

**CITY OF WATERTOWN, NEW YORK**  
**AGENDA**  
**Monday, November 7, 2022**  
**7:00 p.m.**

This shall serve as notice that the next regularly scheduled meeting of the City Council will be held on Monday, November 7, 2022, at 7:00 p.m. in the City Council Chambers, 245 Washington Street, Watertown, New York.

**MOMENT OF SILENCE**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**ADOPTION OF MINUTES**

**COMMUNICATIONS**

**PRIVILEGE OF THE FLOOR**

**RESOLUTIONS**

- |                    |   |
|--------------------|---|
| Resolution No. 1 - | Reappointment of Deputy City Constable, Robert D. Connell   |
| Resolution No. 2 - | Reappointment of City Constable, Patrick T. Connell   |
| Resolution No. 3 - | Reappointment to Board of Ethics, Stephen A. Jennings   |
| Resolution No. 4 - | Reappointment to Board of Ethics, Cary J. Parker  |
| Resolution No. 5 - | Reappointment to Board of Ethics, Yvonne F. Reff  |
| Resolution No. 6 - | Reappointment to Board of Assessment Review, Benjamin E Grass   |
| Resolution No. 7 - | Reappointment to the Roswell P. Flower Memorial Library Board of Trustees, Paul J. DiFabion   |
| Resolution No. 8 - | Approving the Federal Aid Local Project Agreement With NYSDOT for the Transportation Alternatives Program Funding for the Black River Trail Western Connection, |

PIN 780788 and Authorizing the Implementation, and Funding in the First Instance 100% of the Federal-Aid and State “Marchiselli” Program-aid Eligible Costs, of a Transportation Federal-Aid Project, and Appropriating Funds Therefore.

- Resolution No. 9 - Approving Federal and Marchiselli Supplemental Agreement #5 Contract No.D035666 Massey Street, Coffeen Street, & Court Street Bridge, PIN 775362.
- Resolution No. 10 - Approving Online Auction Contract, Auctions International, Inc.
- Resolution No. 11 - Approving the Design Proposal for the Flynn Pool and Bathhouse Rehabilitation, C&S Companies
- Resolution No. 12 - Approving the Community Development Block Grant (CDBG) Sub-recipient Grant Agreement with Neighbors of Watertown, Inc. for the 2022 Homebuyer Program
- Resolution No. 13 - Approving the Community Development Block Grant (CDBG) Sub-recipient Grant Agreement with Neighbors of Watertown, Inc. for the 2022 Owner-Occupied Rehabilitation Program
- Resolution No. 14 - Approving Termination of Reverter for a Portion of Tax Parcel No. 7-04-101 Conveyed to JCIDA for the YMCA Aquatics Center
- Resolution No. 15 - Approving the Employment Agreement Between the City of Watertown and Kenneth A. Mix for the Position of City Manager
- Resolution No. 16 - Accepting Bid for Storm Sewer Outfall Bypass – Renzi Project Cunningham Excavation, Inc.
- Resolution No. 17 - Approving The Proposal for Construction Administration and Inspection Services of Storm Sewer Outfalls City Center Industrial Park – Renzi Lots, Aubertine and Currier
- Resolution No. 18 - Authorizing Intent to Apply to the Restore NY Communities Initiative Grant Program – 146 Arsenal Street
- Resolution No.19 - Approving Intent to Purchase Watertown Golf Club, Inc. Real Estate and Equipment Assets

## **ORDINANCES**

## **LOCAL LAW**

## **PUBLIC HEARING**

## **OLD BUSINESS**

## **STAFF REPORTS**

1. Sale of Surplus Hydro-electricity – September 2022 Facility
2. Sales Tax Revenue – September 2022

## **NEW BUSINESS**

## **EXECUTIVE SESSION**

1. To discuss Collective Bargaining

## **WORK SESSION**

Next Work Session is scheduled for Monday, November 14, 2022, at 7:00 p.m.

## **ADJOURNMENT**

**NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING IS MONDAY,  
NOVEMBER 21, 2022**

Res Nos. 1 and 2

September 30, 2022

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Reappointment of City Constable and Deputy City Constable

At the request of the City Council, the City Constable, Patrick T. Connell, and Deputy City Constable, Robert D. Connell, have been contacted and both have agreed to serve another one-year term, such term expiring on December 31, 2023.

Resolutions are attached for City Council consideration.



# RESOLUTION

Page 1 of 1

Reappointment of Deputy City Constable,  
Robert D. Connell

Council Member Hickey, Patrick J.

Council Member Olney, Clifford G. III

Council Member PIERCE, Sarah V.C

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

*Introduced by* \_\_\_\_\_

BE IT RESOLVED that the following individual is hereby reappointed as Deputy City Constable for the City of Watertown for a one-year term expiring on December 31, 2023:

Robert D. Connell  
115 Fairmont Avenue  
Watertown, New York 13601

*Seconded by* \_\_\_\_\_

**RESOLUTION**

Page 1 of 1

Reappointment of City Constable,  
Patrick T. Connell

Council Member Hickey, Patrick J.

Council Member Olney, Clifford G. III

Council Member PIERCE, Sarah V.C

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by*** \_\_\_\_\_

BE IT RESOLVED that the following individual is hereby reappointed as City Constable for the City of Watertown for a one-year term expiring on December 31, 2023:

Patrick T. Connell  
173 Bowers Avenue  
Watertown, New York 13601

***Seconded by*** \_\_\_\_\_

Res Nos. 3, 4, and 5

October 19, 2022

To: The Honorable Mayor and City Council  
From: Kenneth A. Mix, City Manager  
Subject: Reappointments to the Board of Ethics

At the request of the City Council, the following members of the Board of Ethics were contacted and have agreed to serve another one-year term, such term expiring on December 31, 2023:

Stephen A. Jennings  
219 Green Street  
Watertown, NY 13601

Cary J. Parker  
212 North Orchard Street  
Watertown, New York 13601

Yvonne F. Reff  
621 Frontenac Street  
Watertown, NY 13601

Resolutions are attached for City Council consideration.

## RESOLUTION

Page 1 of 1

Reappointment to Board of Ethics,  
Stephen A Jennings

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by*** \_\_\_\_\_

BE IT RESOLVED that the following individual is hereby reappointed to the Board of Ethics for a one-year term expiring on December 31, 2023:

Stephen A. Jennings  
219 Green Street  
Watertown, NY 13601

***Seconded by*** \_\_\_\_\_

## RESOLUTION

Page 1 of 1

Reappointment to Board of Ethics,  
Cary J. Parker

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

*Introduced by* \_\_\_\_\_

BE IT RESOLVED that the following individual is hereby reappointed to the Board of Ethics for a one-year term expiring on December 31, 2023:

Cary J. Parker  
212 North Orchard Street  
Watertown, New York 13601

*Seconded by* \_\_\_\_\_

## RESOLUTION

Page 1 of 1

Reappointment to Board of Ethics,  
Yvonne F. Reff

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

*Introduced by* \_\_\_\_\_

BE IT RESOLVED that the following individual is hereby reappointed to the Board of Ethics for a one-year term expiring on December 31, 2023:

Yvonne F. Reff  
621 Frontenac Street  
Watertown, New York 13601

*Seconded by* \_\_\_\_\_

Res Nos. 6

October 19, 2022

To: The Honorable Mayor and City Council  
From: Kenneth A Mix, City Manager  
Subject: Reappointment to the Board of Assessment Review

At the request of the City Council, the following member of the Board of Assessment Review was contacted and has agreed to serve another five-year term, such term expiring on September 30, 2027:

Benjamin E Grass  
168 Ward Street  
Watertown, NY 13601

The attached resolution has been prepared for City Council consideration for the reappointment.

## RESOLUTION

Page 1 of 1

Reappointment to Board of Assessment  
Review, Benjamin E Grass

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by*** \_\_\_\_\_

BE IT RESOLVED that the following individual is hereby reappointed to the Board of Assessment Review for a five-year term expiring on September 30, 2027:

Benjamin E. Grass  
168 Ward Street  
Watertown, New York 13601

***Seconded by*** \_\_\_\_\_



Res No. 7

October 19, 2022

To: Members of City Council

From: Jeffrey M. Smith, Mayor

Subject: Reappointment to the Roswell P. Flower Memorial Library Board,  
Paul J. DiFabion

Paul J. DiFabion's term expires on December 31, 2022, and he has now graciously agreed to serve another eleven-year term, such term expiring on December 31, 2033. Mr. DiFabion has been an excellent addition to the Roswell P. Flower Memorial Library Board.

A Resolution is attached for City Council consideration.

# RESOLUTION

Page 1 of 1

Reappointment to the Roswell P. Flower Memorial  
Library Board of Trustees, Paul J. DiFabion

Council Member HICKEY, Patrick, J.

Council Member OLNEY III, Clifford G..

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

*Introduced by* \_\_\_\_\_

BE IT RESOLVED that the City Council of the City of Watertown, New York,  
hereby appoints to the Roswell P. Flower Memorial Library Board of Trustees, to an 11-year  
term, which term expires December 31, 2033:

Paul J. DiFabion  
328 Bugbee Drive  
Watertown, NY 13601

*Seconded by* \_\_\_\_\_

October 31, 2022

To: The Honorable Mayor and City Council

From: Michael A. Lumbis, Planning and Community Development Director

Subject: Approving the Federal Aid Local Project Agreement with NYSDOT for the Transportation Alternatives Program funding for the Black River Trail Western Connection, PIN 780788 and Authorizing the Implementation, and Funding in the First Instance 100% of the Federal-Aid and State “Marchiselli” Program-aid Eligible Costs, of a Transportation Federal-Aid Project, and Appropriating Funds Therefore

In September 2021, the City of Watertown submitted an application to the New York State Department of Transportation (NYSDOT) for Transportation Alternatives Program funding to extend the Black River Trail further into the City of Watertown, providing a connection between Marble Street Park and Sewall’s Island and Factory Square Park. The project was awarded \$1,663,764 in funding in late June 2022.

Under the Transportation Alternatives Program, the New York State Department of Transportation (NYSDOT) provides up to 80 percent of the total project cost, with the local government providing a minimum 20 percent match. The local match is \$415,941 and was originally proposed to be paid for using Community Development Block Grant (CDBG) funds. However, due to the timing of when the CDBG funds will be available, the local match for this phase of the project, which totals \$40,000, will be funded by the Black River Trust Fund. The total project cost is \$2,079,705.

The City received notification from NYSDOT that the project is ready to begin the Preliminary Engineering & ROW Incidentals phases of work and that a Federal Aid Project Agreement must be initiated in order to start the project. The City must obligate 100% of the Federal (80%) and Local share (20%) for this phase within the agreement.

The attached resolution approves the Federal Aid Local Project Agreement which provides funding for the Preliminary Engineering and Right-of-Way (ROW) Incidentals phase of the work in the amount of \$200,000. The Federal share of the total is \$160,000, and the Local share is \$40,000. This project was included in the Fiscal Year 2022-2023 Capital Budget.

**RESOLUTION**

Page 1 of 2

Approving the Federal Aid Local Project Agreement With NYSDOT for the Transportation Alternatives Program Funding for the Black River Trail Western Connection, PIN 780788 and Authorizing the Implementation, and Funding in the First Instance 100% of the Federal-Aid and State "Marchiselli" Program-aid Eligible Costs, of a Transportation Federal-Aid Project, and Appropriating Funds Therefore.

Council Member HICKEY, Patrick J.  
 Council Member OLNEY III, Clifford G.  
 Council Member PIERCE, Sarah V.C.  
 Council Member RUGGIERO, Lisa A.  
 Mayor SMITH, Jeffrey M.  
 Total .....

YEA	NAY

***Introduced by***


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WHEREAS a project for the Black River Trail Western Connection, P.I.N. 780788 (the Project) is eligible for funding under Title 23 U.S. Code, as amended, calls for the apportionment of the costs of such project to be borne at the ratio of 80% Federal funds and 20% non-federal funds, and

WHEREAS the City of Watertown desires to advance the Project by making a commitment of 100% of the non-federal share of the costs of the Preliminary Engineering and Right-of-Way Incidentals, and

NOW THEREFORE BE IT RESOLVED the City Council of the City of Watertown, duly convened hereby approves the above-subject project, and

BE IT FURTHER RESOLVED that the City Council of the City of Watertown hereby authorizes the City Comptroller to pay in the first instance 100% of the federal and non-federal share of the cost of the Preliminary Engineering and Right of Way Incidentals work for the Project or portions thereof, and

BE IT FURTHER RESOLVED that the sum of \$200,000 is hereby appropriated including \$40,000 from the Black River Trust Fund and made available to cover the cost of participation in the above phase of the Project, and

BE IT FURTHER RESOLVED that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the City of Watertown City Council shall convene as soon as possible to appropriate said excess amount immediately upon notification by the City Manager thereof, and

**RESOLUTION**

Page 2 of 2

Approving the Federal Aid Local Project Agreement With NYSDOT for the Transportation Alternatives Program Funding for the Black River Trail Western Connection, PIN 780788 and Authorizing the Implementation, and Funding in the First Instance 100% of the Federal-Aid and State "Marchiselli" Program-aid Eligible Costs, of a Transportation Federal-Aid Project, and Appropriating Funds Therefore.

Council Member HICKEY, Patrick J.  
 Council Member OLNEY III, Clifford G.  
 Council Member PIERCE, Sarah V.C.  
 Council Member RUGGIERO, Lisa A.  
 Mayor SMITH, Jeffrey M.  
 Total .....

YEA	NAY


BE IT FURTHER RESOLVED that the City Manager of the City of Watertown, Kenneth A. Mix, is hereby authorized and directed to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid and/or Marchiselli Aid on behalf of the City of Watertown with the New York State Department of Transportation in connection with the advancement or approval of the project and providing for the administration of the project and the municipality's first instance funding of project costs and permanent funding of the local share of federal aid eligible and state aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible, and

BE IT FURTHER RESOLVED that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project, and

BE IT FURTHER RESOLVED that this resolution shall take effect immediately.

***Seconded by:***

**FISCAL YEAR 2022-2023  
CAPITAL BUDGET  
FACILITY IMPROVEMENTS  
RIVER PARKS DEVELOPMENT**

PROJECT DESCRIPTION	COST
<p><b>Black River Trail Western Extension</b></p> <p>The western extension of the Black River Trail will include the construction of sidewalks and multi-use trails connecting the existing Black River Trail from the intersection of New York State Route 3 and Huntington Street to Factory Square Park at the edge of downtown Watertown. The project will extend the Black River Trail west by approximately 1.6 miles to the north side of the City through Marble Street Park, parallel to Water Street and across Sewall's Island. The project will increase connectivity within the City's trail system, providing off-road access to and from downtown Watertown via the region's signature trail.</p>  <p>Funding to support this project will include a \$1,663,764 in grant funding from the Transportation Alternatives Program and \$415,941 in Community Development Block Grant funding.</p>	<p><b>\$2,079,705</b></p>
<b>TOTAL</b>	<b>\$2,079,705</b>

## Federal Aid Local Project Agreement

COMPTROLLER'S CONTRACT NO D040688

This Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State");

and

the City of Watertown (the "Municipality/Sponsor")  
acting by and through the City Council  
with its office at the Municipal Building, 245 Washington Street, Watertown, NY 13601.

This Agreement covers eligible costs incurred on or after 1 / 1.

This Agreement identifies the party responsible for administration and establishes the method or provision for funding of applicable phases of a Federal aid project for the improvement of a street or highway, not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement or one or more Supplemental Schedule(s) A to this Agreement as duly executed and approved by the parties hereto. The phases that are potentially the subject of this Agreement, as further enumerated below, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; Construction; and/or Construction Supervision and Inspection. The Federal aid project shall be identified for the purposes of this Agreement as Black River Trail, Western Connection, City of Watertown, TAP Project (as more specifically described in such Schedule A, the "Project").

### WITNESSETH:

WHEREAS, the United States has provided for the apportionment of Federal aid funds to the State for the purpose of carrying out Federal aid highway projects pursuant to the appropriate sections of Title 23 U.S. Code as administered by the Federal Highway Administration ("FHWA"); and

WHEREAS, the New York State Highway Law authorizes the Commissioner of Transportation (hereinafter referred to as "Commissioner") to use Federal aid available under the Federal aid highway acts and provides for the consent to and approval by the Municipality/Sponsor of any project under the Federal aid highway program which is not on the State highway system before such Project is commenced; and

WHEREAS, pursuant to Highway Law §10(34-a) and section 15 of Chapter 329 of the Laws of 1991 as amended by section 9 of Chapter 330 of the Laws of 1991, as further amended by Chapter 57 of the Laws of New York of 2014, the State has established the "Marchiselli" Program, which provides certain State-aid for Federal aid highway projects not on the State highway system; and

WHEREAS, funding of the "State share" of projects under the Marchiselli Program is administered through the New York State Office of the Comptroller ("State Comptroller"); and

WHEREAS, Highway Law §80-b authorizes the funding of eligible costs of Federal aid Municipal/Sponsor streets and highway projects using State-aid and Federal aid; and

WHEREAS, project eligibility for Marchiselli Program funds is determined by NYSDOT; and

WHEREAS, pursuant to authorizations therefore, NYSDOT and the Municipality/Sponsor are desirous of progressing the Project under the Federal aid and, if applicable, Marchiselli-aid Programs; and

WHEREAS, The Legislative Body of the Municipality/Sponsor by Resolution No. \_\_\_\_\_ adopted at meeting held on \_\_\_\_\_ approved the Project, the Municipality/Sponsor's entry into this Agreement, has appropriated necessary funds in connection with any applicable Municipal/Sponsor Deposit identified in applicable Schedules A and has further authorized the \_\_\_\_\_ of the Municipality/Sponsor to execute this Agreement and the applicable Schedule A on behalf of the Municipality/Sponsor and a copy of such Resolution is attached to and made a part of this Agreement (where New York City is the Municipality/Sponsor, such resolution is not required).

NOW, THEREFORE, the parties agree as follows:

1. *Documents Forming this Agreement.* The Agreement consists of the following:

- Agreement Form - this document titled "Federal aid Local Project Agreement";
- Schedule "A" - Description of Project Phase, Funding and Deposit Requirements;
- Schedule "B" - Phases, Subphase/Tasks, and Allocation of Responsibility
- Appendix "A" - New York State Required Contract Provisions
- Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act)
- Appendix "B" - U.S. Government Required Clauses (Only required for agreements with federal funding)
- Municipal/Sponsor Resolution(s) - duly adopted Municipal/Sponsor resolution authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating the funding required therefore. (Where New York City is the Municipality/Sponsor, such resolution is not required).

**\*Note – Resolutions for Bridge NY projects must also include an express commitment by the Municipality/Sponsor that construction shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction.**

2. *General Description of Work and Responsibility for Administration and Performance.* Subject to the allocations of responsibility for administration and performance thereof as shown in Schedule B (attached), the work of the Project may consist generally of the categories of work marked and described in Schedule B for the scope and phase in effect according to Schedule A or one or more Supplemental Schedule(s) A as may hereafter be executed and approved by the parties hereto as required for a State contract, and any additions or deletions made thereto by NYSDOT subsequent to the development of such Schedule(s) A for the purposes of conforming to New York State or to Federal Highway Administration requirements.

The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the "Local Projects Manual (LPM)" (available through NYSDOT's web site at <https://www.dot.ny.gov/plafap>, and as such may be amended from time to time.



3. *Municipal/Sponsor Deposit.* Where the work is performed by consultant or construction contract entered into with NYSDOT, or by NYSDOT forces, and unless the total non-Federal share of the Project phase is under \$5,000, the Municipality/Sponsor shall deposit with the State Comptroller, prior to the award of NYSDOT's contract or NYSDOT's performance of work by its own forces, the full amount of the non-Federal share of the Project costs due in accordance with Schedule A.

4. *Payment or Reimbursement of Costs.* For work performed by NYSDOT, NYSDOT will directly apply Federal aid and the required Municipality/Sponsor Deposit for the non-Federally aided portion, and, if applicable, shall request State Comptroller funding of Marchiselli aid to the Municipality/Sponsor as described below. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse the Municipality/Sponsor with Federal aid and, if applicable, Marchiselli aid as described below. NYSDOT will periodically make reimbursements upon request and certification by the Sponsor. The frequency of reimbursement requests must be in conformance with that stipulated in the NYSDOT Standard Specifications; Construction and Materials (section 109-06, Contract Payments). NYSDOT recommends that reimbursement requests not be submitted more frequently than monthly for a typical project. In all cases, reimbursement requests must be submitted at least once every six months.

4.1 *Federal aid.* NYSDOT will administer Federal funds for the benefit of the Municipality/Sponsor for the Federal share and will fund the applicable percentage designated in Schedule A of Federal aid participating costs incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. For work performed by or through the Municipality/Sponsor, NYSDOT will reimburse Federal aid-eligible expenditures in accordance with NYSDOT policy and procedures.

4.1.1 *Participating Items.* NYSDOT shall apply Federal funds only for that work and those items that are eligible for Federal participation under Title 23 of U.S. Code, as amended, that requires Federal aid eligible projects to be located on the Federal Aid Highway System ("FAHS"), except for bridge and safety projects which can be located off the FAHS. Included among the Federal participating items are the actual cost of employee personal services, and leave and fringe benefit additives. Other participating costs include materials and supplies, equipment use charges or other Federal Participating costs directly identifiable with the eligible project.

