “Civic Event” and immediately before the definition of “Communication Tower”:

“Commercial; Commercial Uses - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “commercial,” “commercial uses,” or any variation thereof, be construed to mean, be, include, or authorize within the Town any Explicitly Prohibited Use.”

E. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Comprehensive Plan” therein, said definition to be inserted immediately after the newly added text regarding the term “Commercial; Commercial Uses” therein and immediately before the definition of “Communication Tower”:

“Comprehensive Plan - any document, styled comprehensive or master plan
or otherwise, adopted by the Town Board for the protection, enhancement, growth, and development of the Town, immediate as well as long-range, specifically pursuant to § 272-a of the NYS Town Law, together with all other materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material, adopted by the Town Board, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the protection, enhancement, growth and development of the Town.

F. § 2-2 of the Existing Zoning Law is hereby further amended, so as to add the following text to the present definition of “Customary Agricultural Operations,” said text to be inserted immediately following the end of the sentence that begins “When in conjunction...”:

“In no event shall ‘Customary Agricultural Operations’ be construed to mean, be, include, or authorize within the Town Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”

G. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Excavation” therein, said text to be inserted immediately after the definition of “Escort Agency” and immediately before the definition of “Expandables”:

“Excavated Materials; Excavation; Excavating - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “excavated materials,” “excavation,” “excavating” or any variation thereof be construed to mean, be, or include Natural Gas, or to authorize within the Town Natural Gas and/or Petroleum Extraction Activities or any other Explicitly Prohibited Use.”

H. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Explicitly Prohibited Use(s)” therein, said text to be inserted immediately after the definition of “Expandables” and immediately before the definition of “Exterior Property Line”:

“Explicitly Prohibited Use(s) - Shall mean and be the Explicitly Prohibited Uses defined and described in Article IIIA of this Law.”

I. § 2-2 of the Existing Zoning Law is hereby further amended, so as to add the following text to the present definition of “Filling,” said text to be inserted immediately following the end of the sentence that begins “The depositing of natural...”:

“In no event shall ‘Filling’ be construed to mean, be, include, or authorize within the Town a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”
J. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Industrial; Industrial Uses; Industry” therein, said text to be inserted immediately after the definition of “Ideological Sign” and immediately before the present definition of “In-Law”:

“Industrial; Industrial Uses; Industry - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the terms “industrial,” “industrial uses,” “industry,” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town any Explicitly Prohibited Use.”

K. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Injection Well” therein, said text to be inserted immediately after the newly added text regarding the terms “Industrial; Industrial Uses; Industry” and immediately before the definition of “In-Law”:

“Injection Well - A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension of the hole, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.”

L. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Irrevocable Letter of Credit” therein, said text to be inserted immediately after the definition of “In-Law” and immediately before the definition of “In-Law Apartment”:

“Irrevocable Letter of Credit - Notwithstanding any provision hereof to the contrary, for all purposes of this Law the term “Irrevocable Letter of Credit” shall mean and be a letter of credit in form and content (including without limitation the conditions to draw), and from an issuer, acceptable to the Attorney for the Town of Penfield in his or her reasonable discretion.”

M. § 2-2 of the Existing Zoning Law is hereby further amended, so as to add the following text to the present definition of “Junkyards,” said text to be inserted immediately following the end of the sentence that begins “A place where waste...”:

“In no event shall ‘Junkyards’ be construed to mean, be, include, or authorize within the Town a Land Application Facility, a Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility, a Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump, or any other Explicitly Prohibited Use.”

N. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Land Application Facility” therein, said text to be inserted immediately after the definition of “Kennel” and immediately before the definition of “Landmark Site”: 
“Land Application Facility - A site where any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.”

O. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the terms “Mine; Mining” therein, said text to be inserted immediately after the definition of “Microwave” and immediately before the present definition of “Mobile/Manufactured Home”:

“Mine; Mining - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “mine,” “mining” or any variation thereof contained in this Law be construed to mean, be, include, or authorize within the Town any Natural Gas And/Or Petroleum Extraction Activities, or any other Explicitly Prohibited Use.”

P. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definitions of (i) “Natural Gas,” (ii) “Natural Gas and/or Petroleum Exploration Activities,” (iii) “Natural Gas and/or Petroleum Extraction Activities,” (iv) “Natural Gas and/or Petroleum Exploration, Extraction or Production Wastes,” (v) “Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility,” (vi) “Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump,” (vii) “Natural Gas Compression Facility,” and (viii) “Natural Gas Processing Facility” therein, said definitions to be respectively inserted immediately after the definition of “Multiple Section Mobile/Manufactured Home” and immediately before the definition of “Nudity or a state of Nudity”:

“Natural Gas - Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas And/Or Petroleum Exploration Activities - Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas And/Or Petroleum Extraction Activities - The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.
Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes
- Any of the following in any form, and **whether or not** such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) natural gas or petroleum drilling fluids; (b) natural gas or petroleum exploration, drilling, production or processing wastes; (c) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (d) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (e) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (f) drill cuttings from natural gas or petroleum wells; or (g) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes **does not include** (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Customary Agricultural Operations.

Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facility
- Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dump
- Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas Compression Facility
- A facility constructed or operated to compress natural gas that originates from a gas well or collection of such wells, operating as a midstream facility for delivery of gas from a gas field for entry into the transmission pipeline system; the term shall not include the transmission pipeline itself; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility
- Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs,
or the capture of CO₂ separated from natural gas streams.

Q. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following text regarding the term “Naturally Occurring Material(s)” therein, said text to be inserted immediately after the newly added definition of “Natural Gas Processing Facility” and immediately before the definition of “Nudity or a state of Nudity”:

“Naturally Occurring Material(s) - Notwithstanding any provision hereof to the contrary, for purposes of this Law in no event shall the term “naturally occurring material” or any variation thereof be construed to mean, be or to include Natural Gas, or to authorize within the Town any Explicitly Prohibited Use.”

R. § 2-2 of the Existing Zoning Law is hereby further amended, so as to delete the text of the definition of “Person (which begins “Any individual, …)” in the entirety, and to substitute the following text therefor:

“Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, or estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.”

S. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definition of “Public Utility; Public Utility Facility; Utility” therein, said text to be inserted immediately after the definition of “Public Officer” and immediately before the definition of “PWF”:

“Public Utility; Public Utility Building; Public Utility Facility; Utility - An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility or utility facility, structure, or use is a facility, structure, or use which is operated by a public utility, and which provides electric, gas, steam, CATV, telephone or other communication service, water or sewerage directly to the general public. In no event shall ‘Public Utility,’ ‘Public Utility Building,’ ‘Public Utility Facility,’ or ‘Utility’ be construed to mean, be, include, or authorize within the Town a Natural Gas Compression Facility, Natural Gas Processing Facility, or any other Explicitly Prohibited Use.”

T. § 2-2 of the Existing Zoning Law is hereby further amended, so as to insert the following definitions of (i) “Radiation”, and (ii) “Radioactive Material” therein, said definitions to be respectively inserted immediately after the definition of “PWF” and immediately before the present definition of “Ramada”:

“Radiation - The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Radioactive Material - Material in any form that emits radiation. This definition specifically includes NORM (naturally occurring radioactive material), but only if
such naturally occurring material has been moved from its naturally occurring location through a mechanical or other man-made process. All such material is “radioactive material” for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.”

**U. § 2-2 of the Existing Zoning Law is hereby further amended so as to insert the following definition of “Subsurface” therein, said definition to be inserted immediately after the present definition of “Substantial Improvement” and immediately before the present definition of “Telecommunications”:**

“Subsurface - Below the surface of the earth, or of a body of water, as the context may require.”

**V. § 2-2 of the Existing Zoning Law is hereby further amended so as to insert the following definitions of “Underground Injection” and “Underground Natural Gas Storage” therein, said definitions to be inserted immediately after the present definition of “Usable Satellite Signal” and immediately before the present definition of “Variance”:**

“Underground Injection - Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage - Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location, whether for the purpose of load balancing the production of natural gas or for any other reason, including without limitation short-term, long-term, or intermittent storage for product quality, processing, or transportation purposes, or because of market conditions. Without limitation, this term includes compression and dehydration facilities.”

**W. § 2-2 of the Existing Zoning Law is hereby further amended so as to delete the present definition of “Variance” in the entirety, and to substitute the following definitions of “Variance,” “Variance, Area,” and “Variance, Use” therefor, said definitions to be inserted after the definition of “Usable Satellite Signal” and immediately prior to the definition of “Watercourse”:**

“Variance - An area variance or a use variance, as the context may admit.

Variance, Area - The authorization by the Zoning Board of Appeals for the use of land in a manner that is not otherwise allowed by the dimensional or physical requirements of the applicable zoning regulations.

