

A regular meeting of the Town of Avon was held on Thursday November 18 2021, at 6:00 P.M. at the Avon Opera Block/Town Hall, 23 Genesee Street, Avon, New York 14414.

PRESENT: Supervisor David LeFeber, Deputy Supervisor Thomas Mairs, Councilmen James Harrington, Paul Drozdziel, and Malachy Coyne

OTHERS: Code Enforcement Officer Brian Glise, Attorney James Campbell, and Ellen M. Zapf, RMC Deputy Town Clerk

VISITORS: Bob Westfall, Kevin Lillis, Bruce Maxon, Ashley Champion, Steve Fantuzzo, Dale Twardokus, Edward Forsythe, Jason Molino, Rebecca Budinger-Mulhearn and Eric Huppert

Supervisor LeFeber called the meeting to order at 6:00 P.M. and led everyone in the Pledge of Allegiance.

### **DISCUSSION – OPEN PUBLIC HEARING FOR LOCAL LAW T-6A-2021**

Supervisor LeFeber opened the public hearing for Local Law T-6A-2021 by reading the following legal notice:

#### **LEGAL NOTICE NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN**, pursuant to the provisions of the Code of the Town of Avon, and pursuant to Town Law §130, that a public hearing shall be held by the Town Board of the Town of Avon at **6:00 p.m. on Thursday, November 18, 2021**, at the Avon Town Hall, located at 23 Genesee Street, Avon, New York for the purpose of considering public opinion and comment about or concerning a proposed local law relating to the following:

**A LOCAL LAW TO ADD A NEW CHAPTER 104 TO THE CODE OF THE TOWN OF AVON, LIVINGSTON COUNTY, NEW YORK TO ESTABLISH SEWER USE RULES AND REGULATIONS**

A copy of the proposed local law will be available for review by the public at the office of the Town Clerk during regular Town Clerk hours and will also be available on the Town's website at <https://www.avon-ny.org/town-of-avon/town-home.html>.

All interested persons are invited to appear and be heard at the aforesaid time and place.

Dated: October 29, 2021

Publish: November 11, 2021

By Order of the Town Board of the Town of Avon

Sharon Knight - Town Clerk, MMC/RMC

Attorney Campbell gave an overview of the proposed local law which will give consistent regulatory framework between what regulations the water authority uses and the town code. The town is asked to accept these regulations and make them part of the town code.

The regulations were drafted by the water authority and approved by the DEC. The local law accounts for any updates to the regulations and the town will be provided with the updates.

Councilman Harrington questioned LCW&SA Executive Director Jason Molino if the village water plant is at max capacity and if they go over will they be fined by the DEC, or will the water authority be charged? This is regarding to new construction at Royal Springs.

Executive Director Jason Molino stated that public information regarding capacity and loads states that the village is not at maximum capacity. Therefore, he could not find a reason to object to the developer of Royal Spring to expand and add twenty new homes as it is off an existing sewer main. If they wish to expand beyond that they would have to put in an additional sewer main and go to the DEC for approval and that is where the DEC would start to weigh in about available capacity.

Supervisor LeFeber stated that the public hearing will remain open if anyone would like to comment.

There was further discussion regarding capacity and who is responsible, what type of building projects and how much capacity would be used, and the cooperative municipal agreement between the town, village, and water authority. There will be a kickoff meeting next week and Councilman Coyne will attend.

#### **DISCUSSION – OAK OPENINGS LLC HARDSHIP VARIANCE APPLICATION**

Attorney Campbell stated he had discussions with each board member individually to determine their thoughts on the hardship application. After compiling all the information, a written findings and decision document was created. Attorney Campbell read the document in its entirety to the board.

The board members made the following comments:

Deputy Supervisor Mairs gave a brief history of the excavation moratorium local law. He thanked all the members of the moratorium committee for their hard work. He also thanked Mr. Twardokus for his input and the input and passion of all the residents on Oak Openings Road. He is for not extending the moratorium but for establishing a ban on deep mining and for not granting the hardship application.

Councilman Coyne stated that an extension of the moratorium may not be necessary due to the fact that much of the land in that area is in the conservancy. The mine was not meant to be commercial it was meant to build Route 390, but things get grandfathered in. He is against extending the moratorium.

Councilman Harrington agrees with Deputy Supervisor Mairs. Mr. Twardokus has the right to operate his business and he does feel bad for the residents on Oak Openings Road, but the DEC trumps the town, and our hands are tied. He is against extending the moratorium.

Councilman Drozdziel also agrees with the other board members. He does not see a need to extend the moratorium as there are limited areas around the town for excavation. He is against extending the moratorium.

Councilman Harrington suggested that the mine put up a sign to ask their truck drivers to watch their speed as this is a great concern of the residents.

Councilman Drozdziel hopes that the mine can have a constructive and positive relationship with the neighbors and hopefully they would offer the same respect as well. It is always better to get along than be adversarial.

**RESOLUTION #210 ADOPT THE FINDINGS AND DECISION DOCUMENT**

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to adopt the document below provided by Attorney Campbell as the official findings and decision for the Oak Openings, LLC. Hardship Variance Application.

**FINDINGS AND DECISION**

Avon Town Board

November 18, 2021

Matter of the application for Hardship Variance Relief from Moratorium relating to Excavation Operations

Applicant: Oak Openings, LLC

Property Address: 1392 Oak Openings Road, Town of Avon, Livingston County, New York

Tax Id. #: 26.-1-22.1

**BACKGROUND SUMMARY:**

Applicant, Oak Openings, LLC (hereafter the "Applicant") currently operates an excavation and mining operation on property it owns at 1392 Oak Openings Road. The property is approximately 121 acres in size and is located on the west side of Oak Openings Road, north of NYS Routes 5 & 20. Applicant's current operation is pursuant to a Mining Permit from the New York State Department of Environmental Conservation (hereafter "DEC"), issued on May 16, 2018 and a Special Use Permit issued by the Town of Avon Zoning Board of Appeals, approved on September 17, 2018.

Applicant has made application to the DEC for a permit modification to allow Oak Openings LLC to expand the Life of Mine by 18.87 acres, increase permitted truck traffic from 12 trucks per hour to 30 trucks per hour and expand Saturday hours of operation (hereafter "DEC permit modification application").

The review of such permit modification application is currently pending, and the DEC has determined that such application is complete and has issued a Negative Declaration pursuant to the State Environmental Quality Review Act (hereafter "SEQR").

On December 10, 2020, the Town of Avon (hereafter "Town") adopted Local Law 5 of 2020, styled "A Local Law Establishing a Temporary Land Use Moratorium Prohibiting Excavation Operations within the Town of Avon" (hereafter "Moratorium"). The Moratorium prohibits all applications for zoning permits or approvals related to Excavation Operations (as defined in the Avon Town Code), including applications for expansion of existing Excavation Operations within the Town, during a one-year period.

On or about August 17, 2021, the Avon Town Board received an application from Oak Openings, LLC, seeking hardship variance relief from the Moratorium, which was adopted as Local Law No. 5 of 2020.

Following receipt of the application, a duly noticed Public Hearing was held by the Town Board of the Town of Avon on September 23, 2021, for the purpose of considering public opinion and comment about Oak Openings, LLC's request for a hardship variance from the Moratorium. A copy of the materials submitted by the Applicant in support of such request were made available for review by the public at the office of the Town Clerk and placed on the Town's website.

At the Public Hearing, the Applicant, through its attorney, presented various information and materials to support Applicant's request for the hardship variance. Numerous neighbors to the site in question on Oak Openings Road, as well as other persons, were provided an opportunity to express comments either in support of or against the application. After hearing comments from many people, the Town Board held the Public Hearing open, to be continued at the October 14, 2021 meeting of the Town Board.

