

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 531st Meeting
Friday, January 21, 2022-8:30 am

Via Zoom - 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
4. Treasurer's Report
5. Public Comment
 - a. Speakers Limited to Three (3) Minutes
6. Executive Director's Report
7. Committee Reports
 - I. Nominating Committee
 - Election of Officers
 - Committee Assignments
8. Unfinished Business
9. New Business
 - I. AIDA Employee 401(k) Plan Restatement
10. Adjournment

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
TOWN OF AMHERST DEVELOPMENT CORPORATION**

EXECUTIVE COMMITTEE AND BOARD MEETING DATES

2022

EXECUTIVE COMMITTEE

- No meeting-

Thursday, February 3, 2022

Thursday, March 3, 2022

Thursday, April 7, 2022

Thursday, May 5, 2022

Thursday, June 2, 2022

Thursday, July 7, 2022

Thursday, August 4, 2022

Thursday, September 1, 2022

Thursday, October 6, 2022

Thursday, November 3, 2022

Thursday, December 1, 2022

BOARD MEETINGS

Friday, January 21, 2022

Friday, February 18, 2022

Friday, March 25, 2022

Friday, April 15 or 22, 2022

Friday, May 20, 2022

Friday, June 17, 2022

Friday, July 15 or 22, 2022

Friday, August 19, 2022

Friday, September 16, 2022

Friday, October 21, 2022

Friday, November 18, 2022

Friday, December 16, 2022

**ALL MEETINGS BEGIN AT 8:30 AM
AIDA OFFICES
4827 MAIN STREET, AMHERST, NY 14226
716.688.9000
AmherstIDA.com**

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 529th Meeting
Monday, December 6, 2021 – 8:30 am – via Zoom
James J. Allen Boardroom
Agency Offices, 4287 Main Street

Pursuant to the provisions of Part E of Chapter 417 of the Laws of 2021, the Town of Amherst Industrial Development Agency Board of Directors Meeting was conducted through via Zoom and live streamed at www.AmherstIDA.com. In attendance at the meeting at Amherst IDA offices was Executive Director David Mingoia. A video recording of the meeting can be accessed and viewed at www.AmherstIDA.com

PRESENT via Zoom: Carlton N. Brock, Jr.
William Tuyn
Anthony Agostino
Timothy Drury
Philip Meyer
Hadar Borden
Frank L. LoTempio III
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

ABSENT: Timothy Drury

GUESTS via Zoom: AIDA Staff
Jacqueline Berger, TOA Councilmember
Brian Kulpa, TOA Supervisor
Angela Rossi, TOA Dept of Economic Development
Sean Hopkins, Hopkins & Sgroi
Erik Wagner, Ciminelli Development Co.

Chairman Carlton Brock requested that Vice Chairman Tuyn chair the meeting as he was driving. Vice Chairman William Tuyn called the meeting to order and reminded everyone the meeting was being video recorded and live-streamed.

MINUTES

Upon a motion by Frank LoTempio seconded by Philip Meyer and unanimously carried, the minutes of the December 6, 2021 meeting were approved as presented.

BILLS & COMMUNICATIONS

There were no Bills & Communications presented at this meeting.

TREASURER'S REPORT

Upon a motion by Frank LoTempio, seconded by Hadar Borden and unanimously carried, the Treasurer's Report for November 2021 was approved as presented.

PUBLIC COMMENT

There was no Public Comment at this meeting.

EXECUTIVE DIRECTOR'S REPORT

Attached to the minutes is the Executive Director's Report.

COMMITTEE REPORTS

The Governance Committee met to discuss the Amherst Central Park Infrastructure Fund and Administration Agreement. They recommended to advance the Agreement to the board of directors of the Town of Amherst Industrial Development Agency for deliberation.

The Town of Amherst Industrial Development Agency (the "AIDA") is being asked to approve the Amherst Central Park Infrastructure Fund and Administration Agreement.

The Agreement specifies the AIDA, the Town of Amherst, and the Sweet Home Central School District (the "School District") are parties to that certain Amherst Central Park Infrastructure Fund and PILOT Application Agreement (the "PILOT Application Agreement") pursuant to which the parties agreed to have AIDA redirect a portion of Town PILOT payments and a portion of School District PILOT payments received by AIDA to a restricted fund (the "Amherst Central Park Infrastructure Fund" or "Fund"), to be managed and disbursed by AIDA in accordance with the Agreement.

Frank LoTempio made a motion to approve the Amherst Central Park Infrastructure Fund and Administration Agreement. Anthony Agostino seconded the motion to approve. After discussion a roll call of votes was taken: Brock-aye; Tuyn-aye; Agostino-aye; Meyer-aye; Borden-aye; LoTempio-aye. Motion to approve passed 6-0.

UNFINISHED BUSINESS

There was no Unfinished Business presented at this meeting.

