

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Agenda – 518<sup>th</sup> Meeting**  
**Friday, June 19, 2020-8:30 am**

**James J. Allen Boardroom**  
**Agency Offices – 4287 Main Street, Amherst, NY 14226**

1. Roll Call of Members
2. Reading and Approval of Minutes
3. Bills & Communications
  - I. TOA – 2020 PILOT Exemption Report
4. Treasurer's Report
5. Executive Director's Report
6. Committee Reports
7. Unfinished Business
8. New Business
  - I. Authorization Resolution – Capital Fence
  - II. 2020 Versel Contract
9. Adjournment

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Minutes of the 517<sup>th</sup> Meeting**  
**May 15, 2020 – 8:30 am**  
**James J. Allen Boardroom**  
**Agency Offices, 4287 Main Street**

**Due to the Covid-19 Pandemic and pursuant to Governor Andrew Cuomo’s Executive Order No.202.1, the Amherst IDA Board of Directors meeting was conducted through Zoom.com and live streamed at [www.AmherstIDA.com](http://www.AmherstIDA.com). In physical attendance at the meeting at AIDA offices was Executive Director David Mingoia. A video recording of the meeting can be accessed and viewed at [www.AmherstIDA.com](http://www.AmherstIDA.com).**

PRESENT via Zoom.com: Carlton N. Brock, Jr.  
Steven Sanders  
Anthony Agostino  
William Tuyn  
Hon. Timothy J. Drury  
Philip Meyer  
Hadar Borden  
Kevin J. Zanner, Hurwitz & Fine PC

GUESTS via Zoom.com: Dave Sutton, 3980 Bailey, LLC  
Sean Hopkins, 3980 Bailey LLC (via telephone)  
AIDA Staff

Chairman Carlton Brock called the meeting to order.

**MINUTES**

The minutes of the March 2020 meeting were approved with the stipulation that they be corrected to note the vote on temporary check signing procedures reflect the actual number of board members present. The draft minutes state the vote was 6-0 when there were only 5 members in attendance.

**BILLS & COMMUNICATIONS**

There were no Bills & Communications at this meeting.

**TREASURER’S REPORT**

The Treasurer’s Report for March and April 2020 were approved as presented.

**PUBLIC COMMENT**

There was no Public Comment at this meeting.

**EXECUTIVE DIRECTOR’S REPORT**

The Executive Director’s Report is attached to these minutes.

**COMMITTEE REPORTS**

There were no Committee Reports presented at this meeting.

## **UNFISNISHED BUSINESS**

### **I. Extension to Authorization Resolution – 3980 Bailey, LLC project**

Company requested a one-year extension to their project that was approved in May 2019. The company, in their request for extension, informed the Agency that the project scope had changed. They indicated that the previously approved building consisting of nine units (4 bedrooms per unit) has been replaced with two buildings consisting of eight units per building (2 bedrooms per unit).

After discussion, Hadar Borden made a motion to approve the extension request. William Tuyn seconded the motion. Votes of aye to approve were cast by Brock, Sanders, Agostino, Tuyn, Drury, Meyer and Borden. Motion to approve passed 7-0.

## **NEW BUSINESS**

### **I. Amherst IDA – COVID-19 Program**

Executive Director Mingoia presented the **AMHERST IDA COVID-19 DISASTER RELIEF SALES TAX INCENTIVE ASSISTANCE PROGRAM.**

Steven Sanders made a motion to approve the Amherst IDA COVID-19 Disaster Relief Sales Tax Incentive Assistance Program. Philip Meyer seconded the motion. After discussion, votes of aye to approve the program were cast by Brock, Sanders, Agostino, Tuyn, Drury, Meyer and Borden. Motion to approve passed 7-0.

9:54 am – Meeting adjourned.



**TOWN OF AMHERST**  
**OFFICE OF TOWN COMPTROLLER**  
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Town Comptroller  
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**EXAMINATION REPORT**  
**Town of Amherst Industrial Development Agency**  
**Payment In Lieu of Tax**

06/02/2020

**DRAFT**

**Background:**

On February 4<sup>th</sup>, 2008, the Town Board adopted Resolution 2008-193, “Full Accounting of Amherst IDA PILOT Program Payments”.

The Town of Amherst Industrial Development Agency (AIDA) is a public benefit corporation created in 1973 in accordance with Article 18-A of New York State General Municipal Law. The AIDA enters into contractual arrangements with client companies that have outstanding industrial development revenue bonds. The AIDA is a discretely presented component unit of the Town of Amherst.

The client companies make payments to the AIDA in lieu of taxes. Special District taxes are on the property tax bill sent out by the Town Clerk. The AIDA then collects and remits these payments to the various taxing jurisdictions.

PILOT payments for properties located in the Town of Amherst include the tax rates from the General Fund, Central Alarm, and Highway Fund. For properties located within the Village of Williamsville, the tax rates include the General Fund (Village’s Share) and Central Alarm.