Variance, Use - The authorization by the Zoning Board of Appeals of the Town for the use of land for a purpose that is otherwise not otherwise allowed or is prohibited by the applicable zoning regulations.”
2.3. Amendments to Article III of the Existing Zoning Law

A. Article III of the Existing Zoning Law is hereby amended so as to replace the present title of such Article (“Zoning Districts of the Town of Penfield”) with the words “Zoning Districts of the Town of Penfield; Any Use Not Specifically Permitted is Prohibited.”

B. § 3-1 of the Existing Zoning Law is hereby amended so as to replace the present title of such Section (“Application of District Regulations”) with the words “Application of District Regulations; Any Use Not Specifically Permitted is Prohibited.”

C. § 3-1 of the Existing Zoning Law is hereby further amended so as to delete the present first sentence of text thereof (beginning “No activity shall ...”), and to substitute the following text therefor:

“Any use not specifically set forth as a permitted use (as of right, accessory, or upon special permit or conditional use permit, as the context may admit) in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. No structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified for the district in which such building is located on within this zoning ordinance, and what is specified within this ordinance as to dimensional and similar area requirements is further limited and qualified by any restrictions imposed by any applicable additional requirements, standards, and/or regulations contained in this Law.”

D. § 3-6 of the Existing Zoning Law is hereby amended so as to insert the following text – as a standalone paragraph - immediately after the title caption (‘Purpose’) of present § 3-6 of the Existing Zoning Law, and immediately preceding the present first paragraph of text (beginning “The purpose of the ...”) of said § 3-6:

“Notwithstanding any provision of this Law to the contrary, under no circumstances shall an EPOD development permit be issued for any Explicitly Prohibited Use.”

E. § 3-36 of the Existing Zoning Law is hereby amended so as to delete the text of clause K. thereof (beginning “Other uses not specifically listed ...”) in the entirety, and to substitute therefor the following text:

“K. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through J. of this § 3-36, to be compatible with the purposes of the district for which such use is proposed, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use.”
F. § 3-47 of the Existing Zoning Law is hereby amended, so as to add the following text thereto (to be a stand alone paragraph), said additional text to be inserted immediately after the text of present subsection B. of § 3-46 of the Existing Zoning Law, and immediately prior to the number and title caption of present § 3-47 of the Existing Zoning Law: "Notwithstanding any provision of this Law to the contrary, in no event shall any Explicitly Prohibited Use be permitted within any Planned Development District."

G. § 3-67 of the Existing Zoning Law is hereby amended so as to delete the text of clause G. thereof (beginning “Other uses not specifically listed …”) in the entirety, and to substitute therefor the following text:

"G. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through F. of this § 3-67, to be compatible with the purposes of the BN-R district, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use."

H. § 3-72 of the Existing Zoning Law is hereby amended so as to delete the text of clause E. thereof (beginning "Other uses not specifically listed ...") in the entirety, and to substitute therefor the following text:

"E. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through D. of this § 3-72, to be compatible with the purposes of the LB district, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use."

I. § 3-77 of the Existing Zoning Law is hereby amended so as to delete the text of clause K. thereof (beginning “Other uses not specifically listed ...”) in the entirety, and to substitute therefor the following text:

"K. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items A. through J. of this § 3-77, to be compatible with the purposes of the GB district, and to be consistent with the Town’s Comprehensive Plan; with respect to any Explicitly Prohibited Use."

J. § 3-79 of the Existing Zoning Law is hereby amended, so as to delete the words “master plan” from the fourth sentence thereof (beginning “In reaching its decision ...”), and to substitute the words “comprehensive plan” therefor.

K. § 3-99 of the Existing Zoning Law is hereby amended so as to delete the text of clause 17. thereof (beginning "Uses similar in nature ...") in the entirety, and to substitute therefor the following text:
“17. Other legal uses, determined (following a public hearing) by the applicable board having jurisdiction to issue conditional use permits to be similar in nature to those uses described in items 1. through 16. of this § 3-99, to be compatible with the purposes of the FC district, and to be consistent with the Town’s Comprehensive Plan; provided, however, that in any event no conditional use permit shall or may be issued with respect to any Explicitly Prohibited Use.”

