

AGENDA
REGULAR MEETING OF THE ELLICOTTVILLE TOWN BOARD
February 21, 2024
at 6:00pm

Call to Order and Pledge to Flag

Privilege of the Floor

Approve Minutes

- Town Board Meeting – January 17, 2024
- Special Meeting – January 24, 2024

Audit of Claims

- Pay Town bills on Distribution Report #01-2024

Supervisor's Reports

- Accept Supervisor's January 2024 Financial Report
- Short-term Rental Committee Meeting
- Set Date for Water Project Public Hearing

Present Written Department Reports for Approval

- Clerk's, Justice, Building Inspector, Planners and Police Reports

Department Heads

Don Auge – Police Department

Scot Brumagin – Highway Department

Greg Keyser – Planning Department

- Cannabis Moratorium
- B & L Contract
- Planning Board Appointments
- Pro Housing Communities Program

Ben Slotman - Engineering Department

- Approve Cotter Rd. Precast Culvert Bid
- Set Bid Opening for Town Hall Door

New Business

- 2024 Ram 3500 4x4
- Court Clerk Training

Old Business

- Arboretum Society - MOU
- Speed Reduction Maples Rd.
- BAR Vacancy
- EVGV Trail
- SAM Grant for Windows and Doors
- 6515 Donlen Drive
- Noise Law
- Alarm Law

Correspondence

- Alley Katz Thank You

Attorney/Client Privilege

Executive Session

Draft MINUTES OF THE
REGULAR MEETING OF THE TOWN BOARD
OF THE TOWN OF ELLICOTTVILLE, January 17, 2024
at 6:00 pm HELD AT THE TOWN HALL

<u>Present:</u>	Matthew McAndrew	Supervisor
	John Zerfas	Councilman
	Steve Crowley	Councilman
	Ken Hinman	Councilman
	Greg Fitzpatrick	Councilman
	Robyn George	Town Clerk
	Seth Pullen (via phone)	Town Attorney
	Ben Slotman	Town Engineer
	Greg Keyser	Town Planner
	Don Auge	OIC
	Scot Brumagin	Highway Superintendent
	Kelly Fredrickson	CEO/Building Inspector

Others Present: Ellen and Gary Frank, Dawn Westfall, Chuck Parenti

Call meeting to order:

Supervisor McAndrew called the meeting to order at 6:00pm and led the Pledge to the Flag.

Privilege of the Floor

- Dawn Westfall – Historical Society Storage Options

Dawn Westfall of the Historical Society explained that they are in need of storage and office space. Currently overflow records are kept in several members homes. They have looked into the possibility of expanding the Historical Building and applied for a grant last year hoping to make that happen but were not awarded the grant. They will try again this year. They have asked Mansfield about using the Mansfield Municipal Building that housed the now disbanded Mansfield Historical Society. Another storage option could be expanding the area at the Highway Barn that they currently use. They are looking into fundraising events to help facilitate their goals. Any suggestions or help from the Town would be appreciated.

The need for an inventory of assets was discussed for insurance purposes. Ms. Westfall said they have records of their assets. The possibility of drafting a “hold harmless” agreement to protect the Town from insurance claims for property stored on Town property was also discussed.

- Chuck Parenti – Sort-term Rentals

Mr. Parenti voiced his opinion on the importance to the community to regulate short-term rentals and had several suggestions. He was told that the Town has hired a consultant to draft a local law on the matter and there will be a public hearing once completed.

Approve Minutes

- Town Board Meeting – December 20, 2023
- Organizational Meeting – January 3, 2024

On motion by Mr. Hinman and second by Mr. Zervas the minutes of December 20, 2023 and January 3, 2024 meeting were:

Accepted Ayes 5 - McAndrew, Zervas, Hinman, Fitzpatrick & Crowley
 Nays 0

Audit of Claims

- Pay Town bills on Distribution Report #12-2023

On motion by Mr. Zervas and second by Mr. Hinman the following resolution was

Accepted Ayes 5 - McAndrew, Zervas, Hinman, Fitzpatrick & Crowley
 Nays 0

Resolved that the Town bills be paid on General Ledger Distribution Report 12-23 as follows:

001 - General Fund A:	\$ 33,013.96		
002 - General Fund B:	\$ 3,490.75		
		General Fund Total:	\$ 36,504.71
004 - Highway DB	\$ 14,039.77		
		Highway Fund Total:	\$ 14,039.77
006 - Water	\$ 30,737.34		
		<u>006 - Water Fund Total</u>	<u>\$ 30,737.34</u>
		Grand Total:	\$ 81,281.82

Supervisor's Reports

- Accept Supervisor's December 2023 Financial Report

On motion by Mr. Zervas and second by Mr. Hinman the Supervisor's November 2023 Financial Report was

Accepted Ayes 5 - McAndrew, Zervas, Hinman, Fitzpatrick & Crowley
Nays 0

- Short-term Rental Committee

The draft local law on short-term rentals was presented to the committee on January 3rd. The committee had some comments but generally agreed the draft local law captured the intent of what the Town is hoping to achieve. The revised law will go to the Planning Board for review.

- Community Host Agreement – Simmons Road Ellicottville Solar 1, LLC

Attorney Pullen presented a revised Community Benefit Agreement between the Town of Ellicottville and Simmons Rd. Ellicottville Solar 1, LLC. The developer was proposing to pay the Town in five equal annual payments in the amount of \$40,000 per year no later than 30 days following the Project's commercial operation date. The Town counter proposed that payment would be due at the commencement of construction on a 4 year schedule of \$50,000 per year. The developer agreed to the new terms.

