



JOHN FENZ
TOWN ATTORNEY
jfenz@twsny.org

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
Land Northerly to Intersection Fairfax & Ashmund Drives

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 performing construction along the portion of New York State Thruway Interstate 90 which passes through West Seneca, the Department of Transportation requires temporary access to the Thruway via the land northerly to the intersection of Ashmund and Fairfax Drives. The NYSDOT has acquired by way of eminent domain easements of approximately .3 acres (as seen on the attached map) for a just compensation price of \$9,000.00.

RESOLUTION
AUTHORIZATION OF ADVANCE AGREEMENT FOR PAYMENT WITH
NEW YORK STATE DEPARTMENT OF TRANSPORTATION
LAND NORTHERLY TO THE INTERSECTION OF ASHMUND AND FAIRFAX DRIVES

WHEREAS, the New York State Department of Transportation ("DOT") is in the process of improving the New York State Thruway – Interstate 90 in the Town of West Seneca, and

WHEREAS, the Town of West Seneca owns property northerly to the intersection of Ashmund and Fairfax Drives which provides access to the New York State Thruway – Interstate 90 , and

WHEREAS, the DOT has notified the Town that it needs to acquire easements to the aforementioned Town-owned property in order to provides access to the New York State Thruway – Interstate 90, and has offered the Town \$9,000.00 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.

ROW 21-2b (09/15)

Return

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
OFFICE OF RIGHT-OF-WAY

AGREEMENT FOR ADVANCE PAYMENT

PIN **552841201** PROC **14443** PAYEE ID#
PROJECT **New York State Thruway Erie Section Subdivision E-8-C**
MAP(S) **1131, 1132** PARCEL(S) **1133, 1134**
COUNTY **Erie** TOWN/CITY **West Seneca** VILLAGE

THIS AGREEMENT, made this 1 day of 7, between
Town of West Seneca
1250 Union Road
West Seneca, NY 14224-2950

hereinafter referred to as "Claimant," and the **COMMISSIONER OF TRANSPORTATION FOR THE PEOPLE OF THE STATE OF NEW YORK**, hereinafter referred to as "the State," **pursuant to statute.**

WITNESSETH:

WHEREAS, pursuant to the aforementioned statute, the State is appropriating or has appropriated, for the purpose of the above identified project, certain property shown and described on the above designated map(s), and

WHEREAS, the Claimant represents that Claimant is or was at the time of said appropriation the owner of the property affected by said appropriation or of some right, title, or interest therein, and

WHEREAS, the value of the property appropriated and legal damages caused by said appropriation, as set forth in paragraph numbered 1 below, cannot be agreed upon, and

WHEREAS, the State is willing to pay an amount equal to the amount determined by the Commissioner of Transportation to be the value of all claims for the property appropriated and legal damages caused by said appropriation, as so set forth in paragraph numbered 1 below, on the terms and conditions hereinafter stated,

NOW, THEREFORE, it is understood and agreed by and between the parties as follows:

1. The State will pay to the Claimant the sum of **Nine Thousand and 00/100 Dollars (\$9,000.00)**, the amount hereby determined by the Commissioner of Transportation to be the value of all claims for the property appropriated and legal damages caused by such appropriation, including all damages incurred by virtue and during the pendency of said appropriation proceedings, and including all damages to the remainder of said affected property, if any, of which the appropriated area formed a part, whether caused by said appropriation or by the use of said appropriated property, excepting the aggregate value, if any, of claims hereinafter specifically excluded.
2. The Claimant agrees, as a prerequisite to such advance payment, to execute and deliver or cause the execution and delivery to the Attorney General of all formal papers which the Attorney General deems reasonably necessary, which will be identified upon written request by the Claimant to the Department of Transportation, to authorize payment and to secure to the State a full release of all claims (other than the claim of Claimant) by reason of the aforementioned appropriation, including claims by reason of any estate or interest in the streams, lakes, drainage and irrigation ditches or channels, streets, roads, highways, or public or private rights of way, if any, adjacent to or abutting the above-mentioned property required for the purposes of said project.
3. Payment is to be made hereunder only upon approval of this Agreement by the Comptroller of the State of New York or the Director of Office of Right of Way and upon certificate of the Attorney General of the State of New York as required by law.
4. This Agreement is exclusive of the claims, if any, of persons other than owners of the appropriated property, their tenants, mortgagees, and lienors, having any right or interest in any stream, lake, drainage and irrigation ditch or channel, street, road, highway, or public or private right of way, or the bed thereof, within the limits of the appropriated property or contiguous thereto.
5. This Agreement is also exclusive of claims, if any, (other than the claim of Claimant) for the value of or damage to easements and appurtenant facilities for the construction, operation, and maintenance of publicly owned or public service electric, telephone, telegraph, pipe, water, sewer, and railroad lines.
6. The Claimant hereby reserves the right to file a claim with the Court of Claims, or, if a claim has been filed, reserves the right to prosecute said claim, it being understood, however, that such reservation shall not extend or affect in any way the time limit for the filing of such claim as provided for in the Eminent Domain Procedure Law.