On October 14, 2021, the public and Applicant were again afforded an opportunity to share their thoughts and opinions relative to the application for hardship variance relief. One resident requested that the Public Hearing be further continued to afford recently engaged legal counsel an opportunity to review and comment on the pending application. The Town Board held the public hearing open to be continued until November 4, 2021.

On October 28, 2021, the public and Applicant were again afforded an opportunity to share their thoughts and opinions relative to the application for hardship variance relief.

On November 4, 2021, legal counsel for a number of the residents of Oak Openings Road attended the Public Hearing and presented a written letter and numerous comments in opposition to the application, which were entered into the record.

Members of the public were provided with an additional opportunity to speak regarding the hardship application, as was legal counsel for Applicant. At the conclusion of all comments, the Town Board moved to close the Public Hearing.

FINDINGS:

The Town Board hereby makes the following findings relative to the requested hardship variance application of Oak Openings, LLC:

1. The Town Board received a written application for hardship relief pursuant to Local Law No. 5 of 2020, from Ashley Champion, Esq. of Nixon Peabody, on behalf of Oak Openings, LLC and dated August 17, 2021.
2. The Town Board acknowledges that adoption of the Local Law that imposed the subject moratorium was classified as a Type 2 action pursuant to 6 NYCRR 617.5. Accordingly, the Town Board was not required to undertake any additional review of potential environmental impacts (or specific findings relative to the same) as part of the Local Law adoption process related to the moratorium.
3. With regard to Applicant's Hardship Variance Relief application, the Town Board finds that it is not required to undertake any SEQR review as a condition precedent to taking action on Applicant's request for hardship. It is noted that on September 2, 2021, the DEC issued a Negative Declaration relating to Applicant's DEC permit modification application.
4. Pursuant to the requirements of the underlying Moratorium, the Town Board scheduled a duly noticed and published Public Hearing for September 23, 2021.
5. The Town Board conducted the Public Hearing on September 23, 2021, which was held open and continued on October 14, 2021, October 28, 2021, and November 4, 2021, at which time the Public Hearing was concluded.
6. During the Public Hearing and multiple continuations thereof, all interested persons were afforded an opportunity to speak with regard to the hardship variance request and the Town Board received numerous written comments that were also entered into the record of the proceedings.
7. The terms of the moratorium created by Local Law No. 5 of 2020 permit the Town Board to consider a number of factors to determine whether the requested relief for hardship from the Moratorium should be granted.
8. The Town Board finds that the most essential factors for consideration are whether the Moratorium creates an unreasonable hardship on the Applicant measured or balanced against what impact Applicant's intended application for change or expansion would have on residential uses in the vicinity.
9. The Town Board finds that based on the application submitted, along with comments offered during the Public Hearing, Applicant has provided some credible indication of hardship relating to the prohibitions created by the Moratorium.

10. The Town Board also finds that based on the many comments and information provided by neighboring property owners, those opposing the hardship relief have provided some credible indication of negative impact should the hardship variance relief request be granted, and Applicant proceeds with its intended application for change to and expansion of its mining operations.
11. The Town Board concludes and makes the finding that while some credible information has been provided by both the Applicant and opposition, the balancing test required by the Moratorium is largely moot and unnecessary for the Town Board to make, as the Moratorium is due to expire on December 10, 2021.

DECISION:

Accordingly, the Town Board hereby denies Applicant's request for hardship variance relief of the Moratorium on Excavation Operations as established by Local Law No. 5 of 2020.

**Vote of the Board: Councilman Drozdzial - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION –PUBLIC HEARING FOR LOCAL LAW T-6A-2021**

Supervisor LeFeber asked for any further comments and there were none. The board took the following action:

**RESOLUTION #211 CLOSE THE PUBLIC HEARING**

On motion of Councilman Harrington, seconded by Councilman Drozdzial the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to close the public hearing on Local Law T-6A-2021

**Vote of the Board: Councilman Drozdzial - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**RESOLUTION #212 ADOPT LOCAL LAW 4-2021**

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to adopt the following Local Law 4-2021:

**LOCAL LAW NO. 4 OF THE YEAR 2021  
OF THE TOWN OF AVON**

A local law to add a new Chapter 104 to the Code of the Town of Avon, Livingston County, New York to be known as “Sewer Use Rules and Regulations.”

Be it enacted by the Town Board of the Town of Avon as follows:

SECTION 1. TITLE AND SCOPE

This local law shall be known as “A LOCAL LAW TO ADD A NEW CHAPTER 104 TO THE CODE OF THE TOWN OF AVON, LIVINGSTON COUNTY, NEW YORK TO ESTABLISH SEWER USE RULES AND REGULATIONS.”

SECTION 2. PURPOSE.

A. Authority. This Local Law is adopted pursuant to the New York State Town Law § 64 and Articles 2 and 3 of the Municipal Home Rule Law, to protect and promote public health, safety, convenience, order, aesthetics, prosperity and general welfare of the Town of Avon in a fashion that is not inconsistent with the Comprehensive Plan of the Town of Avon. This Local Law regulates the discharge of sanitary sewage and other types of wastes into any public sewer collection or treatment system within the Town of Avon.

B. To these ends, this local law and the Chapter that it creates is designed to:

1. Enhance the orderly growth, development and redevelopment of the Town in accordance with a well-considered plan;
2. Properly regulate the discharge of sanitary sewage and other types of wastes into any public sewer collection or treatment system benefitting the Town, in order to protect the health, safety and welfare of the residents of the Town and to protect the various public benefit infrastructure that collects and treats sanitary sewage and other types of wastes within and/or for the benefit of the Town; and
3. Provide for efficient and effective enforcement of rules and regulations ensuring proper use of and discharge into the public sanitary sewer/waste water collection and treatment system.

SECTION 3. CREATION OF NEW CHAPTER 104 SEWER USE RULES AND REGULATIONS

A. Chapter 104 is hereby added to the Code of the Town of Avon and shall read as follows:

Chapter 104 Sewer Use Rules and Regulations

§104-1 **History.**

Both the Town of Avon and the Livingston County Water and Sewer Authority own, operate and maintain certain sanitary sewer transmission and/or treatment improvements within the Town of Avon that service residential and commercial properties within the Town.

§104-2 **General Purpose.**

The purpose of these Sewer Use Rules and Regulations is to provide for efficient, economic, environmentally safe, and legal operation of the publicly owned sanitary sewer system serving properties within the Town of Avon.

In order for the Town of Avon and the Livingston County Water and Sewer Authority to properly administer their respective obligations with regard to such publicly owned facilities, it is important that both the Town of Avon and the Livingston County Water and Sewer Authority have consistent rules and regulations that apply to customer usage of such facilities that treat waste water.

Consistent rules and regulations between the Town and the Authority will allow both parties to most efficiently and effectively ensure proper use of the public sanitary sewer and treatment system and when such rules and regulations are violated, to seek proper enforcement against violating users.

§104-3 **Specific Purpose.**

The specific purposes of these Regulations are the following:

- A. To prevent the introduction of substances into the publicly owned sanitary sewer system that will:
  - (1) interfere with the publicly owned sanitary sewer system in any way;
  - (2) pass through the publicly owned sanitary sewer system to the State's Waters and cause contravention of standards for those waters or cause violation of the publicly owned sanitary sewer system 's SPDES Permit;
  - (3) increase the cost or otherwise hamper the disposal of publicly owned sanitary sewer system sludge and/or residuals;
  - (4) endanger Authority or any municipal employees;
  - (5) cause air pollution, or groundwater pollution, directly or indirectly; and
  - (6) cause, directly or indirectly, any public nuisance condition.
- B. To prevent new sources of Infiltration and Inflow as much as possible and eliminate existing sources of Infiltration and Inflow.



