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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.
Town Attorney

Date: September 5, 2018

Re: Agreement for Advance Payment with
New York State Department of Transportation
Harlem Road Culverts, SH 9381

Kindly adopt the attached Resolution authorizing the Supervisor to execute the attached Agreement for Advance Payment with the New York State Department of State.

While it was performing construction along the NYS Route 400 bridge the NYSDOT made improvements to culverts along Harlem Road. To effectuate these improvements, the NYSDOT has acquired by way of eminent domain a fee simple interest of .1 acres (as seen on the attached map) for a just compensation price of \$6,000.00.

RESOLUTION
AUTHORIZATION OF ADVANCE AGREEMENT FOR PAYMENT WITH
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
Harlem Road, SH 9381

WHEREAS, the New York State Department of Transportation ("DOT") is in the process of improving the bridge along NYS Route 400 spanning over Harlem Road in the Town of West Seneca, and

WHEREAS, the Town of West Seneca owns property beneath the bridge on the easterly and westerly sides of Harlem Road , and

WHEREAS, the DOT has notified the Town that it needs to acquire the aforementioned Town-owned property in order to improve certain culverts adjacent to Harlem Road, and has offered the Town \$6,000.00 for such property, and

WHEREAS, the proposed acquisition of Town-owned property will not interfere with the Town's use of such property, NOW, THEREFORE, BE IT

RESOLVED, that the Supervisor be and hereby is authorized and directed to execute an Agreement of Advance Payment and any and all other documents necessary with the DOT for the above referenced property.

HARLEM ROAD
S.H. 9381

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
ACQUISITION MAP

PIN 5392.37

MAP NO. 633
PARCEL NOS. 652 & 653
SHEET 1 OF 2 SHEETS

MAP REFERENCE INFORMATION:
LOT 193 TOWN 10 RANGE 7
HOLLAND LAND COMPANY'S SURVEY

TOWN OF WEST SENECA
(REPUTED OWNER)

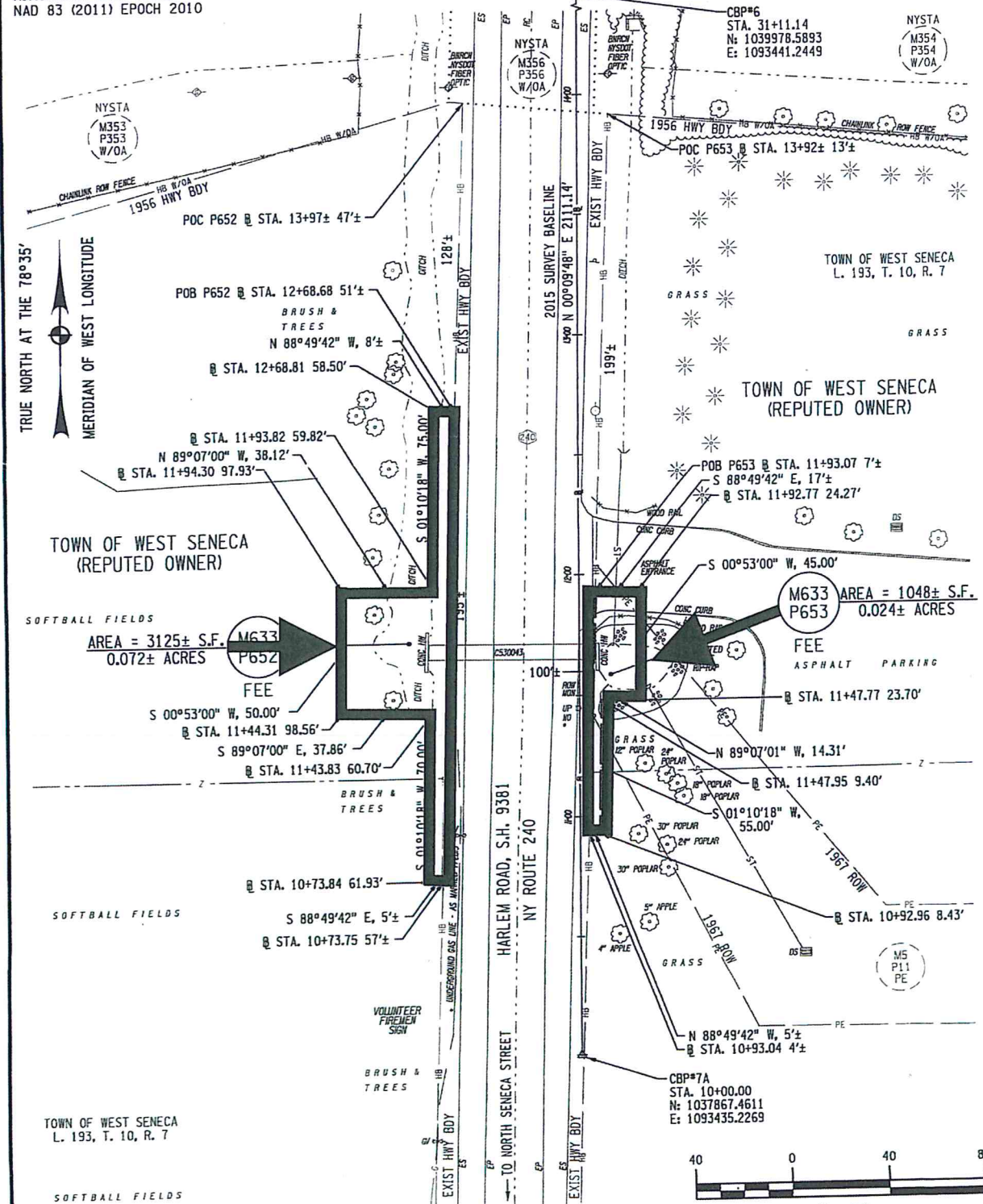
PARCEL SUMMARY:
Type: P*652 : FEE
P*653 : FEE
Portion of 2014 Tax
Map Ref. No. 134.05-2-14
Map Ref. No. 134.38-3-10
Town of WEST SENECA
County of ERIE
State of New York