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, 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: _____

ITS: _____

Payee ID# _____

STATE OF NEW YORK) ss.:
COUNTY OF _____

On the _____ day of _____, in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, 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.

(Notary Public)

APPROVED:

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

By: _____
(for the State Comptroller)

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

Land Contract
No. _____

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
ACQUISITION MAP

NEW YORK STATE THRUWAY
ERIE SECTION
SUBDIVISIONS E-B-C & E-B-D

MAP NO. 1131
PARCEL NO. 1133
SHEET 1 OF 2 SHEETS

NYSTA-PIN B52895
NYSOT-PIN 5528.41

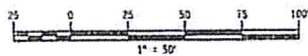
MAP REFERENCE INFORMATION:
Part of Town Lot 278, T.10, R.7
'Farmington Re-Subdivision' Filed
Aug. 25, 1919, Cover No. 1035

TOWN OF WEST SENECA
(REPUTED OWNER)

PARCEL SUMMARY:
Type: PERMANENT EASEMENT
Portion of 2014 Tax
Map Ref. No. 134.53-4-23.1
Town of West Seneca
County of Erie
State of New York

Parcel Locator Points:
Parcel No: 1133
N: 1034982.9980
E: 1092206.1670

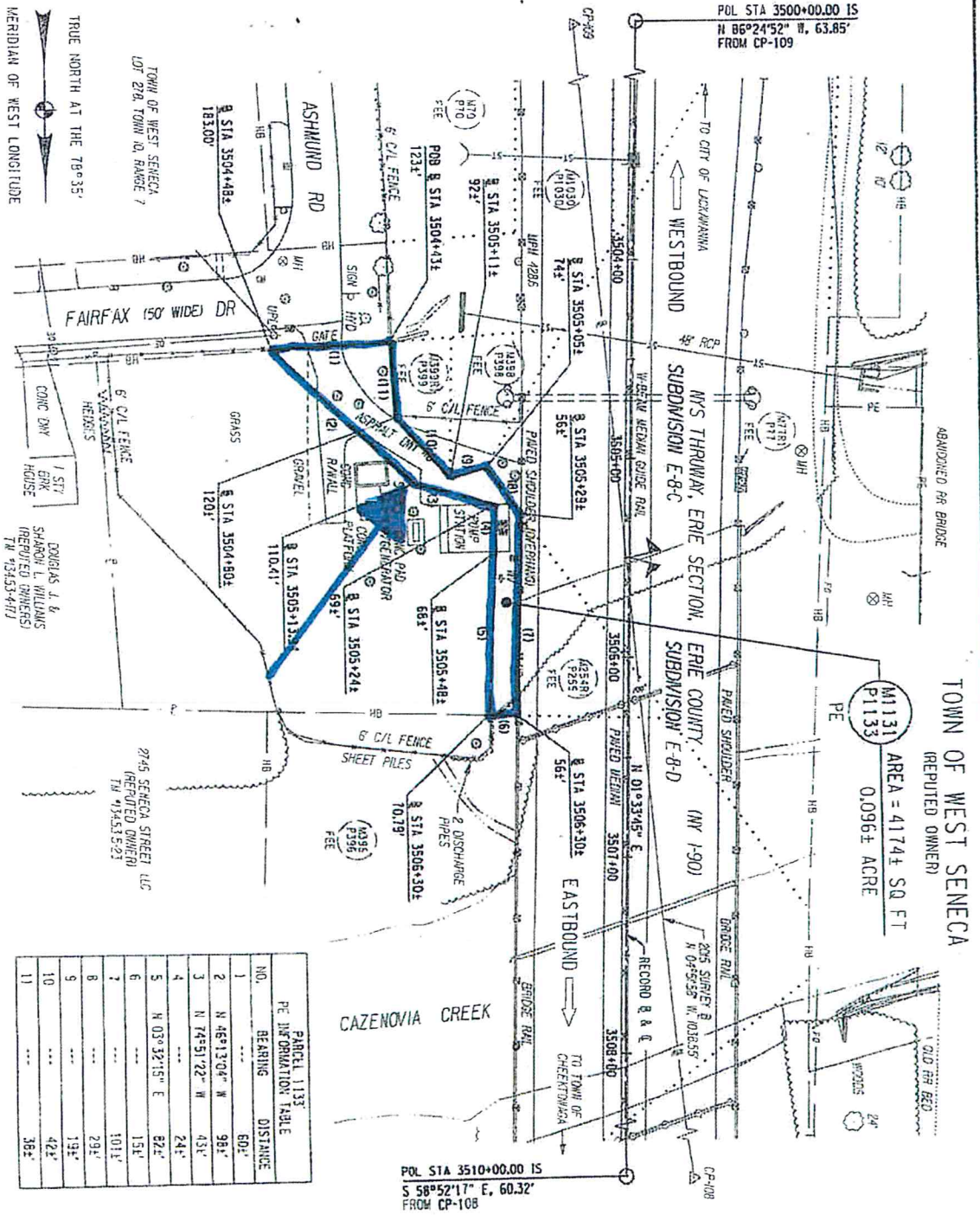
CCD L. 6227 P. 302
L. 1629 P. 326
L. 6103 P. 557
TRN 4