NEW BUSINESS

Authorization Resolution – 111 North Maplemere, LLC

The proposed project consists of the development of a state of the art healthcare facility consisting of 163,200 square feet integrating innovative specialized medical tenants, mainly consisting of not-for-profit medical providers. Kaleida, University Orthopedic Services, Great Lakes Imaging, Bones and Guts, and General Physicians, PC, are locating at the project to improve healthcare collaboration, community synergies, and improve patient outcomes.

Executive Director Mingoa reviewed the Project Profile and Cost Benefit analysis for the project with the board. Project counsel, Sean Hopkins then provided a brief overview of the project.

Frank LoTempio made a motion to approve the 111 North Maplemere, LLC project. Carlton Brock seconded the motion. After discussion, a roll call of votes was taken: Brock-aye; Tuyn-aye; Agostino-

aye; Meyer-aye; Borden-aye; LoTempio-aye. Motion to approve passed 6-0.

8:59 am – A Public Hearing was held for the Amherst NY Properties KP6, LLC project.

Project counsel, Sean Hopkins provided a brief overview of the project. There was no public comment made at the hearing.

9:05 am – The Public Hearing was closed.

Authorization Resolution – Amherst NY Properties KP6, LLC

Aspen Heights, through Amherst NY Properties KP6, LLC, is proposing to construct and manage a multi-phase student housing development on the Muir Woods parcel to include 830 beds in cottage/townhome style units. This project was previously induced in April 2021 for York Acquisitions, LLC to undertake the project, but the change to an unrelated corporate entity requires further Agency approval. The developer is faced with estimates of \$5,000,000 in extraordinary off-site public benefit infrastructure expenses as directed by the New York State Department of Transportation and others. Included in these costs is design allowance for a future NFTA Metro Light Rail or Enhanced Transit Stop. Construction costs, through material and labor increases caused by the pandemic, impact the feasibility of the project.

Executive Director Mingoia reviewed the Project Profile and Cost Benefit analysis for the project with the board.

Frank LoTempio made a motion to approve the Amherst NY Properties KP6, LLC project. Anthony Agostino seconded the motion to approve. After discussion a roll call of votes was taken: Brock-aye; Tuyn-aye; Agostino-aye; Meyer-aye; Borden-aye; LoTempio-aye. Motion to approve passed 6-0.

9:13 am – Phil Meyer made a motion to adjourn the meeting. Frank LoTempio seconded the motion. Motion to adjourn was unanimously approved.

Executive Director's Report

January 21, 2022

Marketing RFP

In December, a RFP for marketing services and initial branding for a medical innovation and service initiative was advertised in the NYS Contract Reporter and mailed to the firms listed in Business First's Book of Lists. Medical is a target sector identified through Town Recovery Planning and gained traction through several media stories about the clustering of firms along the 1-290 corridor.

We received seventeen (17) responses from as far as West Virginia and Halifax, Canada. After review, we selected three (3) firms for interviews taking place the week of January 18th. Our RFP process parallels the Town's engagement of an Economic Consultant to undertake a Strategic Economic Development Plan. The work of the Town's consultant will provide data that the selected marketing firm will use to refine message, brand and materials. In order to stay on schedule with the Town's consultant, we would like to engage with the selected firm prior to our next scheduled Board of Directors meeting in February.

Countywide Tax Exemption Policy – Uniform Tax Exemption Policy (UTEP)

Enclosed in the Board Packet is a copy of the transmittal letter to the taxing jurisdictions and revised UTEP. The revised UTEP improves user understanding of eligible projects and accounts for new types of projects such as Renewables (Solar, Wind). State Law is referred to, not reprinted in the UTEP, which allows the document to remain current if IDA statute changes. Policies that may be different between IDAs are addendums which allows us to still present one set of benefits and eligibility for projects looking at multiple locations in Erie County while maintaining flexibility for individual board priorities. Inter-municipal move criteria and notification requirements remain, as does the continuance of a county-wide leadership council that exists to discuss policy changes and issues.

The transmittal to the taxing jurisdictions includes a registration link for a Zoom meeting we are holding in conjunction with the other IDAs that will provide an overview of the document and allow for questions. Our expectation is that the UTEP will be before this Board in February for final review and approval. The UTEP would have an effective date of March 1st if we remain on schedule.

David S. Mingoia
Executive Director



January 12, 2022

Hon. Mark C. Poloncarz
Erie County Executive
95 Franklin Street
Buffalo, New York 14202

Teresa Anne Leatherbarrow
School Board President
Williamsville Central School District
105 Casey Road
East Amherst, New York 14051

Hon. Brian Kulpa, Supervisor
Town of Amherst
5583 Main Street
Amherst, New York 14221

Anthony J. Panella
Superintendent
Amherst Central School District
55 Kings Highway
Amherst, New York 14226

Michael Ginestre
Superintendent
Sweet Home Central School District
1901 Sweet Home Road
Amherst, New York 14228

Paul Steimle
School Board President
Amherst Central School District
55 Kings Highway
Amherst, New York 14226

Hon. Marianne Jasen
School Board President
Sweet Home Central School District
1901 Sweet Home Road
Amherst, New York 14228

Dr. Matt Frahm
Superintendent
Clarence Central School District
9625 Main Street
Clarence, New York 14031

Dr. Darren J. Brown-Hall
Superintendent
Williamsville Central School District
105 Casey Road
East Amherst, New York 14051

Michael Fuchs
School Board President
Clarence Central School District
9625 Main Street
Clarence, New York 14031

**RE: Town of Amherst Industrial Development Agency (the "Agency")
Amended and Restated Uniform Tax Exemption Policy**

Ladies and Gentlemen:

Please accept this correspondence as notice from the Agency, pursuant to Section 874 of the New York General Municipal Law ("GML"), informing you of the Agency's contemplated action to amend and restate, in its entirety, its Uniform Tax Exemption Policy ("UTEP").

