

**Town Board Workshop Meeting  
June 30, 2022**

A regularly scheduled Town Board Workshop meeting was held in person at the Esopus Town Hall, 1 Town Hall Way, Ulster Park, NY on Thursday June 30, 2022, at 7:00 PM with the following persons in attendance:

**Supervisor Danielle Freer  
Councilman Kathie Quick  
Councilman Jared Geuss  
Councilman Evelyn Clarke  
Councilman Laura Robinson**

**Recording Administrator Holly A. Netter, Town Clerk, RMC**

**4 ways to give public comment:**

In person at meeting

Phone – 845 331 0676

Email – [lreynolds@esopus.com](mailto:lreynolds@esopus.com) with subject line “Public Comment” and meeting date

Mail – Town of Esopus PO BOX 700 Port Ewen, NY 12466

**SUPERVISOR FREER CALLED THE MEETING TO ORDER**

**PLEDGE**

**PUBLIC COMMENT –**

**Mike Mulligan**-Port Ewen resident said he attended the Planning Board meeting last night and was dismayed at a comment made in relation to the new Port Ewen Fire Department by the Planning Board Chair Roxanne Pecora. She said she would not approve the project and would insist access to Bowne Street was part of the plan. She stated it was something that should have been done when the Town Hall was built. Mr. Mulligan felt it was ridiculous that after spending all the money to improve Ross Park and bring more tourism to the area that they would want to have the Sheriff and Fire Department racing down through a residential area past the park to get to Salem Street. He said the decision to route the traffic down the secondary streets is stupid. Why would you want traffic funneling down narrow secondary streets? If there was a waiver the first time, why shouldn't it continue.

**Steven Cerini**, Mountainview Ave – Steven gave kudos to the Port Ewen Water Department for constantly fixing the water breaks. He also acknowledged the Town Board and expressed his appreciation for everything they do. Often people voice their complaints and do not take the

time to compliment all the positive things that are done. He told them all not to lose the faith – they are appreciated.

**SUPERVISOR FREER MADE A MOTION TO CLOSE THE PUBLIC COMMENT PERIOD. MOTION WAS SECONDED BY COUNCILMAN JARED GEUSS. ALL MEMBERS PRESENT WERE IN FAVOR. MOTION CARRIED.**

**INTRODUCTION LOCAL LAW 2 OF 2022: AMEND CHAPTER 123 OF THE ESOPUS TOWN CODE**

Supervisor Freer mentioned at our last meeting that we have been working very closely with our Planning Board to simplify our camping at marinas law. We have decided to take the local law as it was written and rewrite the law to now live under our existing camping section in our zoning code.

No significant changes were made to the actual content of the law that we have been discussing. This is just a simpler way for it to read and for it to be enforced.

**RESOLUTION OF INTRODUCTION**

**Supervisor Danielle Freer, seconded by Councilman Kathie Quick, introduced the following proposed local law, to be known as **Local Law No. 2 of 2022, entitled A LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK AMENDING CHAPTER 123 OF THE ESOPUS TOWN CODE (ZONING) AS FOLLOWS TO PERMIT CAMPING AT MARINAS AND BOATYARDS AND CAMPGROUNDS AS A SPECIAL USE IN THE WATERFRONT DISTRICT****

BE IT ENACTED by the Town Board of the Town of Esopus as follows:

Section 1. Revise §123-10 to make “Campgrounds” a permitted Special Use (SUP) in the W Waterfront District on the Schedule of Permitted Uses.

Section 2. Delete §123-13.A(4)(h) of the Town of Esopus Code (Zoning).

Section 3. Add §123-13.A(11) to the Town of Esopus Code (Zoning), reading as follows:

- (11) Marina camping. Subject to Special Use Permit, camping may also be permitted in conjunction with Marinas and Boatyards in the W Waterfront District.

- (a) A maximum of 12 campsites altogether shall be permitted at any Marina and Boatyard, subject to the standards of §123-13.A(10)(d) hereof.
- (b) The camping activity shall not occupy more than one-third of the property and remain incidental and subordinate to of the Marina and Boatyard.
- (c) Marina campgrounds shall only operate between April 1 and October 31 of each year. No campsite shall be occupied between November 1 and March 31 or be the residence of the owner or any other occupant.
- (d) All campsites shall be physically defined, numbered and designated by signs for purposes of emergency services.
- (e) Campsites shall be separated by 10 feet from any specific marina operations, and from associated internal vehicle traffic.
- (f) Camping permitted at Marinas and Boatyards shall otherwise comply with §123-13.A(10)(e) through (i) hereof, provided the Planning Board may modify such standards during Special Use application where appropriate to reflect the amount of camping proposed, the availability of services from the Marina and Boatyard operation and similar factors.
- (g) A detailed emergency preparedness plan for evacuation in the event of a fire, imminent flooding or other disaster situation shall be provided.
- (h) Marina camping campsites shall be used only for camping purposes and maintained in a transportable condition at all times. No improvement or living unit designed for permanent occupancy shall be erected or placed on any campsite. No permanent external appurtenances, including, but not limited to carports, cabanas, or patios, may be attached to any recreational vehicle, and the removal of wheels or placement of the unit on a foundation shall be prohibited.
- (i) If recreational vehicles are proposed to be on the property between November 1 and March 31, they shall be stored in a single designated storage area apart from the camping area located a minimum of 50 feet from the mean high-water mark of the Rondout Creek and a minimum of 20 feet from adjoining property boundaries, from which all recreational vehicles shall be fully screened. The number of recreational vehicles stored on the property shall not exceed the total number of approved campsites.