4.2 *Marchiselli Aid (if applicable).* NYSDOT will request State Comptroller reimbursement to the Municipality of the upset amount and designated percentage in Schedule A of the non-overmatched non-Federal share of Federal participating cost, (the "State share"), incurred in connection with the work covered by this Agreement, subject to the limitations set forth on Schedule A. Not all Federal aid-eligible participating costs are eligible for Marchiselli aid. Only "Eligible Project Costs" (as defined in Marchiselli Program instructions issued by NYSDOT) incurred after April 1, 1991 are reimbursable.

4.2.1 *Marchiselli Eligible Project Costs.* To be eligible for Marchiselli Aid, Project costs must: (a) be eligible for Federal participation as described under 4.1 above; (b) be for work which, when completed, has a certifiable service life of at least 10 years; (c) be for work that relates directly and exclusively to a municipally-owned highway, bridge or highway-railroad crossing located off the State Highway System; and (d) be submitted for reimbursement in accordance with 4.2.2.

4.2.2 *Marchiselli Reimbursement Requests.* A Sponsor's reimbursement requests are restricted to eligible project costs. To be classified as an "eligible project cost", in addition to other requirements of this agreement, the original expenditure must have been paid within the past 15 months in order to comply with Federal Tax Law (26 CFR 1.150-2 (d)(2)(i)) which governs fund disbursements from the issuance of tax-exempt bonds. Hence, expenditures paid greater than 15 months prior to the reimbursement request are ineligible for reimbursement.

4.2.3 *Marchiselli Extended Records Retention Requirements.*

4.2.3.1 To ensure that NYSDOT meets certain requirements under the Code of Federal Regulations, Part 26, and to ensure that NYSDOT may authorize the use of funds for this project, notwithstanding any other provision of this Contract to the contrary, the Sponsor must retain the following documents in connection with the Projects:

- a) Documents evidencing the specific assets financed with such proceeds, including but not limited to project costs, and documents evidencing the use and ownership of the property financed with proceeds of the bonds; and
- b) Documents, if any, evidencing the sale or other disposition of the financed property.

4.2.3.2 The Sponsor covenants to retain those records described above, which are used by the Sponsor in connection with the administration of this Program, for thirty-six (36) years after the date of NYSDOT's final payment of the eligible project cost(s).

4.2.3.3 Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the Sponsor's repayment of funds distributed, to the Sponsor under this agreement.

4.3 In no event shall the State be obligated to fund or reimburse any costs exceeding:

- (a) the amount stated in Schedule A for the Federal Share; or
- (b) the amount stated in Schedule A as the State (Marchiselli) share.

4.4 All items included by the Municipality/Sponsor in the record of costs shall be in conformity with accounting procedures acceptable to NYSDOT and the FHWA. Such items shall be subject to audit by the State, the federal government or their representatives.

4.5 If Project-related work is performed by NYSDOT, NYSDOT will be paid for the full costs thereof. To affect such payment, the reimbursement to the Municipality/Sponsor provided for in sections 4.1 and 4.2 above may be reduced by NYSDOT by the amounts thereof in excess of the Municipality/Sponsor Deposit available for such payment to NYSDOT.

5. *Supplemental Agreements and Supplemental Schedule(s)* A. Supplemental Agreements or Supplemental Schedule(s) A may be entered into by the parties and must be executed and approved in the manner required for a State contract. A Supplemental Schedule A is defined as a Supplemental Agreement which revises only the Schedule A of a prior Agreement or Supplemental Agreement. In the event Project cost estimates increase over the amounts provided for in Schedule A, no additional reimbursement shall be due to the Municipality/Sponsor unless the parties enter into a Supplemental Agreement or Supplemental Schedule A for reimbursement of additional Eligible Project Costs.

6. *State Recovery of Ineligible Reimbursements.* NYSDOT shall be entitled to recover from the Municipality/Sponsor any monies paid to the Municipality/Sponsor pursuant to this Agreement which are subsequently determined to be ineligible for Federal aid or Marchiselli Aid hereunder.

7. *Loss of Federal Participation.* In the event the Municipality/Sponsor withdraws its approval of the project, suspends or delays work on the Project or takes other action that results in the loss of Federal participation for the costs incurred pursuant to this Agreement, the Municipality/Sponsor shall refund to the State all reimbursements received from the State, and shall reimburse the State for 100% of all preliminary engineering and right-of-way incidental costs incurred by NYSDOT. The State may offset any other State or Federal aid due to the Municipality/Sponsor by such amount and apply such offset to satisfy such refund.

8. *Municipal/Sponsor Liability.*

8.1 If the Municipality/Sponsor performs work under this Agreement with its own forces, it shall be responsible for all damage to person or property arising from any act or negligence performed by or on behalf of the Municipality/Sponsor, its officers, agents, servants or employees, contractors, subcontractors or others in connection therewith. The Municipality/Sponsor specifically agrees that its agents or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

8.2 The Municipality/Sponsor shall indemnify and save harmless the State for all damages and costs arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement. Negligent performance of service, within the meaning of this section, shall include, in addition to negligence founded upon tort, negligence based upon the Municipality/Sponsor's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work. Additionally, the Municipality/Sponsor shall defend the State in any action arising out of any claims, suits, actions, or proceedings resulting from the negligent performance of work by or on behalf of the Municipality/Sponsor, its officers, agents, servants, employees, contractors, subcontractors or others under this Agreement.

8.3 The Municipality/Sponsor shall at all times during the Contract term remain responsible. The Municipality/Sponsor agrees, if requested by the Commissioner of Transportation or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

8.4 The Commissioner of Transportation or his or her designee, in his or her sole discretion,

reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Municipality/Sponsor. In the event of such suspension, the Municipality/Sponsor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Municipality/Sponsor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of Transportation or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

8.5 Upon written notice to the Municipality/Sponsor, and a reasonable opportunity to be heard with appropriate Department of Transportation officials or staff, the Contract may be terminated by the Commissioner of Transportation or his or her designee at the Municipality's/Sponsor's expense where the Municipality/Sponsor is determined by the Commissioner of Transportation or his or her designee to be non-responsible. In such event, the Commissioner of Transportation or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

9. *Maintenance.* The Municipality/Sponsor shall be responsible for the maintenance of the project at the sole cost and expense of the Municipality/Sponsor. If the Municipality/Sponsor intends to have the project maintained by another, any necessary maintenance agreement will be executed and submitted to NYSDOT before construction of the Project is begun. Upon its completion, the Municipality/Sponsor will operate and maintain the Project at no expense to NYSDOT; and during the useful life of the Project, the Municipality/Sponsor shall not discontinue operation and maintenance of the Project, nor dispose of the Project, unless it receives prior written approval to do so from NYSDOT.

9.1 The Municipality/Sponsor may request such approved disposition from NYSDOT where the Municipality/Sponsor either causes the purchaser or transferee to assume the Municipality/Sponsor's continuing obligations under this Agreement, or agrees immediately to reimburse NYSDOT for the pro-rata share of the funds received for the project, plus any direct costs incurred by NYSDOT, over the remaining useful life of the Project.

9.2 If a Municipality/Sponsor fails to obtain prior written approval from NYSDOT before discontinuing operation and maintenance of the Project or before disposing of the project, in addition to the costs provided, above in 9.1, Municipality/Sponsor shall be liable for liquidated damages for indirect costs incurred by NYSDOT in the amount of 5% of the total Federal and non-Federal funding provided through NYSDOT.

9.3 For NYSDOT-administered projects, NYSDOT is responsible for maintenance only during the NYSDOT administered construction phase. Upon completion of the construction phase, the Municipality/Sponsor's maintenance obligations start or resume.

10. *Independent Contractor.* The officers and employees of the Municipality/Sponsor, in accordance with the status of the Municipality/Sponsor as an independent contractor, covenant and agree that they will conduct themselves consistent with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the State by reason hereof, and that they will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including, but not limited to, Workers Compensation coverage, Unemployment Insurance benefits, Social Security or Retirement membership or credit.

11. *Contract Executory; Required Federal Authorization.* It is understood by and between the parties hereto that this Agreement shall be deemed executory only to the extent of the monies available to the State and no liability on account thereof shall be incurred by the State beyond monies available for the purposes hereof. No phase of work for the project shall be commenced unless and until NYSDOT receives authorization from the Federal government.

12. *Assignment or Other Disposition of Agreement.* The Municipality/Sponsor agrees not to assign, transfer, convey, sublet or otherwise dispose of this Agreement or any part thereof, or of its right, title or interest therein, or its power to execute such Agreement to any person, company or corporation without previous consent in writing of the Commissioner.

13. *Term of Agreement.* As to the Project and phase(s) described in the Schedule A executed herewith, the term of this Agreement shall begin on the date of this Agreement as first above written. This Agreement shall remain in effect so long as Federal aid and Marchiselli-aid funding authorizations are in effect and funds are made available pursuant to the laws controlling such authorizations and availabilities. However, if such authorizations or availabilities lapse and are not renewed, continued or reenacted, as to funds encumbered or available and to the extent of such encumbrances or availabilities, this Agreement shall remain in effect for the duration of such encumbrances or availabilities. Although the liquidity of encumbrances or the availability of funds may be affected by budgetary hiatuses, a Federal or State budgetary hiatus will not by itself be construed to cause a lapse in this Agreement provided any necessary Federal or State appropriations or other funding authorizations therefore are eventually enacted.

**13.1 *Time is of the essence (Bridge NY Projects).* The Municipality/Sponsor understands and agrees that construction of Bridge NY Projects shall commence no later than twenty-four (24) months after award, and the project must be completed within thirty (30) months of commencing construction.**

14. *NYSDOT Obligations.* NYSDOT's responsibilities and obligations are as specifically set forth in this contract, and neither NYSDOT nor any of its officers or employees shall be responsible or liable, nor shall the Municipality/Sponsor assert, make or join in any claim or demand against NYSDOT, its officers or employees, for any damages or other relief based on any alleged failure of NYSDOT, its officers or employees, to undertake or perform any act, or for undertaking or performing any act, which is not specifically required or prohibited by this Agreement.

15. *Offset Rights.* In addition to any and all set-off rights provided to the State in the attached and incorporated Appendix A, Standard Clauses for New York Contracts, NYSDOT shall be entitled to recover and offset from the Municipality/Sponsor any ineligible reimbursements and any direct or indirect costs to the State as to paragraph 6 above, as well as any direct or indirect costs incurred by the State for any breach of the term of this agreement, including, but not limited to, the useful life requirements in paragraph 9 above. At its sole discretion NYSDOT shall have the option to permanently withhold and offset such direct and indirect cost against any monies due to the Municipality/Sponsor from the State of New York for any other reason, from any other source, including but not limited to, any other Federal or State Local Project Funding, and/or any Consolidated Highway and Local Street Improvement Program (CHIPS) funds

16. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and the Local Projects Manual and in accordance with current Federal and State laws, rules, and regulations.

17. *Notice Requirements.*

- 17.1 All notices permitted or required hereunder shall be in writing and shall be transmitted:
- (a) Via certified or registered United States mail, return receipt requested;
  - (b) By facsimile transmission;
  - (c) By personal delivery;
  - (d) By expedited delivery service; or
  - (e) By e-mail.

Such notices shall be address as follows or to such different addresses as the parties may from time-to-time designate:

**New York State Department of Transportation (NYSDOT)**

Name: Timothy A. Valentine, Regional PPM Office

Title: Local Project Liaison

Address: 317 Washington Street, Region 7 Planning Office, Watertown, NY 13601

Telephone Number: (315)785-2474

Facsimile Number: (315)785-2315

E-Mail Address: tim.valentine@dot.ny.gov

**[Municipality/Sponsor] City of Watertown**

Name: Michael A. Lumbis

Title: Planning & Community Development Director

Address: 245 Washington Street, Room 304, Watertown, New York 13601

Telephone Number: 315-785-7741

Facsimile Number: 315-785-7734

E-Mail Address: mlumbis@watertown-ny.gov

- 17.2 Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States Mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

18. *Electronic Contract Payments.* Municipality/Sponsor shall provide complete and accurate supporting documentation of eligible local expenditures as required by this Agreement, NYSDOT and the State Comptroller. Following NYSDOT approval of such supporting documentation, payment for invoices submitted by the Municipality/Sponsor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The contracting local Municipality/Sponsor shall comply with the State Comptroller's procedures for all Federal and applicable State Aid to authorize electronic payments.

Authorization forms are available on the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm) or by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us). When applicable to State Marchiselli and other State reimbursement by the State Comptroller, registration forms and instructions can be found at the NYSDOT Electronic Payment Guidelines website.

The Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this agreement if it does not comply with the applicable State Comptroller and/or NYS State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

19. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the following:

19.1 Title 49 of the Code of Federal Regulations Part 26 (49 CFR 26), Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Title 23 Code of Federal Regulations Part 230 (23 CFR 230), External Programs; and, Title 41 of the Code of Federal Regulations Part 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, including the requirements thereunder related to utilization goals for contracting opportunities for disadvantaged business enterprises (DBEs) and equal employment opportunity.

19.1.1 If the Municipality/Sponsor fails to monitor and administer contracts funded in whole or in part in accordance with Federal requirements, the Municipality/Sponsor will not be reimbursed for ineligible activities within the affected contracts. The Municipality/Sponsor must ensure that the prime contractor has a Disadvantaged Business Enterprise (DBE) Utilization Plan and complies with such plan. If, without prior written approval by NYSDOT, the Municipality/Sponsor's contractors and subcontractors fail to complete work for the project as proposed in the DBE Schedule of Utilization, NYSDOT at its discretion may (1) cancel, terminate or suspend this agreement or such portion of this agreement or (2) assess liquidated damages in an amount of up to 20% of the pro rata share of the Municipality/Sponsor's contracts and subcontracts funded in whole or in part by this agreement for which contract goals have been established.

19.2 New York State Environmental Law, Article 6, the State Smart Growth Public Infrastructure Policy Act, including providing true, timely and accurate information relating to the project to ensure compliance with the Act.

19.3 28 CFR 35.105, which requires a Municipality/Sponsor employing 50 or more persons to prepare a Transition Plan addressing compliance with the Americans with Disabilities Act (ADA).

20. *Compliance with Procedural Requirements.* The Municipality/Sponsor understands that funding is contingent upon the Municipality/Sponsor's compliance with the applicable requirements of the Local Projects Manual (LPM), which, as such, may be amended from time to time. Locally administered Federal aid transportation projects must be constructed in accordance with the current version of NYSDOT Standard Specifications; Construction and Materials, including any and all modifications to the Standard Specifications issued by the Engineering Information Issuance System, and NYSDOT-approved Special Specifications for general use. (Cities with a population of 3 million or more may pursue approval of their own construction specifications and procedures on a project by project basis).

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

MUNICIPALITY/SPONSOR:

MUNICIPALITY/SPONSOR ATTORNEY:

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK            )  
  )ss.:

COUNTY OF *Jefferson*  
D040688 Master Agreement    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the \_\_\_\_\_ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on \_\_\_\_\_ and which a certified copy is attached and made a part hereof; and that he/she signed his name thereto by like order.

\_\_\_\_\_  
Notary Public

**APPROVED FOR NYSDOT:**

By: \_\_\_\_\_  
For Commissioner of Transportation

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Date: \_\_\_\_\_

**APPROVED AS TO FORM:  
STATE OF NEW YORK ATTORNEY GENERAL**

By: \_\_\_\_\_  
Assistant Attorney General

**COMPTROLLER'S APPROVAL:**

By: \_\_\_\_\_  
For the New York State Comptroller  
Pursuant to State Finance Law §112



# SCHEDULE A

<b>A. Summary of <u>allocated</u> MARCHISELLI Program Costs FOR ALL PHASES</b> <i>For each PIN Fiscal Share below, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.</i>							
PIN Fiscal Share	"Current" or "Old" entry indicator	Federal Funding	Total Costs	FEDERAL Participating Share	STATE MARCHISELLI Match	LOCAL Matching Share	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL CURRENT COSTS:</b>			\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

## NYSDOT/State-Local Agreement – Schedule A

**B. Summary of Other (including Non-allocated MARCHISELLI) Participating Costs FOR ALL PHASES** For each PIN Fiscal Share, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
7807.88.121	Current	TAP	\$198,000.00	\$158,400.00	\$0.00	\$39,600.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
7807.88.221	Current	TAP	\$2,000.00	\$1,600.00	\$0.00	\$400.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
.	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL CURRENT COSTS:</b>			\$200,000.00	\$160,000.00	\$ 0.00	\$40,000.00

<b>C. Local Deposit(s) from Section A:</b>	\$ 0.00
<b>Additional Local Deposit(s)</b>	\$
<b>Total Local Deposit(s)</b>	\$ 0.00

**D. Total Project Costs** All totals will calculate automatically.

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total OTHER STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$160,000.00	\$ 0.00	\$ 0.00	\$40,000.00	\$200,000.00

**E. Point of Contact for Questions Regarding this Schedule A (Must be completed)**

Name: Timothy A. Valentine  
Phone No: 315-785-2474

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

**NYSDOT/State-Local Agreement – Schedule A**

**Footnotes:** (See LPB's website for link to sample footnotes)

- PIN 780788 Master Agreement - Black River Trail, Western Connection - Design Phases I-IV
- The Federal Aid shown above is a capped amount. Project cost overruns must be absorbed by the Sponsor/Municipality.
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# SCHEDULE B

## SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

**Instructions:** Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

### A1. Preliminary Engineering ("PE") Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Smart Growth Attestation (NYSDOT ONLY).	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Conduct any required soils and other geological investigations.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Prepare and execute any required agreements, including: <ul style="list-style-type: none"> <li>- Railroad force account</li> <li>- Maintenance agreements for sidewalks, lighting, signals, betterments</li> <li>- Betterment Agreements</li> <li>- Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities</li> </ul>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## **A2. Right-of-Way (ROW) Incidentals**

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. Prepare ARM or other mapping, showing preliminary taking lines.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. ROW mapping and any necessary ROW relocation plans.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Secure Appraisals.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Perform Appraisal Review and establish an amount representing just compensation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. <b>If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## **B. Right-of-Way (ROW) Acquisition**

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. <b>If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.	<input type="checkbox"/>	<input checked="" type="checkbox"/>



## C. Construction, Construction Support (C/S) and Construction Inspection (C/I)

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. Advertise contract lettings and distribute contract documents to prospective bidders.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Compile and submit Contract Award Documentation Package.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review/approve any proposed subcontractors, vendors, or suppliers.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and insure that the proper materials, equipment, human resources, methods and procedures are used.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	<input type="checkbox"/>	<input type="checkbox"/>
7c. For projects that fall under both 7a and 7b above, check boxes for each.		
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Phase/Sub-phase/Task**

**Responsibility: NYSDOT Sponsor**

- |  |                                       |                                     |
|--|---------------------------------------|-------------------------------------|
| 10. Review and approve all shop drawings, fabrication details, and other details of structural work.   | <input type="checkbox"/>              | <input checked="" type="checkbox"/> |
| 11. Administer all construction contract claims, disputes or litigation.   | <input type="checkbox"/>              | <input checked="" type="checkbox"/> |
| 12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.   | <input checked="" type="checkbox"/> * | <input checked="" type="checkbox"/> |
| 13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. | <input type="checkbox"/>              | <input checked="" type="checkbox"/> |

\*- Municipality has the lead responsibility

# APPENDIX A

## **APPENDIX A**

# **STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the

Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the

agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

\$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The

contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by



any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992 (APPLICABLE ONLY IN NON-FEDERAL AID NEW YORK STATE CONTRACTS).** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions,

seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

# APPENDIX A-1

**APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)**  
(To be included in all contracts)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, age, color, sex or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

# APPENDIX B

**APPENDIX B**  
**REQUIREMENTS FOR FEDERALLY-AIDED TRANSPORTATION PROJECTS**  
*(June 2016)*

There is a substantial body of requirements attached to the use of Federal highway or transportation aid. These requirements create or overlay processes, procedures, documentation requirements, authorizations, approvals and certifications that may be substantially greater or different from those that are not funded with Federal-aid and proceed under applicable State and local laws, customs and practices. Under Title 23 of the United States Code, the New York State Department of Transportation (NYSDOT) is responsible for the administration of transportation projects in New York State to which NYSDOT provides Federal highway or transportation-related aid. Through this Agreement, which provides or is associated with such funding, NYSDOT delegates various elements of project and funding administration as described elsewhere in this Agreement. In undertaking a Federally aided project, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement with Federal-aid funding or project administration agrees to proceed in compliance with all the applicable Federal-aid requirements.

NYSDOT, in cooperation with FHWA, has assembled the body of Federal-aid requirements, procedures and practices in its Procedures for Locally Administered Federal-Aid Projects Manual (available through NYSDOT's web site at: <http://www.dot.ny.gov/plafap>). In addition, the Municipality/Sponsor, Authority or Project Manager designated under this Agreement for Federal-aid funding or project administration that enters into Federally aided project construction contracts is required to physically incorporate into all its Federally aided construction contracts and subcontracts there under the provisions that are contained in Form FHWA-1273 (available from NYSDOT or electronically at: <http://www.fhwa.dot.gov/programadmin/contracts/1273.htm>).