Enclosed herewith is the proposed amended and restated UTEP that the Agency, in consultation with the respective Industrial Development Agencies for the County of Erie, the Town of Clarence, the Town of Hamburg, and the Town of Lancaster (collectively, the "IDAs") has developed for consideration and approval.

Revisions to the UTEP are being proposed to establish updated and clarified policies for the provision of financial assistance including, for the claiming of, real property, mortgage recording, and sales tax exemptions, and have been tailored to be responsive to the kinds of qualified projects that are expected to be undertaken in accordance with the GML.

Please be advised that representatives from the Agency and the IDAs will present and discuss the proposed amended and restated UTEP at a scheduled UTEP public information session, to be conducted via Zoom on January 2:00 pm on January 27, 2022. You are invited to participate in the UTEP public information session. Please register to attend by accessing the UTEP Information Session registration link, via the following HTML:

<https://www.ecidany.com/utep-information-session>

In addition, the Agency invites you to provide written comments, which will be reviewed at the Agency's public meeting scheduled to be held at 8:30 a.m. on February 18, 2022, at which the Agency contemplates taking action on the amended and restated UTEP. Written comments will be accepted up to the close of business on February 11th.

All written comments can be submitted to the Agency at 4287 Main Street, Amherst, New York 14228. I also welcome and encourage you to contact me with any questions or for additional information regarding the proposed amended and restated UTEP. I can be reached at dmingoia@amherstida.com and at (716) 688-9000.

Very truly yours,



David Mingoia
Executive Director/CEO

/Enc.

cc: Town of Amherst IDA Board of Directors

Countywide Industrial Development Agency Uniform Tax Exemption Policy

Town of Amherst Industrial Development Agency, the Town of Clarence Industrial Development Agency, the Town of Hamburg Industrial Development Agency, the Town of Lancaster Industrial Development Agency and the Erie County Industrial Development Agency

Amended and Restated as of _____, 202__

The declared policy of New York State is to promote the economic welfare, recreation opportunities and prosperity of its inhabitants, and to promote, attract, encourage and develop recreation, and economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies (“IDA”). IDAs are empowered to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, and commercial facilities and thereby advance the job opportunities, health, and the general prosperity and economic welfare of the people of New York State and to improve their recreational opportunities, prosperity and standard of living.

IDAs are empowered to carry out these statutory purposes by providing for the claiming of real property tax abatements and exemptions from sales, use, and mortgage recording tax, and the issuance of tax exempt bonds (collectively, “Financial Assistance”). The IDAs in Erie County have adopted this Uniform Tax Exemption Policy (the “Policy”) to provide for uniform policies for the claiming of IDA Financial Assistance.

Pursuant to the authority vested in it by Article 18-A of the General Municipal Law of the State of New York, an IDA is authorized to establish guidelines and policies for the evaluation and selection of projects for which Financial Assistance will be provided, the suspension, discontinuance, or modification of real property tax abatements, and the recapture of all or part of the Financial Assistance as a consequence of job creation/retention shortfalls or other material violations of the terms and conditions established for the provision of Financial Assistance. Each applicant for Financial Assistance should consult with the appropriate individual IDA to confirm such an IDA’s relevant guidelines and policies.

I. Eligible Applicants/Projects

A. By way of example only, Applicants involved in the following business activities may be eligible to apply for Financial Assistance:

1. Commercial activities
2. Manufacturing/Advanced Manufacturing
3. Warehousing/Distributive Services
4. Back office (headquarters, data and call centers)
5. Renewable energy and/or electric energy storage¹

¹ Renewable energy and/or electric energy storage projects will be evaluated based upon consideration of evaluative criteria which are appropriate for such projects particularly where the goals of the project may be broader than typical job retention and creations goals.

B. **Retail Business.** Only certain Retail Business projects may be eligible to receive Financial Assistance in compliance with Section 862 of the New York General Municipal Law (“GML”). Applicants are strongly encouraged to consult Section 862 of the GML and the appropriate individual IDA if a proposed project involves the sale of goods or services to customers who personally visit the project site.

C. **Special Projects.** Applications which contain a mix of retail uses and other non-retail uses (a mixed use project) must comply with Section 862 of the GML and meet additional requirements, if any, as established by each such IDA.