- (j) Other than incidental and emergency repairs needed to maintain drivability and/or to protect the health and safety of guests and staff, no on-site vehicle repairs shall be permitted.
- (k) All outdoor music and camping associated outdoor activities shall cease by 9:00 PM eastern standard time except for Friday and Saturday when the time shall be extended to 10 PM. No noxious or offensive activities or nuisances shall be permitted and fires shall be confined to designated fire pits that shall be provided by the operator, Fireworks shall be prohibited.
- (l) Pets shall be licensed, leashed and kept under control at all times.
- (m) All camping activities and improvements shall comply with Esopus Town Code Chapter 80, "Flood Damage Prevention."
- (n) The fire department shall have unimpeded access to the Rondout Creek to withdraw water as needed in case of a fire on or near the subject property.

Section 4. Add §123-14.G(5) to the Town of Esopus Code (Zoning), reading as follows:

- (5) Marina camping. Subject to Special Use Permit and §123-13.A(11) hereof, camping may be permitted in conjunction with Marinas and Boatyards in the W Waterfront District.

Section 5. Severability.

If any clause, sentence, paragraph, section, article or part of this Local Law shall be adjudicated in any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such and such invalidity shall not be deemed to affect the remaining portions thereof.

Section 6. Effective Date.

This local law shall take effect ten (10) days following publication and posting in accordance with Town Code Section 123-50(D) and filing of the local law with the Secretary of State in accord with Article 3 of the Municipal Home Rule Law.

Supervisor Freer advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this law. She

offered the following resolution, which was seconded by **Councilman Kathie Quick**, who moved its adoption:

WHEREAS, on June 30, 2022, **Supervisor Danielle Freer** has introduced this local law for the Town of Esopus, to be known as “Town of Esopus **Local Law No. 2** of the Year 2022, A LOCAL LAW OF THE TOWN OF ESOPUS, ULSTER COUNTY, NEW YORK AMENDING CHAPTER 123 OF THE ESOPUS TOWN CODE (ZONING) AS FOLLOWS TO PERMIT CAMPING AT MARINAS AND BOATYARDS AND CAMPGROUNDS AS A SPECIAL USE IN THE WATERFRONT DISTRICT.

WHEREAS, the Town Board has determined that the action to amend the Town of Esopus Zoning Law is a Type I Action under the New York State Environmental Quality Review Act (SEQRA).

WHEREAS, that because only the Town Board can consider and adopt changes to the Town Code, that it is the only involved agency, and the Board hereby declares that it is the Lead Agency for purposes of coordinating the environmental review of this matter pursuant to Article 8 of the Environmental Conservation Law.

WHEREAS, the Town Board has determined that the amendments must be referred to the Ulster County Planning Board for review and recommendation pursuant to General Municipal Law §239-m and Town Code §123-51.

WHEREAS, the Town Board refers this matter to the Town of Esopus Planning Board pursuant to Town Code §123-51.

RESOLVED, that a public hearing be held in relation to the proposed changes as set forth in the form of notice, hereinafter provided, at which hearing parties of interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 1 Town Hall Way, Ulster Park, New York, on **July 21, 2022, at 6:50 p.m.**, Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of Esopus, by the Town Clerk, at least ten (10) days before such hearing and that notice shall be in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Esopus will hold a public hearing at the Town Hall, 1 Town Hall Way, Ulster Park, New York on **July 21, 2022, at 6:50 p.m.**, on **Local Law**

**No. 2 of the Year 2022**, AMENDING CHAPTER 123 OF THE ESOPUS TOWN CODE (ZONING) AS FOLLOWS TO PERMIT CAMPING AT MARINAS AND BOATYARDS AND CAMPGROUNDS AS A SPECIAL USE IN THE WATERFRONT DISTRICT.

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination on the town website [www.esopus.com](http://www.esopus.com) and at the office of the Clerk of the Town of Esopus, at the Town Hall, 1 Town Hall Way, Ulster Park, New York between the hours of 9:00 a.m. and 4:00 p.m. on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all persons interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED: Ulster Park, New York  
June 30, 2022

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HOLLY A. NETTER, TOWN CLERK, RMC

The foregoing resolution was voted upon with all councilmen voting as follows:

<b>COUNCILMAN LAURA ROBINSON</b>	<b>AYE</b>
<b>COUNCILMAN EVELYN CLARKE</b>	<b>AYE</b>
<b>COUNCILMAN KATHIE QUICK</b>	<b>AYE</b>
<b>COUNCILMAN JARED GEUSS</b>	<b>AYE</b>
<b>SUPERVISOR DANIELLE FREER</b>	<b>AYE</b>

**Resolution duly adopted.**

DATED: Ulster Park, New York  
June 30, 2022

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HOLLY A. NETTER, TOWN CLERK

**Engineering Planning Grant Application**

Supervisor Freer said this is a proposal that we heard Dan Valentine talk about at our last meeting regarding our wastewater system that runs from DYN0 to the North Broadway pumpstation. Along our sewer interceptor line, we have identified several significant offenders of infiltration in the manholes which causes Esopus to pay Kingston to treat groundwater.

This study is especially important given projects that are currently on the table with the Planning Board – Streamside Farms and Lighthouse Village.