**Scope:**

The scope of our exam was to review that the Town of Amherst is receiving in full the PILOTS that are due, the accuracy of such payment calculations, including contractual agreements, and that such PILOT’s assessed value agrees with the Town Assessor’s records. We reviewed the 2020 AIDA PILOT payments.

The Office of the Town Comptroller in the scope of the work performed did not audit and does not express an opinion on the assessed values of properties in the Town of Amherst.

The Office of the Town Comptroller in the scope of the work performed does not express an opinion on the contractual agreements entered into with client companies and the AIDA.

### **Steps and Procedures Performed:**

1. We read the 2019 Audited Financial Statements of the AIDA.
2. Obtain the PILOT listing for the current year from the AIDA.
3. Obtain the RPS Assessor Data Base listing of exemption code 18020 from the Assessor's Department.
4. We selected a sample of PILOT properties for 2020 and performed the following:
  - a. Re-calculated the PILOT and compared the results with the AIDA calculations.
  - b. Compared the assessed value used by the AIDA to the Assessors RPS listing.
  - c. Traced the PILOTS payments to the cash receipts received by the Town of Amherst.
  - d. Reviewed the contracts/property file of AIDA properties in our sample and compared the tax abatement percentage used in the calculation of taxes to the contract/property file.
5. Compared the PILOT listing from the AIDA with the Assessor's RPS listing for completeness.
6. Reviewed and reconciled all cash receipts with the AIDA listing.

### **Findings:**

There were no reportable findings for 2020.

97.77% or \$804,583.63 of the \$822,915.29 total PILOTS due were collected by the February 18<sup>th</sup> due date. The balance of \$18,331.66 was collected past the due date with interest. (97.87% or \$768,389.69 of the \$785,096.69 for 2019, the balance of \$16,707.00 was collected past the due date with interest).

### **Conclusion:**

It appears that Amherst Industrial Development Agency is calculating the PILOTS correctly based on the contractual requirements and assessed values of record with the Town of Amherst, and are remitting the proper amounts to the Office of the Town Comptroller, except as noted above.

### **Recommendation:**

The Office of the Town Comptroller, on an annual basis, will perform the steps and procedures (as per above) of all new PILOTS added in the current year and a random sample of ten (10) existing PILOTS.

### **Other:**

The workpapers of this examination are open for review in the Office of the Town Comptroller.

## **Executive Director's Report**

June 19, 2020

### **Recovery Task Force**

On June 8<sup>th</sup>, the Town Board approved a resolution establishing a COVID-19 Recovery Task Force (Advance Amherst) that includes myself along with other community and business members. This Task Force will oversee, and Chair, the Working Groups listed below:

1. Small Business/Economic Development – Co-Chair with Emily Melski. Carlton Brock and Jon O'Rourke requested to participate.
2. Office Redevelopment – Co-Chair with Maggie Winship
3. Agriculture Business – Jon O'Rourke on workgroup
4. Biomedical/Healthcare
5. Housing Issues
6. Senior Services
7. Educational Issues/Childcare
8. Faith Based Institutions
9. Quality of Life/Social Support
10. Disadvantages/Underserved Communities
11. Return to Work/Workforce Re-entry
12. Disabled Care

The Working Groups are currently developing rosters of participants with initial invitees sent a letter requesting their participation. If anyone has an interest in participating on any of these let me know and I can coordinate with Lauri Stillwell, Emergency Operation Center Planning Section Chief.

**PROJECT PROFILE:  
CAPITAL FENCE**  
\$2,145,000  
June 19, 2020



**ELIGIBILITY**

- Commercial Project under NYS Law

**COMPANY INCENTIVES (EST.)**

- Property Tax = \$265,000
- Sales Tax = \$131,250
- Mortgage Exemption = \$11,250

**PROJECT BENEFITS (EST.)**

- Property Taxes = \$72,000
- Income Taxes = \$1,789,000
- Sales Taxes = \$1,200,000

**EMPLOYMENT**

- 12 Construction Jobs Created
- 5 Full-Time Equivalent Jobs Created
- 19 Full-Time Equivalent Jobs Retained
- Average Salary of Jobs = \$60,000 annually Plus Benefits

**PROJECT SCHEDULE**

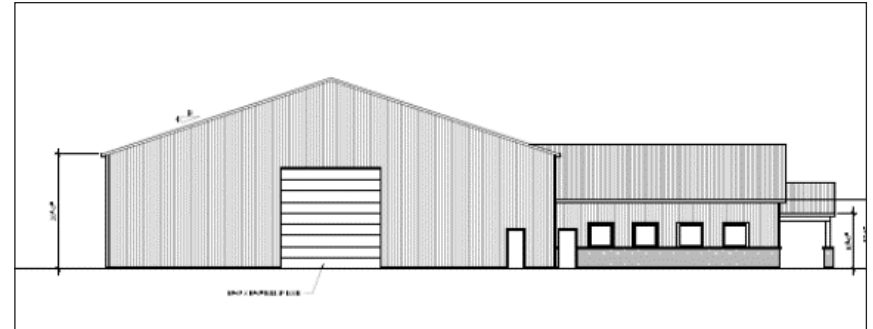
- July 2020 Work Begins
- December 2020 Investment Expected To Be Complete