In addition to the referenced requirements, the attention of Municipality/Sponsor hereunder is directed to the following requirements and information:

**NON DISCRIMINATION/EEO/DBE REQUIREMENTS**

The Municipality/Sponsor and its contractors agree to comply with Executive Order 11246, entitled "Equal Employment Opportunity" and United States Department of Transportation (USDOT) regulations (49 CFR Parts 21, 23, 25, 26 and 27) and the following:

1. **NON DISCRIMINATION.** No person shall, on the ground of race, color, creed, national origin, sex, age or handicap, be excluded from participation in, or denied the benefits of, or be subject to, discrimination under the Project funded through this Agreement.
2. **EQUAL EMPLOYMENT OPPORTUNITY.** In connection with the execution of this Agreement, the Municipality/Sponsors contractors or subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, age, color, sex or national origin. Such contractors shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin or age. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. **DISADVANTAGED BUSINESS ENTERPRISES.** In connection with the performance of this Agreement, the Municipality/Sponsor shall cause its contractors to cooperate with the State

in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs will have opportunity to compete for subcontract work under this Agreement. Also, in this connection the Municipality or Municipality/Sponsor shall cause its contractors to undertake such actions as may be necessary to comply with 49 CFR Part 26.

As a sub-recipient under 49 CFR Part 26.13, the Municipality/Sponsor hereby makes the following assurance.

The Municipality/Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements of 49 CFR Part 26. The Municipality/Sponsor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of the United States Department of Transportation-assisted contracts. The New York State Department of Transportation's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

#### **FEDERAL SINGLE AUDIT REQUIREMENTS**

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency<sup>1</sup> the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

Non-Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

#### **THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE**

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<sup>1</sup> The designated cognizant agency for audit shall be the federal awarding agency that provides the predominant amount of direct funding to a recipient unless OMB changes it.



The Catalog of Federal Domestic Assistance (CFDA<sup>2</sup>), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

### **THE CFDA IDENTIFICATION NUMBER**

OMB Circular A-133 requires all Federal-aid recipients to identify and account for awards and expenditures by CFDA Number. The Municipality/Sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

**The most commonly used CFDA number for the Federal Aid Highway Planning and Construction program is 20.205.**

**Additional CFDA numbers for other transportation and non-transportation related programs are:**

<b>20.215</b>	<b>Highway Training and Education</b>
<b>20.219</b>	<b>Recreational Trails Program</b>
<b>20.XXX</b>	<b>Highway Planning and Construction - Highways for LIFE;</b>
<b>20.XXX</b>	<b>Surface Transportation Research and Development;</b>
<b>20.500</b>	<b>Federal Transit-Capital Investment Grants</b>
<b>20.505</b>	<b>Federal Transit-Metropolitan Planning Grants</b>
<b>20.507</b>	<b>Federal Transit-Formula Grants</b>
<b>20.509</b>	<b>Formula Grants for Other Than Urbanized Areas</b>
<b>20.600</b>	<b>State and Community Highway Safety</b>
<b>23.003</b>	<b>Appalachian Development Highway System</b>
<b>23.008</b>	<b>Appalachian Local Access Roads</b>

### **PROMPT PAYMENT MECHANISMS**

In accordance with 49 CFR 26.29, and NY State Finance Law 139-f or NY General Municipal Law 106-b(2) as applicable:

**(a)** You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 calendar days from receipt of each payment you make to the prime contractor.

**(b)** You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

**(1)** You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

**(2)** You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

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<sup>2</sup> <http://www.cfda.gov/>

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 calendar days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

### **CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS**

In accordance with 46 CFR 381, the contractor agrees:

- (a) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- (b) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
- (c) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

Res. No. 9

November 2, 2022

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Federal and Marchiselli Supplemental Agreement #5, Contract No. D035666: Massey Street, Coffeen Street & Court Street Bridge, PIN 775362

At the October 2, 2017 meeting the City Council of the City of Watertown Authorizing Standard Federal Aid Highway And Marchiselli Aid Project Agreement, Massey Street, Coffeen Street and Court Street Bridge Rehabilitation Project, PIN 775362; D035666. The City must obligate 100% of the Federal (80%) and non-Federal share (20%) for all phases of the Agreement. The project is now in the construction phase with completion expected the Fall of 2023.

This Supplemental Agreement adds funds for the construction phase totaling \$6,129,079: State Marchiselli (\$919,362), Federal (\$4,903,263), and City (\$306,454).

The total agreement is now for \$6,832,079: State Marchiselli (\$1,024,812), Federal (\$5,465,663), and City (\$341,604). City funding for the project is provided by the Bond Ordinance approved by City Council at the July 20, 2020 meeting.

Attached is a Resolution approving the Supplemental Agreement for City Council consideration.

**RESOLUTION**

Page 1 of 2

Approving Federal and Marchiselli  
Supplemental Agreement #5, Contract No.  
D035666 Massey Street, Coffeen Street,  
& Court Street Bridge, PIN 775362,

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by*** \_\_\_\_\_

WHEREAS a project for the reconstruction of Massey Street, Coffeen Street & Court St. Bridge, PIN 7755362, (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the cost of such program to be borne at the ratio of eligible costs at 80% federal funds and 20% non-federal funds, and

WHEREAS the City of Watertown desires to advance the Project by making a commitment of 100% of the federal and non-federal share of the costs of the Design, Right-of-Way Incidentals and Right-of-Way Acquisition and Construction in the amount of \$6,832,079, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown authorizes the City Comptroller to pay in the first instance 100% of the federal and non-federal share of the costs of Design, Right-of-Way Incidentals, Right of Way Acquisition and Construction, and

BE IT FURTHER RESOLVED that the sum of \$6,129,079 is hereby appropriated from the existing Bond and made available to cover the cost of participation in the construction phase of the Project, and

BE IT FURTHER RESOLVED that the City Comptroller is hereby authorized to pay in the first instance 100% of the federal and non-federal share of the costs associated with the phase of the projects listed above in the amount of \$6,129,079 from the Bond, and

BE IT FURTHER RESOLVED that in the event the full federal and non-federal share costs of the project exceeds the amount appropriated above, the City Council of the City of Watertown shall convene as soon as possible to appropriate said excess amount immediately upon notification by the City Manager, and

BE IT FURTHER RESOLVED that the City Manager of the City of Watertown, Kenneth Mix, is hereby authorized and directed to execute all necessary Agreements, certifications or

**RESOLUTION**

Page 2 of 2

Approving Federal and Marchiselli  
Supplemental Agreement #5, Contract No.  
D035666 Massey Street, Coffeen Street,  
& Court Street Bridge, PIN 775362,

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

reimbursement requests for Federal Aid and Marchiselli Aid on behalf of the City of Watertown with the New York State Department of Transportation in connection with the advancement or approval of the project and providing for the administration of the project and the municipality's first instance funding of project costs and permanent funding for the local share of federal aid eligible project costs and all project costs within appropriations that are not eligible, and

BE IT FURTHER RESOLVED that a certified copy of this resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the project, and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

*Seconded by* \_\_\_\_\_

Sponsor: **City of Watertown**  
 PIN: **775362** BIN: **2220220**  
 Comptroller's Contract No. **D035666**  
 Supplemental Agreement No. **5**  
 Date Prepared: **9/27/2022** By: **BRC**  
 Initials

Press F1 for instructions in the blank fields:

**SUPPLEMENTAL AGREEMENT No. 5 to D035666** (Comptroller's Contract No.)

This Supplemental Agreement is by and between:

the New York State Department of Transportation ("NYSDOT"), having its principal office at 50 Wolf Road, Albany, NY 12232, on behalf of New York State ("State")  
 and

**City of Watertown** (the Sponsor)  
 Acting by and through the **City Council**  
 with its office at **the Municipal Building, 245 Washington St., Watertown, NY 13601.**

This amends the existing Agreement between the parties in the following respects only:

Amends a previously adopted Schedule A by (check as applicable):

- ☐ amending a project description
- ☒ amending the contract end date
- ☒ amending the scheduled funding by:
  - ☐ adding additional funding (check and enter the # phase(s) as applicable):
  - ☒ adding phase **.321** which covers eligible costs incurred on/after **05/13/2022**
  - ☐ adding phase \_\_\_\_\_ which covers eligible costs incurred on/after  **/ /**
- ☐ increasing funding for a project phase(s)
- ☐ adding a pin extension
- ☐ change from Non-Marchiselli to Marchiselli
- ☐ deleting/reducing funding for a project phase(s)
- ☐ other (\_\_\_\_\_)
- ☒ Amends a previously adopted Schedule "B" (Phases, Sub-phase/Tasks, and Allocation of Responsibility)
- ☐ Amends a previously adopted Agreement by replacing the Appendix A dated January 2014 with the Appendix A dated October 2019
- ☐ Amends a previously adopted Agreement by adding:
  - ☐ Appendix B M/WBE/SDVOB.
  - ☐ Retention Exhibit.
  - ☐ Other: \_\_\_\_\_
- ☐ Amends the text of the Agreement as follows (insert text below):

Sponsor: **City of Watertown**  
 PIN: **775362** BIN: **2220220**  
 Comptroller's Contract No. **D035666**  
 Supplemental Agreement No. **5**  
 Date Prepared: **9/27/2022** By: **BRC**  
 Initials

Press F1 for instructions in the blank fields:

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

SPONSOR:

SPONSOR ATTORNEY:

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW YORK

)ss.:

COUNTY OF **Jefferson**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally came \_\_\_\_\_ to me known, who, being by me duly sworn did depose and say that he/she resides at \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the \_\_\_\_\_ of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on \_\_\_\_\_ and which a certified copy is attached and made a part hereof; and that he/she signed his/her name thereto by like order.

\_\_\_\_\_  
 Notary Public

APPROVED FOR NYSDOT:

APPROVED AS TO FORM:  
 STATE OF NEW YORK ATTORNEY GENERAL

BY: \_\_\_\_\_

\_\_\_\_\_  
 For Commissioner of Transportation

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

By: \_\_\_\_\_  
 Assistant Attorney General

Date: \_\_\_\_\_

COMPTROLLER'S APPROVAL:

By: \_\_\_\_\_  
 For the New York State Comptroller  
 Pursuant to State Finance Law ' 112

# SCHEDULE A



**SCHEDULE A – Description of Project Phase, Funding and Deposit Requirements**  
**NYSDOT/ State-Local Agreement - Schedule A for PIN 7753.62**

<b>OSC Municipal Contract #:</b> <u>D035666</u>	<b>Contract Start Date:</b> <u>9/17/2017</u> (mm/dd/yyyy) <b>Contract End Date:</b> <u>12/17/2025</u> (mm/dd/yyyy) <input checked="" type="checkbox"/> Check, if date changed from the last Schedule A				
<b>Purpose:</b> <input type="checkbox"/> Original Standard Agreement <input checked="" type="checkbox"/> Supplemental Schedule A No. 5					
<b>Agreement Type:</b> <input checked="" type="checkbox"/> Locally Administered Municipality/Sponsor (Contract Payee): Other Municipality/Sponsor (if applicable): <hr/> <input type="checkbox"/> State Administered <small>List participating Municipality(ies) and the % of cost share for each and indicate by checkbox which Municipality this Schedule A applies.</small> <input type="checkbox"/> Municipality: % of Cost share <input type="checkbox"/> Municipality: % of Cost share <input type="checkbox"/> Municipality: % of Cost share					
<b>Authorized Project Phase(s) to which this Schedule applies:</b> <input checked="" type="checkbox"/> PE/Design <input checked="" type="checkbox"/> ROW Incidentals <input checked="" type="checkbox"/> ROW Acquisition <input checked="" type="checkbox"/> Construction/CI/CS					
<b>Work Type:</b> HWY RESURF	<b>County</b> (If different from Municipality): Jefferson				
<b>Marchiselli Eligible</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>(Check, if Project Description has changed from last Schedule A):</small> <input type="checkbox"/> <b>Project Description:</b> Massey Street, Coffeen Street & Court Street Bridge (2220220)					
<b>Marchiselli Allocations Approved FOR ALL PHASES</b> <small>All totals will calculate automatically.</small>					
<small>Check box to indicate change from last Schedule A</small>	<b>State Fiscal Year(s)</b>	<b>Project Phase</b>			<b>TOTAL</b>
		PE/Design	ROW (RI & RA)	Construction/CI/CS	
<input checked="" type="checkbox"/>	Cumulative total for all prior SFYs	\$75,450.00	\$30,000.00	\$1,059,000.00	\$1,164,450.00
<input checked="" type="checkbox"/>	Current SFY	\$0.00	\$0.00	\$0.00	\$ 0.00
Authorized Allocations to Date		\$75,450.00	\$30,000.00	\$1,059,000.00	\$1,164,450.00

**A. Summary of allocated MARCHISELLI Program Costs FOR ALL PHASES** For each PIN Fiscal Share below, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

PIN Fiscal Share	"Current" or "Old" entry indicator	Federal Funding	Total Costs	FEDERAL Participating Share	STATE MARCHISELLI Match	LOCAL Matching Share	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
7753.62.121	Current	NHPP (80%)	\$243,000.00	\$194,400.00	\$36,450.00	\$12,150.00	\$0.00
	Old	(80%)	\$243,000.00	\$194,400.00	\$36,450.00 *	\$12,150.00	\$0.00
7753.62.122	Current	Other (see footn (80%))	\$260,000.00	\$208,000.00	\$39,000.00	\$13,000.00	\$0.00
	Old	(80%)	\$260,000.00	\$208,000.00	\$39,000.00	\$13,000.00	\$0.00
7753.62.221	Current	NHPP (80%)	\$156,000.00	\$124,800.00	\$23,400.00	\$7,800.00	\$0.00
	Old	(80%)	\$156,000.00	\$124,800.00	\$23,400.00	\$7,800.00	\$0.00
7753.62.222	Current	Other (see footn (80%))	\$44,000.00	\$35,200.00	\$6,600.00	\$2,200.00	\$0.00
	Old	(80%)	\$44,000.00	\$35,200.00	\$6,600.00	\$2,200.00	\$0.00
7753.62.321	Current	NHPP (80%)	\$5,267,999.00	\$4,214,399.00	\$790,200.00	\$263,400.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
7753.62.322	Current	Other (see footn (80%))	\$861,080.00	\$688,864.00	\$129,162.00	\$43,054.00	\$0.00
	Old		\$ 0.00	\$.	\$0.00	\$0.00	\$0.00
<b>TOTAL CURRENT COSTS:</b>			\$6,832,079.00	\$5,465,663.00	\$1,024,812.00	\$341,604.00	\$ 0.00

## NYSDOT/State-Local Agreement – Schedule A

**B. Summary of Other (including Non-allocated MARCHISELLI) Participating Costs FOR ALL PHASES** For each PIN Fiscal Share, show current costs on the rows indicated as "Current.". Show the old costs from the previous Schedule A on the row indicated as "Old." All totals will calculate automatically.

Other PIN Fiscal Shares	'Current' or 'Old' entry indicator	Funding Source	TOTAL	Other FEDERAL	Other STATE	Other LOCAL
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
. . .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00
<b>TOTAL CURRENT COSTS:</b>			\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

**C. Local Deposit(s) from Section A:**

	\$ 0.00
<b>Additional Local Deposit(s)</b>	\$
<b>Total Local Deposit(s)</b>	\$ 0.00

**D. Total Project Costs** All totals will calculate automatically.

Total FEDERAL Cost	Total STATE MARCHISELLI Cost	Total OTHER STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$5,465,663.00	\$1,024,812.00	\$ 0.00	\$341,604.00	\$6,832,079.00

**E. Point of Contact for Questions Regarding this Schedule A (Must be completed)**

Name: Barbara R. Cadwell  
Phone No: 315-785-2499

See Agreement (or Supplemental Agreement Cover) for required contract signatures.

**NYSDOT/State-Local Agreement – Schedule A****Footnotes:** (See [LPB](#)'s website for link to sample footnotes)

- D035666; PIN 775362 Massey, Coffeen, and Court Street Bridge (2220220)
- Preliminary Design, ROW and Construction are funded with 80% Federally funded by National Highway Performance Program (NHPP) for NHS Sections and 80% Surface Transportation Block Grant Program (STBG) funds for Non-NHS Sections.
- This Supplemental #5 has been amended to include SFY 22/23 approved Marchiselli funds for the Construction phase.
- 
- \*Marchiselli funding hereunder is limited by the amount authorized on the Comprehensive List. Additional Marchiselli funding is contingent on appropriate increase(s) to the Comprehensive List and the execution of a Supplemental Schedule A providing such additional funds.
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# SCHEDULE B

## SCHEDULE B: Phases, Sub-phase/Tasks, and Allocation of Responsibility

**Instructions:** Identify the responsibility for each applicable Sub-phase task by entering X in either the *NYSDOT* column to allocate the task to State labor forces or a State Contract, or in the *Sponsor* column indicating non-State labor forces or a locally administered contract.

### A1. Preliminary Engineering (“PE”) Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. <u>Scoping</u> : Prepare and distribute all required project reports, including an Expanded Project Proposal (EPP) or Scoping Summary Memorandum (SSM), as appropriate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
3. Smart Growth Attestation (NYSDOT ONLY).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. <u>Preliminary Design</u> : Prepare and distribute Design Report/Design Approval Document (DAD), including environmental analysis/assessments, and other reports required to demonstrate the completion of specific design sub-phases or tasks and/or to secure the approval/authorization to proceed.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review and Circulate all project reports, plans, and other project data to obtain the necessary review, approval, and/or other input and actions required of other NYSDOT units and external agencies.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. <u>Detailed Design</u> : Perform all project design, including preparation of plan sheets, cross-sections, profiles, detail sheets, specialty items, shop drawings, and other items required in accordance with the Highway Design Manual, including all Highway Design, including pavement evaluations, including taking and analyzing cores; design of Pavement mixes and applications procedures; preparation of bridge site data package, if necessary, and all Structural Design, including hydraulic analyses, if necessary, foundation design, and all design of highway appurtenances and systems [e.g., Signals, Intelligent Transportation System (ITS) facilities], and maintenance protection of traffic plans. Federal Railroad Administration (FRA) criteria will apply to rail work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Design environmental mitigation, where appropriate, in connection with: Noise readings, projections, air quality monitoring, emissions projections, hazardous waste, asbestos, determination of need of cultural resources survey.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b><u>Phase/Sub-phase/Task</u></b>	<b>Responsibility: <u>NYSDOT</u></b>	<b><u>Sponsor</u></b>
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Compile PS&E package, including all plans, proposals, specifications, estimates, notes, special contract requirements, and any other contract documents necessary to advance the project to construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Conduct any required soils and other geological investigations.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Obtain utility information, including identifying the locations and types of utilities within the project area, the ownership of these utilities, and prepare utility relocations plans and agreements, including completion of Form HC-140, titled Preliminary Utility Work Agreement.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. Determine the need and apply for any required permits, including U.S. Coast Guard, U.S. Army Corps of Engineers, Wetlands (including identification and delineation of wetlands), SPDES, NYSDOT Highway Work Permits, and any permits or other approvals required to comply with local laws, such as zoning ordinances, historic districts, tax assessment and special districts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Prepare and execute any required agreements, including: - Railroad force account - Maintenance agreements for sidewalks, lighting, signals, betterments - Betterment Agreements - Utility Work Agreements for any necessary Utility Relocations of Privately owned Utilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Provide overall supervision/oversight of design to assure conformity with Federal and State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>

## **A2. Right-of-Way (ROW) Incidentals**

<b><u>Phase/Sub-phase/Task</u></b>	<b>Responsibility: <u>NYSDOT</u></b>	<b><u>Sponsor</u></b>
1. Prepare ARM or other mapping, showing preliminary taking lines.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. ROW mapping and any necessary ROW relocation plans.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Obtain abstracts of title and certify those having an interest in ROW to be acquired.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Secure Appraisals.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Perform Appraisal Review and establish an amount representing just compensation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: <b>NYSDOT</b> <b>Sponsor</b></u>	
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. <b>If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## **B. Right-of-Way (ROW) Acquisition**

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: <b>NYSDOT</b> <b>Sponsor</b></u>	
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. <b>If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Provide required relocation assistance, including payment of moving expenses, replacement supplements, mortgage interest differentials, closing costs, mortgage prepayment fees.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
5. Provide official certification that all right-of-way required for the construction has been acquired in compliance with applicable Federal, State or Local requirements and is available for use and/or making projections of when such property(ies) will be available if such properties are not in hand at the time of contract award.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
6. Conduct any property management activities, including establishment and collecting rents, building maintenance and repairs, and any other activities necessary to sustain properties and/or tenants until the sites are vacated, demolished, or otherwise used for the construction project.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Subsequent to completion of the Project, conduct ongoing property management activities in a manner consistent with applicable Federal, State and Local requirements including, as applicable, the development of any ancillary uses, establishment and collection of rent, property maintenance and any other related activities.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### C. Construction, Construction Support (C/S) and Construction Inspection (C/I) Phase

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. Advertise contract lettings and distribute contract documents to prospective bidders.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
2. Conduct all contract lettings, including receipt, opening, and analysis of bids, evaluation/certification of bidders, notification of rejected bids/bidders, and awarding of the construction contract(s).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Receive and process bid deposits and verify any bidder's insurance and bond coverage that may be required.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Compile and submit Contract Award Documentation Package.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Review/approve any proposed subcontractors, vendors, or suppliers.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
6. Conduct and control all construction activities in accordance with the plans and proposal for the project. Maintain accurate, up-to-date project records and files, including all diaries and logs, to provide a detailed chronology of project construction activities. Procure or provide all materials, supplies and labor for the performance of the work on the project, and insure that the proper materials, equipment, human resources, methods and procedures are used.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7a. For non-NHS or non-State Highway System Projects: Test and accept materials, including review and approval for any requests for substitutions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
7c. For projects that fall under both 7a and 7b above, check boxes for each.		
8. Design and/or re-design the project or any portion of the project that may be required because of conditions encountered during construction.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Administer construction contract, including the review and approval of all contractor requests for payment, orders-on-contract, force account work, extensions of time, exceptions to the plans and specifications, substitutions or equivalents, and special specifications.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Review and approve all shop drawings, fabrication details, and other details of structural work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Administer all construction contract claims, disputes or litigation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>



<b><u>Phase/Sub-phase/Task</u></b>	<b>Responsibility: <u>NYSDOT</u></b>	<b><u>Sponsor</u></b>
12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.	<input checked="" type="checkbox"/> *	<input checked="" type="checkbox"/>
13. Pursuant to Federal Regulation 49 CFR 18.42(e)(1) The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

October 18, 2022

TO: The Honorable Mayor and City Council

FROM: Tina Bartlett-Bearup, Purchasing Manager

SUBJECT: Surplus Equipment Online Auction – Auctions International, Inc.  
Letter of Recommendation

Over the past several years, the City of Watertown has partnered with Auctions International, Inc. for disposing of our surplus equipment with great success and ease. The company is reputable and has national exposure that provides the City with greater opportunity to sell our surplus equipment.