M XX
P XX
FEE INDICATES PROPERTY OF THE
PEOPLE OF THE STATE OF NEW YORK

TRUE NORTH AT THE 79°35'
MERIDIAN OF WEST LONGITUDE

TOWN OF WEST SENECA
LOT 278, TOWN 10, RANGE 7



POL STA 3500+00.00 IS
N 86°24'52" W, 63.85'
FROM CP-109

M1131
P1133
AREA = 4174± SQ. FT.
0.096± ACRE

TOWN OF WEST SENECA
(REPUTED OWNER)

PARCEL 1133
PER INFORMATION TABLE

| NO. | BEARING | DISTANCE |
|-----|---------------|----------|
| 1 | ... | 60± |
| 2 | N 46°13'04" W | 98± |
| 3 | N 74°51'22" W | 43± |
| 4 | ... | 24± |
| 5 | N 03°32'15" E | 82± |
| 6 | ... | 15± |
| 7 | ... | 101± |
| 8 | ... | 29± |
| 9 | ... | 19± |
| 10 | ... | 42± |
| 11 | ... | 38± |

POL STA 3510+00.00 IS
S 58°52'17" E, 60.32'
FROM CP-108

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION
ACQUISITION MAP

NEW YORK STATE THRUWAY
ERIE SECTION
SUBDIVISIONS E-8-C & E-8-D

MAP NO. 1132
PARCEL NO. 1134
SHEET 1 OF 2 SHEETS

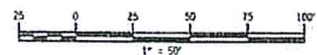
MAP REFERENCE INFORMATION:
Part of Town Lot 278, T.10, R.7
'Farmington Re-Subdivision' Filed
Aug. 25, 1919, Cover No. 1035

TOWN OF WEST SENECA
(REPUTED OWNER)

PARCEL SUMMARY:
Type: TEMPORARY EASEMENT
Portion of 2014 Tax
Map Ref. No. 134.53-4-23.1
Town of West Seneca
County of Erie
State of New York