**Project Address:**

68-74 North Ellicott Creek Road  
Amherst, New York 14228  
(Sweet Home School District)

**Investment:**

Acquisition: \$300,000  
Construction: \$1,600,000  
Equipment: \$30,000  
Soft/Other Costs: \$215,000



**Company Description:**

Capital Fence was founded in 1989 by Mark Schiferle as a residential fence installation contractor. Over the past thirty years the company has continued to grow in sales volume, employment, scope of operations and physical presence. Today a major focus of the business is the manufacture and distribution of fencing components to other local and regional fence contractors.

**Project Description:**

In order to accommodate this growing area of the business, the owner plans on demolishing several smaller buildings that he has acquired over the past several years. These buildings are inefficient, in poor repair and are generally unattractive.

The project will include new construction of a facility on the parcels located at 68-74 North Ellicott Creek Road. This facility will include 2400 square feet of office space and 9600 square feet of assembly/warehouse space.

The owner has worked closely with the Town of Amherst to incorporate several improvements to the site including sidewalks, proper curb cuts, green space and enhanced public access to the town's bike path. Incentives are necessary to offset the costs of expanding this small business and assist with the company's growth opportunities in fabricating and distribution.

**PROJECT PROFILE:**  
**CAPITAL FENCE**  
**\$2,145,000**

**AIDA COMPANY HISTORY:**

None

**MATERIAL TERMS:**

1. Achievement of total 23 Full-Time Equivalent jobs at the project location two years after project completion, and retention of such jobs for duration of the PILOT.
2. Investment of not less than \$1,823,250 at the project location as noted in the application.
3. Compliance with the Agency's Local Labor Policy in connection with the construction of the Project



**Cost-Benefit Analysis for Capital Fence Warehouse/Fabricating Project**

Prepared by Amherst IDA using InformAnalytics

# Executive Summary

INVESTOR  
**Capital Fence**

TOTAL INVESTED  
**\$2.1 Million**

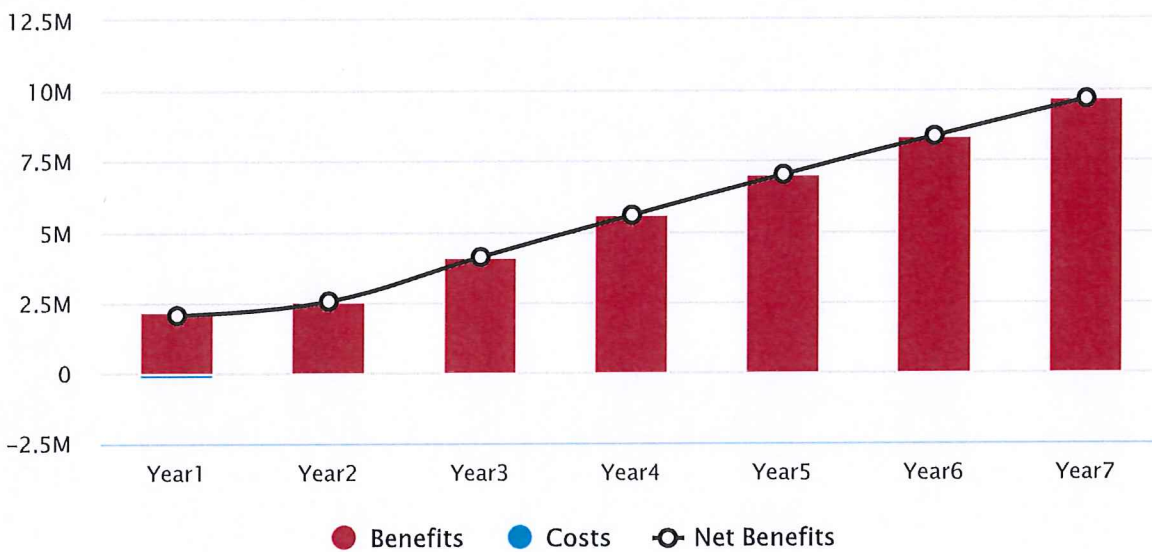
LOCATION  
**42 North Ellicott Creek  
Road, Amherst, NY  
14228**

TIMELINE  
**7 Years**

F1 FIGURE 1

Discounted\* Net Benefits for Capital Fence Warehouse/Fabricating Project by Year