**RESOLUTION AUTHORIZING APPLICATION FOR THE NEW YORK STATE DEC/EFC  
WASTEWATER INFRASTRUCTURE ENGINEERING PLANNING GRANT PROGRAM**

**WHEREAS**, the Town of Esopus owns and maintains a wastewater collection system providing wastewater service to businesses and residents; and

**WHEREAS**, the Town of Esopus requires an assessment of the existing wastewater collection system infrastructure in order to prioritize and plan for needed improvements and repairs; and

**WHEREAS**, the New York State Environmental Facilities Corporation (“NYSEFC”) provides an engineering planning grant for funding for this type of engineering study; and

**WHEREAS**, the Town Board of the Town of Esopus would like to retain the services of Tighe & Bond Engineering and Landscape Architecture, P.C. (“Tighe & Bond”) to assist the Town with an application to the NYSEFC engineering planning grant at a cost not to exceed \$1,500.00; and

**WHEREAS**, the NYSEFC engineering planning grant requires the applicant to certify and agree that Tighe & Bond are authorized on behalf of the Town to do the following:

1. To commit the applicant (Town) to comply with the requirements of Article 15-A of the New York State Executive Law: Participation By Minority Group Members and Women With Respect to State Contracts by providing opportunities for Minority-Owned Business Enterprises (MBE)/Woman-owned Business Enterprise (WBE) participation and will maintain such records and take such actions necessary to demonstrate such compliance throughout the completion of the project;

2. Certify that all the information contained in this application and in all statements, data and supporting documents which have been made or furnished for the purpose of receiving assistance for the project described in this application, are true, correct and complete to the best of their knowledge and belief; and

3. If the New York State DEC/EFC Wastewater Infrastructure Engineering Planning Grant Program funding is provided for the project described in this application, the applicant shall comply with all rules, regulations, provisions and guidance with respect thereto, as each may be amended from time to time, including, but not limited to, the Clean Water Act, 33 U.S.C. 1251 et seq., Chapter 565 of the Laws of 1989, 6 NYCRR Part 649, and 21 NYCRR Part 2602.

**WHEREAS**, pursuant to 6 NYCRR Part 617.5(c)(24) “information collection, including basic data collection and research; border quality and pollution studies, traffic counts, engineering studies; surveys, subsurface investigation; and soil studies that do not commit the agency to undertake, fund or prove any Type I or Unlisted action is not subject to review under SEQRA”; and

**WHEREAS**, the preparation of the updated wastewater feasibility study does not commit the Town to undertake, fund or approve any action listed in 6 NYCRR Part 617 as a Type I or Unlisted action; and

**WHEREAS**, the anticipated budget for the study is \$62,300 of which \$49,840 would be provided by the NYSEFC Engineering Planning Grant with a 20% match in the amount of \$12,460 to be provided by the Town.

**NOW, THEREFORE, BE IT RESOLVED**, as follows:

1. The recitations set forth above are incorporated in this Resolution as if fully set forth and adopted herein.
2. The Town of Esopus Town Board hereby finds that the preparation of and application for the NYSEFC Engineering Planning Grant to conduct a Wastewater Preliminary Engineer Report Evaluation is a Type II action and not subject to review under SEQR (6 NYCRR Part 617).
3. The Town Board of the Town of Esopus hereby authorizes the Town Supervisor to make all necessary certifications as set forth above and to execute the grant application as well as any other contracts, documents and instruments necessary to bring about the grant to fulfill the Town's obligations under the NYSEFC Engineering Planning Grant.

4. The Town Board of the Town of Esopus hereby authorizes Tighe & Bond to assist the Town with its application for the NYSEFC Engineering Planning Grant for a cost not to exceed \$1,500 and pursuant to the proposal annexed hereto.(Addendum A)

**Motioned By: Supervisor Danielle Freer**

**Seconded By: Councilman Jared Geuss**

**The foregoing resolution was voted upon with all councilwomen/councilmen voting as follows:**

<b>COUNCILMAN LAURA ROBINSON</b>	<b>AYE</b>
<b>COUNCILMAN EVELYN CLARKE</b>	<b>AYE</b>
<b>COUNCILMAN KATHIE QUICK</b>	<b>AYE</b>
<b>COUNCILMAN JARED GEUSS</b>	<b>AYE</b>
<b>SUPERVISOR DANIELLE FREER</b>	<b>AYE</b>

**Resolution duly adopted.**

**\*\* Dan Valentine was here last meeting to discuss topics relative to this resolution. These studies are important as we get larger projects coming into the town, such as Berg Field and Clay Rd. developments to be able to see if the water and sewer capacity can handle it.**

**MISCELLANEOUS**

**COUNCILMAN JARED GEUSS MADE A MOTION TO AUTHORIZE SUPERVISOR FREER TO SEND A LETTER OF SUPPORT FOR THE CITY OF KINGSTON WASTEWATER INFRASTRUCTURE ENGINEERING PLANNING GRANT PROGRAM. THE MOTION WAS SECONDED BY COUNCILMAN EVELYN CLARKE. ALL MEMBERS WERE IN FAVOR. MOTION CARRIED.**

**SUPERVISOR DANIELLE FREER MOTIONED TO AUTHORIZE SUPERVISOR FREER TO SIGN THE SERVICE AGREEMENT WITH LABELLA ASSOCIATES DPC IN THE AMOUNT OF \$5,000 TO ASSIST WITH THE BUILDING DEPARTMENT CODE UPDATES. THE MOTION WAS SECONDED BY COUNCILMAN EVELYN CLARKE. ALL MEMBERS WERE IN FAVOR. MOTION CARRIED.**

**\*\* will bring the Town into compliance with all of the new state laws**

*Code revision outline*

*Draft revised Town code chapter 56*

*Local law introduction and adoption process*

## **TBWS 6-30-22**

*Draft/ Revised Draft Local Law Introductory Resolution*

*Draft/ Revised Draft EAF Parts 1-3 and Negative Declaration*

*Attend Public Hearing (in person)*

*Review public and agency comments*

*Meeting #4 as necessary*

*Draft/ Revised Draft Adoption and Negative Declaration Resolutions*

*ENB Filing of Negative Declaration*

### **LIAISON LIGHTNING ROUND**

#### **Supervisor Freer:**

Overall:

- Our Town website now has a new events calendar and we've reinstated the Facebook Esopus Events page to help keep people up to date on town happenings.