On motion by Mr. Fitzpatrick and second by Mr. Hinman the following resolution was

Accepted Ayes 5 - McAndrew, Zervas, Fitzpatrick, Hinman & Crowley
Nays 0

Resolved that the Town approve the Community Benefit Agreement between the Town of Ellicottville and Simmons Rd. Ellicottville Solar 1, LLC as presented subject to minor revisions by the Town Attorney and Planner.

Mr. Keyser pointed out that the Solar Project still needs a decommissioning bond; road bond and plan for well water testing before they can be granted a building permit and begin construction.

- Conservation Easement

On motion by Mr. Fitzpatrick and second by Mr. Hinman the following resolution was

Accepted Ayes 5 - McAndrew, Zervas, Fitzpatrick, Hinman & Crowley

Nays 0

Resolved that the Town approve the Declaration of Covenants, Restrictions and Easements in relation to a portion of the Solar Farm property to remain substantially conserved in its natural condition as a condition requested by the Planning Board.

- Planning Board Chair Appointments

The Planning Board recommended appointing Tim Zervas as Planning Board Chair and Caitlyn Croft as Vice-Chair.

On motion by Mr. Hinman and second by Mr. Fitzpatrick the following resolution was

Accepted Ayes 5 - McAndrew, Zervas, Fitzpatrick, Hinman & Crowley
Nays 0

Resolved that the Town Board approve the appointing of Tim Zervas as Planning Board Chair and Caitlyn Croft as Vice-Chair on the recommendation of the Planning Board.

Present Written Department Reports for Approval

- Clerk's, Police, Planners, Justice and Building Inspector's Reports

On **motion** by Mr. Hinman and second by Mr. Fitzpatrick the Clerk's, Police, Planning, Justice and Building Inspector's reports were:

Accepted Ayes 5 - McAndrew, Zervas, Hinman, Fitzpatrick & Crowley
Nays 0

Department Heads

- **Don Auge – Police Department**

The State Police have vacated their office in the Town Hall and OIC Auge has ordered furniture and is working on getting it ready for EPD occupancy.

- **Scot Brumagin - Highway Department**

On motion by Mr. Hinman and second by Mr. Crowley the following resolution was

Accepted Ayes 5 - McAndrew, Zervas, Fitzpatrick, Hinman & Crowley

Nays 0

Resolved that the Board approve the Agreement for the Expenditure of Highway Moneys with the County.

- **Greg Keyser – Town Planner**

The traffic impact study of the Crosby Gas station project will be updated to include possible future projects that may be proposed by Steelbound. The EVGV trail's impact will also be considered. The DOT may ask the project to consider extending sidewalks to the area.

- **Ben Slotman – Engineering Department**

- Cotter Road Pre-cast Concrete Box Culvert Bid

There were 3 bidders for the project. The low bid was \$132,984.00. Mr. Slotman will review and make a recommendation.

The front doors for the Town Hall are close to being bid out.

New Business

- Arboretum Society

The MOU between the Town and the Arboretum Society was presented at their last meeting. The Town is awaiting their response.

Old Business

- BAR vacancy

The Assessor has identified a few candidates.

- EVGV Trail

The Trail committee is planning a 5k trail run fundraiser at Holimont and also looking for corporate sponsorship for trail funding. There are two easements that have not been signed.

Correspondence

- Arboretum

The Arboretum Society shared their accomplishments for 2023 and thanked the Town for their support. The Board, in turn thanked the Arboretum Society for their efforts.

Adjournment

Supervisor McAndrew announced the Board will enter into Attorney/Client privilege.

Motion by Mr. Crowley seconded by Mr. Zerfas to adjourn the meeting at 7:30pm. All Ayes. Carried

I, Robyn A. George, Clerk of the Town of Ellicottville, County of Cattaraugus, State of NY, do hereby certify that the foregoing constitutes the complete minutes of the Town Board Meeting held on the 17th day of January, 2024 approved by said Board on the 21st day of February, 2024

Robyn George, Town Clerk

Draft MINUTES OF
SPECIAL MEETING
OF THE TOWN OF ELLICOTTVILLE
TOWN BOARD HELD
January 24, 2024 at 4PM
At the Ellicottville Town Hall

Present:	Matt McAndrew	Supervisor
	Steve Crowley	Councilman
	John Zerfas	Councilman
	Ken Hinman	Councilman
	Greg Fitzpatrick	Councilman
	Seth Pullen	Attorney for Town
	Don Auge	Officer in Charge
	Jim Bouchard	Deputy OIC

Call meeting to order: The meeting was called to order by Supervisor McAndrew.

Executive Session

Motion by Mr. Crowley, seconded by Mr. Hinman to go into executive session to discuss Police personnel. All Ayes, Carried.

Motion by Mr. Fitzpatrick seconded by Mr. Zerfas to resume regular session. All Ayes, Carried.

Motion by Mr. Hinman and seconded by Mr. Zerfas to set the next meeting for February 28th, 2024 to continue negotiations with police personnel. All Ayes. Carried.

Adjournment

Motion by Mr. Zerfas seconded by Mr. Hinman to adjourn the meeting at 5pm and go into Attorney/Client privilege. All Ayes. Carried.

MONTHLY PLANNING REPORT

February 15, 2024

This report summarizes planning, zoning, and development for the month of January 2024.

ZONING APPLICATIONS

There are 16 open zoning applications. Since the last report, 7 new zoning applications have been received, 2 zoning permits were approved, 1 subdivision was approved and 1 zoning permit was denied. A summary is provided below.