1. **Adaptive Reuse Project/Neighborhood Enhancement Area Project.** Adaptive Reuse Projects/Neighborhood Enhancement Area Projects will be evaluated based upon consideration of evaluative criteria which are appropriate for such projects particularly where the goals of the project may be broader than typical job retention and creation goals. IDA Financial Assistance may be provided to an Adaptive Reuse Project that involves adapting old structures or sites for new purposes, including but not limited to, potentially a mix of retail uses (in compliance with Section 862 of the GML) and commercial uses, and/or market rate or below market rate housing, and/or as otherwise permitted under any exception or amendment to this Policy for each individual IDA. An Adaptive Reuse Project is one that will benefit the host municipality and Erie County by redeveloping a blighted site or structure, promoting infill development utilizing existing infrastructure, creating new economic activity at difficult sites and buildings thus helping to eliminate neighborhood slum and blight, promoting re-use of existing buildings and sites, and helping to maintain a neighborhood’s fabric. Adaptive Reuse Projects prevent economic deterioration and promote employment opportunities. IDAs may also provide Financial Assistance, as determined by each such IDA, to projects that are retail or have retail components, in compliance with Section 862 of the GML, if the project is located in or contemplating relocating to areas within Erie County that are designated, by the respective municipal legislatures, as Neighborhood Enhancement Areas.

2. **Additional Commercial Special Projects.** Continuing Care Retirement Community Project as permitted under Sections 854(19) and 859-b of the GML.

II. Exemption from Real Property Taxes: Payments in Lieu of Taxes

The IDAs maintain a policy for the provision of real property tax exemptions with a corresponding Payment In Lieu Of Tax Agreement (“PILOT Agreement”) to provide a real property tax abatement for qualified projects. Each project receiving an abatement from real property tax will be subject to a PILOT Agreement in a form proscribed by the IDA. Such PILOT Agreement will also require payment of any and all special district assessments.

The calculation of the amount of the PILOT payments, and the amount of such payments, is not set forth in statute. The PILOT Agreement payment schedules contained within this Policy establish a varied real property tax abatement schedule to incentivize certain investments over others. In this manner, projects that meet all or some of the region’s planning and economic development goal criteria will be rewarded with a more beneficial real property tax abatement schedule in comparison to those projects that meet less of the region’s planning and economic development goal criteria. To meet this goal, a four-tiered PILOT incentives schedule will be utilized. Consideration of the following “PILOT Tier Criteria” will be utilized in analyzing and selecting the appropriate

tiered PILOT schedule to be utilized for each particular project: (i) capital investment, (ii) employment creation and employment retention, (iii) consistency with regional and community based planning, and (iv) overall community benefit.

Below is a listing of the current tiered PILOT schedules:

A. Tier 1: Five Year PILOT Schedule

A five year PILOT Schedule will be applied to projects that score at the Tier 1 level based upon application of the PILOT Determination Scoring Worksheet.

Year	1	2	3	4	5
% Abatement	75%	65%	55%	45%	35%

B. Tier 2: Seven Year PILOT Schedule

A seven year PILOT Schedule will be applied to projects that score at the Tier 2 level based upon application of the PILOT Determination Scoring Worksheet.

Year	1	2	3	4	5	6	7
% Abatement	95%	90%	85%	80%	75%	70%	65%

C. Tier 3: Ten Year PILOT Schedule

A ten year PILOT Schedule will be applied to projects that score at the Tier 3 level based upon application of the PILOT Determination Scoring Worksheet.

Year	1	2	3	4	5	6	7	8	9	10
% Abatement	95%	90%	85%	85%	80%	80%	75%	75%	70%	65%

D. Tier 4: Renewable Energy PILOT Schedule

A PILOT Schedule unique to renewable energy projects that may or may not also have an electric energy storage component is available to support statewide renewable energy production goals, currently established at achieving 70% renewable electricity production by 2030. With respect to a renewable energy project, an IDA, in its sole discretion, may authorize a payment in lieu of taxes agreement for up to a twenty-five (25) year benefit period, and shall calculate such payments based upon a formula expressed as a dollar value per Mega Watt (MW) multiplied by the total MW(s) to be generated by such a project. A determination to grant a Renewable Energy PILOT containing terms consistent with the provisions described within this section shall not be considered a deviation from this Policy.

III. Exemption from Sales and Use Taxes

The IDAs maintain a policy for the provision of sales and use tax exemptions, being a 100% exemption from the New York State and local sales and use taxes related to the acquisition, construction, re-construction and equipping of any approved project, inclusive of rentals and all other elements of the Project qualifying for exemption. In coordination with an IDA, an Applicant must

confirm the amount of sales and use tax exemption in connection with a qualified project. Operating and maintenance expenses are not eligible for a New York State and local sales and use tax exemption benefit.

IV. Exemption from Mortgage Recording Taxes

The IDAs maintain a policy for the provision of a mortgage recording tax exemption that permits a mortgage recording tax exemption on a portion of the New York State Mortgage Recording Tax in Erie County, statutorily limited to .0075% on any commercial mortgage or security instrument arising out of or related to the financing or refinancing of an approved project.