Highway Department:

- Hudson Lane repair is complete and now needs to be paved. Funding should be discussed. The department is tackling an off-road drainage issue in Sleightsburgh and will then move on to Horton Lane.
- Paving season: Burrough Drive is finishing up today, tomorrow Palaphene Road.
- Had a good meeting with Tighe & Bond regarding Stormwater Infrastructure Assessment and Capital Improvement Plan draining system and off-road drainage report.
- Superintendent Cafaldo would like to host a Touch-a-Truck event

Town Clerk Update:

- Sojourner truth sign near Sturgeon Pond will be rehabbed around the second week of August at no cost to the town.
- Town Clerk Netter contacted Attorney Paul Keller for guidance on selling the former building/grounds/rec garage by the railroad track ("The Hutt"). There is no longer a need for the property nor any future need since the new garage has been completed on the Town Hall property. It will be up to the Board to determine how they want to sell it; auction, bid, broker etc. The Board has the fiduciary duty to secure the best price obtainable or most beneficial in the public interest. Councilman Geuss suggested the possibility of going out to bid for the lowest commission percentage from a broker, while obtaining market exposure. The Board will revisit this topic in August. The process requires a public hearing, and the contract of sale is subject to permissive referendum.

**Councilman Geuss:**

Water Board meeting was moved to July 7, 2022 due to the vacations. With regard to the earlier comment regarding egress on Bowne Street, the Town accepted Town Hall Way so the fire department would have access to 9W. There would be a turn lane with possible light to get out on to 9W. There needs to be clarification because the initial drawing granted a second egress through Heavenly Valley for an emergency egress. Since that drawing meets the egress criteria, he does not see why the town should have to pay for the road to Bowen.

Transfer Station – Composting needs to talk to the RRA.

**Councilman Quick:**

The ZBA met on June 21, 2022. A public hearing was held for the Lighthouse Village Area Variance, [154 Clay Road](#) in Ulster Park. Many residents expressed concerns regarding increased traffic, drainage issues and stress on the local schools. A variance for a higher fence was granted on Old Mill Road in the Rifton area.

Waterfront Advisory Board.

Some of the possible improvement design guidelines such as adding rain gardens to prevent erosion from storm water runoff at the Freer Beach Park were discussed. Some of these ideas will be presented to the NYSDOS Division of Coastal Management. Carol Tomasetti reported that Chester is moored by Lighthouse Park and Esopus Meadows Park. Chestnut cutting has already begun, thanks to our dedicated volunteers. We are waiting for a permit from DEC to begin cutting in the cove by Freer Park Beach. The requirement for a permit to cut in that area is new this year, cut since 2010 without needing it.

Office of the Assessor

Our Assessor completed the 2022 Tax Roll and submitted it to the County. The County is finished with the Tax Roll and she picked it up and delivered it to Town Hall today. Shannon is ahead of her schedule of qualifying courses. She only has three more classes to complete.

Esopus Seniors

We had a trip to a Strawberry Festival in Massachusetts on June 14th; 52 people attended. We had a BBQ with all the trimmings and Strawberry Shortcake for dessert. We were entertained by a Patsy Cline/Loretta Lynn impersonator singing many country songs. We're planning another BBQ picnic trip on August 9th for a musical tribute to Kenny Rogers. We are working on scheduling a ten-week program called Bingo-Cize to combine some exercise with Bingo for our seniors. We also scheduled another class for Defensive Driving to be held on October 24.

**Councilman Clarke:**

EB / Environmental Board

- Climate Smart Communities
  - o EV Charging station Central Hudson grant application is being worked on by Nina Nichols with the Town – Hold for more research into the actual cost
  - o Lee Gough is working with the County’s Solar Mapping Committee
  - o Green Fleet Inventory
  - o Laura Petit, Mark Ellison developing action steps
  - o Repair Café – Held June 25 at Ascension Church Rt 9W
    - Qualifies for points for Climate Smart Communities
    - Next session August 27
- MS4 education – Will provide Stormwater Management Education to the public
- Request to sign Resolution Declaring Support for NYS Climate Action Council Scoping Plan

EDC / Esopus Development Committee

- Planters placed May 9<sup>th</sup>. American Legion provided flags
- Event Calendar on the Town’s website. Provide communication and coordination with Town agencies, businesses to provide information regarding upcoming events
- Esopus Community Foundation
  - o Cans placed to provide additional names for camp
  - o Book bag giveaway planned Aug. 6 10-1pm at Mario’s. Drop off school supplies at Mario’s
  - o Local Barber, George Davis, to offer free haircuts

**EBA MIXER Waiver**

**COUNCILMAN JARED GEUSS MOTIONED TO WAIVE THE PARK RENTAL AND ALCOHOL FEE FOR THE ESOPUS BUSINESS ALLIANCE FOR THEIR ANNUAL FREER PARK MIXER 7/25. INSURANCE HAS BEEN PROVIDED. THE MOTION WAS SECONDED BY COUNCILMAN LAURA ROBINSON. ALL MEMBERS WERE IN FAVOR. MOTION CARRIED.**

Building Dept

- Request for P/T staff
  - o Staff needed for 2023 FY to provide the added code enforcement which will be needed due to new/updated codes (B&B, short term rentals, etc)
- Code Violations
  - o properties being cleaned up

Camp Esopus

- Registrations
  - o Session 1 – 35 youth
  - o Session 2 – 18 youth
  - o Session 3 – 9 youth
- Esopus Community Foundation placing cans at local businesses for scholarships and donations for youth in need of funding

**Councilman Robinson:**

Recreation committee updates: New members are great and are working out well. Kevin Boller resigned.