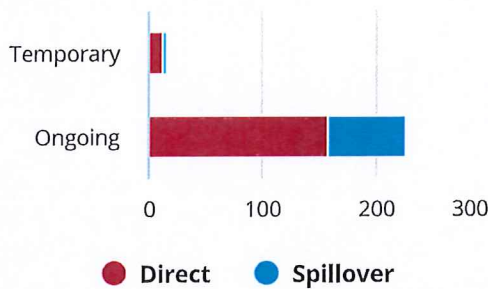
Total Net Benefits: **\$39,322,000**



Discounted at 2%

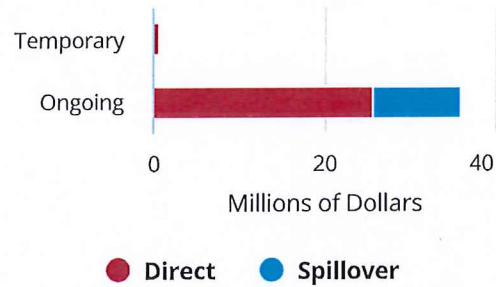
F2 FIGURE 2

Total Jobs



F3 FIGURE 3

Total Payroll



# Proposed Investment

Capital Fence proposes to invest \$2.1 million at 42 North Ellicott Creek Road, Amherst, NY 14228 over 7 years. Amherst IDA staff summarize the proposed with the following: Construction of 12,000 SF building supporting growth in fabricating and wholesale business, along with associated site improvements.

T1 TABLE 1

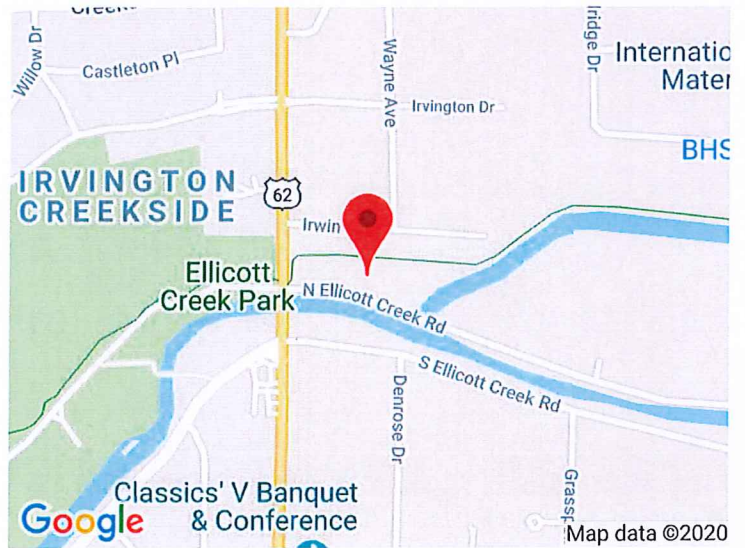
## Proposed Investments

Description	Amount
<b>CONSTRUCTION SPENDING</b>	
	\$1,600,000
<b>OTHER SPENDING</b>	
Land Costs	\$300,000
FF&E	\$15,000
Manufacturing Equipment	\$30,000
Soft Costs	\$200,000
<b>Total Investments</b>	<b>\$2,145,000</b>
<b>Discounted Total (2%)</b>	<b>\$2,145,000</b>

May not sum to total due to rounding.

F4 FIGURE 4

## Location of Investment



# Cost-Benefit Analysis

A cost-benefit analysis of this proposed investment was conducted using InformAnalytics, an economic impact model developed by CGR. The report estimates the impact that a potential project will have on the local economy based on information provided by Amherst IDA. The report calculates the costs and benefits for specified local taxing districts over the first 7 years, with future returns discounted at a 2% rate.

T2 TABLE 2

## Estimated Costs or Incentives

Amherst IDA is considering the following incentive package for Capital Fence.

Description	Nominal Value	Discounted Value*
Property Tax Exemption	\$265,000	\$251,000
Sales Tax Exemption	\$116,000	\$116,000
Mortgage Recording Tax Exemption	\$11,000	\$11,000
<b>Total Costs</b>	<b>\$392,000</b>	<b>\$378,000</b>

May not sum to total due to rounding.

\* Discounted at 2%

T3 TABLE 3

### State & Regional Impact (Life of Project)

The following table estimates the total benefits from the project over its lifetime.

Description	Direct	Spillover	Total
<b>REGIONAL BENEFITS</b>	<b>\$29,005,000</b>	<b>\$11,580,000</b>	<b>\$40,586,000</b>
<b>To Private Individuals</b>	<b>\$28,469,000</b>	<b>\$11,394,000</b>	<b>\$39,863,000</b>
Temporary Payroll	\$615,000	\$213,000	\$828,000
Ongoing Payroll	\$27,854,000	\$11,181,000	\$39,035,000
<b>To the Public</b>	<b>\$536,000</b>	<b>\$186,000</b>	<b>\$722,000</b>
Property Tax Revenue	\$72,000	N/A	\$72,000
Temporary Sales Tax Revenue	\$10,000	\$3,000	\$14,000
Ongoing Sales Tax Revenue	\$454,000	\$182,000	\$636,000
<b>STATE BENEFITS</b>	<b>\$1,723,000</b>	<b>\$629,000</b>	<b>\$2,352,000</b>
<b>To the Public</b>	<b>\$1,723,000</b>	<b>\$629,000</b>	<b>\$2,352,000</b>
Temporary Income Tax Revenue	\$30,000	\$10,000	\$40,000
Ongoing Income Tax Revenue	\$1,291,000	\$458,000	\$1,749,000
Temporary Sales Tax Revenue	\$9,000	\$3,000	\$12,000
Ongoing Sales Tax Revenue	\$393,000	\$158,000	\$551,000
<b>Total Benefits to State &amp; Region</b>	<b>\$30,728,000</b>	<b>\$12,210,000</b>	<b>\$42,937,000</b>
<b>Discounted Total Benefits (2%)</b>	<b>\$28,414,000</b>	<b>\$11,286,000</b>	<b>\$39,700,000</b>