Address	Description	Approval	Status
Town			
6599 US Route 219	Gas Station Convenience Store	Area Variance	Open – SEQR review ongoing.
6064 NYS Route 242	7-lot subdivision (Rotella)	Major Subdivision	Open – Public hearing set for 2/26/24.
7200 Horn Hill Rd	2 Cabin Campground	Special Use Permit	Open – PB waiting for additional information.
6399 NYS Route 242	New garage with apartment	Zoning Permit	Denied. 60 days to appeal period ends 3/4/24.
6442 NYS Route 242	Rezoning / Subdivision	Rezoning	Open – Under PB review.
0 Smith Road	2-Lot Split	Subdivision	Approved 1/24/24.
14 Sundance Rd	New residence	Zoning Permit	Approved 2/2/25
9 Trail Heights Rd	New residence	Zoning Permit	Approved 2/8/25
8100 US Route 219	New residence	Zoning Permit	Pending – waiting for additional information
Village			
23 Parkside Dr	New residence	ADR Amendment	Open – Under Planning Board review.
10/12 McKinley Dr	New 2-Unit Town House	Site Plan	Open - Building Permit on hold.
41 Mill St	New 1 family residence	Special Use Permit	Open – Public hearing set for 3/12/24.
16 Fillmore Ave	New 1 family residence	Special Use Permit	Open– Under PB review.
37 Washington St	Boutique Motel	Zoning Permit	Open - Public hearing set for 3/12/24.
2 Elk St	New driveway	Zoning Permit	Open - Waiting for additional information
41 Mill St	Subdivision Amendment	Subdivision Amendment	Open – Public hearing set for 3/12/24.
11-15 Martha St	Retail Cannabis Business	Special Use Permit	Open – Public hearing set for 3/12/24.
11-15 Martha St	Hanging Sign -	Sign Permit	Open – Under PB review.
1 W Washington St	Town Hall Entry Improvements	Historic District Review	Public hearing set for 3/12/24.
1 W. Washington St	Ground Sign	Sign Permit	Open – Under PB review.

ZONING VIOLATIONS

Nothing to report.

PLANNING AND ZONING BOARDS

Meetings

The Planning Department has coordinated 2 planning and zoning meetings in January.

- 01/02/24 – Village Planning Board Work Session.
- 01/22/24 – Town Planning Board Meeting.
- 02/06/24 – Village Planning Board Work Session.
- 02/13/24 – Village Planning Board Meeting

Planning & Zoning Board Training

- Attached is a summary of the planning and zoning training completed for 2023.

OTHER PLANNING EFFORTS

- Town Short-term Rental Regulations – Committee met on 1/3/24. A revised draft of the regulations is anticipated the week of 2/19/24.
- DWSP2 - Well Head Protection Overlay Zoning District – Draft regulations under review.
- Village Zoning Book – Update in progress.

- 24 Rockwell Redevelopment Project – No activity.
- EVGV Trail – Attended committee meeting on 2/5.

PROFESSIONAL DEVELOPMENT

- AICP Preparation (Ongoing)

BOARD ACTION ITEMS

Town

- Planning Board Appointments. Jake Northrup and Spence Timkey.
- Approve Barton & Loguidice Professional Services Contract (See Attached).
- Moratorium – Cannabis.
- Pro-Housing Communities Program

Village

- Approve Barton & Loguidice Professional Services Contract (See Attached)
- Pro-Housing Communities Program
- Expiring Terms
 - Chad Neal, Planning Board Member – Term expires 3/31/24.
 - Fred Musolff, ZBA Chair – Term expires 3/31/24.

No Village Building Permits issued in January 2024

TOWN PERMITS 1-1-2024 THRU 1-31-2024									
PERMIT #	INTAKE DATE	ISSUED DATE	PARCEL #	SERVICE ADDRESS	OWNER	TYPE OF PROJECT	TOWN OR VILLAGE	TOTAL PERMIT COST	PROJECT DESCRIPTION
BP24-0001	1/4/24	1/16/24	56.001-1-8.1	6460 Witch Hollow	Guterman, Lee	BUILDING	Town	\$392.00	House renovation
BP24-0003	1/30/24	1/30/24	56.001-1-29.1	6277 Sugartown	Herman, Timm	BUILDING	Town	\$106.00	Re-Roof
Total								\$498.00	

**MASTER SERVICES AGREEMENT
BETWEEN
TOWN OF ELLICOTTVILLE
AND
BARTON & LOGUIDICE, D.P.C.
FOR
2024 PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between the Town of Ellicottville (“Owner”) and Barton & Loguidice, D.P.C. (“Consultant”).

Consultant agrees to provide those professional services to Owner in accordance with separate written scope and fee authorizations (“Task Authorizations”, also sometimes referred to herein as “Project”) that will be agreed upon with Owner on an as requested basis, with the understanding that each Task Authorization will be mutually agreed upon in writing between Owner and Consultant.

Owner and Consultant further agree as follows:

1.01 Basic Agreement

- A. Consultant shall provide, or cause to be provided, the services set forth in Exhibit A and within each Task Authorization, and Owner shall pay Consultant for such services as set forth in Paragraph 4.01. Once duly signed by Owner and Consultant, each Task Authorization will be deemed a part of and incorporated in this Agreement by reference. A template for Task Authorizations is provided herein as Exhibit B. In the event of any inconsistency between a particular Task Authorization and the terms of this Agreement, the terms of this Agreement shall control.
- B. The use of standard business forms, including but not limited to Owner’s purchase orders, are solely for the convenience of the parties and none of the provisions thereof shall in any way limit, alter or modify the terms of this Agreement whether or not any such document is signed.