- C. To assure that new sewers and connections are properly constructed.
- D. To provide for equitable distribution amongst all users of the POTW of all costs, associated with Sewage transmission, treatment, and residuals disposal, and to provide for the collection of such costs.
- E. To provide enforcement mechanisms to ensure proper usage of the POTW to further the above purposes.

**§104-4 Continuity with and Adoption of Livingston County Water and Sewer Authority Rules and Regulations.**

- A. In order for the Livingston County Water and Sewer Authority to properly administer its obligations with regard to its facilities within the Town of Avon, it is crucial that the Authority and Town have the same rules and regulations governing the use of and discharge into the public sanitary sewer and treatment system.
- B. The Town of Avon hereby adopts as its rules and regulations governing the use of and discharge into the public sanitary sewer and treatment system serving the Town of Avon, the Livingston County Water and Sewer Authority Sewer Use Rules and Regulations as most recently adopted (as of the date of this local law) by the Livingston County Water and Sewer Authority on September 25, 2019 and as they may be periodically updated by the Livingston County Water and Sewer Authority from time-to-time. A copy of the most recent Livingston County Water and Sewer Authority Sewer Use Rules and Regulations, as adopted herein by the Town of Avon, will be available at the office of the Avon Town Clerk and in the Town of Avon Building and Zoning Office.

**SECTION 4. EFFECTIVE DATE.**

This local law shall be effective thirty (30) days after its filing with the Office of the Secretary of State.

**Vote of the Board: Councilman Drozdzziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – ATTORNEY REPORT**

Attorney Campbell reported on the following:

Will be sending the Battery Storage Local Law to the committee in the next couple of days.

There was discussion about signing a document regarding the PILOT payment for Avon Solar Farms. The board would like to get the PILOT payment before signing the new paperwork.

Visitor Kevin Lillis asked if the mining operation must abide by the original special use permit granted by the ZBA. He was told yes.

**DISCUSSION – ANNUAL LIBRARY REPORT**

Supervisor LeFeber welcomed Director Rebecca Budinger-Mulhearn and Board of Trustees President Maureen Wheeler (VIA PHONE) from the Avon Free Library.

Director Budinger-Mulhearn gave each board member a budget report and the Director's 2020 Annual Report. She shared with the board that due to covid the library was closed for four months in 2020 and then gradually reopened to the public. She compared numbers from 2019 and 2020. The physical items borrowed were down by half, but the e-content went up by four times. This shows how we were able to pivot and meet the needs of our patrons at home.

We started doing virtual programing and signing up people for library cards online.

The definition of e-content was shared with the board. This included e-books, e-audio books, ancestry.com, and a couple of other data bases.

Total items borrowed went up 5,000 from 2019 to 2020 which is mainly e-content. Many items in the collection have shifted to e-books and audio books.

Another number that is interesting are library visits. We installed a camara system that works as a door counter, so we had real numbers for 2019. We had thirty and a half thousand visits. In 2020 because of the pandemic, we had less than half of that. But we still found ways to increase circulation and borrowing.

Board of Trustees President Maureen Wheeler spoke about the budget numbers. We have done a lot over the past few years to get our expenses to where the library needs to be. We have made a lot of investments in our historic building making renovations and addressing old systems that were costing us a lot in maintenance and repairs. We have now cut the building and equipment line in half.

Regarding labor, materials, and operations we have put systems in place to really start measuring the use of the library so we can make educated decisions on what our hours should be, how many staff do we need during these hours, and what short of materials are best suited for the library.

As to income this is where we will be focusing next. Looking into how we can start to publicize the library as a place that does take donations or memorials. The library line item has significantly increased over the years, and this has to do with the services we offer the public to ensure that items are equally available to all. We have put in place over the last few years auto renewals so if no one is waiting for the item in the system it will auto renew to avoid fines. Since this started, we have gone fine free on everything, but DVD's and park pass. This keeps patrons coming back.

Other income and other expenses fluctuate from year to year and include special projects. We have applied for grant funding and are undertaking a project next year at the front entrance of the library. The front steps, ramp, and the book drop will be redone. The other project is the library's backyard. We own an acre, and it is underutilized.

We are hoping to have outdoor programming and storage space along with a few educational features throughout the property. We have received a state grant to undertake a study to see what the backyard could look like and what sort of costs we would be looking at.

The board thanked Rebecca & Maureen for doing such an excellent job.

### **DISCUSSION – ENGINEER REPORT**

MRB Group Engineer David Willard provided the following report:

There is a renewal quote for the Esri software which is used for GIS mapping. This is an annual fee which includes \$489.00 for a desk version and \$342 for the field license. The current license expires February 10, 2022.

There was discussion on what data has been gathered for the GIS mapping so far and what MRB will need to do with the data.

Bill Davis sent concept easement maps to the village, regarding the water issue on Pole Bridge Road, who will talk with the residents. There was discussion about maintenance, and it was stated that maintenance should be handled by the village as discussed at the joint meeting in October.

CEO Glise asked about the solar project of Rochester Street. He thinks they are changing from the screw mounts to the pound in mounts. Does this matter? If it does not change the site plan it shouldn't matter.

Supervisor LeFeber spoke about the ARPA money. We have \$182,000.00 and possible uses for the money have changed. He is still waiting to see what happens with the new 1.2 trillion infrastructure money. New York State will be getting twenty-nine billion dollars.

Supervisor LeFeber asked if MRB Group could put together a proposal for a map plan for the town line water tank. There was further discussion as to why we need the tank and when past upkeep was performed. A previous proposal that was prepared will be updated and presented to the board.

### **RESOLUTION #213 APPROVAL OF MINUTES**

On motion of Supervisor LeFeber, seconded by Councilman Coyne the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to approve the minutes of November 4, 2021 as presented by e-mail and to request they be published on the Town of Avon website at townofavon-ny.org.

**Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – OCTOBER 4, 2021 JOINT MEETING MINUTES**

Supervisor LeFeber talked about a statement put in the minutes by the village regarding a 2003 agreement between the village and the town and that the mayor would like to speak with Supervisor LeFeber about it. They have had a conversation and Supervisor LeFeber is good with what was discussed.

**RESOLUTION #214 APPROVAL OF MINUTES**

On motion of Councilman Harrington, seconded by Supervisor LeFeber the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to approve the minutes of October 4, 2021 as presented by e-mail and to request they be published on the Town of Avon website at townofavon-ny.org.

**Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – HIGHWAY/WATER DEPARTMENT REPORT**

Highway/Water Superintendent Crye was not in attendance and provided the following written report:

HIGHWAY:

- Snow Fence
- Shop
- Boom mowing

WATER:

Everyday maintenance and sampling

**DISCUSSION – CODE DEPARTMENT REPORT**

Code Enforcement Officer Glise reported on the following:

- Issues on Gilbert Mills Road – water and animals
- Solar on Rochester Street – fence and trees have been put up.
- Paving done at the front entrance of the route 5 & 20 solar site.
- Royal Springs – three homes two have had the basements started one is almost done.
- Three dog issues in the past month.
- Noyes Mental Health is ready to open but is having trouble getting utility service.

Councilman Harrington stated that a resident called him regarding a rodent problem on Route 15 and was not happy with CEO Glise's response. After speaking with CEO Glise, he spoke with the resident again and explained what was done and she is happy with the result.