May not sum to total due to rounding.

T4 TABLE 4

**Benefit to Cost Ratio**

The following benefit to cost ratios were calculated using the discounted totals.

Description	Benefit*	Cost*	Ratio
Region	\$37,525,000	\$317,000	118:1
State	\$2,175,000	\$61,000	35:1
<b>Grand Total</b>	<b>\$39,700,000</b>	<b>\$378,000</b>	<b>105:1</b>

**May not sum to total due to rounding.**

\* Discounted at 2%

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CGR has exercised reasonable professional care and diligence in the the production and design of the InformAnalytics™ tool. However, the data used is provided by users. InformAnalytics does not independently verify, validate or audit the data supplied by users. CGR makes no representations or warranties with respect to the accuracy of the data supplied by users.

**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A COMMERCIAL WAREHOUSE AND OFFICE BUILDING BY CAPITAL FENCE CO., INC., TO BE LOCATED AT 68 & 74 NORTH ELLICOTT CREEK ROAD, AMHERST, NEW YORK, FOR LEASE OR SALE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO A LEASE OR AN INSTALLMENT SALE CONTRACT TO CAPITAL FENCE CO., INC., THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT, PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.**

**WHEREAS**, the Town of Amherst Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, Capital Fence Co., Inc., for itself or for related individuals or entities (collectively, the “Company”), has entered into negotiations with officials of the Agency with respect to the construction and equipping by the Agency without the proceeds of a bond issue of a commercial building to be comprised of 2,400+/- square foot of office space and 9,600+/- square foot assembly/warehouse space (the “Project”) and conveyance of the Project pursuant to an installment sale contract or the lease of the Project to the Company, such Project to be located at 68 & 74 North Ellicott Road, Amherst, New York (the “Premises”); and

**WHEREAS**, the Company has submitted an application and other materials and information (collectively, the “Application”) to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the construction of an office and warehouse facility to be located at 68 & 74 Ellicott Creek Road, Amherst, New York, all at a cost of approximately \$2,145,000; that the Company anticipates that nineteen (19) full-time equivalent (FTE) employment positions will be retained and five (5) new FTE employment positions will be created as a result of the Project at the end of two (2) years of operation thereof; that (i) there will be no substantial adverse disruption of existing employment of facilities of a similar nature in the Town of Amherst, (ii) the Project will retain present employment, provide substantial employment and substantial capital investment; (iii) that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on May 15, 2020, and has considered all oral and written presentations made at or in connection with said public hearing; and

**WHEREAS**, based upon the Application, the Agency has determined that a portion of the Project includes facilities or property which will be primarily used in making retail sales (as defined in Section 862(2) of the New York General Municipal Law) to customers who personally visit such facilities and that the Agency is permitted to provide financial assistance with respect to the Project because the facilities or properties that are primarily used in making retail sales to customers who personally visit such facilities constitute less than one-third (1/3) of the total Project cost; and

**WHEREAS**, the Agency has reviewed the Application and a cost-benefit analysis with respect to the Project, including the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

**WHEREAS**, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

**WHEREAS**, the Company has not yet determined whether it will provide the funds necessary to complete the Project by using its own funds or by obtaining a conventional loan from a third party, and if the Company will finance the Project with funding from a third party the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

**WHEREAS**, the Town of Amherst Planning Board (the “Planning Board”) served as lead agency pursuant to the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617) (“SEQRA”) for the Company’s project. The Agency was duly identified as an involved agency in the amended Part 1 of the long-form Environmental Assessment Form (“EAF”) which was completed by the Company, a copy of which was provided to the Agency; and

**WHEREAS**, on June 18, 2020, the Planning Board issued a negative declaration under SEQRA with respect to the project, a copy of which was provided to the Agency (the “Negative Declaration”).

**NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** Based upon the Agency’s review of the Company’s Application, the EAF



and the Negative Declaration issued by the Planning Board, the Agency hereby: (a) consents to and affirms the status of the Planning Board as lead agency within the meaning of, and for all purposes of complying with, SEQRA; (b) determines that the proceedings undertaken by the Planning Board as lead agency under SEQRA with respect to the acquisition, construction and equipping of the Project satisfy the requirements of SEQRA, and ratifies and confirms such proceedings by the Planning Board as lead agency; and (c) determines that all of the provisions of SEQRA that are required to be complied with as a condition precedent to the approval of the Financial Assistance (as defined herein) contemplated by the Agency with respect to the Project and the participation by the Agency in undertaking the Project have been satisfied.