2.01 General Considerations

- A. The standard of care for all professional or related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant’s services.
- B. Consultant and its Subconsultants may use and rely upon the information, work product and services provided or performed by others, including, but not limited to, Owner’s consultants, contractors, manufacturers, and suppliers.
- C. Consultant shall commence to provide its services upon the full execution of this Agreement and shall provide those services within a reasonable time. In no event shall Consultant be obligated to perform services on a schedule which, in the Consultant’s professional judgement, does not provide Consultant sufficient time to perform in accordance with the aforesaid standard of care.
- D. If, through no fault of Consultant, the orderly and continuous progress of Consultant’s services is impaired, its services are delayed or suspended, or the Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Consultant’s services, and the rates and amounts of Consultant’s compensation, shall be adjusted equitably.
- E. The Owner shall notify the Consultant within (7) day’s from when the Owner becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies on the Consultant’s Instruments of Service.

- F. All design documents prepared or furnished by Consultant are instruments of service, and Consultant retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Consultant grants Owner a limited license to use the instruments of service exclusively (1) performance of design or operation, (2) for Project construction as is the intended purpose of the documents, and (3) for the purpose of maintenance and repair of the Project, or (4) other documents, reports, details and plans as defined in the project Scope of Work.
- G. The Contract Documents for construction contracts prepared as a service under this Agreement are to be the Consultant's template Contract Documents, including but not limited to General Conditions, General Requirements, Information for Bidders and bidding documents, as may be amended by the Owner.
- H. Consultant shall not at any time supervise, direct, or have control over any contractor's work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- I. Consultant neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- J. Consultant shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Consultant's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decisions regarding, or interpretations or clarifications of, the construction contract or Instruments of Service made by Owner or any third party without the advice and consultation of Consultant.
- K. Consultant shall be responsible only for those Construction Phase services expressly required of Consultant by the Task Authorization. With the exception of such expressly required services in each Task Authorization, Consultant shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services, unless otherwise added to the Task Authorization by supplemental agreement. Owner waives all claims against the Consultant that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Consultant in the Task Authorization.
- L. If the Construction Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Consultant shall specify the appropriate performance and design criteria that such services must satisfy. The Consultant shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Consultant. The Consultant's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.
- M. Owner shall bear full responsibility and liability for the generation, existence, or presence of any toxic, hazardous, radioactive, infectious, mutagenic, teratogenic, carcinogenic, explosive, combustible, or other dangerous substances ("hazardous materials") pre-existing at the site. Owner affirms certain additional responsibilities under the Agreement, including without limitation the following:
 - a. Owner shall grant or cause to be granted a license of right-of-way to Consultant to access all sites necessary for the performance of the Services under this Agreement.
 - b. Owner shall furnish or cause to be furnished to Consultant all documents and information known to Owner that relate to the identity, location, quantity, nature, or characteristics of any hazardous materials at or near the site(s).

- c. Unless otherwise required by law or set forth in this Agreement, Owner shall be responsible for accurately locating and prominently marking all buried, concealed, or submerged pipes, tanks, cables, utilities or other man-made obstructions (“underground facilities”) that may affect or be affected by Consultant’s services.
- N. Unless otherwise included under this Agreement, the parties acknowledge that Consultant’s Task Authorization does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). Owner represents to Consultant that, to the best of its knowledge, a Hazardous Environmental Condition does not exist at the Site, except as expressly disclosed to the Consultant in writing. If Consultant or any other party encounters a Hazardous Environmental Condition, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.
- O. The services to be provided by Consultant under this Agreement DO NOT INCLUDE advice or recommendations with respect to the issuance, structure, timing, terms or any other aspect of municipal securities, municipal derivatives, guaranteed investment contracts or investment strategies. Any opinions, advice, information or recommendations provided by Consultant are understood by the parties to this Agreement to be strictly *engineering or other technical* opinions, advice, information or recommendations. Consultant is not a “municipal advisor” as defined by 15 U.S.C. 78o-4 or the related rules of the Securities and Exchange Commission. The other parties to this Agreement should determine independently whether they require the services of a municipal advisor.
- P. The Consultant shall not be required to execute certificates, guarantees, warranties or make representations that would, in its professional judgment, require knowledge, services or responsibilities beyond the scope of this Agreement.
- Q. Owner and Consultant may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If the Scope of Services does not establish protocols for electronic or digital transmittals, then Owner and Consultant shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient’s use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

3.01 Insurance

- A. Owner and Consultant shall procure and maintain insurance as set forth in Exhibit C, “Insurance”. Each party shall cause the other party to be listed as an additional insured on applicable general liability insurance policies.
- B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers’ compensation, general liability, property damage, motor vehicle damage and injuries, and other insurance necessary to protect Owner’s and Consultant’s interests in the Project. Owner shall require Contractor to cause Consultant and its Subconsultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- C. Owner and Consultant shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit C, “Insurance”. Such certificates shall be furnished prior to commencement of Consultant’s services and at renewals thereafter during the life of the Agreement.
- D. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Consultant and to each other additional insured (if any) to which a certificate of insurance has been issued.

4.01 Payment for Services

- A. Payment: Owner shall pay Consultant in the amount and in the manner set forth in each signed Task Authorization. Unless indicated otherwise in a particular Task Authorization, Owner's payments to Consultant shall be on a time and expense basis in accordance with Consultant's hourly billing rates referenced in Exhibit D adjusted annually for the year the work is completed, plus reimbursable expenses and any subcontracted services, subject to any fee limit referenced in each Task Authorization. Unless specifically indicated otherwise in a particular Task Authorization, Consultant's charges for any subcontracted services shall be invoiced at cost plus fifteen percent (15%). Consultant's current billing rates schedule is included in Exhibit D.