2.4. Amendment to add new Article IIIA to the Existing Zoning Law

The Existing Zoning Law is hereby amended so as to add a new Article thereto (to be designated ‘Article IIIA’), said new Article to be inserted immediately after the text of present § 3-121 of the Existing Zoning Law, and immediately prior to the text and heading of Article IV of the Existing Zoning Law:

“ARTICLE IIIA. Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

§ 3A-1. Explicitly Prohibited Uses.

The following uses and activities are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

(a) Land Application Facility;

(b) Natural Gas And/Or Petroleum Exploration Activities;

(c) Natural Gas And/Or Petroleum Extraction Activities;

(d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;

(e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;

(f) Natural Gas Compression Facility;

(g) Natural Gas Processing Facility;

(h) Underground Injection; and

(i) Underground Natural Gas Storage.
Any condition caused or permitted to exist in violation of this § 3A-1. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as “Explicitly Prohibited Uses,” any one of the above expressly prohibited uses may be referred to in this law as an “Explicitly Prohibited Use,” and any combination of more than one such use may also be referred to as “Explicitly Prohibited Uses.”

§ 3A-2. Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

The Town of Penfield hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

C. No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this Article IIIA are not intended, and shall not be construed, to (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town.

2.5. Amendments to Article IV of the Existing Zoning Law

A. Clause K. of § 4-11 of the Existing Zoning Law is hereby amended so as to delete the words “Other uses not” and to substitute the words “Other permitted uses not otherwise” therefor.

B. Article IV of the Existing Zoning Law is hereby amended so as to insert the following new Section § 4-16A, said new § 4-16A to be inserted immediately following the text of present § 4-16A of Article IV, and immediately prior to § 4-17 of the Existing Zoning Law:
"§ 4-16A. Pre-existing, legal non-conforming Natural Gas And/Or Petroleum Extraction Activities.

Notwithstanding any provision of this chapter to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of Local Law [ ] of 2013 shall be subject to the following:

1.a. If, as of the effective date of Local Law 1 of 2014 substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation the possession of valid, non-revoked permits for all matters for which permits are required, and including compliance with each, any, and all permit conditions, as are or may be required by the New York State Department of Environmental Conservation ("DEC") and/or all other regulating local, state, and federal governments, bureaus, or agencies, then and only then such Activity by or on behalf of the holder of the permit(s) shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses 2. and 3. of this § 4-16A.

b. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding clause 1.a. of this § 4-16A. shall not be grandfathered (or be permitted to continue or deemed lawful pre-existing uses).

2. Upon the depletion, closing, or reclamation of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause 1.a. of this § 4-16A or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities for a period of more than twelve (12) months, then and in either of such events the pre-existing and/or non-conforming use status (and any related ‘grandfathering rights’) of or relating to such Activity shall terminate.

3. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause 1. a. of this § 4-16A. is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion of such well, whether as to its production, depth, horizon(s) or otherwise, shall not be grandfathered under Clause 1.a. of this § 4-16A. “

C. § 4-18 of the Existing Zoning Law is hereby amended so as to delete the words “is commenced within” and to substitute the words “is commenced and diligently prosecuted to completion within” therefor.

D. § 4-20 of the Existing Zoning Law is hereby amended so as to delete the words “a farm or dairy use” and to substitute the words “customary agricultural operations” therefor.
E. Subsection A. of § 4-23 of the Existing Zoning Law is hereby amended so as to add the following sentence thereto, said additional sentence to be inserted immediately after the sentence that begins ("The dumping of...")):

"The preceding sentence is not intended and shall not be construed to authorize (whether in sanitary landfills approved by any State, County, or other authorities, or otherwise) any Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Disposal/Storage Facilities, Natural Gas And/Or Petroleum Exploration, Extraction Or Production Wastes Dumps, or any other Explicitly Prohibited Uses anywhere within the Town."

2.6. Amendments to Article 5 (sic, should be ‘V’) of the Existing Zoning Law

A. The heading of Article 5 (sic) of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE 5” and to substitute the words “ARTICLE V” therefor.

B. § 5-1 of the Existing Zoning Law is hereby amended so as to insert, immediately following the sentence beginning “This article shall be ...”, the following text: “Nothing in this Article V is intended or shall be construed to authorize within the Town any Explicitly Prohibited Use.”

C. Clause f) of § 5-8 of the Existing Zoning Law is hereby amended so as to insert the following text immediately following the words "... and found to be acceptable"): “; provided, however, that in no event shall the foregoing be construed to authorize any Explicitly Prohibited Activities to be conducted within the Town.”

