

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF AMHERST, NEW YORK
AND THE SWEET HOME CENTRAL SCHOOL DISTRICT
NORTHWEST AMHERST COMMUNITY CENTER

THIS AGREEMENT (IGA) is entered into this _____ day of October, 2021, by and between the Town of Amherst, New York (“Town”) a municipal corporation duly organized and existing under the laws of State of New York, with principal offices located at 5583 Main Street, Williamsville, New York 14221 and the Sweet Home Central School District (“Sweet Home”), a municipal corporation with principal offices located at 1901 Sweet Home Road, Amherst, New York, 14228.

WHEREAS, the Town seeks to lease from Northpointe Commerce Park, LLC approximately 29,000 square feet of space located in a building having street address at 170-220 Northpointe Parkway, Amherst, New York, 14228 specifically that portion which bears a street address of 220 Northpointe Parkway, said building located at the eastern portion of parcel which bears SBL #26.04-1-32.2 said premises to be operated by the Town of Amherst as the Northwest Amherst Community Center (“NWACC”), and

WHEREAS, the Town and Bones & Guts LLC (Bones & Guts) are in the process of negotiating an Agreement whereby a medical facility (Facility) is to be built by Bones & Guts, or an affiliated organization, at 500 Maple Road (SBL #5504-1-6.1), situated in Amherst, New York, as more particularly depicted on the Survey prepared by Nussbaumer & Clarke, Inc., dated June 3, 2020, (attached hereto is Exhibit “A” and incorporated by reference) and more particularly described in a legal description annexed as Exhibit “B” (hereby incorporated by reference); and,

WHEREAS, the Town and Bones & Guts are negotiating an agreement whereby Bones & Guts will finance the construction of the Facility, with the public infrastructure (except on the

occurrence of an uncured Event of Default by the Town under this Agreement) being funded pursuant to a certain Amherst Central Park Infrastructure Fund and PILOT Application Agreement (the “Infrastructure Fund Agreement”) public investment fund (PIF) between the Town, Sweet Home and the Amherst Industrial Development Agency (“AIDA”) which will include a clause that ceases redirection of PILOT payments from Sweet Home to the AIDA and direct them back to Sweet Home should an Event of Default occur under the terms of this IGA not cured within the 60-day cure period provided for herein; and

WHEREAS, the Town has committed to the operation and maintenance of the NWACC at the location set forth above for at least fifteen (15) years and further agrees that residents living within the jurisdictional confines of Sweet Home, including Sweet Home residents living in the Town of Tonawanda, are able to use the NWACC to be located at the aforementioned premises on terms identical to Town residents; and

WHEREAS, the Town and Sweet Home have an expressed interest to have a community center owned and operated by the Town, separate and apart from Sweet Home, located in the northwest area of Amherst within the jurisdiction and confines of the Sweet Home with services as specified herein to be provided as joint services to the Town and Sweet Home at Town expense; and

WHEREAS, the Town and Sweet Homes have determined that the operation of the NWACC would serve a public purpose and provide a public benefit to the residents of the Town as well as the residents of Sweet Home; and,

WHEREAS, General Municipal Law §119-o (2)(a) authorizes municipal corporations to adopt mutual agreements for the performance of their respective functions, powers and duties,

including the allocation of expense, capital expenditures and operating costs amongst themselves;
and

NOW, THEREFORE, in consideration of the mutual promise and conveyance set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following:

1. **Purpose.**

The purpose of this Agreement is to provide the development of the NWACC, to be leased by the Town from Northpointe Commerce Park LLC or a successor owner of the leased building, such development costs to be borne by an entity other than Sweet Home and rental expenses to be by the Town for a period of at least 15 years from opening of the NWACC to the public, and to provide a long-term user agreement between the Town and Sweet Home regarding the services to be provided at the NWACC for the benefit of the residents of the Town and the residents of Sweet Home (including those residing in the Town of Tonawanda) the costs of which will be borne solely by the Town..

2. **Obligations of Parties.**

Both parties agree to work together in a true spirit of partnership to assure that there is a united, visible and responsive leadership for the financial, administrative and managerial commitment to the development of the NWACC to provide services to Town residents as well and persons living within the jurisdictional confines of Sweet Home.