Total compensation for services and reimbursable expenses is estimated to be **\$25,000, exclusive** of Developer escrow funded assignments. This initial compensation amount will not be exceeded without authorization of the Owner. Consultant will track individual Task Authorization fees, exclusive of Developer escrow funded assignments, and advise Owner when 85% of the authorized \$25,000 fee has been reached.

- B. Preparation of Invoices. Consultant will prepare invoices no more frequently than monthly for submittal to Owner for review. Unless otherwise directed by Owner, separate invoices shall be submitted for each Task Authorization, based on payment methods and amounts set forth in each Task Authorization. Supporting information will be provided with each invoice, to the extent requested by Owner in a Task Authorization.
- C. Payment of Invoices. Invoices are due and payable within thirty (30) days of the date of the invoice. If Owner fails to make a timely payment due Consultant, then Consultant may, without liability, after giving seven (7) days' written notice to Owner, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses, and other related charges.

5.01 Additional Services

- A. If mutually agreed by Owner and Consultant, or if required in Consultant's professional judgement because of changes in the Project, or unforeseen circumstances, Consultant shall furnish services in addition to those set forth in the executed Task Authorization via a written amendment thereto.
- B. When reasonably practicable in Consultant's professional judgment, Consultant shall provide Owner a written request for authorization to perform Additional Services and obtain Owner's written authorization before performing said Additional Services. Consultant's written request may be transmitted by electronic mail or regular mail. Consultant's request shall include a description of the Additional Services required and an estimate of the cost thereof. If the Owner fails to authorize the Additional Services within seven (7) days after Consultant's mailing or transmission of Consultant's request, said request will be deemed to have been denied and Consultant shall have no obligation to perform said Additional Services, nor shall Consultant bear any responsibility or liability for any costs, damages or delays resulting from the lack of said Additional Services.
- C. When, in Consultant's professional judgement, Additional Services are required to be provided on a schedule which does not allow time to obtain Owner's written authorization in advance, Consultant shall begin to provide said Additional Services. As soon as reasonably practicable thereafter, Consultant shall provide Owner written notice of its commencement of said Additional Services and its request for authorization to complete the Additional Services. Consultant's written requests may be transmitted by electronic mail or regular mail. If the Owner fails to authorize the Additional Services within (3) days after Consultant's mailing or transmission of Consultant's request, said request will be deemed to have been denied and Consultant shall have no obligation to complete said Additional Services, nor shall Consultant bear any responsibility or liability for any costs, damages or delays resulting from the lack or said Additional Services. Owner shall pay Consultant for the Additional Services performed prior to the effective date of Owner's denial.
- D. Owner shall pay Consultant for any Additional Services provided as follows: (1) as may be mutually agreed to in writing, or (2) in the absence of a mutual agreement an amount equal to the cumulative hours charged to the Project by each member or each class of Consultant's employees engaged in providing the Additional Services times the Consultant's hourly billing rates for each applicable billing class in effect at the time the Additional Services are performed; plus reimbursable expenses and charges for Consultant's Subconsultants, if any, at cost plus ten (10) percent.

6.01 Dispute Resolution

- A. Owner and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice by either party of the existence of the dispute. If a dispute involves matters other than a claim by Consultant for payment of fees and the parties fail to resolve the dispute through negotiation then Owner and Consultant agree that they shall first submit any and all such unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually acceptable mediator. Owner and Consultant agree to participate in the mediation process in good faith and to share the cost of the mediation equally. The process shall be conducted on a confidential basis, and shall be completed within 150 days of the date of notice by either party of the existence of the dispute. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to an alternative dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.
- B. If a dispute involves a claim by Consultant for payment of fees and the parties fail to resolve the dispute through negotiation then Consultant may seek to have its claim for fees resolved by a court of competent jurisdiction without first participating in mediation.

7.01 Accrual of Claims

- A. All causes of action between the parties to this Agreement including those pertaining to acts, failures to act, or failures to perform in accordance with the obligations of the Agreement or failures to perform in accordance with the standard of care shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts, failures to act or failures to perform occurring prior to Substantial Completion, or the date of issuance of the Notice of Acceptability of Work (or similar notice of the final completion of the Project) for acts, failures to act or failures to perform occurring after Substantial Completion.

8.01 Controlling Law

- A. This Agreement is to be governed by the laws of the state of in which the Project is located.

9.01 Indemnification and Liability

- A. The Consultant and the Owner mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) but only to the extent caused by their own respective negligent acts, negligent errors or negligent omissions and those of anyone for whom they are legally liable, and arising from the project that is the subject of this Agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.
- B. In addition to the indemnity provided under Paragraph 9.01 A and to the fullest extent permitted by law, Owner shall indemnify and hold harmless Consultant and its officers, directors, partners, employees, and Consultant's Subconsultants from and against all costs (including attorneys' fees), losses, damages and liabilities arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, damage or liability is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Project itself), including the loss of use resulting therefrom.
- C. To the fullest extent permitted by law, Consultant and the Owner waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.
- D. In recognition of the relative risks and benefits of the Project to both the Owner and the Consultant, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and sub consultants for any and all claims (including claims by third parties), losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and sub consultants shall not exceed \$100,000, or the amount actually paid to Consultant's for services rendered on this Project, whichever is greater (the "Limitation Amount"), and further, in no event shall the Limitation Amount exceed the amount of liability insurance proceeds actually available to the Consultant for the claim at issue at the time of

settlement or final judgment net of any and all expenses paid or incurred on the claim at issue, payments made or incurred in connection with other claims made against the Consultant, or any other circumstances which may reduce, impair, or eliminate the overall availability of such insurance to the Consultant. It is intended that these limitations apply to any and all liability or cause of action, including, without limitation, active and passive negligence, breach of contract, breach of warranty, tort, strict liability, or equity, or liabilities that might arise out of the parties' indemnification obligations, however alleged or arising, unless otherwise prohibited by law. The Client specifically agrees that it has had the opportunity to negotiate this Limitation of Liability clause and to accept or reject its inclusion herein.