**Section 2.** The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith include: (i) an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$1,500,000, (ii) an exemption from mortgage recording taxes for one or more mortgages having an aggregate principal amount not to exceed \$1,500,000 and (iii) an abatement from real property taxes in accordance with the Agency's standard seven (7) year payment in lieu of tax schedule (collectively, the "Financial Assistance"). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company throughout the period during which the Company is receiving Financial Assistance from the Agency (the "Compliance Period") to comply with the following covenants and agreements, each of which shall constitute a "Material Factor":

- (a) compliance with the Agency's Local Labor Policy in connection with the construction of the Project;
- (b) achievement of a total of twenty-three (23) full-time equivalent (FTE) jobs at the Project within two years of Project completion and the retention of such jobs throughout the Compliance Period; and
- (c) investment of not less than 85% of the total Project cost of \$2,145,000 in the acquisition, renovation and equipping of the Project.

**Section 3.** The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency hereby determines that facilities or properties that are primarily used in making retail sales to customers who personally visit such facilities constitute less than one-third (1/3) of the total Project cost.

**Section 4.** The Agency hereby authorizes the Company, as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as

hereinafter defined).

**Section 5.** The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

**Section 6.** The Company is authorized, as agent of the Agency, to initiate the construction of a building(s) or building addition(s) constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$1,500,000 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

**Section 7.** The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Agreement") and to acquire an interest in the Project site and construct a facility thereon, and the execution and delivery of a lease by the Lessee to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company, a Payment in Lieu of Tax Agreement between the Agency and the Company (the "PILOT Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in form satisfactory to Agency counsel, are hereby authorized. The PILOT Agreement shall provide for payments in accordance with the Agency's standard seven (7) year payment in lieu of tax schedule. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 8.** In the event the Company obtains one or more conventional loans to finance the cost of the Project or which will otherwise be secured by a lien on the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans, and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages shall not exceed \$1,500,000 and provided further that the

mortgages authorized hereunder shall be eligible for an exemption from mortgage recording tax (in accordance with applicable law) only to the extent that such mortgages are executed and delivered within two (2) years of the date of this Resolution. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

**Section 9.** Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

**Section 10.** Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

**Section 11.** In the event a lease is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that Company is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the

Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

**Section 12.** The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company each hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

**Section 13.** Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

**Section 14.** No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease

Agreement, Installment Sale Contract, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

**Section 15.** Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**Section 16.** This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option either (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 10 and 11 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency's fee schedule.

**Section 17.** This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: June \_\_\_\_, 2020

ACCEPTED AND AGREED TO: \_\_\_\_\_, 2020

**CAPITAL FENCE CO., INC.**

By: \_\_\_\_\_  
Name:  
Title:

# AGREEMENT

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This document outlines the Scope of Services, Schedule, and Compensation/Duration of a consulting agreement between the following parties:

Amherst Industrial Development Agency (“Client”)  
4287 Main Street  
Amherst, NY 14226

and

David E. Versel (“Contractor”)  
350 Oak Terrace  
Alpharetta, GA 30009

## SCOPE OF SERVICES

The Client, along with the Town of Amherst, has begun a planning process to manage its recovery from the public health and economic crisis caused by the COVID-19 pandemic. The process will begin with a scoping exercise that will lay the groundwork for a Recovery Plan. The scoping exercise will be led by a separate team of planning consultants—this proposal is designed to support and coordinate with their efforts. This proposal is designed to support and complement the scoping exercise and consists of three major elements: 1) Baseline Data Collection and Analysis; 2) Survey Design and Analysis; 3) Scoping Exercise Support.

### **Task 1: Baseline Data Collection and Analysis**

The demographic and economic data that typically inform planning and economic strategies are of limited value at the present time. Many datapoints are only reported annually and even many monthly and quarterly measures either come with a lag time and/or often must be retroactively adjusted. Given the severity and urgency of the current situation communities will need to identify and track high-frequency economic indicators that are reported on a real-time, daily, or weekly basis in order to gauge and monitor conditions and, hopefully, spot leading indicators of recovery.