V. Deviation from the Uniform Tax Exemption Policy

The following constitutes the procedure for deviation from this Policy, as required pursuant to Section 874(4)(b) of the GML. An IDA may authorize a deviation from the Policy after it: (i) provides prior written notification to the affected taxing jurisdiction(s) of the proposed deviation from the Policy and the reasons for the deviation from this Policy including articulated consideration of the issues identified in Section 874(4)(a) of the GML, and (ii) sets forth in writing the reasons for deviating from the Policy.

VI. Intermunicipal Movement of Facility or Plant

If a project involves the removal or abandonment of a facility or plant within the state, adherence to Section 862 of the GML is required prior to making a Financial Assistance determination.

If a project involves the relocation from one municipality within Erie County (the “Current Municipality”) to a different municipality also within Erie County (the “Proposed Municipality”), the IDAs in Erie County set forth the following additional procedures:

A. Upon receipt of a draft application or sufficient materials from a prospective applicant, the relevant IDA with jurisdiction over the Proposed Municipality shall notify the designated economic development representative from the Current Municipality of the pending project unless there is reason the project remain confidential. Upon receipt of a completed Application for Financial Assistance, the IDA will forward a written notice to the chief elected officer of the Current Municipality and the Proposed Municipality (along with their respective economic development designees), which notice shall include (i) said Application, (ii) sites located in the Current Municipality that were considered by the applicant, along with the reasons for rejecting those sites, and (iii) such other information or documentation with regard to the proposed relocation as the IDA may be in possession of.

B. If the applicant declines to respond to such questions regarding its proposed move or indicates that it has not met with representatives of the Current Municipality or reviewed/considered alternative sites within the Current Municipality, the applicant will be strongly urged by IDA representatives to do so prior to final submission of the application, and a determination of said application being considered complete, for consideration of Financial Assistance.

C. A written response or acknowledgement from the chief elected officer of the Current Municipality will be sought with regard to the application for Financial Assistance, and any such

response or acknowledgement will be included in the record to be considered by the IDA which has jurisdiction over the Proposed Municipality. This need not be a “sign-off” or an approval of the intermunicipal move. The chief elected officer of the Current Municipality and the Proposed Municipality (and their respective economic development designees) will be invited to address the IDA Board when it considers any such application for Financial Assistance.

VII. IDA Leadership Council

On an as needed basis, a leadership council meeting of the IDAs may be convened to encourage further collaborative efforts, to facilitate the uniform implementation of this Policy, and to provide a forum to address other common concerns with regard to economic development in Erie County. Each IDA signatory to this Policy may permit a representative to attend such a meeting, when such a meeting is convened, provided that such individual represents an IDA, a municipality for whose benefit an IDA was created, and/or any other economic development/community organization. The leadership council will, through the consensus of its members, consider and resolve any concerns raised by an IDA with regard to the interpretation of the Policy, and will coordinate other joint activities of the IDAs to promote a countywide program of economic development.

VIII. Effective Date

This Uniform Tax Exemption Policy shall be effective as of *{insert adoption date}*, and shall apply to all projects for which an IDA has adopted or adopts an Inducement Resolution after *{insert adoption date}*, however, it shall not apply to projects for which an IDA, through issuance of its bonds, execution of leases, or the passage of an Inducement Resolution, has authorized any assistance prior to *{insert adoption date}*, whether or not such projects are thereafter refinanced or modified.

IX. Amendments

An IDA, by resolution of its members, and upon notice to all affected taxing jurisdictions as may be required by law, may amend or modify this Policy as it may, from time to time, in its sole discretion determine.

X. Policy Addendums

An IDA, by resolution of its members, and upon notice to all affected taxing jurisdictions as may be required by law, may approve a policy or policies unique to each such IDA as Policy Addendums that may be attached hereto and made a part hereof.

XI. Changes in Law

This Policy has been developed consistent with the applicable provisions of Article 18-A of the GML existing as of the Effective Date. In the event of a change in law, rule or regulation affecting any provision of this Policy, this Policy shall be interpreted consistent with such law, rule or regulation, without giving effect to any provision in the Policy to the contrary.

EMPLOYER SIGNATURE PAGE

PURPOSE OF EXECUTION. This Signature Page is being executed for Amherst Industrial Development Agency 401(k) Plan to effect:

- (a) The adoption of a **new plan**, effective ___. [*Note: Date can be no earlier than the first day of the Plan Year in which the Plan is adopted.*]
- (b) The **restatement** of an existing plan in order to comply with the requirements for Cycle 3 Pre-Approved Plans, pursuant to Rev. Proc. 2017-41.
- (1) Effective date of restatement: 1-1-2022. [*Note: Date can be no earlier than the first day of the Plan Year in which the restatement is adopted.*]
- (2) Name of plan(s) being restated: Amherst Industrial Development Agency 401(k) Plan
- (3) The original effective date of the plan(s) being restated: 1-1-1995
- (c) An **amendment or restatement** of the Plan (other than to comply with the requirements for Cycle 3 Pre-Approved Plans under Rev. Proc. 2017-41). If this Plan is being amended, a snap-on amendment may be used to designate the modifications to the Plan or the updated pages of the Adoption Agreement may be substituted for the original pages in the Adoption Agreement. All prior Employer Signature Pages should be retained as part of this Adoption Agreement.
- (1) Effective Date(s) of amendment/restatement: _____
- (2) Name of plan being amended/restated: _____
- (3) The original effective date of the plan being amended/restated: _____
- (4) If Plan is being amended, identify the Adoption Agreement section(s) being amended: _____