10.01 Successors, Assigns, and Beneficiaries

- A. Owner and Consultant each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted by Paragraph 10.01.B the assigns of Owner and Consultant) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. This provision shall not preclude Consultant from retaining Subconsultants as it deems reasonably necessary for the completion of the services rendered hereunder.

11.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon thirty (30) days' written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Consultant:
 - 1) upon seven (7) days' written notice if Consultant believes that Consultant is being requested by Owner to furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or
 - 2) upon seven (7) days' written notice if the Consultant's services for the Project are delayed or suspended for more than 90 days for reasons beyond Consultant's control.
 - 3) Upon seven (7) days' written notice if Owner fails to pay an invoice when due.
 - 4) In the event Consultant terminates this agreement for either of the above-specified reasons, Consultant shall have no liability to Owner on account of such termination or any resulting costs, damages or delays.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 11.01.A.1.a if the party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such thirty (30) day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, sixty (60) days after the date of receipt of the notice.

2. For convenience, by Owner effective ten (10) days after the receipt of written notice by Consultant.
 - a. The terminating party under Paragraphs 11.01.A.1 or 11.01.A.2 may set the effective date of termination at a time up to thirty (30) days later than otherwise provided to allow Consultant to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
 - b. In the event of any termination under Paragraph 11.01.A.1, Consultant will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk.
 - c. In the event of termination by Owner for convenience or by Consultant for cause, Consultant shall be entitled, in addition to payment for those items identified in Paragraph 4.01, to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, including, but not limited to, reassignment of personnel, costs of terminating contracts with Consultant's Subconsultants, and other related close-out costs, using reasonable methods of calculation including the methods and rates for Additional Services as set forth in Paragraph 5.01.

12.01 No Third Party Beneficiaries

- A. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against the Consultant.

13.01 Waiver

- A. Non-enforcement of any provisions by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

14.01 Confidentiality

- A. Owner and Consultant agree that:
 1. neither party nor any of their employees or authorized representatives will disclose, sell, transfer or make available to third parties any Confidential Information (as defined below) of the other party except to employees, agents or subconsultants who need to know such Confidential Information in the performance of their duties;
 2. each party will use the Confidential Information solely for the purposes of carrying out their responsibilities and obligations under the terms of this Agreement or a Task Authorization;
 3. each party will take those precautions reasonably necessary to maintain the confidentiality of the other party's Confidential Information; and
 4. upon request from the other party, each party shall return, or at the request of the other party destroy, all copies of the other party's Confidential Information, once it is no longer needed or permitted for use.
- B. For purposes of this Agreement, Confidential Information shall mean all trade secrets, proprietary information, know-how, processes, and other information and any tangible evidence, record or representation thereof, financial information, business information and documents, the intellectual property of each party and other information, not generally known to the public, which is confidential or proprietary. Confidential Information shall not, however, include information which:
 1. was published or was otherwise available to the public prior to its being disclosed hereunder;
 2. is published or otherwise becomes available to the public after its receipt from the disclosing party through no act or failure on the part of the receiving party;
 3. was known to the receiving party prior to its receipt from the disclosing party as established by the recipient's written records; or

4. was acquired by the receiving party from a third party under no obligation to maintain its confidentiality.
- C. Owner and Consultant agree that this confidentiality provision shall continue in force for a period of one year subsequent to the date of the last Project invoice sent by Consultant to Owner.

15.01 Total Agreement/Severability

- A. This Agreement, including any expressly incorporated Exhibits, constitutes the entire Agreement between Owner and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. If any term or condition of this Agreement shall, to any extent, be found invalid, void or unenforceable, the remaining provisions shall remain in full force and effect to the extent allowed by applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: Town of Ellicottville

CONSULTANT: Barton & Loguidice, D.P.C.

By:

Matthew McAndrew

Title:

Supervisor

Date

Signed:

By:

Kenneth M. Knutsen

Title:

Senior Vice President

Date

Signed:

Address for giving notices:

Town of Ellicottville, Matthew McAndrew,
Supervisor

1 West Washington Street P.O. Box 475

Ellicottville, New York 14731

Address for giving notices:

Barton & Loguidice, Attn: President

443 Electronics Parkway

Liverpool, New York 13088

Exhibit A – Scope of Term Services

It is envisioned that term services will be provided and invoiced for various Town Planning Board assignments or projects, funded through the Town budget, and for developer escrow-funded projects (site plan and/or subdivision engineering and technical review services), each funded by escrow monies deposited with the Town. If requested by the Town, professional services could also be provided in support of the Town Board.

Services will be provided and invoiced under separate “Phases”; where applicable and when requested by the Town, individual Task Authorizations will be prepared for Town approval in accordance with Section 1.01A. of this Master Service Agreement. The following Phase, Task and fee structure is envisioned wherein initial Phase 24-01 General Planning and Engineering Services will include, but not be limited to, those general services outlined below and be authorized under this Master Service Agreement.