**DEPARTMENTAL REPORT  
BUILDING & ZONING  
JULY 16, 2021 - NOVEMBER 15, 2021**

**The following Building Permits were issued**

2021-0106	Nelson	fence	7/26/2021	\$30.00
2021-0107	Soter Tech	alarm system	7/26/2021	\$100.00
2021-0108	Howlett	re-roof	7/27/2021	\$40.00
2021-0109	Baszto	ramp	7/29/2021	N/C Per Brian
2021-0110	Lewis	re-roof	8/2/2021	\$40.00
2021-0111	Ruegs	demolition mobile home	8/2/2021	\$50.00
2021-0112	Lind	re-roof	8/2/2021	\$40.00
2021-0113	Twin Cedars	demolition mobile home	8/9/2021	\$50.00
2021-0114	Oyer	roof	8/9/2021	\$40.00
2021-0115	Cole	pole barn	8/17/2021	\$39.20
2021-0116	Brice	multilevel deck, pool house	8/20/2021	\$205.20
2021-0117	Clar	re-roof	8/23/2021	\$40.00
2021-0118	Moran	generator	8/24/2021	\$40.00
2021-0119	Lippa	generator	8/24/2021	\$40.00
2021-0120	Brice	Inground pool	9/8/2021	\$90.00
2021-0121	Gallagher	AG pool	9/14/2021	\$50.00
2021-0122	Sinclair	chimney liner	9/15/2021	\$40.00
2021-0123	VanAllen	interior renovations	9/17/2021	\$270.72
2021-0124	Diaz	generator	9/22/2021	\$40.00
2021-0125	Gallagher	deck	9/23/2021	\$50.00

2021-0126	Taylor	pole barn	9/29/2021	\$96.00
2021-0127	Eastern Gas Transmission	pole barn	9/29/2021	\$55.50
2021-0128	Barrett	pole barn	9/30/2021	\$168.00
2021-0129	Vonglis	sign	10/5/2021	\$30.00
2021-0130	Scott	ramp	10/7/2021	N/C per Brian
2021-0131	Costigan	wood stove	10/12/2021	\$40.00
2021-0132	Gunther	run in shed	10/27/2021	\$28.80
2021-0133	Warren	run in shed	11/4/2021	\$864.00
2021-0134	Bishop	generator	11/10/2021	\$40.00
<b>TOTAL PERMIT FEES FOR TIME PERIOD</b>				\$2,617.42
<b>FEES OUTSTANDING FOR TIME PERIOD</b>				\$0.00
<b>TOTAL FEES COLLECTED</b>				\$2,617.42

**The following are permits currently renewed for one year:**

**The following are projects/permits currently working on:**

- Piranha on Tec Drive to begin Phase II of project and adding 2 more Flex Buildings
- 2 new applications for solar arrays - Wolcott Drive, Lake Road

**The following actions occur on a daily basis in the code office:**

- processing all paperwork through the correct channels on a timely basis
- cleanup of outstanding permits, violations and Laserfiche filing system

### **DISCUSSION – TOWN CLERK DEPARTMENT REPORT**

Town Clerk Knight provide a written report dated November 16th and Deputy Clerk Zapf confirmed with the Board Members present they received the report.

Board action items are:

- Approval of minutes of October 4 and November 4, 2021
- Amend Adopted Standard Work Hours for Retirement Reporting
- Approval of claims
- Schedule joint meeting with Planning/ZBA for January 17, 2022

Deputy Town Clerk Zapf spoke with the board about the Adopted Standard Work Hours that are reported to NYS Retirement regarding the number of hours the Deputy Town Clerk works per day. The standard hours reported for this position is eight but should be six as she does not work eight hours a day. This will help get the correct time earned for retirement.

**RESOLUTION #215 AMENDING ADOPTED STANDARD WORK HOURS FOR RETIREMENT REPORTING FOR THE POSITION OF DEPUTY TOWN CLERK**

On motion of Councilman Harrington, seconded by Supervisor LeFeber the following resolution was ADOPTED AYES 5 NAYS 0

WHEREAS, the Avon Town Board adopted Resolution #15, the Standard Work Hours for Retirement Reporting for the Deputy Town Clerk on January 2, 2012, and

RESOLVE that the Standard Work Hours for Retirement Report for the Deputy Town Clerk be amended, effective December 30, 2013, as follows:

<b>Position</b>	<b>Standard Hours.</b>
REMOVE	
Deputy Town Clerk	8
<b>Position</b>	<b>Standard Hours.</b>
ADD	
Deputy Town Clerk	6

**Vote of the Board: Councilman Drozdzziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – SUPERVISOR’S ITEMS**

**RESOLUTION #216 SCHEDULE JOINT MEETING WITH THE PLANNING BOARD & ZONING BOARD OF APPEALS**

On motion of Supervisor LeFeber, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to schedule a joint meeting with the Planning Board & the Zoning Board of Appeals as stated in the legal notice below:

**TOWN OF AVON  
LEGAL NOTICE**

A Joint meeting with the Avon Town Board, the Avon Planning Board, and Zoning Board of Appeals is scheduled for January 17, 2022 at the Avon Town Hall/Opera Block, 23 Genesee Street Avon, New York, 14414 at 7:00 P.M. for discussion on a Solar application in a Planned Development District and any other business that comes before the Board.

By order of the Town Board  
Sharon M Knight MMC/RMC, Town of Avon Clerk  
Dated: November 15, 2021

**Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – SNOW REMOVAL FOR SIDEWALKS AT THE TOWN HALL**

Deputy Supervisor Mairs stated He spoke with Ernie Wiard, and he is still interested in shoveling at the town hall this winter. His salary will remain the same as last year.

**DISCUSSION – ABSTRACT OF CLAIMS**

Councilman Harrington asked about the voucher for the person contracted to help the Assessor with the update. How many hours is the voucher for? Supervisor LeFeber stated that the person was contracted, and this is the final payment owed. He also asked about the voucher for the deputy court clerk who is working per diem on court nights. He wanted to know if her salary was consistent with what the other clerk is being paid. Supervisor LeFeber stated that she is being paid more but is only needed for limited hours and we are saving money right now since the regular deputy court clerk resigned.

Councilman Coyne asked about the voucher regarding the meter pit on Agar Road. He wanted to know what the money paid went towards. This is for water used by the town which is bought from the village. Most of the water purchased goes through this meter.

**RESOLUTION #217 ACCEPT THE CLAIMS**

On motion of Councilman Coyne, seconded by Councilman Drozdziel the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to accept for payment Abstract 2021-22 in the following amounts:

<b>General Fund</b>	Amounts totaling \$18,906.94
<b>Highway Fund</b>	Amounts totaling \$17,496.33
<b>Water Fund</b>	Amounts totaling \$55,669.82

**Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – TOWN HALL/OPERA BLOCK RENOVATIONS**

Councilman Drozdziel stated that we received the proposal for the emergency generator for the building. We would pay forty percent at the initial order and the generator should be here in four to six months. We were able to piggyback off another town’s competitive bid. There was further discussion about the type of generator, how it works, and what is included in the price. A three-year maintenance plan was also purchased. The board took the following action:



**RESOLUTION # 218 ALLOW THE SUPERVISOR TO SIGN THE KINSLEY PROPOSAL**

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to allow Supervisor LeFeber to sign the proposal from Kinsley for an emergency generator for the Town Hall/Opera Block Building and send with a forty percent down payment. The voucher will be presented for approval at the December 9, 2021 meeting.