This task will include identifying key indicators, gathering baseline data starting at the beginning of the crisis in early 2020, and setting up a system for updating this information. It will also include an analytical report that identifies the key strengths and weaknesses in Amherst and the Buffalo-Niagara region relative to the state and nation. The following is a list of possible indicators that could be tracked (many of these datapoints may not be reported at the local level):

- New unemployment claims and repeat claims
- Job postings
- Electrical consumption
- Retail sales and foot traffic

- Vehicle traffic and congestion
- US-Canada border crossings
- Freight rail activity
- Gasoline prices
- Mortgage loan originations
- Airport boardings
- Transit ridership
- Movie box office sales
- Restaurant reservations

Deliverables:

- Memorandum report summarizing the competitive position of Amherst and the Buffalo-Niagara region based on these indicators
- Technical appendix with data tables and links to data sources

**Task 2: Survey Design, Administration & Analysis**

In addition to the collection of outside data the Town of Amherst will also benefit from gathering data from its own business community. This task will build on the initial survey work already completed for the Buffalo-Niagara region and will include the design, administration, data collection, tabulation and analysis of a short, recurring survey. The survey instrument will be modeled on political campaign surveys—it will only contain a few questions and it will be designed to be administered on a monthly basis. The survey would be conducted online and would be distributed and collected with the assistance of the Amherst Chamber of Commerce and the Amherst Industrial Development Agency.

This proposal includes the design of the initial survey instrument and the administration of the first two (2) monthly surveys, which will cover the entirety of the scoping period.

Deliverables:

- Survey instrument
- Raw data from surveys
- Tables with tabulations and cross-tabulations
- Memorandum report summarizing results of each survey

**Task 3: Scoping Exercise Support**

The scoping exercise to be conducted by a separate consulting group will result in the design of a robust process for the Town of Amherst's Recovery Plan. Since the economic development piece is truly at the heart of the recovery, this proposal assumes participation in the background research, pre-planning meeting, scoping workshop, and follow-up meetings.

Deliverable:

- Economic Development components of scoping document

## **FEE AND SCHEDULE**

The estimated fee to complete these tasks is as follows:

<b><u>Task</u></b>	<b><u>Fee</u></b>
Task 1: Baseline Data Collection & Analysis	\$ 6,000
Task 2: Survey Design, Administration & Analysis	\$ 4,000
Task 3: Scoping Exercise Support	\$ 3,000
<b>Total Consulting Fee</b>	<b>\$13,000</b>

There will likely be direct costs incurred related to data collection and survey administration. These costs will only be billed based on actual expenditures and will not exceed \$2,000. The total not-to-exceed contract amount is therefore estimated to be **\$15,000**.

All tasks as shown above will be completed within a six-week time frame, to be coordinated with the Scoping Exercise.

## **CONSULTANT BACKGROUND**

David E. Versel is a national leader in the urban development field with 23 years of professional experience. He has worked with more than 200 clients in 30 U.S. states on a wide range of projects, plans, and studies related to the development of places, neighborhoods, cities, and regions. He has worked on seven separate plans and studies for the Town of Amherst and/or Village of Williamsville, including the Town's Bicentennial Comprehensive Plan (2000-2001), the Village's Community Plan (2007-2008), and the Town's Economic Study (2016). In addition to his consulting experience Mr. Versel has also held executive-level positions with multiple real estate development firms, the George Mason University Center for Regional Analysis, and the Southeast Fairfax Development Corporation.

A full statement of qualifications for Mr. Versel is attached as Appendix A

## **AGREEMENT**

Both parties agree to the above terms and conditions. The signatures below authorize this agreement and it shall commence on the date shown below. This agreement shall be valid for a period of sixty (60) days following execution by both parties.

Signed on this day, \_\_\_\_\_

\_\_\_\_\_  
David Mingoia, Executive Director/CEO/CFO  
Amherst Industrial Development Agency ("Client")

\_\_\_\_\_  
David E. Versel ("Contractor")



## **APPENDIX A: STATEMENT OF CONTRACTOR QUALIFICATIONS**

### **DAVID E. VERSEL**

**TEL 404.860.4504 EMAIL [dversel@yahoo.com](mailto:dversel@yahoo.com)**

David Versel is a national leader in the development of places, neighborhoods, cities, and regions. Since 1997 he has worked with more than 200 clients in 30 U.S. states on a wide range of projects, plans, and studies. David has also held executive-level positions with multiple real estate development firms, the George Mason University Center for Regional Analysis, and the Southeast Fairfax Development Corporation. David has a Master's in City Planning from the Georgia Institute of Technology and a B.A. in Architecture from Washington University. His project experience cuts across multiple interrelated disciplines:

#### **Economic & Community Development Planning**

- Economic Development Strategy and Incentive Policies; Fayetteville, GA
- Revitalization Strategies for Highway 9 Corridor; Roswell, GA
- Economic Development Strategic Plan; Round Rock, TX
- Economic Development Strategic Plan; Colorado Springs, CO
- Richmond Highway Corridor Revitalization Planning & Implementation; Alexandria, VA
- Affordable Housing Study and Action Plan; Arlington, VA
- Economic Revitalization Strategies for Comprehensive Plan; Cheektowaga, NY
- Twin Cities Cultural Development Plan; Biddeford & Saco, ME
- Comprehensive Economic Development Plan; Pike County, KY
- Downtown Revitalization Study Update; Westbrook, ME
- Economic Action Plan; St. Mary Parish, LA
- Downtown Parking and Access Study; Buffalo, NY
- Comprehensive Housing Assessment and CDBG Grantwriting; Gardiner, ME
- NoMa Planning Study; Washington, DC
- Harlem-Kensington-Cleveland Revitalization Strategy; Amherst and Cheektowaga, NY
- Town of Amherst Bicentennial Plan; Amherst, NY
- University District Revitalization Study; Cincinnati, OH
- Trinity River Project Master Plan; Dallas, TX