This process is initiated by various City Departments submitting a surplus of equipment/vehicle list to the Purchasing Department and a Resolution presented to City Council for approval. There is NO commission charged to the seller. Buyers are required to pay varying premiums on all transactions to Auctions International (based upon equipment manufacture date). All sales must be final at the time of sale. Therefore, the City Council must authorize Purchasing to accept all bid prices at time of bid closing.

Attached please find a copy of the Auctions International, Inc. contract for City Council approval. This agreement is a two-year contract that commences with the date of signing. I have reviewed the attached contract and there are no noted changes from the previous contract that was dated on December 8, 2020.

If there are any questions concerning this recommendation, please contact me at your convenience.

**RESOLUTION**

Page 1 of 1

Approving Online Auction Contract,  
Auctions International, Inc.

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

**Introduced by** \_\_\_\_\_

WHEREAS the City of Watertown has successfully used the services of Auctions International, Inc. over the past ten years for various City Departments, and

WHEREAS it is the City's desire to get the best price possible for vehicles and/or equipment it deems surplus or excess, and

WHEREAS the Purchasing Manager, Tina Bartlett-Bearup, has contacted Auctions International, Inc., which conducts online auctions of vehicles and equipment, and

WHEREAS there is no cost to the City, as the buyer pays a fee charged by Auctions International, Inc.,

NOW THEREFORE BE IT RESOLVED by the City Council that it hereby approves the Online Auction Contract with Auctions International, Inc. a copy of which is attached and made a part of this resolution, and

BE IT FURTHER RESOLVED that if the highest bid does not meet the City's estimated scrap value, no sale will take place, without prior approval of the City Council, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Contract and accept the highest offer at the time of sale above the City's estimated scrap values, on behalf of the City.

**Seconded by** \_\_\_\_\_

(X) Thomas F. Eagan THOMAS F. EAGAN

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving the Design Proposal Letter for the Flynn Pool and Bathhouse Rehabilitation, C&S Companies

On January 18, 2022, the City Council amended the Budget to include \$750,000 for the rehabilitation of the Flynn Pool. It was also decided at that meeting to start with a preliminary engineering assessment that would look at two alternatives: a rehabilitation that meets regulations and gives an additional lifespan of at least 10 years, and a complete rebuild of the facility.

C&S Companies was hired to do the preliminary engineering assessment and presented their findings to the City Council at the Work Session on July 11, 2022. The City Council requested at the work session that C&S Companies continue their services regarding cost evaluation for the Flynn Pool and Bathhouse.

C&S Companies completed their updated study and presented it to the City Council at the meeting on October 17, 2022, and the City Council determined that C&S Companies should proceed with design services for the Flynn Pool and Bathhouse Rehabilitation. C&S Companies is proposing to perform these services for \$287,400.00.

The projected total cost of the project is:

Construction Cost	\$2,893,460
Construction Contingency	\$ 144,668
Preliminary Engineering	\$ 13,850
Prelim. Engineer. Update	\$ 4,300
Engineering Design	\$ 287,400
Construction Admin.	\$ 145,800
Third Party Testing	<u>\$ 8,000</u>
TOTAL	\$3,497,478

A resolution approving this Proposal for design services has been prepared for City Council consideration.

**RESOLUTION**

Page 1 of 2

Approving the Design Proposal  
for the Flynn Pool and Bathhouse  
Rehabilitation, C&S Companies

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by***

WHEREAS on February 1, 2022, the City of Watertown requested a proposal from C&S Companies regarding an evaluation and feasibility study on the Flynn Pool and Bathhouse, and

WHEREAS C&S would evaluate Flynn Pool and determine a probable cost opinion for the two alternatives the City of Watertown would consider for the Flynn Pool and Bathhouse,

WHEREAS on February 22, 2022, the City Council of the City of Watertown approved the Professional Service Agreement from C&S Companies,

WHEREAS C&S Companies completed their evaluation and submitted their report along with an outside estimator's calculations for the two alternatives, and presented it at the City Council Work Session on July 11, 2022, and,

WHEREAS the City Council requested additional services from C&S Companies to determine approximate costs for other pool shapes and bathhouse construction, and

WHEREAS C&S Companies completed their updated study for the Flynn Pool and Bathhouse Rehabilitation and presented it to the City Council at the meeting on October 17, 2022, and,

WHEREAS the City Council determined that C&S Companies would proceed with design services for the Flynn Pool and Bathhouse Rehabilitation, and,

WHEREAS C&S Companies has submitted a proposal for design services at a cost of \$287,400.00, and,

## RESOLUTION

Page 2 of 2

Approving the Design Proposal  
for the Flynn Pool and Bathhouse  
Rehabilitation, C&S Companies

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown approves the design proposal from C&S Companies in the amount of \$287,400.00 for design services, a copy of which is attached and made part of this Resolution, and

BE IT FURTHER RESOLVED that City Manager Kenneth A. Mix is hereby authorized and directed to execute the Council's decision on behalf of the City of Watertown.

***Seconded by***

October 27, 2022

Mr. Michael Delaney, P.E., City Engineer  
City of Watertown  
245 Washington Street  
Watertown, NY 13601

RE: William J. Flynn Municipal Swimming Pool  
**Flynn Pool and Bathhouse Project**

Dear Michael,

C&S Engineers Inc. is pleased to present our proposal for the proposed Flynn Pool and Bathhouse Project as requested by the City Council at their October 17, 2022 work session meeting.

- It is our understanding that the City Council prefers the Option B (L-Shaped) pool as submitted in our Updated Study dated October 5, 2022. It is also our understanding that the City Council would like to keep the proposed splash pad and exterior accessible restrooms as part of the project scope described in the above Study. Lastly it is our understanding that The City Council would like to maintain the scope (as described in the above Study) for the Bathhouse Renovations.

### **PROJECT DESCRIPTION:**

Generally, the project consists of the Scope of Work outlined below:

It is our understanding that the building and pool are approximately 4,200 square feet and 5,500 square foot, respectively, and constructed circa 1980. The building consists of concrete masonry units and brick veneer with pre-cast concrete roof deck. The pool appears to be constructed of cast in place shotcrete with a marsonite masonry liner. The pool / deck shall be completely removed and a new pool / splash pad / deck with associated site work constructed. The interior of the existing bathhouse shall be renovated including but not limited to mechanical, plumbing and electrical work. The roofing shall be removed and replaced with new insulation and rubber membrane. Exterior shall include some minor masonry repairs.

### **SCOPE OF SERVICES:**

Considering the above Scope of Work, C&S's Scope of Services are as follows:

#### **Preliminary Design Phase:**

- Architectural / Site:
  - Topographic / Utility Survey
  - Geotechnical boring analyses.



- Review the short and long term goals and needs with key stakeholders from Parks and Recreation as well as the City Engineering department.
- Provide concept site plan indicating location of new pool and splash pad along with other site associated improvements.
- Review Concept plan with key stakeholders.
- Create a preliminary site plan based upon the approved concept of the building plan. Review the plans with the key stakeholders.
- Make requested revisions to the preliminary plans based on the comments received.
- Meet with the City Council to present the proposed concept.
- Make any final revisions as requested by the departments and Council.
- Hazardous material survey (as required by DOL & City Codes Office)

### **Design Phase:**

#### ➤ Site/Civil:

- Site plans depicting the full scope of work including but not limited to the concrete deck around the pool, the splash pad, fencing, pool related utilities and limited replacement of concrete sidewalks / curbs where necessary.

#### ➤ Building Architecture and Engineering:

- Perform a Code review based upon the New York State family of Codes, including but not limited to Americans w/ Disabilities Act (ADA).
- Provide Final Drawings including information as listed below:

##### 1. Architectural:

- a. Floor Plans: The plans will be dimensioned with room names and room numbers and indicate areas of specific work.
- b. Floor Finish Plans: The plans will indicate the flooring patterns, call out flooring materials and locate floor transitions.
- c. Reflected Ceiling Plans: The plans will indicate ceiling types, ceiling finishes, and light fixture and diffuser locations.
- d. Finish Schedule/Material Finish Legend Specification: Provide a schedule of finishes.
- e. Interior Elevations & Details: Dimensioned interior wall elevations and details, with materials and finishes noted. All materials and finishes will be tagged/ called out on drawings.
- f. Door and Window Schedule: Provide schedules, sizes and details of window and doors.
- g. Exterior Elevations and Sections: The plan will provide dimensioned proposed exterior wall elevations for the entire facility, and provide wall sections where appropriate. All materials and finishes shall be called out on the drawings.
- h. Details: Provide Sections and details.
- i. Coordinate all details and finishes with Owner.

2. Structural
  - a. Foundation Plan, sections and details for the new pool.
  - b. Details of lintels for new openings and details of infilled openings.
3. Plumbing
  - a. Plans and riser diagrams.
  - b. Fixture Schedules.
4. Electrical
  - a. Interior Lighting Plan & Lighting Schedules.
  - b. Power Plan Branch Circuits to Mechanical Equipment.
  - c. Communications/Data Plan.
5. Mechanical
  - a. Heating Ventilation & Air Conditioning plans.
  - b. Mechanical details and schedules.
6. Pool Systems
  - a. Sections and details of pool gutter and drain system
  - b. Sections and details of surge tank.
  - c. Plans of Filter / Chemical Feed Room including all associated mechanical, plumbing and electrical work.
  - d. Details of recirculation pump, strainer and valving.
  - e. Details and schedules for chemical systems.
7. Deliverables to include:
  - a. Preliminary Design submission.
  - b. Subsequent 75% and 100% Review submissions.
  - c. Signed and Sealed Contract Documents (Construction Drawings and Technical Specifications) for advertised bidding. Front end of Specifications shall be by the City Engineering Department.
  - d. Bi-weekly meetings (in person & / or zoom) to review progress.

### **Bidding Phase:**

- Assist in solicitation of contractors thru advertised public bid process.
- Electronic distribution of bid documents to the County (broken down into a maximum of 4 prime contracts, General Construction, Mechanical, Plumbing and Electrical.
- Respond to bidder questions with written addenda and any required supplemental drawings.
- Conduct a pre-bid walk thru with the contractors
- Prepare a bid tabulation sheet
- Review bids received to determine technical responsiveness and bidder experience and qualification to perform the work.

- Assist the Owner and CM with the selection of the best qualified Bidder.
- Provide written recommendation to owner for award of contract.

**Construction Administration Phase:** (to be awarded upon approval of construction bids)

- Review and certify contractor's schedule of values.
- Draft and execute owner/Contractor agreement (City)
- Act as Owner's representative to administer the project.
- Attend pre-construction meeting (at site) with Owner and Contractor.
- One review for each shop drawing submittal.
- Periodically observe the contractor's activities with regard to compliance with contract specifications and drawings (an average of two site visits per week, assume a maximum of 100 visits).
- Monthly inspection reports.
- Conduct bi-weekly project meetings.
- Provide job clarifications and field directives as necessary.
- Assist in developing modifications and change orders to the contract where necessary whether the modifications are developed by the engineer, the owner, or result from claims submitted by the contractor. All change orders shall be approved by owner prior to proceeding with said work.
- Review certificates for payment and authorize payment for work completed less retainage.
- Conduct a final walk thru and distribute a punch list to contractor and copy owner.
- One final inspection of completed punch list items.
- Review close out paperwork including but not limited to Substantial Completion, Release of Liens and Warranty information.

**ASSUMPTIONS:**

- Site survey (topographic/planimetric/utility) are included and shall be performed by a sub consultant.
- Furniture, fixture, and equipment (FF&E) are included.
- Hazardous Material investigation and abatement design (if required) is included.
- Site subdivision survey/application and boundary survey are by others.
- Geotechnical investigation is included and will be performed by a sub-consultant.
- Submission of documents to the Planning Board (Not required as per the Planning Department)
- Storm Water Pollution Prevention Plans (SWPPP) and inspections (not required)
- The preparation of a Long EAF or an Environmental Impact Statement (EIS), if required, is not considered as part of this proposal.
- Existing utilities (water, power, gas, sewer, etc.) are assumed to be sufficient for proposed development and no major upgrades to services are included.
- Re-design to accommodate value engineering requests is not included.
- All approval and permit related fees are by the Owner.
- Fire alarm systems are not required and design services for such have not been included.

- Security systems shall be by the City or others. We will include infrastructure (conduits and or wiring as part of the electrical design and contract.)
- Door access control systems are not in the scope of the project and have not been included in the design proposal.
- Driveways and parking lots are not within the scope.
- Third party testing is not included and shall be contracted directly by the City. This is typically done on a half day or full day basis when required. It is presumed that the cost would be approximately \$8,000 for budgeting purposes.

**SCHEDULE:**

The design schedule is anticipated to be as follows:

Contract Execution / Notice to Proceed (NTP)	November 7, 2022
Preliminary Design Submission	December 23, 2022
75% Review Submission	February 23, 2023
100% Review Submission	March 17, 2023
Bid Documents Submission	April 1, 2023
Bid Opening	April 28,2023

**FEE:**

We propose to provide the services associated with the Design/ Bidding phase of the project for a **lump sum fee of \$287,400** which includes direct expenses (it is assumed that the City would wait until bids are received and approved by council before entering into an agreement for the Construction Administration Services.). We have priced our professional services for this project as competitively as possible. Our goal is to deliver excellent professional services throughout the project while maintaining a reasonable funding stream to achieve a successful project. If the Scope of Service changes, this amount may require revision. However, no additional amount will be expended without your prior authorization.

Architectural / Engineering & Bidding	\$253,600
Hazardous Material Survey	\$6,500
Geotechnical Borings / Analyses (ATL)	\$13,000
<u>Topographic/Planimetric/Utility Survey (A&amp;C)</u>	<u>\$14,300</u>
<b>TOTAL DESIGN / BIDDING</b>	<b>\$287,400</b>

Construction Administration (to be signed upon award of construction contracts) **\$145,800.**

This proposal, including the attached Terms and Conditions, will become an agreement upon your acceptance, as acknowledged below. Your acceptance will constitute authorization to proceed on this project.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,  
C&S ARCHITECTS, ENGINEERS, &  
LANDSCAPE ARCHITECT, PLLC



Patrick J. Currier, Sr. R.A  
Managing Architect

Accept this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
(Authorized Representative)

*\*C&S Architects, Engineers, & Landscape Architect, PLLC is our primary architectural practice; however, C&S Engineers, Inc. will be the contracting entity*

**EXHIBIT "A"**  
**TERMS & CONDITIONS (Design and Construction Phases)**

These Terms and Conditions govern the performance by or through Engineer of the Scope of Services set forth in the letter part of this Agreement. Capitalized terms used herein, unless otherwise defined, shall have the meanings ascribed thereto in the letter and/or scope of services. Owner and Engineer agree as follows:

**1.01 Basic Agreement**

Engineer shall provide, or cause to be provided, the services set forth in the letter part of this Agreement, and Owner shall pay Engineer for such Services as set forth in Section 2.01.

**2.01 Payment Procedures**

A. *Terms of Payment.* Refer to the letter part of this Agreement between Owner and Engineer for the method of payment to Engineer.

B. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

C. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal. In addition, Owner agrees to pay all expenses incurred by Engineer as a result of Owner's failure to fulfill its obligations under this Agreement, including but not limited to, costs, disbursements, and attorney's fees.

D. *Payment upon Termination.* In the event of termination of Engineer's services by Owner, Engineer will be paid for Basic Services rendered to date of termination in accordance with the method of payment defined in the letter part of this Agreement except that under the lump sum method, the adjusted fee shall be determined by proportioning the stipulated amount to reflect the percentage of completion of the Project, as mutually agreed to by Owner and Engineer. Engineer will also be paid for additional services rendered to date of termination in accordance with the method of payment defined in the letter part of this Agreement.

**3.01 Additional Services**

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth in the letter part of this Agreement.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

**4.01 Owner's Responsibilities**

Owner shall perform the following in a timely manner so as not to delay the services of Engineer under this Agreement. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all reports, data and other information furnished pursuant to this paragraph. Engineer may use such reports, data and information in performing or furnishing services under this Agreement.

A. Designate in writing a person to act as Owner's representative with respect to the services to be rendered under this

Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to Engineer's services for the Project. Engineer shall not rely on directions from anyone outside the scope of that person's authority as set forth in written delegations. Directions and decisions made by the Owner's representatives shall be binding on the Owner.

B. Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints; space, capacity, and performance requirements; flexibility and expandability; and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications.

C. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, Construction Management, Cost Estimating, Project Peer Review, Value Engineering, and Constructability Review.

D. Assist Engineer by placing at Engineer's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

E. Furnish to Engineer, as required for performance of Engineer's Basic Services (except to the extent provided otherwise in Section 1.01) the following:

1. Data prepared by or services of others including, without limitation, borings, probings, subsurface explorations and hydrographic surveys at or contiguous to the site, laboratory tests and inspections of samples, materials, and equipment;
2. Appropriate professional interpretations of all of the foregoing;
3. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;
4. Property, boundary, easement, right-of-way, topographic and utility surveys;
5. Property descriptions;
6. Zoning, deed and other land use restrictions; and
7. Other special data or consultations not covered in Section 3.01; all of which Engineer may use and rely upon in performing services under this Agreement.

F. Arrange for access to and make all provisions for Engineer and any necessary equipment to enter upon public and private property as required for Engineer to objectively and independently perform services under this Agreement.

G. Provide engineering surveys to establish reference points for construction (except to the extent provided in Section 1.01.)

H. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by Engineer, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the service of Engineer.

I. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

**EXHIBIT "A"**  
**TERMS & CONDITIONS (Design and Construction Phases)**

J. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Owner may require or Engineer may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Owner may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

K. If Owner designates a person to represent Owner at the site who is not Engineer or Engineer's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of Engineer will be set forth in an exhibit that is to be identified, attached to, and made a part of this Agreement before such services begin.

L. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

M. Furnish to Engineer data or estimated figures as to Owner's anticipated costs for services to be provided by others for Owner (such as services pursuant to paragraphs I through L inclusive) so that Engineer may make the necessary findings to support opinions of probable Total Project Costs.

N. Attend the pre-bid conference, bid opening, preconstruction conferences, construction progress and other job-related meetings; and substantial completion inspections and final payment inspections.

O. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of any constituent of concern or any development that affects the scope or timing of Engineer's services, or any defect or non-conformance in the work of any Contractor.

P. Require Contractor(s) to name Engineer as an additional insured on all Contractor's Liability Insurance Policies.

Q. Provide services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner prior to their incorporation into the Work with appropriate professional interpretations thereof.

R. Place and pay for advertisement for Bids in appropriate publications.

S. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.

T. Furnish, or direct Engineer to provide, Additional Services as stipulated in Section 3.01.

U. Except as provided in paragraph T, bear all costs incident to compliance with the requirements of this Section 4.01.

#### **5.01 Termination**

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 5.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 5.01.A.1 or 5.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

#### **6.01 Controlling Law**

This Agreement is to be governed by the law of the state in which the project is located without regard to any conflict of laws provisions, which may apply the laws of other jurisdictions.

#### **7.01 Successors, Assigns, and Beneficiaries**

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 7.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will

**EXHIBIT "A"**  
**TERMS & CONDITIONS (Design and Construction Phases)**

release or discharge the assignor from any duty or responsibility under this Agreement.

**8.01 General Considerations**

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Such documents are not intended or represented to be suitable for reuse by Owner or others in extensions of the facility beyond that now contemplated or on any other facility. Any reuse by Owner or others without specific written verification or adaptation by Engineer for the specific purpose intended will be at user's sole risk and without liability or legal exposure to Engineer, or to Engineer's independent professional associates or consultants, and Owner shall indemnify and hold harmless Engineer and Engineer's independent professional associates and consultants from all claims, losses, damages of any kind or nature, judgments, and expenses (including, but not limited to, reasonable attorney's fees and any costs), arising out of or resulting therefrom. Any such verification and adaptation will entitle Engineer to further compensation at rate to be agreed upon by Engineer and Owner.