# Proposal



Quote Number	Project Name	Project Location	Date
QUO-05933-S9Y9B	Avon Town Hall	Avon, NY	11/11/2021

**From:** Joe Murray  
**Cell:** 585-260-3641  
**Email:** jmurray@kinsleypower.com

Qty	Bill of Material Summary
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- |   |  |
|---|--|
| 1 | <p><b>Kohler KG80 Generator</b><br/> <b>Output</b> - 80kW, 100kVA, 120/208 Volt, Three Phase, 278amps, 60 Hz<br/> <b>Fuel Type</b> - Natural Gas<br/> <b>Enclosure</b> – Sound Attenuated<br/> <b>Warranty</b> - 1 Year Standard<br/> <b>Estimated Leadtime</b> – 39-41 Weeks, ARO</p>   |
| 1 | <p><b>Power Telematics Remote Monitoring</b></p>   |
| 1 | <p><b>Kohler KEP-DCTA-0800S-NK Transfer Switch</b><br/> <b>Type</b> - Service Entrance Rated, Programmed Transition, 208 Volts/60Hz, 800amps<br/> <b>Poles</b> - 3-Pole, 4-Wire, Solid Neutral<br/> <b>Utility Switching Device</b> - MCCB w/electronic trip<br/> <b>Generator Switching Device</b> - MCSW<br/> <b>Enclosure</b> - NEMA 1 Enclosure<br/> <b>Warranty</b> - 1 Year Standard<br/> <b>Estimated Leadtime</b> – 24-26 Weeks, ARO</p> |
| 1 | <p>Complete electrical installation of generator including conduit, transfer switch, wire, labor, material &amp; generator set up per local electrical and building codes. Includes underground raceways to generator from building. All work prevailing Rate</p>  |
| 1 | <p>Dedicated underground natural gas raceway from existing gas meter to generator per local gas utility requirements. This includes installation of gas regulator per utility requirements if required. All gas utility meter upgrade costs by owner – a new meter will be required.</p>   |
| 1 | <p>Furnish and install new concrete generator pad and all required site excavation including saw cutting of pavement for gas and electric.</p>   |
| 1 | <p>Receive generator, uncrate and check for damage. Load on crane truck and transport to job site. Rig in place new 80kw liquid cooled standby generator. Bolt to pad per manufacturer instructions.</p>   |
| 1 | <p>Final on-site testing and commissioning by Kohler factory trained technician, owner training, owner’s manual, design and engineering, project management, electrical inspection and town permitting.</p>  |

# Proposal




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**Spec/Notes:** • Standard closed-truck delivery included.

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Terms	Retainage	F.O.B.	Mfg. Manuals
40% Due Upon Order	No Retainage	Source	1
55% Due Net 30 Delivery	Allowed		
5% Net 30 Project Completion			

**KOHLER QUOTE # 26802324-- SOURCEWELL CONTRACT # 120617-KOH FOR TOWN OF AVON, SOURCEWELL ID # 197400**

**Kohler KG80 Natural Gas Genset - List Price = \$39,166.00**  
 Less Sourcewell member 40% discount, final price = **\$23,499.60**

**Kohler KEP-DCTA-0800S ATS - List Price = \$13,691.00**  
 Less Sourcewell member 30% discount, final price = **\$9,583.70**

**Complete Electrical and Gas Installation, Rigging, Etc. – List Price = \$77,376.37**  
 Less Sourcewell member 5% discount, final price = **\$73,507.55**

**Startup/Commissioning/Training – List Price = \$1,840.00**  
 Less Sourcewell member 5% discount, final price = **\$1,748.00**

**Power Telematic Remote Monitoring – List Price = \$781.00**  
 Less Sourcewell member 5% discount, final price = **\$741.95**

**3 Year Service Contract (Annual Visits) – List Price = \$3,325.00**  
 Less Sourcewell member 5% discount, final price = **\$3,158.75**

**5 Year Comprehensive Warranty – List Price = \$1,504.00**  
 Less Sourcewell member 5% discount, final price = **\$1,428.80**

Price Quotation Expires in 30 Days  
 Price does not include state sales tax, or installation

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# Proposal



Generator	
Qty	Description
1	KG80 Generator System KG80 Generator Set <b>Includes the following:</b> Literature Languages Approvals and Listings Engine Nameplate Rating Voltage Alternator Cooling System Skid and Mounting Air Intake Controller Enclosure Type Enclosure Material Starting Aids, Installed Electrical Accy., Installed Electrical Accy., Installed Electrical Accy., Installed Rating, LCB 1 Amps, LCB 1 Trip Type, LCB 1 Interrupt Rating LCB 1 Miscellaneous Accy, Installed Warranty Flexible Fuel Line
	English UL2200 Listing/cUL Genset List UL, Pre Alarm, NG, Standby Standby 130C Rise 60Hz, 120/208V, Wye, 3Ph, 4W 4R9X Unit Mounted Radiator, 50C Skid, 44" Standard Duty APM402 Sound Steel 1500W, 110-120V Battery, 1/12V, Wet Battery Charger, 6A Run Relay 80% Rated 300 Thermal Magnetic 30kA at 480V Coolant in Genset Standard

# Proposal



### OFFER ACCEPTANCE

I hereby authorize Kinsley Power Systems, Inc. to use this form as a bona fide purchase order of the equipment shown on Proposal Number QUO-05933-S9Y9B which clearly establishes definite price and specifications of material ordered. The person signing is doing so according to the terms and conditions.

**Proposed By:**

**Accepted By:**

Company: Kinsley Power Systems, Inc.

Company: \_\_\_\_\_

Signature: Joe Murray

Signature: David K. Fisher

Printed Name: Joe Murray

Printed Name: David K. Fisher

Title: Sales Engineer

Title: supervisor

Date: 11/11/2021

Date: 11/18/2021

**TERMS & CONDITIONS:**

Quote subject to Kinsley Power Systems' General Terms and Conditions. General Terms and Conditions available upon request.

**ESTIMATED SHIPPING** Ship dates are best estimates only. Therefore, Kinsley Power Systems is not responsible for incidental or liquidated damages.

**TERMS** Payment Schedule as listed above. Our price does not include sales tax or installation.

**CANCELLATION/BILLABLE DELAYS** If the manufacturer will allow order to be cancelled a re-stocking charge will apply. Orders placed on in-stock items which are not shipped or picked up after 15 days of order date will be returned to inventory for sale to others. Factory-ordered units shipped to a Kinsley facility for temporarily storage due to customer payment or jobsite readiness issues are subject to storage fees of 1% per month unless order is paid in full.

**CONTRACT CHANGES** A mutually agreed to, signed change order is required for any contract changes.

**RETAINAGE** None

**MANUALS** One set of manuals is included with each unit. Additional manuals can be ordered at additional cost.

**WARRANTY** Manufacturer's standard warranty terms and conditions apply.

**START UP** Start-up service is during normal business hours. After hours or weekend start up is available at an additional cost. Unless otherwise noted, all 3rd party testing such as NETA, Insulation Resistance, Ground Fault, Infrared Scanning, emissions testing, exhaust backpressure testing, etc. to be provided by others

I acknowledge that I have read and agree to the above Terms and Conditions:

\_\_\_\_\_  
(Initial)

# Proposal



## Kinsley Power Systems General Terms and Conditions

**1.0 Summary.** These General Terms & Conditions are between Kinsley Group, Inc. d/b/a Kinsley Power Systems ("Kinsley") having a mailing address of 14 Connecticut South Drive, East Granby, CT 06026 (fax number 860-424-6136) and the person, company, firm or business entity purchasing equipment, renting equipment and/or obtaining products or services from Kinsley ("Customer", "You" or "Your"). The purpose of these General Terms & Conditions is to set forth the general terms and conditions that will apply to all services performed by Kinsley for the Customer and all products sold by Kinsley to the Customer. Specific terms and conditions on which such services and products will be provided may be set forth in separate agreements (written proposals, quotations, etc.) signed and agreed to by Kinsley (each hereinafter referred to as a "Related Agreement"). The provisions of these General Terms & Conditions shall be incorporated into each of these Related Agreements and govern all the understandings and agreements between the parties unless otherwise expressly set forth in a Related Agreement. In the event of a specific conflict between the provisions of these General Terms & Conditions and the express provisions of any Related Agreement, the Related Agreement shall control, except for Section 3.0 below, "Limited Warranty Statement", which shall control over any Related Agreement, unless such Section 3.0 is specifically referenced and amended in writing and signed by authorized personnel of Kinsley. These General Terms and Conditions shall apply to each individual project, sale or transaction, provided that a default by Customer under the General Terms and Conditions or a Related Agreement with respect to one project, sale or transaction shall constitute a Customer default under all projects, sales and transactions with such Customer and its affiliates.