Jessica & Kathy will do a tech check for movie night which will be 7/23 at Ross Park. Goonies will be the movie. A scavenger hunt will precede the movie. August 27 Karate Kid with a Martial Arts demonstration prior to the movie. September 24 Never Ending Story and a story will be shared before the movie.

Food Truck Friday 6/17 was successful they had 9 vendors.

Fill the backpack promotion, donations being accepted to fill backpacks for children in need. Donations were given by RCAL and American Legion.

**COUNCILMAN LAURA ROBINSON MOTIONED TO APPROVE ADAMS FENCE PROPOSAL FOR THE INSTALLATION OF A NEW FENCE AT CAS LANDI PARK IN THE AMOUNT OF \$13,895.00 TO BE PAID FROM ARPA FUNDS. THE MOTION WAS SECONDED BY COUNCILMAN KATHIE QUICK. ALL MEMBERS WERE IN FAVOR. MOTION CARRIED.**

**ADJOURNMENT**

**A MOTION TO ADJOURN THE MEETING WAS MADE BY SUPERVISOR FREER AT 8:53 PM. THE MOTION WAS SECONDED BY COUNCILMAN JARED GEUSS. ALL MEMBERS PRESENT WERE IN FAVOR. MOTION CARRIED.**

*Respectively Submitted,  
Holly A. Netter  
Town Clerk, R.MC*

E5006-P007  
June 14, 2022

Danielle Freer  
Supervisor  
Town of Esopus  
284 Broadway  
Ulster Park, NY 12487

Re: **Proposal for Wastewater Grant Funding Assistance**

Dear Supervisor Freer:

Tighe & Bond, whose services in New York are provided through T&B Engineering & Landscape Architecture, P.C. (Tighe & Bond) is pleased to provide this letter proposal for engineering services for assistance with grant procurement.

### **Scope of Work**

1. IUP Listing due June 17<sup>th</sup> - Tighe & Bond will complete this form based upon the data presented in the Water System PER and submit the updated PER. In addition to the DWSRF loan funding this provides opportunity to indicate desire for bipartisan infrastructure bill support as well.
2. EPG Application due July 29<sup>th</sup> - Tighe & Bond will support the Town in application to the New York State Environmental Facilities Corporation Engineering Planning Grant. Activities will include:
  - Preparation of the grant application via the consolidated funding application website
  - Development of grant narrative consistent with specific application evaluation criteria
  - Development of project budget
  - Coordination with Town representatives for application execution and appropriate resolutions to support grant

### **Schedule**

Tighe & Bond will complete this work before the noted deadlines.

### **Fee**

Tighe & Bond will perform the scope of work noted above for a lump sum fee of \$1,500. In the event that the scope of work is increased for any reason, the limiting fee to complete the work shall be mutually revised by written amendment. Our attached Terms and Conditions is part of this letter agreement.

The included schedule and fees are based on the above scope of work and assumptions. The schedule includes reasonable allowances for review and approval times by applicable parties. This schedule may need to be adjusted as the project progresses, allowing for changes in scope, character or size of the project requested by you, or for delays or other causes beyond our reasonable control, including delays due to Force Majeure, including those delays that may incur due to the COVID-19 pandemic.

Very truly yours,

**T&B Engineering and Landscape Architecture, P.C.**



Erin K. Moore, PE, BCEE  
Senior Project Manager  
[ekmoore@tighebond.com](mailto:ekmoore@tighebond.com)



Peter M. Valinski, PE  
Director  
[pmvalinski@tighebond.com](mailto:pmvalinski@tighebond.com)

**ACCEPTANCE:**

On behalf of the Town of Esopus, the scope, fee, and terms of this proposal are hereby accepted.



Authorized Representative

6/23/2022  
Date

Enclosures: Terms & Conditions

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**"CLIENT" is defined in the acceptance line of the accompanying proposal letter or the name the proposal is issued to; T&B Engineering and Landscape Architecture, P.C. is hereby referenced as "CONSULTANT"; "PROJECT" is defined in the accompanying proposal letter**

#### **1. SCHEDULE OF PAYMENTS**

**1.1** Invoices will generally be submitted once a month for services performed during the previous month. Payment will be due within 30 days of invoice date. Monthly payments to CONSULTANT shall be made on the basis of invoices submitted by CONSULTANT and approved by CLIENT. If requested by CLIENT, monthly invoices may be supplemented with such supporting data as reasonably requested to substantiate them.

**1.2** In the event of a disagreement as to billing, the CLIENT shall pay the agreed portion.

**1.3** Interest will be added to accounts in arrears at the rate of one and one-half (1.5) percent per month (18 percent per annum) or the maximum rate allowed by law, whichever is less, of the outstanding balance. In the event counsel is retained to obtain payment of an outstanding balance, CLIENT will reimburse CONSULTANT for all reasonable attorney's fees and court costs.

**1.4** If CLIENT fails to make payment in full within 30 days of the date due for any undisputed billing, CONSULTANT may, after giving seven days' written notice to CLIENT, suspend services and retain work product until paid in full, including interest. In the event of suspension of services, CONSULTANT will have no liability to CLIENT for delays or damages caused by such suspension.

