

**AMHERST CENTRAL PARK  
INFRASTRUCTURE FUND ADMINISTRATION AGREEMENT**

THIS AGREEMENT (“Agreement”), entered into as of December 20, 2021, is by and between the TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation with offices at 4287 Main Street, Amherst, New York 14228 (“AIDA”); and the TOWN OF AMHERST, a New York municipal corporation having its principal office at 5583 Main Street, Williamsville, New York 14221 (the “Town”).

**RECITALS:**

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

B. The parties desire to enter into this Agreement to set forth their respective understandings concerning the management and administration of the Fund.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I  
INCORPORATION OF RECITALS**

1.1 Recitals. The foregoing Recitals are hereby incorporated into this Agreement and made a part hereof as if fully set forth herein.

**ARTICLE II  
APPOINTMENT OF FUND ADMINISTRATOR**

2.1 Appointment. AIDA is hereby designated as administrator of the Fund (the “Fund Administrator”), and AIDA accepts such appointment upon the terms and conditions set forth herein.

**ARTICLE III  
DUTIES OF FUND ADMINISTRATOR**

3.1 No Implied Duties. The Fund Administrator need only perform those duties that are specifically set forth in this Agreement. No covenants or obligations adverse to the Fund Administrator shall be implied in this Agreement.

3.2 Investment of PILOT Payments. The Fund Administrator shall deposit Town PILOT payments and School District PILOT payments received pursuant to the PILOT Application Agreement into one or more dedicated, interest-bearing depository accounts (individually or collectively, the "Fund Account") established at the financial institution at which AIDA regularly maintains its own accounts. The Fund Administrator shall have the absolute discretion to invest and manage the Fund Account, subject to the investment limitations set forth in Section 10 of the New York General Municipal Law (GML). All decisions made by the Fund Administrator in connection with the investment and management of the Fund Account shall be final and not subject to challenge, provided that the Fund Administrator is managing the Fund Account in compliance with Section 10 of the GML. Provided that the Fund Administrator complies with Section 10 of the GML in connection with the investment and management of the Fund Account, the Fund Administrator shall have no liability for any losses incurred to the Fund Account.

3.3 Reinvestment. The Fund Administrator shall reinvest all interest earned on the monies of the Fund into the Fund Account. All earned interest shall become part of the Fund, to be managed and disbursed in accordance with the terms of this Agreement.

3.4 Disbursement of Fund Monies.

(a) Eligible Disbursement Purposes. The parties acknowledge and agree that the Fund has been established for the purpose of funding "Eligible Projects" as defined in the PILOT Application Agreement which include: (i) the undertaking of public infrastructure improvements and public streetscape improvements and/or enhancements, sidewalk reconstruction, curb reconstruction, tree planting, installation of street lighting, paving and public parking, smart city technologies, traffic signals, within the PIF District; and (ii) financial assistance for the Northwest Community Center, Amherst Central Park and park-displaced projects located elsewhere in the Town. No disbursement may be made from the Fund unless such disbursement is for an eligible purpose as described in the preceding sentence ("Eligible Purpose") and the disbursement request complies with the requirements set forth in Section 3.4(b) of this Agreement.

(b) Disbursement Requests. The Town may request from time to time that the Fund Administrator disburse monies from the Fund Account to the Town (or if requested by the Town in writing, to a person or entity designated by the Town) for an Eligible Purpose. Each disbursement request made by the Town to the Fund Administrator shall be accompanied by (i) documentation satisfactory to the Fund Administrator that is sufficient to identify that the disbursement is being requested in connection with an Eligible Purpose ("Disbursement Request Documentation") and (ii) a certification ("Town Certification") signed by the Town Supervisor ("Supervisor") or other person duly authorized in writing by the Supervisor confirming that the disbursement request has been approved by the Town and certifying that the monies requested for disbursement shall be applied by the Town toward an Eligible Purpose as described in the Disbursement Request Documentation. Provided that the Disbursement Request Documentation and the Town Certification meet the requirements of the preceding

sentence and there are sufficient monies in the Fund Account to fulfill the disbursement request, the Fund Administrator shall disburse monies from the Fund Account to the Town within ten (10) business days after the Fund Administrator's approval of the disbursement request, provided that the Fund Administrator may delay disbursement for a period of time (not to exceed thirty (30) calendar days) if it determines that an earlier disbursement would result in penalties or other losses to the Fund Account.

(c) Rejection of Disbursement Request. In the event that the Fund Administrator determines that the Disbursement Request Documentation and/or the Town Certification do not meet the requirements of Section 3.4(b), the Fund Administrator shall reject the disbursement request and notify the Town in writing of same no later than five (5) business days after the Fund Administrator's receipt of the disbursement request. Such notification shall identify the specific deficiency or deficiencies in the Disbursement Request Documentation and/or the Town Certification, as applicable. The Town may submit additional documentation to the Fund Administrator to correct the deficiency or deficiencies. Notwithstanding the foregoing, the Fund Administrator shall retain the discretion to grant or reject a disbursement request based on such additional documentation. The Fund Administrator's determination that any Disbursement Request Documentation and/or the Town Certification do not meet the requirements of Section 3.4(b) shall be final and not subject to challenge.