**2.1 Recoverable Costs & Expenses.** All costs advanced and expenses incurred that are related to the services performed will be reimbursed to Kinsley. These may include, but are not limited to, airfare, hotel accommodations, meals, business meals, parking, miscellaneous travel expenses, taxes, courier charges, express mailing, mileage round-trip from Kinsley's service location or shipping point, and all other out-of-pocket expenses.

**2.2 Finance Charges, Collection Costs, Expenses, and Other Remedies.** All bills not paid within agreed-upon terms shall be assessed a late charge of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) on the unpaid balance until paid in full. In the event that Kinsley incurs collection expenses or brings any lawsuit, arbitration or other proceeding to collect amounts owed, Kinsley shall be entitled to recover the costs and expenses (including but not limited to its filing fees, witness fees and reasonable legal fees) incurred in collecting such amounts. Kinsley reserves the right, where permitted by law, to charge a two percent (2%) surcharge, processing fee, or convenience fee, for all payments made by credit card. Furthermore, if Kinsley is not paid in full within ninety (90) days of invoice date, Kinsley reserves the right to remove any rental equipment or partially paid equipment from customer site, storage, or any physical location where equipment resides and place the equipment back into Kinsley inventory for resale or further rent. Any proceeds from resale will be used first to reimburse Kinsley for any removal costs and other remedies or costs incurred due to the delinquency, removal, and resale.

**2.3 Storage.** If equipment ordered by Customer is not shipped after notification has been made to the Customer or its agent that it is ready for shipping, for any reason beyond Kinsley's control, including Customer's failure to give shipping instructions, Kinsley may store the equipment at the Customer's risk and expense. The Customer shall pay all handling, transportation, storage and insurance cost at the prevailing commercial rates.

**2.4 Credit Approval, Sales.** Shipments, deliveries and performance of work shall at all times be subject to the approval of Kinsley. Kinsley may at any time reject any purchase order, or decline to make any shipment or delivery or perform any work except upon receipt of payment or security or conditions satisfactory to Kinsley in its sole discretion.

**2.5 Cancellation or Changes.** Order cancellations without Kinsley's written consent, shall be subject to, in Kinsley's sole discretion, the following:

**Generator sets:** Standard Product Orders cancelled within five (5) weeks of the acknowledged ship date from the vendor or three (3) weeks of the production start date will be subject to a charge of twenty percent (20%) of the selling price plus a charge for unique parts. Orders completed and ready for shipment are non-cancellable. Estimated order cancellation fees will be offered upon request and are subject to change based on actual product and engineering fees.

**Electrical Controls:** Standard Product Orders cancelled within five (5) weeks of the acknowledged ship date from the vendor or cancelled within three (3) weeks of the production start date will be subject to a charge of up to twenty percent (20%) of selling price plus a charge for unique parts. Orders completed and ready for shipment are non-cancellable.

**Paralleling Switchgear or DPS:** In the event of order cancellation, prior to release of order for manufacture and following receipt of order by Kohler, there will be a charge of fifteen percent (15%) of selling price, with additional charges related to unique part procurement and engineering fees. Once a Kohler accepted order is released for manufacture, paralleling switchgear and DPS orders are non-cancellable.

**ATS: Standard, Programmed or Closed Transition (30-1200A):** Orders cancelled at least two (2) weeks prior to acknowledged ship date from the vendor will be subject to a charge of twenty percent (20%) of selling price. Orders cancelled within two (2) weeks of acknowledged ship date from the vendor will be subject to a charge of fifty percent (50%) of selling price.

**ATS: Standard, Programmed or Closed Transition (1600 to 3000A):** Orders cancelled at least four (4) weeks prior to acknowledged ship date from the vendor will be subject to a charge of twenty percent (20%) of selling price. Orders cancelled less than four (4) weeks prior to acknowledged ship date from the vendor will be subject to a charge of fifty percent (50%) of selling price.

**ATS: Bypass Isolation (up to 1200A):** Orders cancelled at least three (3) weeks prior to acknowledged ship date from the vendor will be subject to a charge of thirty percent (30%) of selling price. Orders cancelled less than three (3) weeks prior to acknowledged ship date from the vendor will be subject to a charge of sixty percent (60%) of selling price.

**ATS: Bypass Isolation (1800A to 3000A):** Orders cancelled at least five (5) weeks prior to acknowledged ship date from the vendor will be subject to a charge of thirty percent (30%) of selling price. Orders cancelled less than five (5) weeks prior to acknowledged ship date from the vendor will be subject to a charge of sixty percent (60%) of selling price.

**ATS: Service Entrance:** Orders cancelled at least two (2) weeks prior to acknowledged ship date from the vendor will be subject to a charge of twenty percent (20%) of selling price. Orders cancelled less than two (2) weeks prior to acknowledged ship date from the vendor will be subject to a charge of fifty percent (50%) of selling price.

**Engineered Specials & Standard Accessories:** In the event of order cancellation, once the order has been submitted to Kohler and the order is outside of standard product parameters by Kohler, there will be a charge of fifteen percent (15%) of the selling price plus additional unique parts and engineering charges. Standard accessories cancelled or changed after order acknowledgement are subject to a charge of eight percent (8%) of the value of the accessory or Fifty Dollars (\$50.00) (whichever is greater) plus a charge for unique parts.

Order changes without Kinsley Power Systems' written consent, shall be subject to, in Kinsley's sole discretion, the following:

**Rescheduling Product Shipment Dates:** Requests to extend the acknowledged ship date from the vendor will be considered on an individual basis. The extended date cannot be greater than three months following the original acknowledged ship date, and storage fees will be assessed. Requests for improved shipping dates will be considered on an individual basis subject to availability of material and manufacturing capacity.

**Product Changes:** Requests for factory modifications, on an individual basis, will be reviewed and may be possible if received thirty (30) calendar days prior to production start date. Product change requests to orders within the factory frozen schedule (factory will need to be contacted - frozen schedule varies based on generator, tank and enclosure) will be subject to a Five Hundred Dollar (\$500.00) fee in addition to any product or components deemed as unusable by the factory after the change has taken place. All other requests for modifications, including Switchgear and Engineering Specials that are in production at time of order acknowledgement, will be reviewed on an individual basis and will be subject to availability of material. Any product changes may affect the acknowledged shipping date and the acknowledged price. Product deletions will be subject to the conditions of the cancellation policy.

**Storage Policy:** Products not accepted at acknowledged ship date are subject to a two percent (2%) storage fee per month assessed at time of confirmed ship date. The base date for determination will be the distributor requested shipping date or the Kohler confirmed product availability date, whichever is latest.