#### **2. SUCCESSORS AND ASSIGNS**

**2.1** CLIENT and CONSULTANT each binds itself, its partners, successors, assigns and legal representatives to the other parties to this Agreement and to the partners, successors, assigns and legal representatives of such other parties with respect to all covenants of this Agreement. CONSULTANT shall not assign, sublet or transfer its interest in this Agreement without the written consent of CLIENT, which consent shall not be unreasonably withheld.

**2.2** This Agreement represents the entire and integrated Agreement between CLIENT and CONSULTANT and supersedes all prior negotiations, representations or Agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both CLIENT and CONSULTANT. References to this agreement include these Terms & Conditions, any accompanying proposal or description of services, as well as any other documents referenced or incorporated therein. In the event one or more provisions of any of the foregoing documents conflict with the provisions of these Terms & Conditions, the provisions of these Terms & Conditions shall control.

**2.3** Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against CLIENT or against CONSULTANT.

#### **3. STANDARD OF CARE**

**3.1** In providing services, CONSULTANT will use that degree of care and skill ordinarily exercised under similar circumstances by individuals providing such services in the same or similar locality for similar projects.

#### **4. TERMINATION**

**4.1** This Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In addition, CLIENT may terminate this Agreement for its convenience at any time by giving written notice to CONSULTANT. In the event of any termination, CLIENT will pay CONSULTANT for all services rendered and reimbursable expenses incurred under the Agreement to the date of termination and all services and expenses related to the orderly termination of this Agreement.

#### **5. RECORD RETENTION**

**5.1** CONSULTANT will retain pertinent records relating to the services performed for the time required by law, during which period the records will be made available upon reasonable request and upon reimbursement for any applicable retrieval/copying charges.

**5.2** Samples - All soil, rock and water samples will be discarded 30 days after submission of CONSULTANT's report, unless mutually agreed otherwise or unless CONSULTANT's customary practice is to retain for a longer period of time for the specific type of services which CONSULTANT has agreed to perform. Upon request and mutual agreement regarding applicable charges, CONSULTANT will ship, deliver and/or store samples for CLIENT.

#### **6. OWNERSHIP OF DOCUMENTS**

**6.1** All reports, drawings, specifications, computer files, field data, notes, and other documents, whether in paper or electronic format or otherwise ("documents"), are instruments of service and shall remain the property of CONSULTANT, which shall retain all common law, statutory and other reserved rights including, without limitation, the copyright thereto. CLIENT's payment to CONSULTANT of the compensation set forth in the Agreement shall be a condition precedent to the CLIENT's right to use documents prepared by CONSULTANT.

**6.2** Documents provided by CONSULTANT are not intended or represented to be suitable for reuse by CLIENT or others on any extension or modification of this PROJECT or for any other projects or sites. Documents provided by CONSULTANT on this PROJECT shall not, in whole or in part, be disseminated or conveyed to any other party, nor used by any other party, other than regulatory agencies, without the prior written consent of CONSULTANT. Reuse of documents by CLIENT or others on extensions or modifications of this project or on other sites or use by others on this PROJECT, without CONSULTANT's written permission and mutual agreement as to scope of use and as to compensation, if applicable, shall be at the user's sole risk, without liability on CONSULTANT's part, and CLIENT agrees to indemnify and hold CONSULTANT harmless from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized use or reuse.

**6.3** Electronic Documents - CONSULTANT cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic writeable format. If CONSULTANT provides documents in writeable electronic format for CLIENT's convenience, CLIENT agrees to waive any and all claims against CONSULTANT resulting in any way from the unauthorized use, alteration, misuse or reuse of the electronic documents, and to defend, indemnify, and hold CONSULTANT harmless from any claims, losses, damages, or costs, including attorney's fees, arising out of the unauthorized use, alteration, misuse or reuse of any electronic documents provided to CLIENT.

**6.4 Electronic Data Bases** – In the event that CONSULTANT prepares electronic data bases, geographical information system (GIS) deliverables, or similar electronic documents, it is acknowledged by CLIENT and CONSULTANT that such PROJECT deliverables will be used and perhaps modified by CLIENT and that CONSULTANT's obligations are limited to the deliverables and not to any subsequent modifications thereof. Once CLIENT accepts the delivery of maps, databases, or similar documents developed by CONSULTANT, ownership is passed to CLIENT. CONSULTANT will retain the right to use the developed data and will archive the data for a period of three years from the date of PROJECT completion.

## **7. INSURANCE**

**7.1** CONSULTANT will retain Workmen's Compensation Insurance, Professional Liability Insurance with respect to liabilities arising from negligent errors and omissions, Commercial General Liability Insurance, Excess Liability, Unmanned Aircraft, Cyber Liability, and Automobile Liability during this PROJECT. CONSULTANT will furnish certificates at CLIENT's request.

**7.2 Risk Allocation** - To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the CONSULTANT to the CLIENT and anyone claiming by or through the CLIENT, for any and all claims, losses, costs or damage, of any nature whatsoever, the liability of CONSULTANT to all claimants with respect to this PROJECT will be limited to an aggregate sum not to exceed \$100,000 or CONSULTANT's compensation for consulting services, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**7.3 Damages** – Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the PROJECT or to this Agreement. This mutual waiver of certain damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that may be incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both CLIENT and CONSULTANT shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this PROJECT.

**7.4** CLIENT agrees that any and all limitations of CONSULTANT's liability or waivers of damages by CLIENT to CONSULTANT shall include and extend to those individuals and entities CONSULTANT retains for performance of the services under this Agreement, including but not limited to CONSULTANT's officers, partners, and employees and their heirs and assigns, as well as CONSULTANT's subconsultants and their officers, employees, and heirs and assigns.