PRE-APPROVED PLAN PROVIDER INFORMATION. The Pre-Approved Plan Provider (or authorized representative) will inform the Employer of any amendments made to the Plan and will notify the Employer if it discontinues or abandons the Plan. To be eligible to receive such notification, the Employer agrees to notify the Pre-Approved Plan Provider (or authorized representative) of any change in address. The Employer may direct inquiries regarding the Plan or the effect of the IRS Opinion Letter to the Pre-Approved Plan Provider (or authorized representative) at the following location:

Name of Pre-Approved Plan Provider (or authorized representative): PPS Pension & Financial Services, Inc.

Address: 8660 Sheridan Drive Williamsville, NY 14221

Telephone number: 716-204-0170

IMPORTANT INFORMATION ABOUT THIS PRE-APPROVED PLAN. A failure to properly complete the elections in this Adoption Agreement or to operate the Plan in accordance with applicable law may result in disqualification of the Plan. The Employer may rely on the Favorable IRS Letter issued by the Internal Revenue Service to the Pre-Approved Plan Provider as evidence that the Plan is qualified under Code §401(a), to the extent provided in Rev. Proc. 2017-41. The Employer may not rely on the Favorable IRS Letter in certain circumstances or with respect to certain qualification requirements, which are specified in the Favorable IRS Letter issued with respect to the Plan and in Rev. Proc. 2017-41. In order to obtain reliance in such circumstances or with respect to such qualification requirements, the Employer may need to apply to the Internal Revenue Service for a determination letter.

By executing this Adoption Agreement, the Employer intends to adopt the provisions as set forth in this Adoption Agreement and the related Plan document. By signing this Adoption Agreement, the individual below represents that he/she has the authority to execute this Plan document on behalf of the Employer. This Adoption Agreement may only be used in conjunction with Basic Plan Document #01. The Employer understands that the Pre-Approved Plan Provider has no responsibility or liability regarding the suitability of the Plan for the Employer's needs or the options elected under this Adoption Agreement. It is recommended that the Employer consult with legal counsel before executing this Adoption Agreement.

Amherst Industrial Development Agency
(Name of Employer)

David S. Mingoia
(Name of authorized representative) (Title)

(Signature) (Date)

TRUST DECLARATION

This Trust Declaration may be used to identify and adopt the Trust associated with the Plan.

[Note: The Internal Revenue Service does not review the Trust Declaration, or the trust provisions associated with Pre-Approved Plans. Therefore, the provisions of the Trust Declaration, ASC Trust Agreement or any separate Trust agreement have not been approved by the IRS and the IRS opinion letter does not cover such Trust Agreement. The Provider, the Trustee and the adopting Employer should review the applicable Trust provisions, and any modifications thereto, with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]

Name of Plan. Amherst Industrial Development Agency 401(k) Plan

Name of Employer. Amherst Industrial Development Agency

Effective date of Trust Agreement: 1-1-2022

(a) **The Trust terms are:**

(1) **Determined under the Trust provisions contained in the ASC Trust Agreement - Standard.**

[Note: Trustee must complete the Trustee Signature section under Section (b) below.]

(i) **Directed Trustee.** The Trustee may only invest Plan assets as directed by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.

(ii) **Discretionary Trustee.** The Trustee has discretion to invest Plan assets, unless specifically directed otherwise by the Plan Administrator, the Employer, an Investment Manager or other Named Fiduciary or, to the extent authorized under the Plan, a Plan Participant.

[Modification of ASC Trust Agreement Provisions. The Employer may amend the Trust provisions as provided under Section 1.19 of the ASC Trust Agreement. Plan provisions will override any conflicting provisions in the Trust Agreement, including any modification thereto. The Provider and the adopting Employer should review any modifications of the ASC Trust Agreement with legal counsel to ensure the provisions are appropriate for the Plan and consistent with Employer elections.]

(2) **Determined under a separate Trust agreement(s).** The Trust provisions are contained in a separate Trust Agreement that has been furnished to the Employer. Notwithstanding the terms of the Plan, the terms of the Trust Agreement shall control the rights and responsibilities of the Trustee with respect to the Trust and the assets held in such Trust.

Name of Trustee. _____

Title of Trust Agreement. _____

Address of Trustee. _____

[Note: In using a separate Trust Agreement, the Trustee may adopt such Trust Agreement by either completing the Trustee Signature section under Section (b) below or may execute the separate Trust Agreement. In either case, the information above – Name of Trustee, Title of Trust Agreement and Address of Trustee – must be completed.]