#### **Real Estate Market and Feasibility Analysis**

- Market Analysis of the Milstead Village Revitalization Plan; Conyers, GA
- Market & Feasibility Study for Dulles Parkway Center; Ashburn, VA
- Reston Station Mixed-Use Development Market Assessment; Reston, VA
- Ballston Common Mall Redevelopment Market Assessment; Arlington, VA
- Main Street Corridor Market Study; Williamsville, NY
- Irondequoit Mall Redevelopment Market Analysis; Irondequoit, NY
- Beach Club Market Analysis; Scarborough, ME
- Market Study for LIHTC Senior Housing Development; Biddeford, ME
- Middle River Waterfront Destination Study; Baltimore County, MD
- Embrey Mill Market and Fiscal Impact Analysis; Stafford, VA
- Market and Fiscal Assessment of Public Works Site Redevelopment; Portland, ME
- Serenbe Resort Market and Financial Analysis; Chattahoochee Hills, GA
- Goldman Sachs Headquarters Retail Study; Jersey City, NJ
- Convention Center Redevelopment Market Study; Charlotte, NC
- Boutique Hotel Market Study; New York, NY
- Factory Outlet Mall Redevelopment; Lakeland, TN
- Production Studio Site Search; Baltimore, MD

### **Real Estate Development Management**

- Medlock Bridge Shopping Center Redevelopment; Johns Creek, GA
- Rose & Main New Town Development; Hampton, GA
- Friendship Village Integrated Senior Living Community; Braselton, GA
- Addison Park Townhomes; Roswell, GA
- Life Storage Climate-Controlled Storage Development; Peachtree Corners, GA
- Iris Lake Aerial Adventure Park; McDonough, GA
- The Cottages at Southampton; Hampton, GA
- Etowah Highlands New Town Development; Emerson, GA
- Palm Coast Marina Mixed-Use Development; Palm Coast, FL
- Marineland Redevelopment; Marineland, FL
- Pepperell Mill Campus Adaptive Re-Use Project; Biddeford, ME

### **Fiscal and Economic Analysis**

- Economic Impact Assessment of George Mason University; Fairfax, VA
- Economic Impact Tool for National Scenic Byways Program; nationwide
- Economic Impact Model for National Aviation Heritage Area; Ohio
- Fiscal Impact Assessment of Comprehensive Plan; Temple, TX
- Fiscal Impact Assessment Tool; Sealy, TX
- Economic Impact Assessment of New River Gorge National River, West Virginia
- Buffalo-Niagara Medical Campus Economic Impact; Buffalo, NY
- Fiscal Impact Review of Proposed Wal-Mart; Damariscotta, ME
- Fiscal Impact of Office Development; Green, OH
- Mellon Arena Redevelopment Strategy; Pittsburgh, PA
- Fifth-Forbes Redevelopment Financial Analysis; Pittsburgh, PA
- Reedy River Corridor Fiscal and Economic Impact Study; Greenville, SC
- Uptown Housing TIRZ Analysis; Houston, TX
- Fiscal Analysis of Prince George's County General Plan; Maryland
- Atlantic Station Economic and Fiscal Analysis; Atlanta, GA
- Cleveland Sculpture Park Economic Impact; Cleveland, OH
- Easton Village Fiscal and Economic Impact; Easton, MD
- A.D. Makepeace Development Fiscal Impact Analysis; Plymouth/Wareham/Carver, MA

### **Tourism and Visitor Attraction Development**

- Upper Housatonic Valley National Heritage Area Management Plan; Mass./Conn.
- New River Gorge National River General Management Plan; West Virginia
- Five-Year Tourism Business Plan, Aroostook County, ME
- Kennebec-Chaudiere Heritage Corridor Strategic Planning; Maine
- Wheeling National Heritage Area Management Plan Update; Wheeling, WV
- Valley Forge National Historic Park General Management Plan; Pennsylvania
- Schuylkill River Valley National Heritage Area Management Plan; Pennsylvania
- International Spy Museum Financial Analysis; Washington, DC
- Garden Under Glass Feasibility Study; Boston, MA
- Jefferson National Expansion Memorial (St. Louis Arch) General Plan; St. Louis, MO
- Mill City Museum Market and Economic Impact Study; Minneapolis, MN
- Shenandoah Valley Battlefields National Historic District Plan; Virginia
- Iowa Trails 2000 Plan; Iowa
- Museums at 18<sup>th</sup> & Vine Operations Assessment; Kansas City, MO
- Great River Road Development Study; Minnesota
- National Coal Heritage Area Management Plan; West Virginia