**2.6 Return Merchandise:** Electrical parts components and special orders are not returnable. There will be a minimum of a twenty-five percent (25%) restocking charge on all other parts and equipment returns. All sales are final after ninety (90) days. Prior written authorization is required before returning any merchandise. All merchandise must be returned prepaid to Kinsley's designated outlet, unless otherwise instructed when the authorization is granted. Kinsley reserves the right to deny authorization for return of any items in its sole discretion.

Kinsley reserves the right to refuse unauthorized returns in its sole discretion.

All claims on returned goods must be made within thirty (30) days from shipment and accompanied by receipt on which original delivery was made.

In cases where Kinsley sells a product on an "exchange" basis, a "core charge" is payable by the Customer if an acceptable "core" is not returned to Kinsley, freight prepaid, within thirty (30) days after shipment of the exchange product. Kinsley reserves the right to determine if the "core" is "acceptable" (i.e., reasonably and economically suitable for repair and resale).

**2.7 Force Majeure:** Kinsley shall not be liable in any way for any default or delay due to conditions or contingencies beyond its control, which prevent or interfere with Kinsley or its suppliers or subcontractors making deliveries or performing services on the date specified, including but not limited to war, or neutral or affecting shipping, delivery of materials or credit as a result of war or war restrictions, nonarrival of duty or failure to produce materials as a result of war or war restrictions, rationing of fuel, strikes, lockouts, fires, bombings, acts of terrorism, accidents, weather conditions, floods, droughts and any other condition or contingency affecting Kinsley, its suppliers, or subcontractors, and Kinsley shall have the right to cancel a contract for services or cancel a contract of sale or to extend the shipping date in the event of one or more of such conditions or contingencies. In the event of delayed or extended shipping dates due to the above causes, and the Customer changes shipping instructions, any additional shipping charges shall be paid by the Customer as a part of the purchase price.

**2.8 Third Party Vendors:** Kinsley may from time to time refer the Customer to third party vendors for specific products or services. These vendors are not Kinsley's subcontractors, so it is the Customer's responsibility to select and negotiate the terms and conditions of the Customer's business with them. Kinsley will not be responsible for their products or services.

**2.9 Taxes:** In addition to all other amounts payable under this Agreement or under a Related Agreement, the Customer shall pay all United States and foreign sales, use, value added, and other taxes and duties of whatever nature, federal, state, provincial or otherwise (herein "taxes"), which are levied or imposed by reason of these General Terms and Conditions or any of the services or products purchased from Kinsley. The Customer shall promptly pay Kinsley for any such Taxes paid by Kinsley on behalf of the Customer or which are required to be collected and paid by Kinsley. Kinsley may bill the Customer separately for such Taxes.

**2.10 General:** Any claims for shortages or deductions for erroneous charges must be made in writing within thirty (30) days after receipt of goods or services or shall be deemed waived.

All manufacturer's names, numbers, symbols and descriptions are used for reference purposes only, and it is not implied that any part listed is the product of these manufacturers.

All clerical errors on the part of Kinsley are subject to correction.

[www.kinsley-group.com](http://www.kinsley-group.com)

800-255-3505

# Proposal



Prices are subject to change without notice.

Unless otherwise stated, prices are FOB point of manufacture.

Delivery dates may be quoted by Kinsley. Such dates are estimates only and in no event shall such dates be construed as falling within the meaning of "time is of the essence".

When providing pricing for site services, Kinsley will adhere to prevailing wage requirements. Kinsley will make reasonable efforts to determine if prevailing wage rates are required, but Customer has the burden and responsibility to communicate any prevailing wage requirements to Kinsley (or intermediate contractor). If Kinsley's failure to pay prevailing wages is reasonably attributable to Customer's failure to provide prevailing wage information to Kinsley, including but not limited to wage schedules or rate sheets associated with the work described in this Agreement, Kinsley may seek appropriate damages and restitution from Customer, and may amend the contract price to reflect increases in wages and fringe benefits paid to Kinsley employees to the extent that these increases are necessary to comply with federal, state or local prevailing wage laws.

**2.11 No Hire Clause.** During the term of any Related Agreement under which Kinsley is providing products or services, and for a period of one (1) year thereafter, neither the Customer nor its affiliates shall: (a) employ or hire or engage as a consultant or subcontractor, any employee or subcontractor of Kinsley or any of its affiliates, (b) solicit any employee or subcontractor of Kinsley or any of its affiliates to become an employee of, or consultant or subcontractor to Customer or any of its affiliates, or (c) recommend or suggest to any other person or entity that it so solicit, employ, hire, or engage any such employee or subcontractor. In the event of any breach of the foregoing provisions, Kinsley shall be entitled to be paid, on demand, as liquidated damages and not as penalty, an amount equal to the annualized base salary and other regular compensation being paid to such employee or subcontractor as of the date of the termination of his or her employment or contract with Kinsley or its affiliate. It is agreed that the amount of damages, which would be suffered because of a breach of the foregoing provisions of this Section, would be difficult to measure and that such payment amount constitutes reasonable liquidated damages for such a breach.

**2.12 Governing Law and Jurisdiction.** These General Terms & Conditions and each Related Agreement shall be construed and enforced in accordance with the laws of the State of Connecticut, without regard to its conflict of law provisions. The United Nations Convention on the International Sale of Goods shall not apply to these General Terms and Conditions and conditions of any Related Agreement. All suits under this agreement shall be brought and filed in the State of Connecticut.

**2.13 Assignment and Transfer.** Except as otherwise provided in any Related Agreement, these General Terms and Conditions and any Related Agreement may not be assigned or transferred by Customer, and shall be binding upon and for the benefit of Kinsley and the Customer, as well as the Customer's and Kinsley's respective legal representatives, successors and assigns.

**2.14 Invalid Provisions.** These General Terms and Conditions and any Related Agreement shall be valid and enforceable to the fullest extent permitted by law. If any term, condition, or provision of these General Terms and Conditions or any Related Agreement, or the application thereof in any person or circumstance, shall be held invalid or unenforceable to any extent, then such term, condition, or provision shall be curtailed and limited to the extent necessary to bring it within the legal requirements, and the remainder of these General Terms and Conditions, or Related Agreement, and the application of such term, condition, or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

**2.15 Entire Agreement, Modification.** These General Terms and Conditions and any Related Agreements constitute the entire agreement between Kinsley and the Customer with respect to the subject matter thereof, superseding all previous communications and negotiations, whether written or oral. No modification of these General Terms and Conditions or any Related Agreement shall be binding unless it is in writing and executed by authorized representatives of Kinsley and the Customer.

**2.16 Notices.** Any written notice or other written communication to a party under these General Terms & Conditions or any Related Agreement shall be delivered personally, sent by fax, or sent by express carrier for next business day delivery evidenced by a receipt, or by United States registered or certified mail, freight or postage prepaid. Notices shall be sent to a party's address or fax number set forth at the beginning of the agreement or purchase order in which these General Terms and Conditions are incorporated or such other address or fax number as such party may specify in writing in accordance with these notice provisions.

**2.17 Waiver of Failure to Act.** No failure or delay by Kinsley in exercising any right or remedy under these General Terms and Conditions or a Related Agreement shall be deemed to be a waiver. The waiver by Kinsley in any respect of any right provided for in these General Terms and Conditions or any Related Agreement shall not be deemed a waiver of any further right hereunder.