Parcel Locator Points:
Parcel No: 1134
N: 1034986.4721
E: 1092266.1956

CCD L. 6227 P. 302
L. 1029 P. 326
L. 6103 P. 557
TRN 4

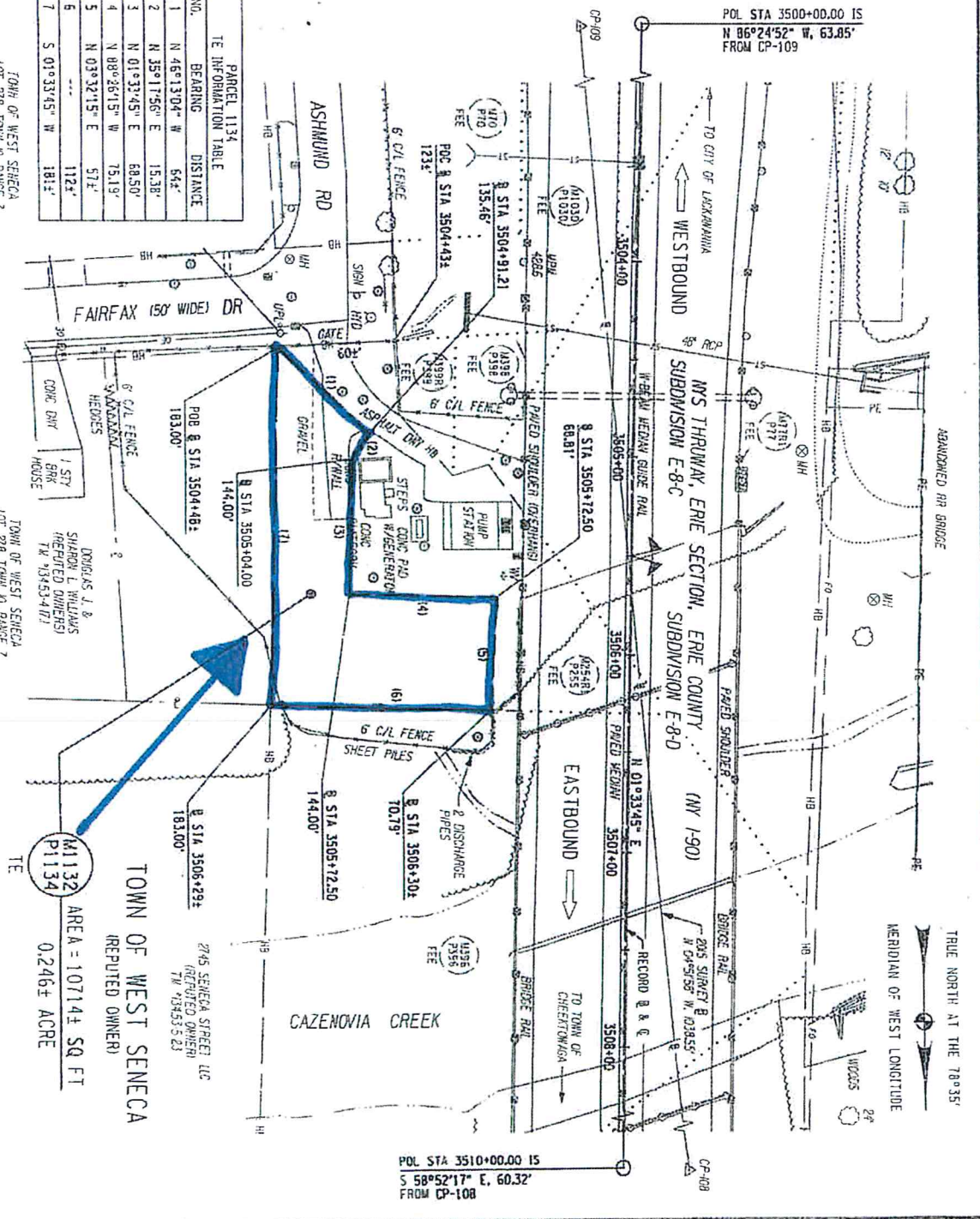


INDICATES PROPERTY OF THE
PEOPLE OF THE STATE OF NEW YORK

| NO. | BEARING | DISTANCE |
|-----|---------------|----------|
| 1 | N 46°13'04" W | 54.2' |
| 2 | N 35°17'56" E | 15.38' |
| 3 | N 01°31'45" E | 68.50' |
| 4 | N 88°26'15" W | 75.19' |
| 5 | N 03°32'15" E | 57.2' |
| 6 | --- | 112.4' |
| 7 | S 01°33'45" W | 181.2' |

TOWN OF WEST SENECA
LOT 278, TOWN N, RANGE 7

TOWN OF WEST SENECA
LOT 278, TOWN N, RANGE 7



TOWN OF WEST SENECA
(REPUTED OWNER)

M1132
P1134
AREA = 10714.4 SQ. FT.
0.246± ACRE

2745 SENECA STREET, LLC
(REPUTED OWNER)
TW #134534-23

POL STA 3510+00.00 IS
S 58°52'17" E, 60.32'
FROM CP-108

POL STA 3500+00.00 IS
N 86°24'52" W, 63.85'
FROM CP-109