(d) Payment of Fund Administration Expenses. The Fund Administrator shall pay all Fund Administration Expenses (as defined herein) from the Fund Account, provided that such expenses are documented to the satisfaction of the Fund Administrator. "Fund Administration Expenses" shall include all out-of-pocket third-party costs and expenses incurred by the Fund Administrator in connection with the performance of its duties under this Agreement, including, without limitation, any fees assessed by the financial institution(s) with respect to the Fund Account and any expenses incurred in connection with any audit with respect to the Fund Account. Fund Administration Expenses shall also include standard time charges of the Fund Administrator for its personnel with regard to the performance by such personnel of the Fund Administrator's responsibilities under this Agreement, provided that such time charges are fully documented and do not exceed 1% of the balance of the Fund in any given calendar year. Statements for time charges of the Fund Administrator shall be issued and paid in December of each year, with the 1% limitation described in the preceding sentence measured as of November 30<sup>th</sup> of the same calendar year.

(e) Accuracy of Documents; Indemnity. In disbursing monies from the Fund Account, the Fund Administrator shall be entitled to conclusively rely upon the accuracy of all facts and representations set forth in the Disbursement Request Documentation, the Town Certification and such other documentation received by the Fund Administrator and need not investigate any fact or matter stated in such documentation. The Town shall indemnify and hold the Fund Administrator harmless from any and all claims, demands and lawsuits against the Fund Administrator which arise from or relate to any inaccuracy or misrepresentation in any Disbursement Request Documentation or Town Certification

submitted by the Town to the Fund Administrator or any determination by the Fund Administrator to grant or reject such a disbursement request.

3.5 Resignation of Fund Administrator. AIDA may, upon 120 days prior written notice to the Town, resign from its responsibilities under this Agreement, provided that a replacement Fund Administrator agrees to assume AIDA's responsibilities under this Agreement in accordance with the provisions of this Section 2.2. Upon issuance of such notice, AIDA shall use its best efforts to obtain an agreement from a commercial bank and trust company or another institution reasonably satisfactory to the Town to assume the responsibilities of Fund Administrator, and the charges of such replacement Fund Administrator to perform such services shall constitute eligible Fund Administration Expenses as defined in Section 3.4(d) of this Agreement.

ARTICLE IV  
RECORDKEEPING; REPORTS AND AUDITS

4.1 Recordkeeping. The Fund Administrator shall keep accurate and complete records pertaining to the Fund Account. Such records shall include a record of all deposits, investments and interest earned in the Fund Account, and all disbursements made from the Fund Account.

4.2 Reporting Requirements. The Fund Administrator shall prepare and submit an annual report to the Town, School District and AIDA within one hundred twenty (120) days after the end of each calendar year. Each report shall identify the amount of Town PILOT payments and School District PILOT payments remitted to the Fund Administrator and shall include a schedule setting forth the Fund balance at the beginning and end of the calendar year, all disbursements made from the Fund for an Eligible Purpose, all disbursements made from the Fund for Fund Administration Expenses and the amount of interest earned on the Fund balance during the calendar year.

4.3 Audit Rights. The Town, School District and AIDA may, at their sole expense, audit the Fund upon thirty (30) days written notice to the Fund Administrator.

ARTICLE V  
TERM; TERMINATION

5.1 Term; Termination. This Agreement shall commence as of the Effective Date set forth above and continue until the Fund Administrator has disbursed all funds from the Fund Account.

ARTICLE VI  
EXCULPATORY PROVISIONS

6.1 Exculpatory Provisions. No provision, covenant or agreement contained in this Agreement, and any other agreement entered into in connection herewith, nor any

obligations herein imposed upon the parties, nor the breach thereof, shall constitute or give rise to or impose upon such party a pecuniary liability or a charge upon its general credit. All covenants, stipulations, promises, agreements and obligations of the parties contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of such party and not of any member, director, officer, employee or agent thereof in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer, employee or agent of such party.

6.2 Limitation on Performance. No provision of this Agreement shall require the Fund Administrator to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties herein or in the exercise of any of its rights or duties if the Fund Administrator shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured.

## ARTICLE VII GENERAL PROVISIONS

7.1 Entire Agreement; Amendment. This Agreement (including the Schedule 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.

7.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

7.3 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.

7.4 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.

7.5 Notices. All notices that may be given in connection with this Agreement shall be in writing and shall be delivered personally or mailed postage prepaid, by regular mail, to the parties at their addresses as set forth above. 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, if mailed.

7.6 Severability. The provisions of this Agreement shall be severable, and if any clause, sentence, paragraph, provision or other part hereof shall be adjudged by any

court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, which remainder shall continue in full force and effect.

7.7 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.

7.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[The Remainder of this Page Intentionally Left Blank.]*

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

TOWN OF AMHERST INDUSTRIAL  
DEVELOPMENT AGENCY

By:  \_\_\_\_\_

TOWN OF AMHERST

By:  \_\_\_\_\_