F. The specific schedule of services is more specifically described in the letter part of this Agreement or an Exhibit thereto. The term of this agreement commences upon the acceptance of this Agreement (including all exhibits) by owner and terminates upon completion of the services described in the letter part of this Agreement. Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including but not limited to, acts of God; expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; strikes; flood blizzard, labor unrest, riot; or any cause the affected party is unable to prevent or foresee with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the nonperformance and the

anticipated extent of any delay and its efforts to minimize the extent of delay and resume performance under this Agreement.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's (including Engineer's employees, officers, directors, agents and insurers, partners, and consultants) total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater. The Owner may negotiate with the Engineer in the event the Owner wishes to change the total liability described herein but acknowledges that any change may result in an additional fee. This additional fee is in consideration of the greater risk involved in performing work for which there is an increase or no limitation of liability.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. Owner acknowledges that:

(i) Engineer is not recommending any action to Owner or other obligated person hereunder that would cause Consultant to be considered a municipal advisor for purposes of the Securities and Exchange Commission Registration of Municipal Advisors Rule, 78 Fed. Reg. 67468 (2013);

(ii) Engineer does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o-4) to Owner or other obligated person with respect to the information and material contained in this Agreement or any Project deliverable; and

(iii) Owner or other obligated person should discuss any information and material contained in this Agreement or Project deliverable with any and all internal or external advisors and experts that Owner or other obligated person deems appropriate before acting on this information or material.

**9.01 Period of Service**

A. The specific schedule of services is more specifically described in the letter part of this Agreement or an exhibit thereto. The term of this agreement commences upon the acceptance of this Agreement (including all exhibits) by owner and terminates upon completion of the services described in the letter part of this Agreement.

B. The provisions of this Section 9.01 and the various rates of compensation for Engineer's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. If execution of this Agreement and authorization to proceed with the Bidding or Negotiating Phase is delayed beyond the date and time frame established in the letter part of the agreement, or if Engineer's services are delayed or suspended for more than three (3) months by Owner or for reasons beyond Engineer's control, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.



**EXHIBIT "A"**  
**TERMS & CONDITIONS (Design and Construction Phases)**

C. If Owner has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of Engineer's services shall be adjusted equitably.

D. Any delay in or failure of performance of any party to this Agreement shall not constitute a default under this Agreement nor give rise to any claim for damage, if and to the extent such delay or failure is caused by occurrences or events beyond the control of the party affected, including but not limited to, acts of God; expropriation or confiscation of facilities or compliance with any order or request of government authority, affecting to a degree not presently existing, the supply, availability, or use of personnel or equipment; strikes; flood blizzard, labor unrest, riot; or any cause the affected party is unable to prevent or foresee with reasonable diligence. A party who is prevented from performing for any reason shall immediately notify the other in writing of the reason for the nonperformance and the anticipated extent of any delay and its efforts to minimize the extent of delay and resume performance under this Agreement.

#### **10.01 Opinions of Probable Cost**

Since Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, Engineer's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Engineer cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by Engineer. If prior to the Bidding or Negotiating Phase Owner wishes greater assurance as to Total Project or Construction Costs, Owner shall employ an independent cost estimator.

#### **11.01 Dispute Resolution**

A. Owner and Engineer agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them as to the execution, meaning of, or performance under the terms of this Agreement prior to exercising their right under paragraph 11.01(B) below. The thirty-day period may be extended upon mutual agreement of the parties.

B. If any dispute cannot be resolved pursuant to paragraph 11.01(A) and only if mutually agreed by Owner and Engineer, said dispute and all unsettled claims, counterclaims and other matters in question between them arising out of or relating to the execution, meaning of, or performance under the terms of this Agreement or the breach thereof ("disputes") shall be submitted to mediation by a mediator, to be selected by the parties jointly, prior to initiating a legal action against the other, unless initiating mediation would irrevocably prejudice one of the parties. It is the intention of the parties that any agreement reached at mediation become binding upon them. The cost of mediation shall be shared equally between the parties.

C. This Section 11.01 shall survive any termination or cancellation of this Agreement.

#### **12.01 Total Agreement/ Severability**

This Agreement (consisting of the letter part of this Agreement, Exhibit "A" and any additional exhibits referenced in the letter part of this Agreement), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings.

This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument. Any provision or part of this Agreement held by a court of law to be invalid or unenforceable

under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part therefore with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### **13.01 Notice**

Any notice required by the terms of this Agreement to be given by one party to another shall be in writing, and shall be deemed to have been duly given (a) on the date of service, if served personally on the party to whom notice is to be given, or (b) on the third day after mailing, if mailed to the party to whom notice is to be given by first-class certified mail, postage prepaid, return receipt requested, at the addresses and to the persons set forth in the letter part of this Agreement. Either party hereto may change its address for notice purposes by giving notice to the other party as prescribed by this paragraph 13.01. For purposes of this notice provision, failure or refusal to accept receipt of notice shall constitute notice nonetheless.

#### **14.01 Insurance**

A. The following types and amounts of insurance shall be procured and maintained by the Engineer throughout the duration of the Project:

a. **Worker's Compensation Insurance** in the amounts required by law to provide protection for employees of the Engineer in the event of job-related injuries.

b. **Comprehensive General Liability Insurance, including broad form and contractual liability endorsement**, having a limit of \$1,000,000 per occurrence and \$1,000,000 Aggregate for personal injury and property damage.

c. **Automobile Liability Insurance** having a combined single limit of \$1,000,000 for bodily injury and property damage per occurrence/policy aggregate.

d. **Professional Liability or Errors and Omissions Insurance** having limits of \$1,000,000 per claim and \$1,000,000 aggregate liability.

Owner shall be named as additional insured with respect to the coverages set forth in (b) and (c) above, on a primary & non-contributory basis.

November 1, 2022

To: The Honorable Mayor and City Council

From: Jennifer L. Voss, Senior Planner

Subject: Approving the Community Development Block Grant (CDBG) Sub-Recipient Agreement with Neighbors of Watertown, Inc. for the 2022 Homebuyer Program

The Community Development Block Grant (CDBG) Annual Action Plan for Program Year 2021 that was adopted by the City Council on June 20, 2022, included \$196,000 for a homebuyer program. The program will assist income eligible homebuyers in paying for the purchase and rehabilitation of approximately seven (7) homes in the City. Financial assistance will be available to help low- and moderate-income individuals pay for closing costs as well as minor home improvements in 1-4 unit homes.

A sub-recipient agreement between the City of Watertown and Neighbors of Watertown, Inc. for the 2022 Homebuyer Program has been drafted and is attached for Council's review. Neighbors of Watertown, Inc. will administer the project, complying with CDBG regulations and ensuring the units are occupied by low- and moderate-income persons. Approximately 8 percent of the total grant or \$15,000 is budgeted for administration and program delivery, while the remainder of the budget will be used to assist first time homebuyers with the purchase and minor rehabilitation of homes within the city.

The resolution prepared for City Council consideration approves the proposed agreement and authorizes the City Manager to sign it on behalf of the City Council.

**RESOLUTION**

Page 1 of 1

Approving the Community Development Block Grant (CDBG) Sub-recipient Grant Agreement with Neighbors of Watertown, Inc. for the 2022 Homebuyer Program

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by***

WHEREAS the City of Watertown's Community Development Block Grant (CDBG) Annual Action Plan for Program Year 2022 includes funding for the purchase and rehabilitation of approximately seven (7) housing units to income eligible homebuyers within the City of Watertown, and

WHEREAS the Annual Action Plan identifies the Homebuyer Program to be \$196,000 in funding for the purchase, rehabilitation, administration, and program delivery, and

WHEREAS Neighbors of Watertown, Inc. will serve as the Sub-Recipient of the funds for program administration, and

WHEREAS a Sub-Recipient Agreement between the City of Watertown and Neighbors of Watertown, Inc. for the CDBG funds has been prepared,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown that it hereby approves the Sub-Recipient Agreement with the Neighbors of Watertown, Inc. for the 2022 Homebuyer Program, a copy of which is attached and made a part of this resolution, and

BE IT FURTHER RESOLVED that the City Manager, Kenneth A. Mix, is hereby authorized and directed to sign the Sub-Recipient Agreement on behalf of the City Council for the 2022 Homebuyer Program.

***Seconded by***

**SUB-RECIPIENT AGREEMENT  
BETWEEN  
CITY OF WATERTOWN, NY  
AND  
NEIGHBORS OF WATERTOWN, INC.  
FOR  
2022 HOMEBUYER PROGRAM**

THIS AGREEMENT, entered this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the City of Watertown (herein called the “Grantee”) and Neighbors of Watertown, Inc. (herein called the “Sub-recipient”).

WHEREAS, the Grantee has received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; otherwise known as the Community Development Block Grant Program, and

WHEREAS, the Grantee wishes to engage the Sub-recipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

**I. SCOPE OF SERVICES**

**A. Activities**

The Sub-recipient is responsible for delivering the Grantee’s 2022 Community Development Block Grant Homebuyer Program. The Sub-recipient shall administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

**B. Principal Tasks**

The major goal of the Sub-recipient’s efforts under this Agreement will be the closing of at least six (6) income eligible homebuyer housing units. Toward that goal, the major tasks that the Sub-recipient will perform include, but are not necessarily limited to, the following:

**1. Homebuyer program guidelines, administrative procedures, plans and forms:**

The Sub-recipient will administer the program using the Homebuyer Program Guidelines established by the Grantee, including but not limited to applicant eligibility requirements, priorities among applicants and among rehabilitation measures, the limits and structure of financial assistance, and the recapture and affordability policies, as well as the administrative procedures (including but not limited to the verification of eligibility, inspection, work write-up and contractor

selection, construction administration and payments). The Sub-recipient will establish other necessary forms, documents, or sample contracts for administration of the program, subject to approval by the Grantee.

2. **Outreach:** The Sub-recipient will conduct sufficient advertisement of the homebuyer program and other forms of outreach to ensure that eligible applicants are made aware of the program and how to participate in order to meet the housing goal stated in this agreement.
3. **Intake/assessment of eligibility:** The Sub-recipient will assist potential property owners in the completion of applications to permit eligibility determinations for homebuyer assistance. The Sub-recipient will make provision for translation services to meet the needs of non-English-speaking applicants. In the event of applicants who have impaired mobility or other disabilities, the Sub-recipient will make provisions for completing the application at the applicant's residence or other acceptable procedures for ensuring equal access to services. Initial eligibility determination of households/structures will be made by the Sub-recipient on the basis of satisfaction of income, when all the required eligibility documentation is provided. Homebuyers will be assisted on a first come, first ready basis.
4. **Environmental Review:** The Grantee will retain all environmental review responsibilities subject to 24 CFR Part 52, as stated explicitly in Section VII, and will bear all accountability for environmental compliance under HUD monitoring. Grantee staff will complete all HUD environmental review forms and procedures. For tiered reviews, this will include both the broad-level environmental review and all site-specific reviews that follow.

In the course of completing environmental reviews, the Grantee may require site specific information from the Sub-recipient. Such information may include, but is not limited to, proof of compliance with any statute, executive order or regulation where compliance was not achieved at the broad level of review. The Grantee may request any information necessary for the completion of an environmental review at any time, and the Sub-recipient is responsible for providing accurate and complete documentation. The Sub-recipient shall not authorize the start of any project until notified by the Grantee that the environmental review of the project has been completed.

5. **Work write-ups:** For each eligible unit to be assisted, the Sub-recipient will complete a detailed work write-up of the rehabilitation to be performed, including estimated costs of each activity, materials to be used, and industry or regulatory standards to be met. This write-up will be initialed and dated by the homeowner.
6. **Lead Based Paint:** For each eligible unit to be assisted that was built prior to 1978, the Sub-recipient will take steps to ensure compliance with Lead-Based Paint regulations, 24 CFR 570.608 and 24 CFR Part 35, Subpart B, including but not limited to testing of painted surfaces to identify lead based paint hazards, a plan for

addressing any identified hazards in the work plan, assurance that work that disturbs painted surfaces where lead-based paint is identified is performed by contractors who are trained to use “safe work practices” and performance of a “clearance inspection” at the completion of the project to assure that no dust is present that is contaminated with lead based paint. Additionally, all owners and tenants of the properties of will be property notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.

7. **Asbestos:** For each eligible unit to be assisted, the Sub-recipient will take steps to ensure compliance with the reporting requirements of the Clean Air Act as well as with all survey, reporting and removal requirements contained within 12 NYCRR Part 56.
8. **Bank financing:** For those applicants required to secure a portion of the mortgage financing or financing for the rehabilitation work through private loans from a bank or other type of private financial institution, the Sub-recipient agrees to provide assistance to applicants when applying for such complementary financing.
9. **Solicitation and selection of contractors:** The Sub-recipient will assist approved applicants in the identification, solicitation, and selection of contractors qualified to perform the authorized rehabilitation of eligible housing units. The Sub-recipient will use the approved forms and contract formats and will ensure the description of the work contained in any contracts with contractors is accurate and complete. The Sub-recipient also agrees to ensure work-write ups are thorough and detailed in order for contractors to create a reasonable bid on the project.
10. **Periodic and final inspections:** The Sub-recipient will perform periodic site visits to ascertain that approved and contracted rehabilitation work is proceeding properly and satisfactorily, will authorize (with the owner’s written approval, including signature and date) appropriate change orders, and will mediate in the event of owner dissatisfaction with the work done by the contractor. A final inspection will be done by the Sub-recipient and signed by the property owner prior to final payment to the contractor.
11. **Approval of contractor payments:** As rehabilitation progresses and invoices are submitted by contractors, the Sub-recipient will verify that the expenses are reasonable and the work has been completed properly (including a sign-off by the owner), and will authorize drawdown of funds from the Grantee, and disbursement to the contractors.
12. **Maintenance of case files and other records:** For each applicant, the Sub-recipient will maintain case files, including application and documentation of

eligibility, work write-ups, the assistance agreement between the property owner and Sub-recipient (along with repayment/ recapture provisions), documentation of liens and any other forms of security, lead based paint reports and notifications, contractor selection criteria, copy of contract between owner and contractors, documentation on all necessary licenses and permits, site visit/inspection reports (including final inspection), change orders, and approved contractor invoices for payment (with owner sign-off). The Sub-recipient will also maintain appropriate information on persons residing in the property, including a list or lists identifying persons in a project immediately before the project, after project completion, and those moving in during the project, as well as information on those displaced or temporarily relocated (per 24 CFR 570.606 and 24 CFR part 24). The Sub-recipient will maintain these and other program and financial records in accordance with the general requirements for record keeping specified in Section VIII B2 of this Agreement.

#### C. National Objectives

All activities funded with CDBG funds must meet at least one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Sub-recipient certifies that the activity (ies) carried out under this Agreement will benefit low- and moderate-income persons by offering financing to support the purchase of homes that are occupied by low- or moderate-income households.

The occupants of each home must qualify with household income not exceeding the HUD Section 8 Income Limits. Therefore, all assistance provided in the form of homebuyer financing and all activity delivery expenses will directly benefit low- or moderate-income persons.

#### D. Levels of Accomplishment – Goals and Performance Measures

The Sub-recipient agrees to the closing of at least six (6) income eligible homebuyer housing units.

#### E. Staffing

Compliance with all CDBG regulations and requirements and implementation of the Homebuyer Program will be carried out by the following staff that will be assigned as key personnel and will carry out and will be responsible for their assigned tasks:

<b>Staff Member Title</b>	<b>General Program Duties</b>
Reginald Schweitzer, Director	Overall administration of the Program activities; General program oversight and administration;
Laurie Barber, Housing Program Director	Assist with revision of forms and procedures; outreach; intake and eligibility determinations; direct the mailing of letters to potential clients, mailing of program handbooks and pre-applications; receive and review applications, interview and verify documentation for qualifying applicants, schedule inspection, supervision of Housing Rehab Coordinator; submission of approved contractor invoices; prepare reports and draws, revision of forms and procedures; assist with securing bank financing, maintain all program records and required grant documentation; ensure compliance upon completion
Gene Bolton, Housing Rehab Coordinator	Stay abreast of rehabilitation costs, materials and best practices; qualify all contractors; inspect each property to determine the scope of rehabilitation required; work write-ups; assist owner in preparing bid packages, solicitation of contractors; assist owner in selecting contractor based on lowest, qualified bid, approval of contractor selection; monitor work in progress; inspect work for compliance with specifications, close out projects, submit progress and final payments; inspect property to ensure compliance throughout the compliance period;
Sarah Millard, Fiscal Director	Financial Records

Any changes in the key personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

#### **F. Performance Monitoring**

The Grantee will monitor the performance of the Sub-recipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

## **II. TIME OF PERFORMANCE**

#### **A. Contract Term.**

Services of the Sub-recipient shall start on November 8, 2022 and end on December 31, 2024. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Sub-recipient remains in control of CDBG funds or other CDBG assets, including program income.



B. Project Schedule.

The Sub-recipient will perform the described homebuyer tasks and complete the rehabilitation of eligible units in conformance with the schedule below.

Activity	Planned Finish Date
Marketing/Outreach	On-going
Applications/Eligibility Determination	On-going
Awards/Project Selection	On-going
Contracts	On-going
25% of Funds Committed	September 2023
50% of Funds Expended	January 2024
100% of Funds Expended	October 2024
Project Closeout	December 2024

**III. BUDGET**

A. Line Item Budget

The following is the budget for the homebuyer program to be administered by the Sub-recipient.

Homebuyer loans	\$ 166,000.00
Environmental Testing Fees	\$ 15,000.00
Administration and Program Delivery	\$ 15,000.00
 TOTAL	 \$ 196,000.00

B. Indirect Costs

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Sub-recipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee.

#### **IV. PAYMENT**

##### **A. Subgrant Amount and Drawdowns**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$196,000. Drawdowns for the payment of eligible expenses shall be made against the line-item budgets specified in Section III herein and in accordance with performance.

##### **B. Direct Rehabilitation Expenses.**

Payments to contractors should be made on the basis of work completed, with at least 10 percent retained until final inspection and sign-off of the completed rehabilitation by the Sub-recipient's staff and property owner.

\*Payment schedules based on number of inspections throughout the process will work, but not an actual schedule as construction timelines can vary based on a number of factors encountered throughout the process.

##### **C. Operation & Administration Expenses**

Expenses for general administration shall also be paid against the line-item budgets specified in Section III and in accordance with performance.

##### **D. Financial Management Certification**

Payments may be contingent upon certification of the Sub-recipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

#### **V. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee

Michael Lumbis, Planning & Community Development Director  
City of Watertown  
245 Washington Street  
Watertown, NY 13601  
Tel: (315) 785-7741  
Fax: (315) 782-9014

Sub-recipient

Reginald J. Schweitzer, CEO/Executive Director  
Neighbors of Watertown, Inc.  
112 Franklin Street  
Watertown, NY 13601  
(315) 782-8497  
(315) 782-0102

**VI. SPECIAL CONDITIONS**

N/A

**VII. GENERAL CONDITIONS**

A. General Compliance

The Sub-recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Sub-recipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Sub-recipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Sub-recipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Sub-recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Sub-recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical

insurance and Workers' Compensation Insurance, as the Sub-recipient is an independent contractor.

C. Hold Harmless

The Sub-recipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Sub-recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Sub-recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Sub-recipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Sub-recipient shall provide the Grantee with proof of the above insurances and bond, reflecting that the City of Watertown is the loss payee for such coverages, and shall also provide a Certificate of Insurance which reflects that the City is an additional insured on its Commercial General liability (CGL) Insurance and that the City of Watertown will be provided with at least 30 days notice, by the insurer, of any intent to cancel or discontinue the Sub-recipient's coverage.

The Sub-recipient shall comply with the bonding and insurance requirements of 2 CFR 200.325 and 200.447, Bonding and Insurance.

F. Grantee Recognition

The Sub-recipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Sub-recipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Sub-recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the

Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Sub-recipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Sub-recipient.

#### H. Suspension or Termination

In accordance with 2 CFR 200.339, the Grantee may suspend or terminate this Agreement if the Sub-recipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Sub-recipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Sub-recipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200.340, this Agreement may also be terminated for convenience by either the Grantee or the Sub-recipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

### **VIII. ADMINISTRATIVE REQUIREMENTS**

#### A. Financial Management

##### 1. Accounting Standards

The Sub-recipient agrees to comply with 2 CFR 200.400-419 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

## 2. Cost Principles

The Sub-recipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

## B. Documentation and Record Keeping

### 1. Records to be Maintained

The Sub-recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

### 2. Retention

The Sub-recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee’s Consolidated Annual Performance and Evaluation Report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### 3. Client Data

The Sub-recipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### 4. Disclosure

The Sub-recipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Sub-recipient's responsibilities with respect to services provided under this contract, is prohibited by the Privacy Act unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### 5. Close-outs

The Sub-recipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Sub-recipient has control over CDBG funds, including program income.

### 6. Audits & Inspections

All Sub-recipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Sub-recipient audits and OMB Circular A-133.

## C. Reporting and Payment Procedures

### 1. Program Income

The Sub-recipient shall report as needed all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The Sub-recipient will not use any program income. All program income will be returned to the Grantee.