D. Clause i) of § 5-8 of the Existing Zoning Law is hereby amended so as to delete the words “Agricultural operations” therefrom, and to substitute the following words therefor: “Customary agricultural operations”.

2.7. Amendments to Article 6 (sic, should be ‘VI’) of the Existing Zoning Law

A. The heading of Article 6 (sic) of the Existing Zoning Law is hereby amended so as to delete the words “ARTICLE 6” and to substitute the words “ARTICLE VI” therefor.

B. § 6-1 of the Existing Zoning Law is hereby amended so as to insert, immediately following the sentence beginning “This article shall be ...”, the following text: “Nothing in this Article VI is intended or shall be construed to authorize within the Town any Explicitly Prohibited Use.”

C. Clause e) of § 6-7 of the Existing Zoning Law is hereby amended so as to delete the words “Agricultural activities” therefrom, and to substitute the following words therefor: “Customary agricultural operations”.
2.8. Amendments to Article X of the Existing Zoning Law

A. § 10-2 of the Existing Zoning Law is hereby amended so as to delete the present first sentence thereof (beginning “The conditional uses listed…”) in the entirety.

B. § 10-4 of the Existing Zoning Law is hereby amended so as to insert the following text immediately following the first sentence thereof (which begins “A conditional use shall comply…”):

“Notwithstanding any provision of this Law to the contrary, in no event shall a conditional use permit be issued to authorize any Explicitly Prohibited Use.”

2.9. Amendment to Article XI of the Existing Zoning Law

The text of § 11-4 of the Existing Zoning Law is hereby deleted in the entirety, and the following text is substituted therefor:

“Variances. The Board of Appeals shall have the authority, on appeal from the decision or determination of the Zoning Officer, or otherwise as contemplated by this Law, to grant use variances and area variances, subject to and upon the terms and conditions set forth herein.

a. Use Variances

1. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that otherwise applicable zoning regulations and restrictions have caused unnecessary hardship.

1. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to clearly demonstrate to the Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each and every of the following four criteria is satisfied: (w) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (x) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood involved; (y) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (z) that the alleged hardship has not been self-created.

2. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Board of Appeals shall examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not
just the site of the proposed project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the applicant has clearly demonstrated, by detailed, written “dollar and cents” proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).

3. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

4. Essential Character of the Neighborhood. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the proposed project will not alter the essential character of the neighborhood. In making its determination of whether the proposed project will alter the essential character of the neighborhood, the Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (a) the rural residential, agricultural and historic character of the Town, (b) its irreplaceable recreation and tourism sites, (c) the extent of hazard to life, limb or property that may result from the proposed project, (d) health impacts, (e) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (f) the impact on property values, and (g) whether the applicant will use a style of development that will result in degradation to the air quality, water quality or scenic and natural resources of the Town. In order to find that the proposed project does not alter the essential character of the neighborhood, the Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.

5. Self-Created Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Board of Appeals finds that the alleged hardship was not self-created. The Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (x) the applicant’s inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (y) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and
which did not apply to the parcel as a whole; or (z) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

2. The Board of Appeals, in the granting of use variances, shall grant only the minimum variance that it shall deem necessary and adequate to allow an economically beneficial use of the property, and at the same time preserve and protect the essential character of the neighborhood and the health, safety and welfare of the community.

3. The Board of Appeals, in the granting of use variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed project. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such use variance may have on the neighborhood or community. Such conditions may include, but are not limited to, landscaping, lighting, access and egress, signs, screening, architectural features, location and layout of buildings, limitations upon the use or characteristics of the use which are reasonably related to the public health, safety and general welfare and as may be necessary to carry out the intent of this Law. If the applicant refuses to accept such requirements and conditions, the use variance shall be denied.

b. Area Variances.

1. In making a determination whether to grant, grant conditionally, or deny an application for an area variance, the Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, and balance this benefit against the detriment to the health, safety and welfare of the neighborhood or community by making such grant. In making such determination the Board shall consider each of the following factors: (a) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (c) whether the requested area variance is substantial; (d) whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (e) whether the alleged difficulty was self-created. (In contrast to the context of a use variance, in the context of an area variance application whether or not the alleged difficulty was self-created shall be relevant to the decision of the Board of Zoning Appeals but a finding that the difficulty was self-created shall not in and of itself preclude the granting of the area variance.)
2. The Board of Appeals, in the granting of area variances, shall grant the minimum area variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. In addition to the application requirements from time to time established pursuant to law and this Law, applications for an area variance shall contain a typewritten narrative explaining what the application is for, and how the project meets or exceeds all of the criteria for an area variance.