(3) **Plan is funded with custodial accounts, annuity contracts and/or insurance contracts.** There is no Trust associated with the Plan because the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts.

[Note: No signature is required under this Trust Declaration if the Plan is funded exclusively with custodial accounts, annuity contracts and/or insurance contracts. The Employer or Plan Administrator may enter into a separate agreement with the custodian or insurance company. Such separate agreement must be consistent with the terms of the Plan.]

(b) **Trustee/Employer Signatures.**

(1) **Trustee Signature.** By signing below, the designated Trustee(s) accept the responsibilities and obligations set forth under the Trust Agreement specified in this Trust Declaration. By signing this Trust Declaration Page, the individual(s) below represent that they have the authority to sign on behalf of the Trustee.

David S. Mingoia

(Print name of Trustee)

(Signature of Trustee or authorized representative)

(Date)

(2) **Employer Signature.** By signing below, the Employer accepts the terms of the Trust Agreement, as specified in this Trust Declaration. By signing this Trust Declaration, the individual below represents that he/she has the authority to adopt the Trust Agreement and sign on behalf of the Employer as sponsor of the Plan.

(Signature of Employer's authorized representative) *(Date)*

David S. Mingoia
(Print name of Employer's authorized representative)

(Title of Employer's authorized representative)



CYCLE 3 PLAN DOCUMENT RESTATEMENTS



APPROXIMATELY EVERY SIX YEARS, THE IRS REQUIRES THAT QUALIFIED RETIREMENT PLANS USING A PRE-APPROVED PLAN DOCUMENT UPDATE (OR RESTATE) THEIR PLAN DOCUMENT TO REFLECT RECENT LEGISLATIVE AND REGULATORY CHANGES.

Plan restatements are divided into staggering six-year cycles depending on the type of plan. In Announcement 2020-7, the IRS confirmed that the next restatement cycle is a 24-month period that runs from August 1, 2020 - July 31, 2022. This restatement cycle is known as "Cycle 3" as it is the 3rd restatement period under the current IRS program (EGTRRA 2010 and PPA 2016 have preceded it).

What is a plan restatement? A restatement is a complete re-writing of the plan document. Along with mandatory regulatory changes, the restated document incorporates all voluntary amendments adopted since the last time the document was updated.

What is a pre-approved document? A pre-approved document is one that has fixed provisions and pre-approved choices that can be selected by the plan sponsor. The fixed language and choices have been reviewed and approved by the IRS.

Why is a plan restatement needed? Plan documents are drafted based on laws and regulations imposed by Congress, the IRS, and the Department of Labor (DOL). Plan documents must be updated to remain in compliance with changing laws and regulations. Since the previous restatement cycle ended on April 30, 2016, there have been several regulatory and legislative changes that impact retirement plans. To assist with the restatement process, the IRS issues a "Cumulative List of Changes," instructing what must be included in the restated document. For this current cycle, the Cumulative List of Changes was issued in 2017. As a result, the list does not include any recent changes due to the SECURE Act or CARES Act. These changes will be addressed in separate good-faith amendments rather than in the Cycle 3 restated plan documents.

What if a plan was just established? The restatement cycle is set by the IRS without regard to a plan's initial effective date. Since the Cycle 3 document language was just recently approved, even newly-established plans may need to be restated.

What if a plan is terminating? The IRS requires that all documents be brought up to date with current laws and regulations before they can be terminated. As a result, your document must be amended and/or fully restated as part of the plan termination process.

What happens if a plan is not restated? Plans that do not adopt a restated plan document by the July 31, 2022 deadline will be subject to IRS-imposed penalties. Failure to timely restate the plan will also jeopardize the plan's tax-qualified status.

Can restatement fees be paid from plan assets? Since the plan document restatement is required to maintain the plan's tax-qualified status, the DOL allows the restatement fee to be paid from plan assets. ■

Please contact us with any other questions!
716-204-0170 anthonyt@ppspensions.net





TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Plan Description: Non-Standardized Pre-Approved Profit Sharing Plan With CODA
FFN: 317E243BH01-002 Case: 202100332 EIN: 16-1062503
Letter Serial No: Q704526a
Date of Submission: 03/22/2021

PPS PENSION & FINANCIAL SERVICES INC
8660 SHERIDAN DRIVE
WILLIAMSVILLE, NY 14221

Contact Person:
Janell Hayes
Telephone Number:
513-975-6319
In Reference To: TEGE:EP:7521
Date: 06/07/2021

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable for use by employers for the benefit of their employees under Internal Revenue Code (IRC) Section 401.

We considered the changes in qualification requirements in the 2017 Cumulative List of Notice 2017-37, 2017-29 Internal Revenue Bulletin (IRB) 89. Our opinion relates only to the acceptability of the form of the plan under the IRC. We did not consider the effect of other federal or local statutes.