### 2. Indirect Costs

If indirect costs are charged, the Sub-recipient will develop an indirect cost allocation plan for determining the appropriate Sub-recipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

### 3. Payment Procedures

The Grantee will pay to the Sub-recipient funds available under this Agreement based upon information submitted by the Sub-recipient and consistent with any approved budget and Grantee policy concerning payments. Payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Sub-recipient.

### 4. Progress Reports

The Sub-recipient shall submit monthly Progress Reports to the Grantee in the form and with the content required by the Grantee.

## D. Procurement

### 1. Compliance

The Sub-recipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.



## 2. OMB Standards

Unless specified otherwise within this agreement, the Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-326.

## 3. Travel

The Sub-recipient shall obtain written approval from the Grantee for any travel outside the greater Watertown area with funds provided under this Agreement.

## E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200.311-315 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Sub-recipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Sub-recipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement. If the Sub-recipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Sub-recipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Sub-recipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Sub-recipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

## **IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Sub-recipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Sub-recipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Sub-recipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

## **X. PERSONNEL & PARTICIPANT CONDITIONS**

### **A. Civil Rights**

#### **1. Compliance**

The Sub-recipient agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

#### **2. Nondiscrimination**

The Sub-recipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

#### **3. Land Covenants**

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Sub-recipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled

to enforce such covenants. The Sub-recipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

#### 4. Section 504

The Sub-recipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Sub-recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

### B. Affirmative Action

#### 1. Approved Plan

The Sub-recipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Sub-recipient to assist in the formulation of such program. The Sub-recipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

#### 2. Women- and Minority-Owned Businesses (W/MBE)

The Sub-recipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

#### 3. Access to Records

The Sub-recipient shall furnish and cause each of its own Sub-recipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent,

or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Sub-recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Sub-recipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Sub-recipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Sub-recipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Sub-recipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Sub-recipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Sub-recipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Sub-recipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Sub-recipient of its obligation, if any, to require payment of the higher wage. The Sub-recipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

D. Conduct

1. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Sub-recipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Sub-recipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Sub-recipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Sub-recipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Sub-recipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Sub-recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Sub-recipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Sub-recipient, or any designated public agency.

## 5. Lobbying

The Sub-recipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-recipients shall certify and disclose accordingly:
- d. Lobbying Certification  
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## 6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

## 7. Religious Activities

The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

## **XI. ENVIRONMENTAL CONDITIONS**

### A. Air and Water

The Sub-recipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

### B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Sub-recipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

### C. Lead-Based Paint

The Sub-recipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.



#### **D. Historic Preservation**

The Sub-recipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

#### **XII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

#### **XIII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

#### **XIV. WAIVER**

The Grantee's failure to act with respect to a breach by the Sub-recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

#### **XV. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Grantee and the Sub-recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Sub-recipient with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

City of Watertown, New York

By: \_\_\_\_\_  
Kenneth A. Mix, City Manager

Neighbors of Watertown, Inc.

By: \_\_\_\_\_  
Reginald J. Schweitzer, Executive Director

November 1, 2022

To: The Honorable Mayor and City Council

From: Jennifer L. Voss, Senior Planner

Subject: Approving the Community Development Block Grant (CDBG) Sub-recipient Grant Agreement with Neighbors of Watertown, Inc. for the 2022 Owner Occupied Rehabilitation Program

The Community Development Block Grant (CDBG) Annual Action Plan for Program Year 2022 that was adopted by the City Council on June 20, 2022, included \$196,000 to pay for the rehabilitation of approximately seven (7) substandard housing units in the City of Watertown. Financial assistance will be available to help low- and moderate-income homeowners pay for the cost of home improvements in 1-4 unit homes.

A sub-recipient agreement between the City of Watertown and Neighbors of Watertown, Inc. for the 2022 Owner Occupied Rehabilitation Program has been drafted and is attached for Council's review. Neighbors of Watertown, Inc. will administer the project, complying with CDBG regulations and ensuring the units are occupied by low- and moderate-income persons. Approximately eight percent of the total budget or \$15,000 is budgeted for administration and program delivery while the remainder of the budget will be used for rehabilitation of substandard homes within the city.

The resolution prepared for City Council consideration approves the proposed agreement and authorizes the City Manager to sign it on behalf of the City Council.

# RESOLUTION

Page 1 of 1

Approving the Community Development Block Grant (CDBG) Sub-recipient Grant Agreement with Neighbors of Watertown, Inc. for the 2022 Owner-Occupied Rehabilitation Program

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

## Introduced by

WHEREAS the City of Watertown's Community Development Block Grant (CDBG) Annual Action Plan for Program Year 2022 includes the rehabilitation of approximately seven (7) substandard housing units within the City of Watertown, and

WHEREAS the Annual Action Plan identifies the Owner-Occupied Rehabilitation activity to be \$196,000 in funding for rehabilitation, administration, and program delivery, and

WHEREAS Neighbors of Watertown, Inc. will serve as the Sub-Recipient of the funds for program administration, and

WHEREAS a Sub-Recipient Agreement between the City of Watertown and Neighbors of Watertown, Inc. for the CDBG funds has been prepared,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown that it hereby approves the Sub-Recipient Agreement for program administration with the Neighbors of Watertown for the 2022 Owner Occupied Rehabilitation Program, a copy of which is attached and made a part of this resolution, and

BE IT FURTHER RESOLVED that the City Manager, Kenneth A. Mix, is hereby authorized and directed to sign the Sub-Recipient Agreement and all contracts associated with implementing the award to Neighbors of Watertown, Inc. for the 2022 Owner-Occupied Rehabilitation Program.

## Seconded by

**SUB-RECIPIENT AGREEMENT  
BETWEEN  
CITY OF WATERTOWN, NY  
AND  
NEIGHBORS OF WATERTOWN, INC.  
FOR  
2022 OWNER OCCUPIED REHABILITATION PROGRAM**

THIS AGREEMENT, entered this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the City of Watertown (herein called the “Grantee”) and Neighbors of Watertown, Inc. (herein called the “Sub-recipient”).

WHEREAS, the Grantee has received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; otherwise known as the Community Development Block Grant Program, and

WHEREAS, the Grantee wishes to engage the Sub-recipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

**I. SCOPE OF SERVICES**

**A. Activities**

The Sub-recipient is responsible for delivering the Grantee’s 2022 Community Development Block Grant Owner Occupied Rehabilitation Program. The Sub-recipient shall administer all tasks in connection with the aforesaid program in compliance with all applicable Federal, state, and local rules and regulations governing these funds, and in a manner satisfactory to the Grantee.

**B. Principal Tasks**

The major goal of the Sub-recipient’s efforts under this Agreement will be the completion of the rehabilitation of at least six (6) eligible owner-occupied housing units. All target areas and locations throughout the City of Watertown will be considered based on the need of the participating homeowners. Toward that goal, the major tasks that the Sub-recipient will perform include, but are not necessarily limited to, the following:

- 1. Housing rehabilitation program guidelines, administrative procedures, plans and forms:** The Sub-recipient will administer the program using the Homebuyer Program Guidelines established by the Grantee, including but not limited to applicant eligibility requirements, priorities among applicants and among rehabilitation measures, the limits and structure of financial assistance, and the recapture and affordability policies, as well as the administrative procedures

(including but not limited to the verification of eligibility, inspection, work write-up and contractor selection, construction administration and payments). The Sub-recipient will establish other necessary forms, documents or sample contracts for administration of the program, subject to approval by the Grantee.

2. **Outreach:** The Sub-recipient will conduct sufficient advertisement of the housing rehabilitation program and other forms of outreach to ensure that eligible applicants are made aware of the program and how to participate in order to meet the housing rehabilitation goal stated in this agreement.
3. **Intake/assessment of eligibility:** The Sub-recipient will assist property owners in the completion of applications to permit eligibility determinations for rehabilitation assistance. The Sub-recipient will make provision for translation services to meet the needs of non-English-speaking applicants. In the event of applicants who have impaired mobility or other disabilities, the Sub-recipient will make provisions for completing the application at the applicant's residence or other acceptable procedures for ensuring equal access to services. Initial eligibility determination of households/structures will be made by the Sub-recipient on the basis of satisfaction of income requirements (single-unit structures must be owner occupied by a low- and moderate-income household; if a two-unit structure, at least one must be so occupied; and if three or four units in a structure, at least 51 percent of the units must be occupied by low- and moderate-income households [at affordable rents, where applicable] according to the most current income limits established by HUD), the apparent need for rehabilitation measures to correct relevant housing code or Housing Quality Standard (HQS) deficiencies, and any other pertinent criteria set forth in the approved program design.
4. **Environmental Review:** The Grantee will retain all environmental review responsibilities subject to 24 CFR Part 52, as stated explicitly in Section VII, and will bear all accountability for environmental compliance under HUD monitoring. Grantee staff will complete all HUD environmental review forms and procedures. For tiered reviews, this will include both the broad-level environmental review and all site-specific reviews that follow.

In the course of completing environmental reviews, the Grantee may require site specific information from the Sub-recipient. Such information may include, but is not limited to, proof of compliance with any statute, executive order or regulation where compliance was not achieved at the broad level of review. The Grantee may request any information necessary for the completion of an environmental review at any time, and the Sub-recipient is responsible for providing accurate and complete documentation. The Sub-recipient shall not authorize the start of construction on any project until notified by the Grantee that the environmental review of the project has been completed.

5. **Work write-ups:** For each eligible unit to be assisted, the Sub-recipient will complete a detailed work write-up of the rehabilitation to be performed, including

estimated costs of each activity, materials to be used, and industry or regulatory standards to be met. This write-up will be initialed and dated by the homeowner.

6. **Lead Based Paint:** For each eligible unit to be assisted that was built prior to 1978, the Sub-recipient will take steps to ensure compliance with Lead-Based Paint regulations, 24 CFR 570.608 and 24 CFR Part 35, Subpart B, including but not limited to testing of painted surfaces to identify lead based paint hazards, a plan for addressing any identified hazards in the work plan, assurance that work that disturbs painted surfaces where lead-based paint is identified is performed by contractors who are trained to use “safe work practices” and performance of a “clearance inspection” at the completion of the project to assure that no dust is present that is contaminated with lead based paint. Additionally, all owners and tenants of the properties of will be property notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken.
7. **Asbestos:** For each eligible unit to be assisted, the Sub-recipient will take steps to ensure compliance with the reporting requirements of the Clean Air Act as well as with all survey, reporting and removal requirements contained within 12 NYCRR Part 56.
8. **Bank financing:** For those applicants required to secure a portion of the financing for the rehabilitation work through private loans from a bank or other type of private financial institution, the Sub-recipient agrees to provide assistance to applicants when applying for such complementary financing.
9. **Solicitation and selection of contractors:** The Sub-recipient will assist approved applicants in the identification, solicitation, and selection of contractors qualified to perform the authorized rehabilitation of eligible housing units. The Sub-recipient will use the approved forms and contract formats and will ensure the description of the work contained in any contracts with contractors is accurate and complete. The Sub-recipient also agrees to ensure work-write ups are thorough and detailed in order for contractors to create a reasonable bid on the project.
10. **Periodic and final inspections:** The Sub-recipient will perform periodic site visits to ascertain that approved and contracted rehabilitation work is proceeding properly and satisfactorily, will authorize (with the owner’s written approval, including signature and date) appropriate change orders, and will mediate in the event of owner dissatisfaction with the work done by the contractor. A final inspection will be done by the Sub-recipient and signed by the property owner prior to final payment to the contractor.

11. **Approval of contractor payments:** As rehabilitation progresses and invoices are submitted by contractors, the Sub-recipient will verify that the expenses are reasonable and the work has been completed properly (including a sign-off by the owner), and will authorize drawdown of funds from the Grantee, and disbursement to the contractors.
12. **Maintenance of case files and other records:** For each applicant, the Sub-recipient will maintain case files, including application and documentation of eligibility, work write-ups, the assistance agreement between the property owner and Sub-recipient (along with repayment/ recapture provisions), documentation of liens and any other forms of security, lead based paint reports and notifications, contractor selection criteria, copy of contract between owner and contractors, documentation on all necessary licenses and permits, site visit/inspection reports (including final inspection), change orders, and approved contractor invoices for payment (with owner sign-off). The Sub-recipient will also maintain appropriate information on persons residing in the property, including a list or lists identifying persons in a project immediately before the project, after project completion, and those moving in during the project, as well as information on those displaced or temporarily relocated (per 24 CFR 570.606 and 24 CFR part 24). The Sub-recipient will maintain these and other program and financial records in accordance with the general requirements for record keeping specified in Section VIII B2 of this Agreement.

#### C. National Objectives

All activities funded with CDBG funds must meet at least one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Sub-recipient certifies that the activity (ies) carried out under this Agreement will benefit low- and moderate-income persons by offering financing to support the rehabilitation of substandard homes and apartments that are occupied by low or moderate income households. For activities benefiting low- and moderate-income persons, the Sub-recipient must adopt and make public the grantee's standards for determining that for housing assisted under the program, the rents of units occupied by low- and moderate-income persons are "affordable."

The occupants of each home must qualify with household income not exceeding the HUD Section 8 Income Limits. Therefore, all assistance provided in the form of rehabilitation financing and all activity delivery expenses will directly benefit low or moderate income persons.

#### D. Levels of Accomplishment – Goals and Performance Measures

The Sub-recipient agrees to rehabilitate at least six (6) housing units.



E. Staffing

Compliance with all CDBG regulations and requirements and implementation of the Owner- Occupied Rehabilitation Program will be carried out by the following staff that will be assigned as key personnel and will carry out and will be responsible for their assigned tasks:

<b>Staff Member Title</b>	<b>General Program Duties</b>
Reginald Schweitzer, Executive Director	Overall administration of the Program activities; General program oversight and administration;
Laurie Barber, Housing Program Director	Assist with revision of forms and procedures; outreach; intake and eligibility determinations; direct the mailing of letters to potential clients, mailing of program handbooks and pre-applications; receive and review applications, interview and verify documentation for qualifying applicants, schedule inspection, supervision of Housing Rehab Coordinator; submission of approved contractor invoices; prepare reports and draws, revision of forms and procedures; qualify potential tenants upon completion, maintain all program records and required grant documentation; ensure compliance upon completion
Gene Bolton, Housing Rehab Coordinator	Stay abreast of rehabilitation costs, materials and best practices; qualify all contractors; inspect each property to determine the scope of rehabilitation required; work write-ups; assist owner in preparing bid packages, solicitation of contractors; assist owner in selecting contractor based on lowest, qualified bid, approval of contractor selection; monitor work in progress; inspect work for compliance with specifications, close out projects, submit progress and final payments; inspect property to ensure compliance throughout the compliance period;
Sarah Millard, Fiscal Director	Financial Records

Any changes in the key personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

F. Performance Monitoring

The Grantee will monitor the performance of the Sub-recipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub-recipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

## **II. TIME OF PERFORMANCE**

### **A. Contract Term.**

Services of the Sub-recipient shall start on November 8, 2022 and end on December 31, 2024. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Sub-recipient remains in control of CDBG funds or other CDBG assets, including program income.

### **B. Project Schedule.**

The Sub-recipient will perform the described housing rehabilitation tasks and complete the rehabilitation of eligible units in conformance with the schedule below.

<b>Activity</b>	<b>Planned Finish Date</b>
Marketing/Outreach	On-going
Applications/Eligibility Determination	On-going
Awards/Project Selection	On-going
Contracts	On-going
25% of Funds Committed	September 2023
50% of Funds Expended	April 2024
100% of Funds Expended	November 2024
Project Closeout	December 2024

## **III. BUDGET**

### **A. Line Item Budget**

The following is the budget for the housing rehabilitation program to be administered by the Sub-recipient.

Rehabilitation Loans and Grants	\$ 166,000.00
Environmental Testing Fees	\$ 15,000.00
Administration and Program Delivery	\$ 15,000.00
<b>TOTAL</b>	<b>\$196,000.00</b>

#### B. Indirect Costs

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Sub-recipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee.

### **IV. PAYMENT**

#### A. Subgrant Amount and Drawdowns

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$196,000. Drawdowns for the payment of eligible expenses shall be made against the line-item budgets specified in Section III herein and in accordance with performance.

#### B. Direct Rehabilitation Expenses.

Payments to contractors should be made on the basis of work completed, with at least 10 percent retained until final inspection and sign-off of the completed rehabilitation by the Sub-recipient's staff and property owner.

\*Payment schedules based on number of inspections throughout the process will work, but not an actual schedule as construction timelines can vary based on a number of factors encountered throughout the process.

#### C. Operation & Administration Expenses

Expenses for general administration shall also be paid against the line-item budgets specified in Section III and in accordance with performance.

#### D. Financial Management Certification

Payments may be contingent upon certification of the Sub-recipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

### **V. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

Grantee

Michael Lumbis, Planning & Community Development Director  
City of Watertown  
245 Washington Street  
Watertown, NY 13601  
Tel: (315) 785-7741  
Fax: (315) 782-9014

Sub-recipient

Reg Schweitzer, CEO/Executive Director  
Neighbors of Watertown, Inc.  
112 Franklin Street  
Watertown, NY 13601  
(315) 782-8497  
(315) 782-0102

**VI. SPECIAL CONDITIONS**

N/A

**VII. GENERAL CONDITIONS**

A. General Compliance

The Sub-recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Sub-recipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Sub-recipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Sub-recipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Sub-recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Sub-recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from

payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub-recipient is an independent contractor.

C. Hold Harmless

The Sub-recipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Sub-recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Sub-recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Sub-recipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Sub-recipient shall provide the Grantee with proof of the above insurances and bond, reflecting that the City of Watertown is the loss payee for such coverages, and shall also provide a Certificate of Insurance which reflects that the City is an additional insured on its Commercial General liability (CGL) Insurance and that the City of Watertown will be provided with at least 30 days notice, by the insurer, of any intent to cancel or discontinue the Sub-recipient's coverage.

The Sub-recipient shall comply with the bonding and insurance requirements of 2 CFR 200.325 and 200.447, Bonding and Insurance.

F. Grantee Recognition

The Sub-recipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Sub-recipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Sub-recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the

Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Sub-recipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Sub-recipient.

#### H. Suspension or Termination

In accordance with 2 CFR 200.339, the Grantee may suspend or terminate this Agreement if the Sub-recipient materially fails to comply with any terms of this Agreement, which include (but are not limited), to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Sub-recipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Sub-recipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR 200.340, this Agreement may also be terminated for convenience by either the Grantee or the Sub-recipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

### **VIII. ADMINISTRATIVE REQUIREMENTS**

#### A. Financial Management

##### 1. Accounting Standards

The Sub-recipient agrees to comply with 2 CFR 200.400-419 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

## 2. Cost Principles

The Sub-recipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-21, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

## B. Documentation and Record Keeping

### 1. Records to be Maintained

The Sub-recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required determining the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

### 2. Retention

The Sub-recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee’s Consolidated Annual Performance and Evaluation Report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

### 3. Client Data

The Sub-recipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

### 4. Disclosure

The Sub-recipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Sub-recipient's responsibilities with respect to services provided under this contract, is prohibited by the Privacy Act unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### 5. Close-outs

The Sub-recipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Sub-recipient has control over CDBG funds, including program income.

### 6. Audits & Inspections

All Sub-recipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Sub-recipient audits and OMB Circular A-133.



## C. Reporting and Payment Procedures

### 1. Program Income

The Sub-recipient shall report as needed all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The Sub-recipient will not use any program income. All program income will be returned to the Grantee.

### 2. Indirect Costs

If indirect costs are charged, the Sub-recipient will develop an indirect cost allocation plan for determining the appropriate Sub-recipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

### 3. Payment Procedures

The Grantee will pay to the Sub-recipient funds available under this Agreement based upon information submitted by the Sub-recipient and consistent with any approved budget and Grantee policy concerning payments. Payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Sub-recipient.

### 4. Progress Reports

The Sub-recipient shall submit monthly Progress Reports to the Grantee in the form and with the content required by the Grantee.

## D. Procurement

### 1. Compliance

The Sub-recipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

### 2. OMB Standards

Unless specified otherwise within this agreement, the Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.317-326.

### 3. Travel

The Sub-recipient shall obtain written approval from the Grantee for any travel outside the greater Watertown area with funds provided under this Agreement.

### E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200.311-315 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Sub-recipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Sub-recipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement. If the Sub-recipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Sub-recipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Sub-recipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period.
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Sub-recipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

## **IX. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Sub-recipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d)

governing optional relocation policies. The Sub-recipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Sub-recipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

## **X. PERSONNEL & PARTICIPANT CONDITIONS**

### **A. Civil Rights**

#### **1. Compliance**

The Sub-recipient agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

#### **2. Nondiscrimination**

The Sub-recipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

#### **3. Land Covenants**

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Sub-recipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Sub-recipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

#### **4. Section 504**

The Sub-recipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),

which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Sub-recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Sub-recipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Sub-recipient to assist in the formulation of such program. The Sub-recipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Sub-recipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Sub-recipient shall furnish and cause each of its own Sub-recipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

#### 4. Notifications

The Sub-recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Sub-recipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

#### 5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.

#### 6. Subcontract Provisions

The Sub-recipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Sub-recipients or subcontractors.