<u>Task Auth. No.</u> <u>B&L Billing Phase</u>	<u>Service Phase Description</u>	<u>Initial Fee</u> <u>Not-to-Exceed</u>
24-01	General Planning and Engineering Services <ul style="list-style-type: none">• <i>Planning Board pre-meetings, work sessions and staff support</i>• <i>Assist with developing Site Plan Application Submission Checklist and Site Plan Review Checklist for Planning Board and applicants.</i>• <i>Town Board meetings and on-call assistance</i>• <i>ZBA assistance and meetings</i>• <i>Departmental assistance – Highway, Sewer, Water, Parks, etc.</i>	\$10,000
24-02	Developer Escrow Funded Projects <ul style="list-style-type: none">• <i>Individual Task Authorizations to be prepared for each assignment, when requested</i>	TBD
24-03	2024 Grant Assistance <ul style="list-style-type: none">• <i>Individual Task Authorizations to be prepared for each grant application, when requested</i>	TBD

Exhibit B – Template for Task Authorizations

The below Task Authorization template will be used for each requested service.

**Town of Ellicottville 2024 Professional Services – Barton & Loguidice
Master Service Agreement
Task Authorization 24- ##-##
Name of Phase and Task**

The Town of Ellicottville (“Owner”) entered in to a Master Services Agreement with Barton & Loguidice, D.P.C. (“Consultant” or “B&L”) with an effective date of _____. In accordance with that Master Services Agreement, the following Task Authorization is hereby approved and Consultant is authorized by Owner to proceed with the services as delineated below.

Effective Date of this Task Authorization:

B&L Project Name: Town of Ellicottville Professional Services

B&L Project Number: 2557.001.001

B&L Phase Number: Phase 24-xx

B&L Project Manager: Keith Ewald, PLA, AICP

Owner’s Project Manager: Greg Keyser, Town Planner

Fee Limit for this Task Authorization, if any: \$ _____

Payment Method: *[e.g., Time & Expense per hourly billing rates; lump sum]*

Payment Source: Town _____ Developer Escrow/Name _____

Consultant’s Scope of Services: *Description of services to be provided, including meetings, deliverables, assumptions, schedule, etc.*

Approved for Owner by: _____
Matthew McAndrew, Supervisor Date

Approved for Owner by Authorized Representative: _____
Date

Name/Title of Authorized Representative: _____
Date

Approved for B&L by: _____
Kenneth M. Knutsen, P.E., Sr. Vice President Date

Exhibit C - Insurance

Per provision 3.01.A of this Agreement, the kinds and amounts of insurance required are as follows:

- a) A policy or policies providing protection for employees of the CONSULTANT in the event of job-related injuries, generally referred to as “Worker’s Compensation Insurance”.
- b) Automobile Liability policies with a combined single limit of not less than \$1,000,000 for each person, or each accident because of bodily injury, sickness, or disease including death at any time resulting therefrom, sustained by any person, and for damages because of injury or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of owned, non-owned or hired automobiles.
- c) Commercial General Liability Insurance shall be furnished with the limits of not less than:

General Aggregate	\$2,000,000	Each Occurrence	\$1,000,000
Products - Comp/Op Agg.	\$2,000,000	Damage to Rented Premises	\$100,000
Personal/Adv. Injury	\$1,000,000	Medical Expense	\$5,000

- d) Excess Liability Insurance Umbrella Form, bodily injury and property damage combined:

Each Occurrence	Aggregate
\$1,000,000	\$1,000,000
- e) Professional Liability Insurance, when applicable, including errors and omissions, shall be maintained with minimum limits of not less than One Million Dollars (\$1,000,000).

Exhibit D – Consultant’s 2024 Standard Billing Rate Schedule

Note: The billing rates schedule shown below will be in effect for the entire calendar year indicated on the rates schedule, and will be replaced with Consultant’s new billing rates schedule effective on January 1st of each and every subsequent year of this Agreement.



New York State Pro-Housing Communities Program

The Pro-Housing Communities Program provides a certification program for local governments that are taking action to support housing growth to address the housing shortage throughout the State. The program will certify participating communities, and those communities will receive a preference in the scoring/evaluation of certain discretionary funding grants.

Program Overview

There are two options for certification in the Pro-Housing Community program.

Option 1:

Communities that can show that their housing permitting has increased by a set percentage in the last year or in aggregate of the last three years will submit that permitting documentation (planning and building permits) to be considered for designation. In addition, these communities will be required to submit documentation on their zoning code, zoning map, and last five years of housing permitting, including planning, zoning, site plans, and building permits.

Option 2:

Communities that have not yet seen housing growth can also achieve Pro-Housing Communities designation. A community can take the following actions to achieve certification: 1) pass a resolution stating their commitment to Pro-Housing principles, and 2) submit documentation on their zoning code, zoning map, and last five years of housing permitting, including planning, zoning, site plans, and building permits.

Submission Timeline and Renewals

Initial Designation

Applications will be open as of late August. Submissions are accepted on a rolling basis. HCR will provide a determination of certification within 90 days of a complete submission.

Designation Renewals

After the original designation, municipalities must submit annual information including building permits data by the end of Q1 of the following year (March 31) in order to maintain their Pro-Housing Community designation.

Deadline for notifying grant agencies

HCR will provide a list of all qualifying municipalities to the agencies on the list of eligible grants prior to the grant submission deadlines. Municipalities should include their designation, if received, in their applications for the eligible grants.

Eligible Grant Programs

The programs currently using the Pro-Housing Communities designation include:

- Downtown Revitalization Initiative (DRI) – Department of State
- NY Forward program – Department of State
- NY Main Street program – Homes and Community Renewal
- Regional Council Capital Fund – Empire State Development
- Market New York (capital grants only) – Empire State Development
- Long Island Investment Fund (LIIF) – Empire State Development
- Mid-Hudson Momentum Fund – Empire State Development
- Public Transportation Modernization Enhancement Program (MEP) – Department of Transportation
- Additional programs may be added in the future

Only municipal applicants are eligible for the Pro-Housing Communities certification. Nonprofit or other entities may still apply for grants from the above programs if they qualify.