4. The Board of Appeals shall, in the granting of area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact such area variance may have on the neighborhood or community. If the applicant refuses to accept such requirements and conditions, the area variance shall be denied.”

2.10. Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.
APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF PENFIELD (NY) LOCAL LAW NO. 1 of the YEAR 2014,
known as:

A local law to amend and supplement
the Town of Penfield Zoning Ordinance
by:
Establishing a Severability Clause;
Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited;
Articulating Certain Explicitly Prohibited Uses;
Adding Certain New Definitions, and Changing Certain Existing Definitions; and
Modifying, Clarifying, and Adding to the Provisions Regarding Variances.

The Town Of Penfield (NY) Local Law No. 1 Of The Year 2014 to which this Appendix A is
attached is herein sometimes referred to as “this Local Law” or “this Law.”

This Appendix A is a part of the Local Law to which it is attached for all purposes.

Section 1. Authority and Intent. This Local Law is intended to be consistent with and is
adopted pursuant to the authority granted to the Town Board of the Town of Penfield
under the New York State Constitution, and the Laws of the State of New York, including
but not limited to the following authorities: New York State Constitution Article IX, Section
2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law §
10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal
Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law §
10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a),
(20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law §
135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law
§ 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

This Law is a police power and land use regulation. This Law is intended and is hereby
declared to address matters of local concern. It is further declared that it is not the
intention of the Town to address matters of statewide concern. This Local Law is intended
to act as, and is hereby declared to exercise, the permissive “incidental control” of a land
use law that is concerned with the broad area of land use planning and the physical use of
land and property within the Town, including the physical externalities associated with
certain herein-identified land uses, such as negative impacts on roadways, traffic
congestion, and other deleterious impacts upon a community. This Law is not intended to
regulate the operational processes of any business. This Local Law is a law of general
applicability and is intended to promote the interests of the community as a whole.
As is consistent with law (including, without limitation NY ECL § 27-0711) this Local Law intends to, and hereby does, regulate certain land uses so as to promote the health and welfare of the citizens of the Town by, among other things, prohibiting the dumping, discharging, injection and disposal of materials herein defined as “Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes” on lands and in bodies of water within the Town. Further, this Local Law is intended and declared to protect drinking water supplies, and is intended and declared to supplement and enhance, but not limit or impinge upon, the Safe Drinking Water Act or the Underground Injection Control programs administered by the Environmental Protection Agency. This Local Law is also intended and declared to impose conditions and restrictions that are directly related and incidental to certain uses of property, with such conditions and restrictions being aimed at minimizing or precluding adverse impacts in and upon the Town that could result from certain uses of property that could pose a unique risk of adverse impacts to, and effects upon, the comfort, peace, enjoyment, health and safety of residents and their property.

Section 2. Findings of Fact.

1. Penfield is a community in Monroe County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, high-quality agricultural and forestry land, and historical and scenic and other natural resources.

2. Maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy. Certain of the Explicitly Prohibited Uses defined and described in this Local Law have the potential to damage surface and ground water resources, in the event of (by way of example) human error, power outages, flooding or other natural disasters, or engineered materials and structures experiencing stresses beyond those for which they were designed. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

3. Preservation of the Town’s irreplaceable scenic sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.

4. The Town’s rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the agricultural, scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They also deeply affect the way people feel about a place, and affect whether businesses will want to locate within, or people will want to live in and visit, a place.
5. Allowing certain of the Explicitly Prohibited Uses defined and described in the Local Law could impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the areas or communities in which such activities are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas and scenic views, the fragmentation of natural communities and valuable wildlife and flora corridors, decreased recreational opportunities, and damage to tourism industries.

6. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Certain of the Explicitly Prohibited Uses defined and described in this Local Law typically involve a large volume of heavy vehicles and accidents involving heavy vehicles have greater potential for death or serious injuries and property damages than those involving smaller vehicles. An increased volume of heavy vehicular traffic may cause, contribute to, or create unsafe conditions for the traveling public and thus place a strain on emergency responders. Increased heavy vehicular traffic also tends to increase air pollution and noise levels, and decrease the quality of life and property values for those living nearby. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that typically accompany many of the Explicitly Prohibited Uses defined and described in this Local Law.

7. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, the air pollution, dust, noise, vibrations, and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. If one or more of the Explicitly Prohibited Uses defined and described in the Local Law are conducted within the Town, noise, vibrations, seismic, subterranean, lateral and subjacent support impacts, and light pollution typically caused by such activities, could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, vibrations, and seismic and other impacts to subterranean surface support, can have negative effects on human health and wildlife.

9. The creation, generation, keeping, storage or disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined in the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
10. The high costs associated with the disposal of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined in the Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

11. Evaluation and determination of whether the Explicitly Prohibited Uses defined and described in this Local Law are appropriate for the Town is a legitimate goal of land use policy and laws; indeed, the exclusion of specified industrial uses is a legitimate and judicially recognized and supported goal of such laws. As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

> the concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.

416 U.S. at 6.

See also, *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State’s highest court, held as follows:

> A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.

87 N.Y. 2d at 683, 684.

**Section 3. Purposes.** This Local Law is enacted so as to take proactive steps to protect and preserve the quality of the Town’s air, water, historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Local Law is intended and declared by the Town Board to:

a. promote the purposes of planning and land use regulation by, among other things, preserving the roads and protecting limited and related fire, police, and other emergency response services in the Town;

b. promote the health, safety and welfare of the Town, its present and future inhabitants, by preventing adverse public nuisances and/or land use impacts and effects that could result
if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town;

c. protect the Town’s priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit here, by protecting it from adverse public nuisances and/or land use impacts and effects that could result if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town; and

d. protect the Town’s irreplaceable historic, scenic, and natural resources, and the Town’s water and air quality, by protecting each and all of the same from adverse public nuisances and/or land use impacts and effects that could result if the Explicitly Prohibited Uses defined and described in this Local Law were allowed to be conducted within the Town.

--- END ---
PENFIELD TOWN BOARD RESOLUTION NO. 14T-205           DATE December 17th 2014

BY  Andy Moore                                   Law and Finance COMMITTEE

NAME Authorization for GASB 45 Professional Services

Whereas, the Town of Penfield desires to secure the professional services of a Consultant to provide certain services relative to accommodating certain requirements of GASB (General Accounting Standards Board) 45, and

Whereas, Brown and Brown Consulting has the necessary equipment, personnel and expertise to provide certain services with respect to these GASB 45 Requirements, and

Whereas, the Town of Penfield is required by the fiscal year 2014 to record the post-retirement benefits on the annual financial reports, and

Now, Be It Resolved that the Supervisor sign the agreement with Brown and Brown Consulting services to complete these reports in compliance with GASB 45 requirements not to exceed $3,500 for the preparation of the final initial report.

Moved: __________________________

Seconded: __________________________

Vote: Kohl __________________________

LaFountain __________________________

Metzler __________________________

Moore __________________________

Quinn __________________________
WHEREAS; the Town of Penfield currently has a right of easement for storm sewer purposes conferred under Liber 8481, Page 303, and

WHEREAS; this storm sewer easement and the storm sewer piping within the easement will be made obsolete by proposed storm sewer improvements as part of the Baytown Plaza Re-development project, and

WHEREAS; the Town of Penfield desires to release this storm sewer easement Liber 8481, Page 303 as shown on Exhibit 1, attached hereto and made a part hereof, and

WHEREAS; this easement release is subject to the installation of new storm sewer improvements in accordance with the approved Utility Plan C-111 & C-113 of the Baytowne Plaza Redevelopment project and filing of the replacement easement as shown on the aforementioned Exhibit.

THEREFORE BE IT RESOLVED, that the Town Supervisor be and hereby is authorized to execute the necessary document(s) which will release the existing Storm Sewer Easement filed under Liber 8481, Page 303 and as shown on Exhibit 1 attached hereto and made a part hereof, and

BE IT FURTHER RESOLVED, this resolution and appropriate documents for said easement release shall be filed in the Office of the Monroe County Clerk; subject to filing a replacement storm sewer easement as also shown on said Exhibit 1, and

BE IT FURTHER RESOLVED, that the filing fees associated thereto are to be reimbursed by the property owner.

Moved: 
Seconded:

Vote: Kohl 
LaFountain 
Metzler 
Moore 
Quinn
AUTHORIZING THE TOWN SUPERVISOR TO EXECUTE AND FILE NECESSARY DOCUMENTS RELATING TO A PORTION OF A SANITARY SEWER EASEMENT, #1900 EMPIRE BOULEVARD, TA# 093.02-1-23.11.