**2.18 Third Party Beneficiaries.** These General Terms and Conditions and any Related Agreement shall not be deemed to create any rights in any third parties (excepting only Kinsley's affiliates), including suppliers and customers of a party, or to create any obligations of a party to any such third parties.

**2.19 Affiliate.** As used in these General Terms and Conditions or in any Related Agreement, an "affiliate" of a party means a third party that directly or indirectly (by the ownership of voting securities, contract or otherwise) controls, is controlled by, or is under the common control with, such party.

**2.20 Security Interest.** Customer hereby grants Kinsley, and Kinsley will retain, a purchase money security interest and lien on any and all equipment, goods or merchandise sold hereunder wherever located, and all replacements or proceeds of the same, until the invoice for the applicable equipment, goods or merchandise is paid in full, including any late charges and costs of collection. Customer consents to Kinsley's use of these General Terms and Conditions, as well as product invoices, as financing statements under the Uniform Commercial Code ("UCC") and to create additional financing statements for protecting this security interest, and appoints Kinsley as Customer's agent for any necessary signatures on such filings and hereby authorizes Kinsley, at Customer's expense, to take such action as may be necessary to perfect and protect Kinsley Power Systems' security interest, including the filing and/or recording of UCC financing statements, and grants Kinsley the right and power of attorney to execute Customer's name thereto. Customer agrees to pay or reimburse Kinsley for any searches, filings, recording or stamp fees or taxes arising from the filing or recording of any such instrument or statement. In the event of a default by Customer of any of its payment obligations hereunder, Kinsley shall be entitled to any of the rights and remedies provided by law. Customer will not change its name, principal place of business, or state of incorporation without Kinsley's prior written consent, and Customer will notify Kinsley in writing of any change in the location of any other place of business prior to making such change, and of the acquisition of any new place of business prior to such acquisition. Customer shall at its expense protect and defend Kinsley's rights against all persons claiming against or through Customer at all times, keeping the equipment, goods or merchandise sold hereunder free from any other legal process or encumbrance whatsoever, including, but not limited to, liens, attachments, levies and executions, and shall give Kinsley immediate written notice thereof and shall indemnify and hold Kinsley harmless from any loss caused thereby.

**3.0 LIMITED WARRANTY STATEMENT** Kinsley makes no express or implied warranties, including without limitation, implied warranties of merchantability and fitness for particular purpose, on equipment, parts or devices or any other goods or products sold or rented by Kinsley. The Customer's sole remedy is under the warranty of the manufacturer. At the Customer's request, Kinsley may furnish specific manufacturers' express limited warranty policies. The Customer accepts the goods or products sold "as is" and "with all faults" except only as provided by the warranty of the manufacturer of the goods or products sold.

Kinsley may provide technical information or advice to assist the Customer in the proper application and utilization of equipment or systems, in which case Kinsley disclaims all warranties, express or implied, including without limitation implied warranties of merchantability and fitness for a particular purpose, or compliance with governmental regulations.

**SOLE LIMITED WARRANTY BY KINSLEY.** Kinsley warrants that for ninety (90) days beginning on the date of invoice, service labor by Kinsley technicians shall be free from material defects in workmanship. This warranty does not cover damage due to external causes including accident, abuse, misuse, problems with electrical power, servicing not authorized or performed by Kinsley, usage not in accordance with product instructions, failure to perform required preventive maintenance, and problems caused by use of parts and components not supplied by Kinsley. This warranty does not cover replacement or repair of materials due to normal wear. Kinsley's responsibility is limited to repair or replacement at its designated facility, and the decision as to location of the repair work shall be made in the sole judgment of Kinsley.

**IN NO EVENT SHALL KINSLEY BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR PUNITIVE LOSSES OR DAMAGES INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, LOSS OF REVENUE OR PROFITS, FEES OR FINES, EVEN IF KINSLEY HAS BEEN ADVISED OR MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY.**

Kinsley's cumulative liability for all losses and damages under these General Terms and Conditions or under any of the Related Agreements (including, without limitation, those arising out of contract, tort (including negligence), strict liability, warranty, or other theory of liability) shall not exceed (a) in the case of any services provided or to be provided by Kinsley, the amount of the fees paid by Customer for such services under the applicable Related Agreement, and (b) in the case of any products or devices provided or to be provided by Kinsley, the amount of Kinsley's labor services paid by Customer and associated with the product sale.

Kinsley makes no warranties beyond those stated in this warranty statement. Furthermore, no personnel of Kinsley are authorized to make warranties of any nature, orally or otherwise.

**4.0 Indemnification.** Customer shall save harmless, indemnify, and at Kinsley's option, defend Kinsley, and Kinsley's owners, directors, officers, agents, representatives, affiliates and successors and assigns, from and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action of every kind and nature arising or growing out of or in any way connected with Kinsley's selling, repairing, evaluating, starting up, testing or maintaining equipment or other items or providing other services or products to or for the benefit of Customer or its affiliates, unless it is determined by a court of competent jurisdiction, after expiration of applicable appeal rights, that such matters were directly caused by Kinsley's gross negligence or willful misconduct.

**5.0 Waiver of Subrogation.** Customer and all parties claiming to be related to customer hereby agree to release and discharge Kinsley from all claims and/or liabilities arising from or caused by any casualty or hazard which may arise out of or in connection with activities associated with Kinsley's work on equipment or premises at the request or direction of Customer except as specifically stated herein, and Customer agrees to waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof and further agree to evidence such waiver as may be required by Customer's insurance policies.

**6.0 Acknowledgment.** Customer acknowledges that it engages in the conduct of trade or commerce. Customer acknowledges that this transaction is in a business context and is not for personal services or for personal goods sold or delivered as a consumer.

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**Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – TOWN HALL/OPERA BLOCK RENOVATIONS-continued**

Councilman Drozdziel talked about a proposal from Nothnagle Drilling, Inc to collect boring samples and provide a geotechnical engineering report. These are needed to put in the new egress stair tower and generator pad at the back of the Opera Block Building. The board took the following action:

**RESOLUTION # 219 ACCEPT THE PROPOSAL FROM NOTHNAGLE DRILLING, INC**

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to accept the proposal from Nothnagle Drilling, Inc for drilling services for the new egress stair tower and generator pad at the back of the Opera Block Building in the amount of \$4,422.00.

**Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye**

**DISCUSSION – TOWN HALL/OPERA BLOCK RENOVATIONS-continued**

NKB has been compiling specifications and drawings. Spent three hours with the mechanical sub consultant and were able to simplify some things and save the town some money. Still looking at mid-December for the bid date.

Spoke with the village code officer and let him know that we are almost ready for his review.

We simplified the location for the heat pump for the third floor. It is nothing elaborate, but no outside equipment will be needed. The main concern is delivery time. We talked about an alternate energy system and included that as a bid alternate.

West Fire is working on a fob and control system for the elevator. I provided them with an operating procedure, and they are working on a proposal.

SHIPPO – In a good place with them. Our requirements have been confirmed on MWBE as to what the state is providing.

**OPEN ITEMS**

There was discussion as to what parts of the building have public access. It was stated that offices should not be readily accessible to the public. From a security standpoint unoccupied arears should be off limits during regular business hours.

Supervisor LeFeber thanked Councilman Drozdziel for discovering an installation problem with the hot water heater. There was an improper seal with a fitting which caused some rust and leaking. The installer will fix the problem.



**DISCUSSION – VISITOR COMMENTS**

Supervisor LeFeber asked if there were any visitor comments, and there were none.

On motion of Councilman Harrington, seconded by Councilman Drozdziel the meeting was adjourned at 7:50 P.M.

Respectfully submitted by:

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Ellen M Zapf, RMC Deputy Town Clerk