3. **Term.**

This Agreement will be for a term commencing on execution of this Agreement by both parties and culminating on the 15th anniversary of the opening of the NWACC to the public.

4. **Services.**

A. Services to be rendered by Sweet Home include the following:

- (i) Sweet Home level participation, where appropriate, in all phases of the project including meetings, presentations and public outreaches.
- (ii) Provision of providing existing demographic data and participation in stakeholder and community needed assessment reports related to the NWACC.
- (iii) Exploration of future funding/grant opportunities for the NWACC which Sweet Home may be eligible as a partner.
- (iv) The establishment of a Family Support Center as well as all programming associated with it.

B. Services will be rendered by the Town may include, but not limited to, the following:

- (i) Programming at the NWACC shall be (except for the Sweet Home Family Support Center) provided by the Town based on community need (as the result of district-wide needs assessments (to be conducted every three years at a minimum) and will be available to all Sweet Home residents. Such services shall be those determined by the Town and Sweet Home to be beneficial to, among others, school-aged children residing within the Town and the District and may include the following services:
 - (a) child care, (b) day camps, (c) gym and other athletic programs for adults and youth, (d) teen programs, (e) workforce development, (f) flex space for

community services, and (g) appropriate space for the operation of a Sweet Home Family Support Center which will be operated by Sweet Home.

(ii) Town Department participation, where appropriate, in all phases of the project including meetings, presentations and public outreach.

(iii) Provision of existing demographic data and participation in stakeholder and community need assessments related to the project.

(iv) Fiscal management of the project.

5. **Annual Review.**

Both the Town and Sweet Home will conduct an annual review of the NWACC project and its progress to be completed by November 30th of each calendar year and to be generated into a report which is presented to the appropriate governing entities of the Town and Sweet Home by December 31st of a calendar year.

6. **Building and Maintenance Operating Costs.**

All costs of operating and maintaining the NWACC not provided at Landlord expense shall be borne and paid for by the Town.

7. **Staffing Costs.**

All costs of staffing the NWACC for all purposes set forth in Paragraph 4.B. shall be borne by the Town except that the cost of staffing the Sweet Home Family Support Center shall be borne by Sweet Home.

8. **Events of Default and Consequences of Uncured Default.**

Each of the following shall individually constitute an Event of Default under this Agreement:

a. The failure of the Town to enter into a lease agreement of at least 15 years from commencement of full rental payments of approximately 29,000 square feet at the Northpointe Facility located at 220 Northpointe Parkway, Amherst, New York on or before March 1, 2022, said lease to include plans and specifications for space redesign adequate to support programs designed to benefit, among others, the residents of the Town and Sweet Home which may include (a) day care; (b) gym and other athletic programming; (c) classroom space; (d) offices, including a satellite office for a Sweet Home Family Support Center; (e) space for community meeting use; and (f) summer camp programming. Purchase of the Facility by the Town will eliminate the lease agreement requirement but not the program aspirations provided for above.

b. The failure of the Town, by January 1, 2023, to complete a community-based input process for needs assessment and service delivery inclusive of meaningful input from residents of Amherst and Sweet Home.

c. The failure of the Facility to be fully operational, inclusive of services listed in Paragraph 4.B (i), above, by no later than September 1, 2023.

d. The failure of the Town to maintain the Facility compliant with all applicable laws, codes, rules and regulations and appropriate for the uses set forth above without charge to Sweet Home from the opening of the Facility to the date of expiration of this Agreement.

e. Failure of the Town to provide for the programs and activities designed to benefit the Town and Sweet Home school-aged residents and their families as determined by the Town and Sweet Home which may include the programs listed in Paragraph 4.B.(i), (except the Sweet Home Family Support Center which will be operated at Sweet Home's expense) to be operated at Town expense, for the entire 15-year term of this Agreement after opening of the Facility, with appropriate staffing by the Town for each such activity.

f. The failure at any time of the Town to establish and maintain rules, regulations and/or protocols permitting residents of Sweet Home residing in Tonawanda to use the Facility and its programs on terms identical to those provided to residents of the Town of Amherst.

g. The lapse of the lease between the Town and the owner of the Facility at any time during the term of this Agreement, except due to purchase of the Facility by the Town of Amherst.