### C. Employment Restrictions

#### 1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

#### 2. Labor Standards

The Sub-recipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Sub-recipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Sub-recipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Sub-recipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all

contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Sub-recipient of its obligation, if any, to require payment of the higher wage. The Sub-recipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

#### D. Conduct

##### 1. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

##### 2. Subcontracts

###### a. Approvals

The Sub-recipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

###### b. Monitoring

The Sub-recipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

###### c. Content

The Sub-recipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Sub-recipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Sub-recipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Sub-recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Sub-recipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Sub-recipient, or any designated public agency.

5. Lobbying

The Sub-recipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-recipients shall certify and disclose accordingly:
- d. Lobbying Certification  
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### 6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

#### 7. Religious Activities



The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

## **XI. ENVIRONMENTAL CONDITIONS**

### **A. Air and Water**

The Sub-recipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C., 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

### **B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Sub-recipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

### **C. Lead-Based Paint**

The Sub-recipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

### **D. Historic Preservation**

The Sub-recipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

## **XII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

## **XIII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

## **XIV. WAIVER**

The Grantee's failure to act with respect to a breach by the Sub-recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

## **XV. ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Grantee and the Sub-recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Sub-recipient with respect to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

City of Watertown, New York

By: \_\_\_\_\_  
Kenneth A. Mix, City Manager

Neighbors of Watertown, Inc.

By: \_\_\_\_\_  
Reginald J. Schweitzer, Executive Director

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Termination of Reverter for a Portion of Tax Parcel No. 7-04-101 Conveyed to JCIDA for the YMCA Aquatics Center

On February 1, 2021, the City Council authorized the conveyance of a 75' x 135' portion of Tax Parcel No. 7-04-101 to Jefferson County Industrial Development Agency for the YMCA Aquatics Center with a right of reversion. The reversion could take place if the project is not built. The permanent financing lender is requesting that the reverter clause be subordinated to their loan or be removed. The project is under construction, so there is no need for the reverter clause to continue.

A Termination of Reverter and a resolution approving it have been prepared for Council consideration.

**RESOLUTION**

Page 1 of 1

Approving Termination of Reverter for a  
Portion of Tax Parcel No. 7-04-101  
Conveyed to JCIDA for the YMCA  
Aquatics Center

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

**Introduced by** \_\_\_\_\_

WHEREAS a 75' x 135' portion of Tax Parcel No. 7-04-101 was conveyed by the City of Watertown to Jefferson County Industrial Development Agency for the YMCA Aquatics Center with the right of reversion to the City if the project is not built, and

WHEREAS the permanent financing lender has requested that the reverter clause be subordinated to their loan or terminated, and

WHEREAS the reverter clause is no longer necessary, because the project is under construction, and

WHEREAS a "Termination of Reverter" has been drafted for filing in the County Clerk's Office,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown, hereby approves the "Termination of Reverter", a copy of which is attached and made part of this resolution, and

BE IT FURTHER RESOLVED that Mayor Jeffrey M. Smith is authorized and directed to sign the "Termination of Reverter" on behalf of the City of Watertown.

**Seconded by** \_\_\_\_\_

**PLEASE RECORD AND RETURN TO:**

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Timothy M. Fitzgerald, Esq.

**TERMINATION OF REVERTER**

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF WATERTOWN, a New York municipal corporation with offices at 245 Washington Street, Watertown, New York 13601(the “City” ), DOES HEREBY CERTIFY that that certain right of reverter in favor the City and encumbering the real property set forth and described on Schedule A attached hereto and made part hereof, as set forth and reserved in that certain Quit Claim Deed recorded in the Jefferson County Clerk’s Office on August 9, 2022 as Instrument Number 2022-00014015 (the “*Right of Reverter*”), is hereby cancelled and terminated, and the City does hereby consent that the Right of Reverter be forever discharged of record:

Property Address: Arsenal Street, Watertown, NY 13601  
Former Tax Account Number: portion of 7-04-101

IN WITNESS WHEREOF, the City has caused this Termination to be duly executed this \_\_\_ day of November, 2022.

CITY OF WATERTOWN

By: \_\_\_\_\_  
Name: Jeffrey S. Smith  
Title: Mayor

STATE OF NEW YORK)  
COUNTY OF JEFFERSON) ss.:

On the \_\_\_ day of November in the year 2022, before me, the undersigned, personally appeared Jeffrey S. Smith, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and s/he acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## SCHEDULE A

City of Watertown – Lot 1

March 15, 2021  
Project No. 2020-107

ALL THAT TRACT or parcel of land situate in the City of Watertown, County of Jefferson, State of New York, and further described as follows:

BEGINNING at a point in the westerly property line of the parcel of land conveyed by Gary Juster to Jefferson County Industrial Development Agency by deed recorded in the Jefferson County Clerk's Office in Liber 1874 Page 106 on August 8, 2002, said point of beginning being N 19° 15' 04" E along the Juster to JCIDA westerly property line a distance of 99.81 feet from the westerly property line and northerly street margin of Arsenal Street;

THENCE N 70° 41' 52" W, a distance of 77.19 feet to a point;

THENCE N 19° 18' 08" E a distance of 133.00 feet to a point;

THENCE S 70° 41' 52" E a distance of 45.57 feet to a point;

THENCE S 88° 16' 52" E a distance of 33.04 feet to the most northwesterly corner of the Juster to JCIDA conveyance;

THENCE S 19° 15' 04" W along the Juster to JCIDA westerly property line a distance of 142.98 feet to the point of beginning.

CONTAINING 0.24 acres of land more or less.

SUBJECT to any rights or restrictions of record.

It being the intent to convey a portion of the following conveyances into the City of Watertown:

1. Standard Oil to City of Watertown by deed recorded in the Jefferson County Clerk's Office in Liber 795 Page 651 on April 4, 1967
2. People of the State of New York to City of Watertown by deed recorded in the Jefferson County Clerk's Office in Liber 751 Page 84 on July 9, 1964
3. Daniel M Swan to City of Watertown by deed recorded in the Jefferson County Clerk's Office in Liber 771 Page 247 on December 16, 1965
4. Harlo Motors Inc to City of Watertown by deed recorded in the Jefferson County Clerk's Office in Liber 765 Page 345 on April 2, 1965
5. Manfred Garage Inc to City of Watertown by deed recorded in the Jefferson County Clerk's Office in Liber 778 Page 71 on December 16, 1965.

The above described parcel as shown on the map titled Subdivision Plat and Topographic Survey of the Land of JCIDA and City of Watertown – Arsenal Street, prepared by Bernier Carr and Associates and dated March 15, 2021.

Res No. 15

November 1, 2022

To: Members of City Council

From: Jeffrey M. Smith, Mayor

Subject: Approving Employment Agreement Between the City  
of Watertown and Kenneth A. Mix for the Position  
of City Manager

Attached for Council's consideration is a resolution approving an Employment Agreement with Kenneth A. Mix for the position of City Manager. The contract is for a two-year term beginning on January 1, 2023.



November 7, 2022

Resolution No. 15

Page 1 of 1

Approving the Employment Agreement  
Between the City of Watertown and  
Kenneth A. Mix for the Position of  
City Manager

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V. C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by***

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WHEREAS the City Council desires to continue employing Kenneth A. Mix as City Manager, and

WHEREAS an employment agreement for the term from January 1, 2023 to December 31, 2024 has been drafted,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves the agreement between Kenneth A. Mix and the City of Watertown, a copy of which is attached and made part of this resolution.

***Seconded by***

## **EMPLOYMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into effective January 1, 2023, by and between the City of Watertown, a municipal corporation hereinafter called “Employer” or “City Council”, and Kenneth A. Mix, hereinafter called “Employee” or “City Manager.”

### **WITNESSETH**

**WHEREAS**, Employer desires to continue to employ the services of Kenneth A. Mix as City Manager of the City of Watertown, as provided for in the Charter of the City of Watertown and in the Optional City Government Law as contained at Chapter 444 of the Laws of 1914; and

**WHEREAS**, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment and to set working conditions of said Employee; and

**WHEREAS**, it is the desire of the City Council to (1) secure and retain the services of Employee, and to provide inducement for him to remain in such employment, (2) to make possible full work productivity and independence by assuring Employee’s morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee’s services at such time that the City Council may desire; and

**WHEREAS**, Employee desires to be employed as City Manager of the City of Watertown;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

### **Section 1. Powers and Duties of the City Manager.**

The City Council hereby agrees to continue the employment of Kenneth A. Mix as City Manager of the City of Watertown to perform the functions and duties specified in the Watertown City Charter and in the Chapter 444 of the Laws of New York of 1914, and to perform other legally permissible and proper duties and functions as the City Council shall from time to time assign, subject to this Agreement. The City Manager has been so employed pursuant to an Employment Agreement effective January 1, 2021.

### **Section 2. Term.**

- A. The City Manager serves at the pleasure of the City Council and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the City Manager, subject to the provisions of Section 3 of this Agreement.
- B. The term of this Agreement shall be January 1, 2023 through December 31, 2024.

- C. In the event Employee voluntarily resigns as City Manager before expiration of the term of this Agreement, then Employee shall give the City Council ninety (90) calendar days advance notice unless the parties agree otherwise.

### **Section 3. Early Termination.**

- A. In the event employment of the City Manager is terminated, other than for “just cause,” and prior to the expiration of the term of this Agreement (as defined in Paragraph 3 (E), below), the City Council agrees to pay Employee three (3) months salary, on a biweekly basis, for a period of three (3) months from termination. In the event Employee commences comparable employment in his field prior to three (3) months from the effective date of termination, the City Council’s obligation to pay salary shall then cease. Employee shall make good faith efforts to seek such comparable employment. The Parties’ rights and responsibilities, in respect to Health Insurance shall continue to be those established from Employee’s prior employment with the City regardless of Early Termination.
- B. The employee shall be compensated for all accrued sick leave and vacation time up to termination. The Employer, up to the maximum allowable, agrees to contribute to the Employee’s deferred compensation account based upon the value of his compensation calculated using the rate ordinarily contributed on regular compensation. If the maximum contribution is reached, Employer shall pay the remainder by direct payment to Employee.
- C. For purposes of this Section 3, a failure of the City Council to renew the City Manager’s Contract shall not be deemed a termination entitling the City Manager to severance pay if the City Council shall notify the City Manager, in writing, by October 1<sup>st</sup> of the year requiring renewal, that the Contract shall not be renewed. If the City Council does not inform the City Manager by October 1<sup>st</sup> of the year requiring renewal that the Contract will not be renewed, then any subsequent failure to renew shall entitle the City Manager to the Severance Pay called for in Section 3(A) and (B).
- D. Contemporaneously with the delivery of all of the severance pay and other compensation set forth above, the City Manager agrees to execute and deliver to Employer a release, releasing Employer from all claims that City Manager may have against Employer, its agent(s), official(s) or employee(s).
- E. In the event City Council at any time reduces the salary, compensation or other benefits of the City Manager in a proportion greater than that applicable as an across-the board reduction for all management and management/confidential employees of the City, or the reduction of all management and management/confidential employees of the City, or the City Manager resigns following a suggestion, either formal or informal, by a majority of the City Council that he resign, then in that event the City Manager may at his option, be deemed terminated, and entitled to the benefits as provided in Sections 3(A) and (B). However, prior to a “deemed” termination, the City Manager must give the City Council

notice of his intention to treat a particular action as a termination and provide the City Council fourteen (14) days to “cure” any claimed termination.

F. In the event the City Manager is terminated for “just cause,” then the Employer’s only obligation to the City Manager is to pay all compensation and benefits accrued but unpaid at the date of termination. “Just cause” is defined as the likely commission of a crime or other action involving likely dishonesty or moral turpitude, or insubordination by the City Manager as found by a majority of City Council in the good faith exercise of its discretion.

G. The terms of this Agreement shall remain in full force and effect unless and until it expires, or is sooner terminated.

#### **Section 4. Salary.**

Employer has been paying Kenneth A. Mix for his services as City Manager an annual gross salary of \$130,000 for the period of his earlier Employment Agreement up to and including December 31, 2022. On January 1, 2023, the annual gross pay shall increase to \$134,000.00; on January 1, 2024, the annual gross pay shall increase to \$138,000.00 for the remaining term of this Agreement. All salary is payable in installments at the same time as other employees of the City of Watertown are paid.

#### **Section 5. Retirement Benefits.**

- A. The City Manager shall be covered and governed by the same retirement system as all other non-public safety employees (New York State Employee Retirement System).
- B. Kenneth A. Mix presently has retirement benefits from his prior employment with the City of Watertown. This Agreement shall neither affect (increase or decrease), nor impair, those benefits.
- C. The City Manager shall have the option of converting up to five (5) sick days and five (5) vacation days, per fiscal year, into dollars to be contributed to the Employee’s Section 457 deferred compensation plan.

#### **Section 6. Health Insurance.**

Kenneth A. Mix presently has health insurance from his prior employment with the City of Watertown. This Agreement shall neither affect, nor impair, that insurance.

#### **Section 7. Other Benefits.**

- A. Employee may, at his option, carry over not more than fifteen (15) days vacation leave in any given year. Such carryover of vacation leave shall not be cumulative from year to year. Employee shall be credited with twenty-five (25) days vacation each year of this Agreement.

Employee's accrual of sick leave shall be at the rate per the existing City policy for management employees.

The City Manager shall use best efforts to provide the City Council with at least twenty-four (24) hours advance notice of his reasonable expectation to be absent from Jefferson County for at least two (2) consecutive days for any reason.

#### **Section 8. Professional Development.**

Employer agrees to budget for and to pay the professional dues, subscriptions, travel and subsistence expenses of the City Manager for professional participation and travel, meetings and occasions adequate to continue his professional development as budgeted by the City Council. Said participation on City time shall include: membership in the International City Management Association (ICMA), the New York State Municipal Management Association annual conference and dues, the New York State Public Employer Labor Relations Association annual conference and dues, and the New York State Conference of Mayors annual conference.

#### **Section 9. Performance Evaluation.**

The City Council shall review and evaluate the performance of the City Manager as required by the City Charter. Employer agrees to review base salary and/or other benefits of the City Manager at the time of his review, in such amounts and to such extent as the City Council may determine that it is desirable to do so, in light of performance by City Manager.

#### **Section 10. Hours of Work.**

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end, Employee shall be allowed to establish an appropriate work schedule.

#### **Section 11. Indemnification.**

Employer shall defend and indemnify Employee, in accordance with Section 18 of the N. Y. Public Officers Law, in any action or special proceeding arising from Employee's performance of duties as City Manager, unless those actions were illegal or otherwise outside the scope of his duties or authority.

#### **Section 12. Notices.**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) EMPLOYER: Mayor of the City of Watertown  
Suite 302, Municipal Building  
245 Washington Street  
Watertown, New York 13601

(2) EMPLOYEE: Kenneth A. Mix  
1008 Washington Street, Apt. 1  
Watertown, New York 13601

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

### **Section 13. Reporting to Council/Protections Against Retaliation.**

- A. In the event that the City Manager is given direction to “report back” at the direction of all members, or at the direction of any particular member of City Council, the City Manager’s sole responsibility shall be to “report back” to the Mayor and the then most senior member of Council.
- B. If a member of City Council shall attempt to give direction to a member of City Staff, said employee shall not be required to act on the direction unless and until the City Manager gives his approval of the same.
- C. The City Manager shall not be subject to retaliation by City Council, or by any of its members, or a combination thereof, for declining to proceed with a Council member’s direction, or declining to require a member of City staff to so proceed, unless such direction is approved by a majority of City Council in open session.
- D. These rules requiring City Council approval shall be strictly construed to ensure that the City Manager has the ability and authority to direct the work of City staff without interference, and further to ensure that City staff members are entitled to look solely to the City Manager for direction in their work.

### **Section 14. General Provisions.**

- A. The text herein shall constitute the entire Agreement between the parties.
- B. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, of portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- C. There shall be no changes in this Agreement unless agreed to in writing and approved by majority vote on the Council and by Employee.
- D. This Agreement is subject to all provisions of the City Charter of Watertown, New York.

Date: November \_\_\_\_, 2022

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Jeffrey M. Smith, Mayor  
Mayor of the City of Watertown

Date: November \_\_\_\_, 2022

---

Kenneth A. Mix, City Manager

November 1, 2022

TO: The Honorable Mayor and City Council

FROM: Tina Bartlett-Bearup, Purchasing Manager

SUBJECT: Bid #2022-33 Storm Sewer Outfall Bypass – Renzi Project  
Letter of Recommendation

The City's Purchasing Department advertised in the Watertown Daily Times for sealed bids from qualified bidders for the Storm Sewer Outfall Bypass – Renzi Project, per City specifications and publicly opened and read the sealed bids on October 31, 2022, at 2:00 p.m. EST.

The Purchasing Department received one (1) sealed bid submittal and the bid tabulation is shown below:

Vendor Name Location and Point of Contact	Cunningham Excavation
	PO Box 420
	Cazenovia, NY 13035
	Robert McCorry <a href="mailto:rmccorry@cunninghamexcavation.com">rmccorry@cunninghamexcavation.com</a>
Total Base Bid	\$168,777.00

The Purchasing Manager and Engineering Department in consultation with Aubertine & Currier reviewed the responses to ensure compliance with the specifications and hereby recommend that City Council award the total base bid for the Storm Sewer Outfall Bypass – Renzi Project to Cunningham Excavation, Inc. as the lowest responsive responsible bidder at a total price of **\$168,777**.

The Storm Sewer Outfall Bypass – Renzi Project, as re-adopted in the Fiscal Years 2020-21 through 2024-25 Capital Budget, will be funded through the American Rescue Plan Act of 2021.

If there are any questions concerning this recommendation, please contact me at your convenience.



**RESOLUTION**

Page 1 of 1

Accepting Bid for Storm Sewer Outfall Bypass –  
Renzi Project Cunningham Excavation, Inc.

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

**Introduced by** \_\_\_\_\_

WHEREAS the City desires to construct storm sewer outfall bypasses through an active project site for the northern and southern storm sewer outfalls. The storm sewer outfall bypass project passes through 901 Rail Drive (Renzi's Foodservice construction site), and

WHEREAS the Purchasing Department advertised and received one (1) sealed bid for the Storm Sewer Outfall Bypass - Renzi Project, and

WHEREAS on Monday, October 31, 2022, at 2:00 p.m. the bids received were publicly opened and read, and

WHEREAS Purchasing Manager, Tina Bartlett-Bearup reviewed the bids received with the Engineering Department and in consultation with Aubertine & Currier and it is their recommendation that the City Council accept the lowest responsive responsible bid submitted by Cunningham Excavation, Inc., and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby accepts the bid received from Cunningham Excavation, Inc. in the amount of \$168,777, and

BE IT FURTHER RESOLVED that the City Manager of the City Watertown is hereby authorized and directed to execute the Agreement on behalf of the City of Watertown.

**Seconded by** \_\_\_\_\_



CITY OF WATERTOWN, NEW YORK  
CITY HALL  
245 WASHINGTON STREET  
WATERTOWN, NEW YORK 13601-3380

Bid Number & Project:	2022-33 Storm Sewer Outfall Bypass
Bid Opening Date:	Monday, October 31, 2022 @ 2:00PM

*The following results are bids as presented at the bid opening and do not represent an award.*

Vendor Name Location and Point of Contact	Cunningham Excavation				
	PO Box 420				
	Cazenovia, NY 13035				
	Robert McCorry				
	<a href="mailto:rmccorry@cunninghamexcavation.com">rmccorry@cunninghamexcavation.com</a>				
Total Base Bid	\$168,777.00				
Addendum Acknowledgement (if any)	Y				
Bid Bond or Check (B / C)	B				
Non-Collusive Bidding Certificate	Y				
Certificate of Compliance with the Iran Divestment Act	Y				
Sexual Harassment Form	Y				
SAM's & NYS Debarred					

Res No. 13

May 31, 2022

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Re-adoption of the Fiscal Years 2021-22 through 2025-26 Capital Fund Budget – C.C.I.P. Stormwater Improvements

The following resolution was prepared at the request of Mayor Smith to re-adopt the Fiscal Years 2021-22 through 2025-26 Capital Fund Budget to include the stormwater improvement project in City Center Industrial Park at an estimated cost of \$200,000, which will be funded from the American Rescue Plan Act funds.

At the January 24, 2022, Work Session, John Renzi of Renzi Foodservice spoke about the problems they are having with stormwater on their property at 901 Rail Drive.

There are two “streams” that flow out of the City’s stormwater collection system and then across the Renzi property to the city-owned wetlands. On April 4, 2022 the City Council authorized obtaining easements for the “streams” and a connection to the storm sewer at the southern end of Bellew Avenue South so that we can maintain the integrity of the stormwater system.

Mr. Renzi would like the City to construct improvements within the proposed easements necessary for their project to move forward. This includes piping one of the streams under a proposed parking lot and rerouting the other around a proposed retention pond. He obtained an estimate from his contractor of \$171,000 for the work. The cost of engineering design brings the total to \$200,000.

# RESOLUTION

Page 1 of 1

Re-Adoption of Fiscal Years 2021-22  
through 2025-26 Capital Budget –  
C.C.I.P. Stormwater Improvements

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

## *Introduced by*

WHEREAS on May 24, 2021 the City Council adopted the Fiscal Years 2021-22 through 2025-26 Capital Budget, and

WHEREAS the re-adopted Fiscal Year 2021-22 Capital Fund Budget did not contain funding to make certain stormwater improvements at City Center Industrial Park,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby amends the Fiscal Years 2021-22 through 2025-26 Capital Budget to add the design and construction of certain stormwater improvements in City Center Industrial Park at an estimated cost of \$200,000 to the FY 2021-22 Capital Budget.