## **8. DISPUTE RESOLUTION**

**8.1** In the event of a disagreement arising out of or relating to this Agreement or the services provided hereunder, CLIENT and CONSULTANT agree to attempt to resolve any such disagreement through direct negotiations between senior, authorized representatives of each party. If any disagreement is not resolved by such direct negotiations, CLIENT and CONSULTANT further agree to consider using mutually acceptable non-binding mediation service in order to resolve any disagreement prior to proceeding to litigation.

## **9. SITE ACCESS**

**9.1 Right of Entry** - Unless otherwise agreed, CLIENT will furnish right-of-entry on the land for CONSULTANT to make any surveys, borings, explorations, tests or similar field investigations. CONSULTANT will take reasonable precautions to limit damage to the land from use of equipment, but the cost for restoration of any damage that may result from such field investigations is not included in the agreed compensation for CONSULTANT. If restoration of the land is required greater than those included in the scope of work, upon mutual agreement this may be accomplished as a reimbursable additional service at cost plus ten percent.

**9.2 Damage to Underground Structures** - Reasonable care will be exercised in locating underground structures in the vicinity of proposed subsurface explorations. This may include contact with the local agency coordinating subsurface utility information and/or a review of plans provided by CLIENT or CLIENT representatives for the site to be investigated. CONSULTANT shall be entitled to rely upon any information or plans prepared or made available by others. In the absence of physically confirmed underground structure locations, CLIENT agrees to accept the risk of damage and costs associated with repair and restoration of damage resulting from the exploration work.

## **10. OIL AND HAZARDOUS MATERIALS**

**10.1** If, at any time, evidence of the existence or possible existence of asbestos, oil, or other hazardous materials or substances is discovered, outside of any agreed scope of work or greater than those anticipated in any agreed scope of work, CONSULTANT reserves the right to renegotiate the fees for CONSULTANT's services and CONSULTANT's continued involvement in the PROJECT. CONSULTANT will notify CLIENT as soon as practical if evidence of the existence or possible existence of such hazardous materials or substances is discovered.

**10.2** The discovery of the existence or possible existence of hazardous materials or substances, outside or greater than any proposed in the agreed scope of work, may make it necessary for CONSULTANT to take accelerated action to protect human health and safety, and/or the environment. CLIENT agrees to compensate CONSULTANT for the cost of any and all measures that in its professional opinion are appropriate to preserve and/or protect the health and safety of the public, the environment, and/or CONSULTANT's personnel. To the full extent permitted by law, CLIENT waives any claims against CONSULTANT and agrees to indemnify, defend and hold harmless CONSULTANT from any and all claims, losses, damages, liability, and costs, including but not limited to cost of defense, arising out of or in any way connected with the existence or possible existence of such hazardous materials substances at the site.

## **11. SITE INVESTIGATIONS**

**11.1** In soils, groundwater, soil gas, indoor air, or other investigations, conditions may vary between successive test points and sample intervals and for locations at or between where observations, exploration, and investigations have been made. Because of the variability of conditions and the inherent uncertainties in such evaluations, explorations, or investigations, changed or unanticipated conditions may occur that may affect overall PROJECT costs and/or execution. These variable conditions and related impacts on cost and PROJECT execution are not the responsibility of CONSULTANT.

**11.2** CLIENT recognizes that special risks occur whenever engineering or related disciplines are applied to provide information regarding subsurface conditions. Even an

agreed sampling and testing program, implemented with appropriate equipment and personnel with the assistance of a trained professional performing in accordance with the applicable professional standard of care, may provide data or information which differs significantly from that discovered or encountered subsequently. Environmental, geological, and geotechnical conditions, that CONSULTANT may infer to exist between sampling points may differ significantly from those discovered or encountered subsequently. The passage of time also should be considered, and CLIENT recognizes that due to natural occurrences or direct, or indirect human intervention at or near the site, actual conditions may quickly change. CONSULTANT shall not be responsible for the identification of emerging contaminants for which no current regulatory provisions exists nor shall CONSULTANT be held liable for not identifying or discussing these compounds even if those compounds are detected at a later date. CLIENT realizes that these risks cannot be eliminated. The services included in this agreement are those agreed to, or selected, consistent with CLIENT's risk preferences and other considerations including cost and schedule.

**11.3** By authorizing CONSULTANT to proceed with the site investigation services, CLIENT confirms that CONSULTANT has not created nor contributed to the presence of any existing hazardous substances or conditions at or near the site. CLIENT recognizes that there is an inherent risk in drilling, borings, punching or driving probes, excavating trenches or implementing other methods of subsurface exploration at or near a site contaminated by hazardous materials. Further, CLIENT recognizes that these are inherent even through the exercise of the Standard of Care. CLIENT accepts the risk and agrees to defend, indemnify, and hold CONSULTANT and each of CONSULTANT's subcontractors, consultants, officers, directors, and employees harmless against and all claims for damages, costs, or expenses direct or consequential, in connection with a release of hazardous substances, except to the extent that such claims, damages, or losses are adjudicated to have resulted from CONSULTANT's gross negligence or willful misconduct in the performance of the services.

## **12. FEDERAL AND STATE REGULATORY AGENCY AUDITS**

**12.1** For certain services rendered by CONSULTANT, documents filed with federal and state regulatory agencies may be audited after the date of filing. In the event that CLIENT's PROJECT is selected for an audit, CLIENT agrees to compensate CONSULTANT for time spent preparing for and complying with an agency request for information or interviews in conjunction with such audit. CLIENT will be notified at the time of any such request by an agency, and CONSULTANT will invoice CLIENT based on its standard billing rates in effect at the time of the audit.