WHEREAS; the Town of Penfield currently has a right of easement for sanitary sewer purposes conferred under Liber 7864, Page 133, and

WHEREAS; a portion of the sanitary sewer easement is no longer being used for its originally intended purpose and therefore is no longer needed, and

WHEREAS; the Town of Penfield desires to release this portion of said easement as described within Schedule A, and as shown on Exhibit 1, both attached hereto and made a part hereof.

THEREFORE BE IT RESOLVED, that the Town Supervisor be and hereby is authorized to execute the necessary document(s) which will release this portion of the sanitary sewer easement originally filed under Liber 7864, Page 133 as described within Schedule A, and shown on Exhibit 1, attached hereto and made a part hereof, and

BE IT FURTHER RESOLVED, this resolution accompanied by the appropriate documents for said release shall be filed in the Office of the Monroe County Clerk; and associated filing fees are to be reimbursed by the property owner.

Moved: 

Seconded: 

Vote: Kohl 
LaFountain 
Metzler 
Moore 
Quinn
PENFIELD TOWN BOARD RESOLUTION NO.14T-202 DATE: December 17, 2014

BY: Councilman Moore Law and Finance COMMITTEE

NAME: Authorization for Supervisor to sign an Agreement with Immediate Mailing Services, Inc. (IMS) for Presort First Class Mail Services

WHEREAS, The Town of Penfield continually looks at ways to reduce costs and improve services for the taxpayers, and

WHEREAS, The Town Clerk researched opportunities for a more cost effective method of processing mail, and

WHEREAS, Immediate Mailing Services, Inc. (IMS) has been providing business communication services for more than twenty years, including many local municipalities, and has processed more than 200 million mail pieces per year.

NOW, THEREFORE, BE IT

RESOLVED, The Town Board, upon recommendation of the Town Clerk, has determined that IMS will significantly reduce postage costs, thus saving costs, by providing a first class presort program to the Town, and be it further

RESOLVED, that the Town Board hereby authorizes the Supervisor to sign an agreement with IMS for postage services subject to the review and approval of said agreement by the Town Attorney.

Moved: ___________________

Seconded: ___________________

Vote: Kohl ___________________

LaFountain ___________________

Metzler ___________________

Moore ___________________

Quinn ___________________
PENFIELD TOWN BOARD RESOLUTION NO.14T-201  DATE December 17th 2014

BY: Andy Moore   Law and Finance COMMITTEE


WHEREAS, during 2014, the Highway Department received insurance recovery dollars from the Insurance Company for damaged vehicles, and

WHEREAS, during 2014, the Highway Department has expended parts to recover the cost of the damaged vehicles during 2014, and

WHEREAS, the Town Board desires to have an up to date budget in relation to current income and expenditures,

NOW BE IT RESOLVED, that the following 2014 Budget Amendment be approved for the Highway Funds as follows:

**Highway Fund Revenue:**

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<tr>
<th>Descriptions</th>
<th>Amount</th>
<th>Revised Amount</th>
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<td>Insurance Recovery</td>
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**Highway Fund Appropriations:**

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<th>Revised Amount</th>
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<td>Vehicle Repairs</td>
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Moved: _____________________
Seconded: _____________________

Vote: Kohl _______________________
      LaFountain _______________________
      Metzler _______________________
      Moore _______________________
      Quinn _______________________

PENFIELD TOWN BOARD RESOLUTION NO. 14T-200  DATE December 17th 2014

BY: Andy Moore      Law and Finance COMMITTEE


WHEREAS, during 2014, the Town Board authorized the Highway Department to contract with the Monroe Community College, and

WHEREAS, during 2014, the Highway Department has completed the resurfacing of the parking lot at the Monroe Community College, and

WHEREAS, the Town Board desires to have an up to date budget in relation to current income and expenditures,

NOW BE IT RESOLVED, that the following 2014 Budget Amendment be approved for the Highway Funds as follows:

**Highway Fund Revenue:**

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<th>Descriptions</th>
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<th>Revised Amount</th>
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**Highway Fund Appropriations:**

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<th>Descriptions</th>
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<th>Revised Amount</th>
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Moved: _____________________  
Seconded: _____________________

Vote: Kohl _____________________  
LaFountain _____________________  
Metzler _____________________  
Moore _____________________  
Quinn _____________________