On the occurrence of an Event of Default, the Sweet Home shall provide the Town of Amherst with written notice of the default(s) as provided below.

In the event such default(s) is/are not cured within 60-days of receipt of notice of default, Sweet Home shall give additional written notice of the same to the Town of Amherst and the Amherst Industrial Development Agency (the “AIDA”), at which time Sweet Home shall cease to be a participant in that Certain Infrastructure Fund and PILOT Application Agreement (the “Infrastructure Fund Agreement”) entered into between the Town, Sweet Home and the AIDA on even date herewith, Sweet Home shall be deemed to have withdrawn from the Infrastructure Fund Agreement and, in accordance with the provisions of Paragraph 4.2 of the Infrastructure Fund Agreement, Sweet Home’s authorization permitting AIDA to redirect Sweet Home PILOT payments on properties within the Amherst Central Park or park-displaced projects shall cease immediately and all Sweet Home PILOT payments on all such projects, whether currently completed and making PILOT payments or thereafter completed shall revert back to Sweet Home, notwithstanding anything to the contrary in the Infrastructure Fund Agreement.

9. **Dispute Resolution.** Sweet Home and the Town shall attempt to resolve any dispute arising out of or relating to this IGA through negotiations between the Town Supervisor

and the Superintendent of Sweet Home. This should include, but not limited to, disputes regarding whether any party is in default as defined by paragraph 8 of this IGA.

If the matter is not resolved by negotiation between the Town Supervisor and the Superintendent of Sweet Home within ten (10) days of receipt of a written “invitation to negotiate”, which shall be sent to those persons mentioned in paragraph 9, the parties will attempt to resolve the dispute in good faith through the agreed upon arbitration procedure as set forth below.

All disputes arising out of this contract regarding whether a party is in default will be discussed between the Town Supervisor and the Superintendent of Sweet Home. Should they fail to resolve the dispute, the dispute shall be submitted to a single arbitrator for final resolution with the arbitrator’s power and function limited to determining whether a party is in default. The arbitrator shall not have the power to impose any of the remedies. The procedure for selection of a single arbitrator is as follows:

The attorney for Sweet Home will send a list containing five (5) persons who appear on the most recent mediation list promulgated by the United States District Court for Western New York who have as nature of practice or area of specialization or either commercial litigation or contract. The list will be transmitted to the Town Attorney. The Town Attorney, within five (5) days of receipt of that list, shall either reject it at which point he/she shall advise the attorney for Sweet Home of the rejection, or rank the individuals on the list from one (1) to five (5) and submit the same list confidentially to the Town Attorney for the Town of Tonawanda. The attorney for Sweet Home shall at the same time submit their list, with people ranked from one (1) to five (5), confidentially to the Town Attorney for the Town of Tonawanda. At that point, the Town Attorney for the Town of Tonawanda shall advise the Town Attorney

and the Attorney for Sweet Home of the arbitrator who received the highest ranking of both parties.

Should the Town Attorney initially reject the list, he/she shall then send a list of five (5) individuals who are on the most recent mediation list for United States District Court for Western New York with an area of concentration of commercial litigation or contracts to the attorney for Sweet Home. Upon receipt of this list, the Sweet Home attorney shall either accept the list or rank the individuals from one (1) to five (5), or announce that he/she is rejecting the list. If the list is not rejected by the attorney for Sweet Home, he/she shall submit the list confidentially to the Town Attorney for the Town of Tonawanda ranking the individuals from one (1) to five (5) and the Town Attorney will submit his ranked list to Town Attorney for the Town of Tonawanda. At that point, the Town Attorney for the Town of Tonawanda shall advise the parties of the arbitrator who received the highest ranking of both parties.

In the event that Sweet Home rejects the list, then the Sweet Home attorney shall then advise the Town Attorney at which point the Town of Tonawanda attorney shall have the power to select an arbitrator from the most recent mediation list maintained by United States District Court for Western New York of persons who have as nature of practice or area of specialization as specified above and advise the Town Attorney and the attorney for Sweet Home of his/her selection.