You must provide the following to each employer who adopts this plan:

- . A copy of this letter
- . A copy of the approved plan
- . Copies of any subsequent amendments including their dates of adoption
- . Direct contact information including address and telephone number of the plan provider

Our opinion on the acceptability of the plan's form is a determination as to the qualification of the plan as adopted by a particular employer only under the circumstances, and to the extent, described in Revenue Procedure (Rev. Proc.) 2017-41, 2017-29 I.R.B. 92. The employer who adopts this plan can generally rely on this letter to the extent described in Rev. Proc. 2017-41. Thus, Employee Plans Determinations, except as provided in Section 12 of Rev. Proc. 2020-4, 2020-01 I.R.B. 148 (as updated annually), will not issue a determination letter to an employer who adopts this plan. Review Rev. Proc. 2020-4 to determine the eligibility of an adopting employer, and the items needed, to submit a determination letter application. The employer must also follow the terms of the plan in operation.

Except as provided below, our opinion doesn't apply to the requirements of IRC Sections 401(a)(4), 401(l), 410(b), and 414(s). Our opinion doesn't apply to IRC Sections 415 and 416 if an employer maintains or ever maintained another qualified plan for one or more employees covered by this plan. For this purpose, we will not consider the employer to have maintained another defined contribution plan provided both of the following are true:

- . The employer terminated the other plan before the effective date of this plan
- . No annual additions have been credited to any participant's account under the other plan as of any date within the limitation year of this plan

Also, for this purpose, we'll consider an employer as maintaining another defined contribution plan, if the employer maintains any of the following:

- . A welfare benefit fund defined in IRC Section 419(e), which provides post-retirement medical benefits allocated to separate accounts for key employees as defined in IRC Section 419A(d)

- . An individual medical account as defined in IRC Section 415(l)(2), which is part of a pension or annuity plan maintained by the employer
- . A simplified employee pension plan

Our opinion doesn't apply to Treasury Regulations Section 1.401(a)-1(b)(2) requirements for a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Our opinion doesn't constitute a determination that the plan is an IRC Section 414(d) governmental plan. This letter is not a ruling with respect to the tax treatment to be given contributions which are picked up by the governmental employing unit within the meaning of IRC Section 414(h)(2).

Our opinion doesn't constitute a determination that the plan is an IRC Section 414(e) church plan.

Our opinion may not be relied on by a non-electing church plan for rules governing pre-ERISA participation and coverage.

Our opinion applies to the requirements of IRC Section 410(b) if 100 percent of all non-excludable employees benefit under the plan.

Employers who choose a safe harbor allocation formula and a safe harbor compensation definition may also rely on this opinion letter for the non-discriminatory amounts requirement under IRC Section 401(a)(4).

If this plan includes a cash or deferred arrangement (CODA) or otherwise provides for contributions subject to IRC Sections 401(k) and/or 401(m), the employer may rely on the opinion letter regarding the form of the non-discrimination tests of IRC Sections 401(k)(3) and 401(m)(2), if the employer uses a safe harbor compensation definition. For plans described in IRC Sections 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may rely on the opinion letter regarding whether the plan's form satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan. For SIMPLE plans described in IRC Sections 401(k)(11) and 401(m)(10), employers may also rely on the opinion letter regarding whether the plan's form satisfies the requirements of those sections.

The provisions of this plan override any conflicting provision contained in the trust or custodial account documents used with the plan, and an adopting employer may not rely on this letter to the extent that provisions of a trust or custodial account that are a separate portion of the plan override or conflict with the provisions of the plan document. This opinion letter does not cover any provisions in trust or custodial account documents.

An employer who adopts this plan may not rely on this letter when:

- . the plan is being used to amend or restate a plan of the employer which was not previously qualified
- . the employer's adoption of the plan precedes the issuance of the letter
- . the employer doesn't correctly complete the adoption agreement or other elective provisions in the plan
- . the plan is not identical to the pre-approved plan (that is, the employer has made amendments that cause the plan not to be considered identical to the pre-approved plan, as described in Section 8.03 of Rev. Proc. 2017-41)

Our opinion doesn't apply to what is contained in any documents referenced outside the plan or adoption agreement, if applicable, such as a collective bargaining agreement.

Our opinion doesn't consider issues under Title I of the Employee Retirement Income Security Act (ERISA) which are administered by the Department of Labor.

If you, the pre-approved plan provider, have questions about the status of this case, you can call the telephone number at the top of the first page of this letter. This number is only for the provider's use.

Individual participants or adopting eligible employers with questions about the plan should contact you.

You must include your address and telephone number on the pre-approved plan or the plan's adoption agreement, if applicable, so that adopting employers can contact you directly.

If you write to us about this plan, provide your telephone number and the best time to call if we need more information. Whether you call or write, refer to the letter serial number and file folder number at the top of the first page of this letter.

Let us know if you change or discontinue sponsorship of this plan.

Keep this letter for your records.

Sincerely Yours,



Khin M. Chow
Director, EP Rulings & Agreements

Letter 6186 (June-2020)
Catalog Number 72434C