Achieving the Pro-Housing Communities designation is not required prior to applying to any of the above grants, and applicants will not be penalized for not having the designation.

For More Information

If you have additional questions about the Pro-Housing Communities program, visit our website at <https://hcr.ny.gov/pro-housing-community-program>.

To reach the Pro-Housing team, you can send an email to prohousing@hcr.ny.gov.

1. SUBMISSION REQUIREMENTS: OPTION 1

- ☐ Letter of Intent from authorized representative of the municipality
- ☐ Zoning map file in a format readable by standard GIS software (shapefile, etc)
- ☐ Zoning code summary (Excel template from HCR site)
- ☐ Housing Planning and Building Permit information from prior five years (2018-2022; Excel template from HCR site)
- ☐ Documentation that the locality's housing stock has increased by 1% (MTCD counties) or by 0.33% in the remaining NYS counties over the past year (Excel template from HCR site) **OR**
- ☐ Documentation that in the last three years, the aggregate growth of the housing stock relative to the 2020 US Census was 3% (MTCD counties) or 1% in upstate counties (Excel template from HCR site)

2. SUBMISSION REQUIREMENTS: OPTION 2

- ☐ Letter of Intent from authorized representative of the municipality
- ☐ Executed Pro-Housing Community Resolution by relevant governing body (town/village council, board, etc)
- ☐ Zoning map file in a format readable by standard GIS software (shapefile, etc)
- ☐ Zoning code summary (Excel template from HCR site)
- ☐ Housing Planning and Building Permit information from prior five years (2018-2022; Excel template from HCR site)

**RESTATED MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF
ELLCOTTVILLE & THE NANNEN ARBORETUM SOCIETY, INC.**

This Memorandum of Understanding ("MOU") is made on _____, 2023 between the Town of Ellicottville ("Town") and the Nannen Arboretum Society, Inc. ("Arboretum Society"), collectively "Parties", to serve as a restatement and amendment of the prior Memorandum of Understanding dated July 29, 2016 between the Town and Arboretum Society, and is intended to fully replace and supersede that prior memorandum, under the following terms and conditions:

RECITALS

WHEREAS, the Arboretum Society is a not-for-profit entity lawfully doing business in New York and having a principal place of business at the Ellicottville Town Center ("Town Center") located at 28 Parkside Drive, Ellicottville, New York 14731;

WHEREAS, Parties agreed to work together to provide such an alternative community space in the Town Center including, but not limited to, an auditorium ("Auditorium"), facilities known as the Nannen Arboretum ("Nannen Arboretum"), a conference room ("Conference Room") and common space not otherwise leased to third parties (collectively, "Community Space");

WHEREAS, Parties have formed a joint committee ("Committee"), consisting of the Manager (defined below) and one representative of each Party, as well as a representative from the Rotary Club of Ellicottville, for the purpose of formulating an operating plan to oversee the management and rental of the Community Space, as reviewed and amended from time to time;

WHEREAS, the Arboretum Society has provided and continues to provide capital for maintenance and improvements, the Town permits the Arboretum Society to manage the care and maintenance of the Town property on which the Nannen Arboretum is located, at no cost;

WHEREAS, the Arboretum Society manages the Nannen Arboretum with the help of volunteers;

WHEREAS, the Town desires to allow individuals and corporate entities to rent the Nannen Arboretum for events, and the Arboretum Society desires to use the Conference Room and Auditorium from time to time;

NOW THEREFORE, in consideration of the mutual promises contained in this MOU, the Parties agree as follows:

A. The Town shall hire a manager ("Manager") to oversee the day to day operation and rental of the Nannen Arboretum for the financial benefit of the Town;

B. The Conference Room shall be available to the Arboretum Society, at no cost and with no deposit, for its monthly meetings, and the Auditorium shall be available to the Arboretum Society, at no cost and with no deposit, for certain programs throughout the year. Additional rentals at no cost may be granted with the consent of the Town Board;

C. The Town shall request bids or proposals for contractors to provide mowing and trimming services at the Nannen Arboretum;

D. The Town shall be responsible for all maintenance and repair to the improvements property consisting of buildings and walkways;

E. The Nannen Arboretum shall be responsible for the maintenance and improvement of all plantings on the property such as trees, shrubs and perennial gardens, and for hardscape elements such as memorial benches, bricks and monuments;

F. For insurance purposes, the Arboretum Society shall require volunteers to sign in and shall provide the Town with the sign in sheet on a monthly basis;

G. The Nannen Arboretum may hire subcontractors, but must require all such subcontractors to provide appropriate insurance coverage such as workers compensation, disability, and general liability, and must name the Town as an insured party on such general liability insurance policies.


NOW THEREFORE, any addition, alteration, or modification to this MOU shall be mutually agreed upon in writing, and no oral agreement shall be effective.

The Parties acknowledge and agree to the above terms and conditions, and have caused this MOU to be executed to signify their acceptance of such terms and conditions as of the date first stated above.

TOWN OF ELLICOTTVILLE

Town Supervisor

NANNEN ARBORETUM SOCIETY, INC.



President

January 29

January 29

Dear friends-

You are the first to
donate to the Stacy Karz
this year.

Thank you as always
to support us in
making our town beautiful
and all the other help
you give us through the
year.

It is appreciated.

Sincerely,
Stacy Karz