Parcel Locator Point:
Parcel No. 652
N: 1038136.2821
E: 1093385.0955
Parcel No. 653
N: 1038060.5144
E: 1093442.5565
N.Y.S.P.C.S. WEST ZONE:
NAD 83 (2011) EPOCH 2010

CC D L 7632 P 413
TRN 1

AURORA EXPRESSWAY CONTRACT 1

NY ROUTE 400



FILE NAME = S:\R001\map\pin.533.dgn
USER = dkasperek

7. It is agreed that, if the Court of Claims finds the value of the property appropriated and legal damages caused by said appropriation as set forth in paragraph numbered 1 above is equal to or exceeds the advance payment made hereunder, the amount of such advance payment shall be deducted from the amount so found by the Court and the award of said Court shall be in the amount of the excess, if any, over and above said advance payment. It is also agreed that no interest shall be allowed in such award on the amount of such advance payment. In the event the amount so found by the Court is less than the amount of said advance payment, upon the filing in the office of the Clerk of the Court of Claims of a Certified copy of this Agreement together with Certification by the Comptroller of the State of New York of such payment and upon application made to the Court on at least eight days notice to Claimant, the Court shall direct the Clerk to enter judgment dismissing the claim and awarding to the State the difference between the awards as found by the Court and the amount of said advance payment with appropriate interest. It is further agreed that in any trial of a claim that may be filed by Claimant, neither the determination of the Commissioner of Transportation, as hereinabove set forth, nor any data, estimates, or appraisals made or prepared in support thereof, shall be evidence of the value of the claim or of the property affected by said claim.

8. Interest will be paid on the cash payment herein provided for according to the conditions in ROW 21-8, Interest Supplement to Agreement, attached and made a part hereof.

9. It is understood and agreed by and between the parties hereto that, pursuant to statute, if no claim is filed by Claimant in the Court of Claims within the statutory time limit set forth in the Eminent Domain Procedure Law, then, upon the expiration of that time, this Agreement for Advance Payment shall automatically become an Agreement of Adjustment in full and complete settlement of all claims as referred to in Paragraph # 1 hereof without further ratification, approval, or consent by Claimant and Claimant shall be deemed to have released Claimant's claim against the State without further acquittance, receipt, or satisfaction therefor in consideration of the payment made hereunder.

10. This Agreement is exclusive of claims, if any, for payment of allowable moving expenses of owners, occupants, or tenants of residential and commercial property and is also exclusive of any claims of Claimant for pro-rata payment of all real property taxes, water and sewer rents, levies or charges paid or payable to a taxing entity as provided for by the above designated statute. This agreement is made exclusive of the rights, if any, of any and all persons other than the claimant of, in and to any and all mines, minerals and mineral, ore, quarries, petroleum deposits, or any lease covering oil, gas or mineral rights.

THIS AGREEMENT shall inure to the benefit of and bind the distributees, legal representatives, successors, and assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

Claimant:

Town of West Seneca

BY:

TTS:

Payee ID#

STATE OF NEW YORK

COUNTY OF Y

) ss.:

On the Y day of Y, In the year Y, before me, the undersigned, a Notary Public in and for said State, personally appeared Y, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of whom the individual(s) acted, executed the instrument.

Y
(Notary Public)

APPROVED:

COMMISSIONER OF TRANSPORTATION
FOR THE PEOPLE OF THE STATE OF NEW YORK

By: Y
(For the State Comptroller)

By: Y
(Director of Office of Right of Way)

Land Contract
No. Y