## **13. CLIENT'S RESPONSIBILITIES**

**13.1** Unless otherwise stated in the Agreement, CLIENT will obtain, arrange, and pay for all notices, permits, and licenses required by local, state, or federal authorities; and CLIENT will make available the land, easements, rights-of-way, and access necessary for CONSULTANT's services or PROJECT implementation.

**13.2** CLIENT will examine CONSULTANT's studies, reports, sketches, drawings, specifications, proposals, and other documents and communicate promptly to CONSULTANT in the event of disagreement regarding the contents of any of the foregoing. CLIENT, at its own cost, will obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

## **14. OPINIONS OF COST, FINANCIAL ANALYSES, ECONOMIC FEASIBILITY PROJECTIONS, AND SCHEDULES**

**14.1** CONSULTANT has no control over cost or price of labor and materials required to implement CLIENT's PROJECT, unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs, competitive bidding procedures and market conditions, time or quality of performance by operating personnel or third parties, and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, CONSULTANT makes no warranty, expressed or implied, that CLIENT's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from any opinions, analyses, projections, or estimates which may be provided by CONSULTANT. If CLIENT wishes additional information as to any element of PROJECT cost, feasibility, or schedule, CLIENT at its own cost will employ an independent cost estimator, contractor, or other appropriate advisor.

## **15. CONSTRUCTION PHASE PROVISIONS**

The following provisions shall be applicable should the CONSULTANT be retained to provide Construction Phase Services in connection with the PROJECT:

**15.1** CLIENT and Contractor - The presence of CONSULTANT's personnel at a construction site, whether as onsite representatives or otherwise, does not make CONSULTANT or CONSULTANT's personnel in any way responsible for the obligations, duties, and responsibilities of the CLIENT and/or the construction contractors or other entities, and does not relieve the construction contractors or any other entity of their respective obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and for providing and/or enforcing all health and safety precautions required for such construction work.

**15.2** Contractor Control - CONSULTANT and CONSULTANT's personnel have no authority or obligation to monitor, to inspect, to supervise, or to exercise any control over any construction contractor or other entity or their employees in connection with their work or the health and safety precautions for the construction work and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s) or other entity or any other persons at the site except CONSULTANT's own personnel.

**15.3** On-site Responsibility - The presence of CONSULTANT's personnel at a construction site is for the purpose of providing to CLIENT an increased degree of confidence that the completed construction work will conform generally to the construction documents and that the design concept as reflected in the construction documents generally has been implemented and preserved by the construction contractor(s). CONSULTANT neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

**15.4** Payment Recommendations - Recommendations by CONSULTANT to CLIENT for periodic construction progress payments to the construction contractor(s) are based on CONSULTANT's knowledge, information, and belief from selective observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by CONSULTANT to ascertain that the construction contractor(s) have completed the work in exact accordance with the

construction documents; that the final work will be acceptable in all respects; that CONSULTANT has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are no other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

**15.5 Record Drawings** - Record drawings, if required as part of CONSULTANT's agreed scope of work, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the PROJECT was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

## **16. DESIGN WITHOUT CONSTRUCTION PHASE SERVICES**

The following provisions shall be applicable should the CONSULTANT be retained to provide design services but not be retained to provide Construction Phase Services in connection with the PROJECT:

**16.1** It is understood and agreed that the CONSULTANT's Scope of Services under this proposal does not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the CLIENT or others. The CLIENT assumes all responsibility for interpretation of the Contract Documents and for construction observation, and the CLIENT waives any claims against the CONSULTANT that may be in any way connected thereto.

**16.2** In addition, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless the CONSULTANT, its officers, directors, employees and subconsultants (collectively, CONSULTANT) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of the CONSULTANT.

## **17. SCHEDULE**

**17.1** The CLIENT agrees that the CONSULTANT is not responsible for damages arising directly or indirectly from any delays for causes beyond the CONSULTANT's reasonable control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters, pandemics, or acts of God; fires, riots, war or other emergencies; failure of any government agency to act in timely manner; failure of performance by the CLIENT or the CLIENT's contractors or consultants.

**17.2** The CONSULTANT's schedule includes reasonable allowances for review and approval times required by the CLIENT, performance of services by the CLIENT's consultants, and review and approval times required by public authorities having jurisdiction over the PROJECT. This schedule shall be equitably adjusted as the PROJECT progresses, allowing for changes in scope, character or size of the PROJECT requested by the Client, or for delays or other causes beyond the Consultant's reasonable control.

## **18. MISCELLANEOUS TERMS**

**18.1 GOVERNING LAW** - The CLIENT and the CONSULTANT agree that this Agreement and any legal actions concerning

its validity, interpretation and performance shall be governed by the laws of the jurisdiction where the PROJECT is located, without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

**18.2 LENDERS' REQUIREMENTS**- The CONSULTANT shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the sole judgment of the CONSULTANT, increase the CONSULTANT's contractual or legal obligations or risks, or adversely affect the availability or cost of its professional or general liability insurance.

**18.3 CORPORATE PROTECTION** - Notwithstanding anything to the contrary contained herein, the CLIENT agrees that as the CLIENT's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the CONSULTANT, a Massachusetts corporation, and not against any of the CONSULTANT's individual employees, officers or directors.

**18.4 TITLES** - The section headings used in this Agreement are intended principally for convenience and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the parties to this Agreement.

**18.5** Upon execution, these terms as incorporated into the accompanying proposal represent the final intent of the parties. Any modification, rescission, or waivers of these terms shall only be effective and binding if agreed to in writing by the parties.

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