The dispute between the parties shall then proceed to a confidential arbitration which shall be conducted in Buffalo, New York. By agreeing to arbitration, both the Town and Sweet Home waive the right to resolve any such disputes through a trial by jury or judge or via an administrative proceeding.

The arbitrator selected shall not have the power to determine any issue other than whether a party is in default of the IGA. Any and all costs and fees associated with arbitration shall be split 50/50 basis between the Town and Sweet Home. The arbitration hearing shall commence within fifteen (15) business days of the selection of the arbitrator, unless the parties otherwise agree to a different time. The arbitrator shall render his/her decision, in writing, to the Town Attorney and the attorney for Sweet Home within ten (10) business days of the conclusion of the arbitration hearing.

Nothing in this clause is intended to prevent either Sweet Home or the Town from obtaining an injunctive relief in the Supreme Court, Erie County to prevent irreparable harm pending the commencement and/or conclusion of any arbitration.

10. **Other Disputes.**

Any dispute between the parties other than whether an Event of Default by the Town has occurred and, if such an Event of Default has occurred, whether it has been cured within 60 days of notice of default from Sweet Home to the Town shall be determined by non-jury action or special proceeding venued in the County of Erie and State of New York. **Both parties hereto waive the right to trial by jury of any issue arising out of this Agreement.**

11. **Governing Law.**

This Agreement shall be governed by the laws of the State of New York exclusive of any conflict of laws, rules that could require the application of any other law.

12. **Entire Agreement; Amendment.**

This Agreement (including the Schedules attached hereto) sets forth the entire agreement and understandings of the parties with respect to the subject matter hereof and supersede

all prior agreements, written or oral, with respect thereto. No amendment or modification of this Agreement shall be effective unless in writing and signed by all of the parties hereto.

13. **Waiver.**

No waiver by any party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision hereof shall constitute a waiver of any subsequent breach, default or violation of the same or any other term, warranty, representation, agreement, covenant, condition or provision hereof.

14. **Binding Effect; No Assignment.**

The provisions of this Agreement shall bind and benefit the successors and assigns of the parties hereto, provided that no party shall assign this Agreement, or any of their rights or obligations hereunder, without the prior written consent of the other parties hereto.

15. **Notices.**

All notices given in connection with this Agreement shall be in writing and shall be delivered personally or both sent by overnight courier service and mailed to the parties at their addresses as set forth below. Notices shall be effective from the date of delivery if delivered personally, or from one (1) business day after the day of deposit with the U.S. mail and deposited with the chosen overnight courier service, if mailed and delivered by overnight courier.

All notices to the School District shall be addressed to:

Superintendent of Schools
Sweet Home Central School District
1901 Sweet Home Road
Amherst, New York 14228

All notices to the Town shall be addressed to:

Amherst Town Supervisor
5583 Main Street
Williamsville, New York 14221

Amherst Town Attorney
5583 Main Street
Williamsville, New York 14221

Town of Amherst
Youth and Recreation Department
1615 Manor Drive
Amherst, New York 14221

Any party may change the address for notices to it by a written notice comporting with this paragraph.

16. **Severability.**

The provisions of this Agreement shall be severable, and if any clause, sentence, paragraph, provision or other part hereof shall be determined by any court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder hereof, which remainder shall continue in full force and effect.

17. **Headings.**

The headings and captions herein are for convenience only and are not to be construed as a part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

18. **Execution: Counterparts and Electronically Transmitted Copies.**

Electronically transmitted executed copies of this Agreement shall for all purposes constitute originals. Counterpart signatures on separate pages shall cumulatively constitute execution of this Agreement by all parties and shall be treated as if executed on a single page.

**SWEET HOME CENTRAL SCHOOL
DISTRICT**

TOWN OF AMHERST, NEW YORK

By: _____

Michael V. Ginestre,
Superintendent of Schools

Date: _____

By: _____

Brian J. Kulpa,
Town Supervisor

Date: _____

**SWEET HOME CENTRAL SCHOOL
DISTRICT BOARD OF EDUCATION**

By: _____

Marianne Jasen
President, Board of Education

Date: _____