## *Seconded by*

FISCAL YEAR 2021-2022  
CAPITAL BUDGET  
FACILITY IMPROVEMENTS  
Stormwater

PROJECT DESCRIPTION		COST
<p><b>City Center Industrial Park Stormwater Improvements</b></p> <p>There are two outfalls from the City's stormwater system that discharge water onto property owned by Renzi Foodservice. The water flows across Renzi's property on its way to Beaver Meadow wetlands.</p> <p>This project designs and constructs alterations to the City's stormwater flow so that Renzi's can continue with their expansion project.</p>		\$200,000
<p>Funding for this project will be from the American Rescue Plan Act of 2021.</p>		
TOTAL		\$200,000

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving the Proposal for Construction Administration and Inspection Services for the Storm Sewer Outfalls City Center Industrial Park – Renzi Lots, Aubertine and Currier

A proposal was requested and received from Aubertine and Currier regarding the Construction Administration and Inspection Services associated with the construction and upgrades to two Storm Sewer Outfalls across the Renzi lots within the City Center Industrial Park, including improvements to a 900 ft. long segment located north of the Renzi Building, and a 620 ft. segment to the south of the building.

This Proposal includes their Scope of Services and overall Project Overview. Aubertine and Currier is proposing to complete the services for \$11,870.00.

A resolution approving this Agreement for Professional Services has been prepared for City Council consideration.

# RESOLUTION

Page 1 of 1

Approving The Proposal for Construction Administration and Inspection Services of Storm Sewer Outfalls City Center Industrial Park – Renzi Lots, Aubertine and Currier

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

## Introduced by

WHEREAS on June 22, 2022, the City of Watertown received a proposal from Aubertine and Currier regarding Civil Engineering, Design Services and Surveying Services associated with the construction and upgrades to two Storm Sewer Outfalls across the Renzi lots within the City Center Industrial Park, including improvements to a 900 ft. long segment located north of the Renzi Building, and a 620 ft. segment to the south of the building, and

WHEREAS the City Council approved this proposal on September 06, 2022, and

WHEREAS on October 31, 2022, the City of Watertown received a proposal from Aubertine and Currier regarding Construction Administration and Inspection Services associated with the construction and upgrades to two Storm Sewer Outfalls across the Renzi Lots within the City Center Industrial Park, including their overall Project Overview and Scope of Services, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves the proposal from Aubertine and Currier in the amount of \$11,870.00 for professional services, a copy of which is attached and made part of this Resolution, and

BE IT FURTHER RESOLVED that City Manager Kenneth A. Mix is hereby authorized and directed to execute Professional Service Agreement on behalf of the City of Watertown.

## Seconded by

October 31, 2022

City of Watertown  
Attn: Ken Mix, City Manager  
Room 206, City Hall  
245 Washington Street  
Watertown, NY 13601  
Submitted via email: kmix@watertown-ny.gov

**RE: Construction Administration and Construction Inspection Proposal  
Storm Sewer Outfalls, City Center Industrial Park – Renzi Lots  
City of Watertown, NY**

Dear Mr. Mix:

We are submitting this Proposal for Construction Administration and Construction Inspection Services associated with the construction and upgrade of two (2) Storm Sewer Outfalls within the City Center Industrial Park. This proposal provides a description of our understanding of the project's services as outlined within the Project Overview, Scope of Services, and corresponding Fee Schedule.

**I. PROJECT OVERVIEW**

- A. The Civil Engineering and Design associated with construction and upgrades to two (2) Storm Sewer Outfall across the Renzi lots within the City Center Industrial Park was completed on 10/17/2022. The project outfalls include upgrades and improvements to a 900' long segment located north of the Renzi building, and a 620' segment south of the Renzi building.
- B. Bids we received and opened by the City Purchasing Office On 10/31/2022. Cunningham Excavation was the low bidder.
- C. The project Construction Administration and Construction Inspections services are understood to take place during the project construction timeline as follows:
- Bid Opening – 12/31/2022
  - City Council Authorization to Award – 11/7/2022
  - Contract Signing – 11/11/2022
  - Construction - 11/14/2022 – 11/30/2022 (11 work days)
  - Punch List and Contract Closeout – 11/31/2022 – 12/9/2022 (7 work days)
  - Contract Completion – 12/9/2022
- D. The Construction Inspection scope of services includes ten (10) days of full time daily inspections during pipe and channel construction of the two (2) outfalls. Plus, five (5) days of part-time inspection during restoration, punch list and project closeout activities.



NYS WBE/DBE Certified  
SBA Woman Owned  
Small Business (WOSB)

[aubertinecurrier.com](http://aubertinecurrier.com)

522 Bradley Street  
Watertown, New York 13601

Phone: 315.782.2005  
Fax: 315.782.1472

**Managing Partner**  
Annette M. Mason, P.E.  
Structural Engineer

**Partners**  
Brian A. Jones, AIA.,  
LEED AP BD+C  
Architect

Matthew R. Morgia, P.E.  
Civil Engineer

Jayson J. Jones, P.L.S.  
Land Surveyor

Brian M. Krueger, AIA.,  
Architect



## **II. SCOPE OF SERVICES**

### **Construction Administration**

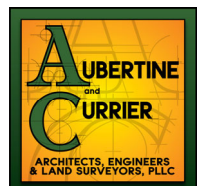
- A. Assist City during Bidding and Contract Award. Review Bids and provide Recommendation for Award. Assist City Purchasing Office with contract execution.
- B. Attend preconstruction meeting with Contractor and City staff to review project scope, schedule of values, schedule, lines of communication, outline submittal review procedures to be utilized, summarize administration activities, and payment application procedures.
- C. Conduct twice monthly job meetings. With the short duration of the project, this is anticipated to include a preconstruction meeting, project status meeting, and project punch list meeting, all taking place in less than one (1) month time.
- D. Monitor and converse with RPR Inspector regarding the progression of construction.
- E. Provide interpretation of plans, details and contract documents. Respond to contractor's requests for information (RFI's).
- F. Review contractor Change Orders. Determine applicability and appropriateness of additional work requested.
- G. Review applications for payment, make recommendations to the City for payment.
- H. Complete final site visit for preparation of Punch List. Issue Certificate of Substantial Completion.

### **Construction Inspection**

- A. Provide the full-time Resident Project Representative (RPR) services of one (1) representative (Inspector) for an anticipated 11 days duration of the contract, (88 hours). Provide part-time inspection services over a period of seven (7) days for project restoration and closeout, (14 hours). Provide a total of 102 hours for full and part time inspection. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. RPR shall observation Contractor's work in progress and field checks of materials and equipment. Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any

**NYS WBE/DBE Certified**

**SBA Woman Owned Small Business (WOSB)**



contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

C. RPR duties shall include those as outlined below which are typical of these services.

*Duties of the Resident Project Representative*

The duties and responsibilities of the RPR are as follows:

1. *General:* Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings.
3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to the RPR's own personal safety while at the Site.
4. *Liaison:* Serve as Engineer's liaison with Contractor.
5. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation – RFI's). Report to Engineer regarding such RFI's. Report to Engineer when clarifications and interpretations of the Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarification, interpretations, and decisions to Contractor.
6. *Review of Work; Defective Work:*
  - a. Report to Engineer whenever RPR believes that any part of work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
  - b. Inform Engineer of Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept and the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
  - c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
7. *Inspections, Tests, and System Start-ups:*
  - a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
  - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted.

- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
  - d. Observe whether Contractor has arranged for inspection required by Laws and Regulation.
8. *Records:*
- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
  - b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
  - c. Photograph or video Work in progress or Site Conditions.
  - d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
  - e. Maintain records for use in preparing Project documentation.
9. *Reports:*
- a. Furnish to Engineer daily reports as required of progress of the Work and of Contractor's compliance with the progress schedule.
  - b. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
  - c. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
10. *Completion:*
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion and prior to the issuance of Certificate of Substantial Completion submit punch list of observed items requiring completion or correction.
  - b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
  - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.

D. Additional Project Specific clarification of RPR duties shall include:

1. Obtain preconstruction photographs of the project area to present evidence of conditions before construction activity.
2. Review shop drawings and submittals of the materials proposed approved by the contractor, and reviewed by the Engineer.
3. Provide assistance to the Engineer during review of pay requests from the contractor, and make recommendations for payments based upon the Engineer approved schedule of values and quantity of work completed to date.
4. Assist the Engineer during negotiation of the value of additional or deductive changes to the contract. The Engineer shall make subsequent recommendations to the Owner for approval or rejection of such changes.

**III. FEE SCHEDULE**

The Lump Sum Fee to complete the services described above is as follows:

Construction Administration (+/- 1 month).....	\$ 3,200.00
Construction Inspection (11 days full-time, 7 days part-time, 102 hours).	\$ 8,670.00
Total =	\$ 11,870.00

If the scope changes from that outlined above, we could negotiate our fees or perform the additional work on an hourly plus reimbursable basis.

If you have questions or would like to discuss this proposal, please contact me at your earliest convenience. Please sign below to authorize and return a copy to our office.

Sincerely,

Aubertine and Currier Architects, Engineers & Land Surveyors, PLLC



Matthew R. Morgia, PE  
Civil Engineer, Partner

\_\_\_\_\_  
Client Authorized Signature

\_\_\_\_\_  
Date

Attachments:

Standard Terms and Conditions

# TERMS AND CONDITIONS

**Compensation and Retainer Amount** as outlined within the proposal.

Services covered by this authorization shall be performed in accordance with Provisions stated as follows:

**1. Authorization to Proceed**

Signing this form shall be construed as authorization by the CLIENT for the FIRM to proceed with the work.

**2. Salary /Costs**

The FIRM'S Salary Costs shall be the amount of salaries paid the FIRM's employees for work performed on the CLIENT's project plus a stipulated percentage of such salaries to cover all payroll-related taxes, payments, premiums and benefits.

**3. Per Diem Rates**

The FIRM's Per Diem Rates are those published in the FIRM's office, which are charged for work performed on the CLIENT's project by the FIRM's employees of the indicated classifications.

**4. Direct Expenses**

The FIRM'S Direct Expenses shall be those costs incurred on or directly for the CLIENT's project, including but not limited to: necessary transportation costs including mileage at the FIRM's current rate, meals and lodging, laboratory tests & analyzes, computer services, printing and binding charges. Reimbursement for these expenses shall be on the basis of actual charges when furnished by commercial sources and on the basis of standard commercial charges when furnished by the FIRM.

**5. Professional Standards**

The FIRM shall be responsible, to the level of competency presently maintained by other practicing Professional Architects in the same type of work in the CLIENT's community, for the professional and technical soundness, accuracy and adequacy of all designs, drawings and specifications and other work and materials furnished under this Authorization. The FIRM makes no other warranty, express or implied.

**6. Termination**

Either the CLIENT or the FIRM may terminate this Authorization by giving seven (7) days written notice to the other party. In such event, the CLIENT shall pay the FIRM in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Authorization shall be terminated upon completion of all applicable requirements of this Authorization.

**7. Arbitration**

All claims, disputes and other matters in question arising out of, or relating to this Authorization or the breach thereof may be decided by Arbitration in accordance with the rules of the American Arbitration Association then applying. Either the CLIENT or the FIRM may initiate a request for such arbitration, but consent of the other party to such procedure shall be mandatory. No arbitration arising out of, or relating to this Authorization may include, by consolidation, joinder, or in any other manner, any additional party not a party to this Authorization.

**8. Legal Expense**

In the event legal action is brought by the CLIENT or the FIRM against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the Court.

**9. Payment to the FIRM**

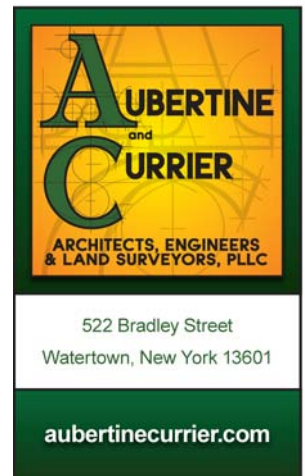
Invoices will be issued by the FIRM for all work performed under the terms of this agreement. **Invoices are due and payable upon receipt.** Finance charges, computed by a "Periodic Rate" of 2% per month, which is an annual percentage rate of 24%, will be charged on all amounts over 30 days unless otherwise provided by contract.

**10. Limitation of Liability**

The FIRM'S liability to the CLIENT for any cause or combination of causes is, in the aggregate, limited to an amount no greater than the fee earned under this agreement.

**11. Indemnification**

- A. Asbestos – For services involving or relating to asbestos as part of this agreement, it is further agreed that the CLIENT shall indemnify and hold harmless the FIRM and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys and court arbitration costs, arising out of or resulting from the performance of the work by the FIRM, or claims against the FIRM arising from the work of others, related to asbestos activities.
- B. Hazardous Waste – For services involving or related to hazardous waste elements of this agreement, it is further agreed that the CLIENT shall indemnify and hold harmless the FIRM and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys and court arbitration costs, arising out of or resulting from the performance of the work by the FIRM, or claims against the FIRM arising from the work of others, related to hazardous waste.
- C. The above indemnification provision extends to claims against the FIRM which arise out of, are related to, or are based upon, the dispersal, discharge, escape, release or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids,



gases or any other material, irritant, contaminant or pollutant in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or water-courses, (c) objects, or (d) any tangible or intangible matter.

- D. Design professional shall use his/her best efforts to conform the construction document to the requirements of any legislation protecting the disabled, including the Americans With Disabilities Act and regulations there under (collectively "disabled legislation"). However, the standards for design practice under disabled legislation are still evolving. Therefore, the design professionals shall not be responsible if any aspect of the design does not conform to disabled legislation and such interpretation was not generally known to similarly situated professionals when the plans were prepared.

**NOTE:**

**THE CONTRACTOR & CLIENT SHALL REVIEW AND BECOME FAMILIAR WITH ALL DRAWINGS PRIOR TO COMMENCEMENT OF WORK. ANY INCONSISTENCIES FOUND BETWEEN THE DRAWINGS SHALL BE REPORTED TO THE FIRM PRIOR TO THE START OF WORK. THE CONTRACTOR MAY REQUEST ADDITIONAL INFORMATION & DETAILS FROM THE FIRM IF APPROVED BY THE CLIENT. ADDITIONAL TIME WILL BE CHARGED AS PER THE FIRMS STANDARD RATE SCHEDULE.**

Additional and non-customary services provided beyond the Scope shall be invoiced for payment in accordance with the above schedule.

**Approved for CLIENT**

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

**Date:** \_\_\_\_\_

**Accepted for Aubertine and Currier Architects,  
Engineers & Land Surveyors PLLC**

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

**Date:** \_\_\_\_\_

**Partner In Charge**\_\_\_\_\_

Res No. 18

November 1, 2022

To: The Honorable Mayor and City Council

From: Michael A. Lumbis, Planning and Community Development Director

Subject: Authorizing Intent to Apply to Restore NY – 146 Arsenal Street

Empire State Development recently announced that Round 7 of the Restore NY Communities Initiative grant program is now open. During the previous funding round, three groups expressed interest in applying for the funding. The City Council directed Staff to apply for funding for a redevelopment project at 75-79 Public Square and for a Special Project proposal at 302 Court Street.

During a discussion in the previous funding round, the City Council indicated that it would support an application from the YMCA for their Downtown Community Center and Aquatics Facility Project at 146 Arsenal Street during Round 7.

An Intent to Apply form is due November 30, 2022, and applications will be due on January 27, 2023. Applications cannot be submitted unless the Intent to Apply is submitted for a project.

A resolution authorizing the submission of an Intent to Apply for the Downtown YMCA Community Center Project at 146 Arsenal Street is attached for City Council consideration.

# RESOLUTION

Page 1 of 1

Authorizing Intent to Apply to the  
Restore NY Communities Initiative  
Grant Program – 146 Arsenal Street

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

## *Introduced by*

WHEREAS the City of Watertown is eligible for grant funding under Round 7 of the Restore NY Community Initiative Grant Program, and

WHEREAS the Empire State Development Corporation (ESDC) must be notified of the City's Intent to Apply by November 30, 2022, and

WHEREAS the YMCA, as the sponsor of a redevelopment project for 146 Arsenal Street, has indicated an interest in applying for Restore NY funds,

NOW THEREFORE BE IT RESOLVED that the City Manager is authorized to submit an Intent to Apply form for Round 7 of the Restore NY Community Initiative Grant Program for 146 Arsenal Street for the Downtown YMCA Community Center Project.

## *Seconded by*



To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Intent to Purchase Watertown Golf Club, Inc. Real Estate and Equipment Assets

Council Members Hickey, Olney, and Ruggiero requested the attached resolution. It formalizes the decision that was voiced at the October 17, 2022 meeting.

The resolution states the City Council's intent to purchase the real estate and equipment assets of Watertown Golf Club, Inc., contingent on drafting a satisfactory purchase agreement and obtaining the information necessary for the operation of the course. It also directs me, as City Manager, to work with Watertown Golf Club, Inc. to develop a satisfactory purchase agreement and obtain the necessary information on operating the course.

**RESOLUTION**

Page 1 of 1

Approving Intent to Purchase Watertown  
Golf Club, Inc. Real Estate and Equipment  
Assets

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

**Introduced by** \_\_\_\_\_

WHEREAS Watertown Golf Club, Inc. has offered to sell its real estate and equipment assets, along with other assurances to the City of Watertown, and

WHEREAS the City Council of the City of Watertown feels that the land will be a valuable addition to John C. Thompson Park and that operating the golf course as municipal course will ensure that it continues as a recreational asset within the city,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown intends to purchase the assets of Watertown Golf Club, Inc. including the real estate and equipment for \$3.4 million contingent on an acceptable purchase agreement being drafted and necessary information on operating the course being provided, and

BE IT FURTHER RESOLVED that the City Manager is hereby directed to work with Watertown Golf Club, Inc. to develop a satisfactory purchase agreement and obtain the necessary information on operating the course.

**Seconded by** \_\_\_\_\_

October 14, 2022

To: The Honorable Mayor and City Council

From: James E. Mills, City Comptroller

Subject: Sale of Surplus Hydro-electricity – September 2022

The City has received the monthly hydro-electricity production and consumption data from National Grid. In comparison to last September, the sale of surplus hydro-electric power on an actual-to-actual basis was up \$134,867 or 43.83%. In comparison to the budget projection for the month, revenue was up \$287,993 or 186.32%. The year-to-date actual revenue is down \$827,849 or 51.96%, while the year-to-date revenue on a budget basis is up \$139,379 or 22.26%.

	<u>Actual</u> <u>2019-20</u>	<u>Actual</u> <u>2020-21</u>	<u>Actual</u> <u>2021-22</u>	<u>Actual</u> <u>2022-23</u>	<u>Variance</u>	<u>%</u> <u>Inc/(Dec)to</u> <u>Prior Year</u>
July	\$ 265,466	\$ 1,937	\$ 673,456	\$ 165,456	(\$ 508,021)	(75.43%)
August	\$ 13,330	\$ 1,819	\$ 612,155	\$ 157,460	(\$ 454,695)	(74.28%)
September	\$ 125,102	\$ 1,164	\$ 307,692	\$ 442,559	\$ 134,867	43.83%
October	\$ 222,218	\$ 117,331	\$ 523,734			
November	\$ 554,930	\$ 410,218	\$ 731,273			
December	\$ 406,126	\$ 366,126	\$ 702,586			
January	\$ 416,391	\$ 255,650	\$ 293,374			
February	\$ 217,222	\$ 175,736	\$ 246,124			
March	\$ 745,936	\$ 449,166	\$ 661,611			
April	\$ 752,511	\$ 669,698	\$ 897,945			
May	\$ 383,085	\$ 433,690	\$ 539,059			
June	\$ 53,641	\$ 85,233	\$ 418,974			
YTD	<u>\$4,155,958</u>	<u>\$2,967,769</u>	<u>\$6,604,983</u>	<u>\$ 765,454</u>	<u>(\$ 827,849)</u>	<u>(51.96%)</u>

	<u>Original</u> <u>Budget</u> <u>2022-23</u>	<u>Actual</u> <u>2022-23</u>	<u>Variance</u>	<u>%</u>	<u>Power</u> <u>Purchased</u> <u>from</u> <u>National</u> <u>Grid</u>
July	\$ 309,892	\$ 165,456	(\$ 144,437)	(46.62%)	\$ 25,655
August	\$ 161,617	\$ 157,460	(\$ 4,157)	( 2.57%)	\$ 22,790
September	\$ 154,566	\$ 442,559	\$ 287,993	186.32%	\$ -
October	\$ 386,125				
November	\$ 590,227				
December	\$ 468,929				
January	\$ 339,180				
February	\$ 274,525				
March	\$ 517,044				
April	\$ 790,853				
May	\$ 633,501				
June	\$ 325,541				
YTD	<u>\$4,952,000</u>	<u>\$ 765,454</u>	<u>\$ 139,379</u>	<u>22.26%</u>	<u>\$ 48,445</u>

October 13, 2022

To: The Honorable Mayor and City Council

From: James E. Mills, City Comptroller

Subject: Sales Tax Revenue – September 2022

Sales tax revenue was up \$31,578 or 1.16% compared to last September. In comparison to the original budget projection for the month, sales tax was down \$22,937 or 0.82%. The year-to-date actual receipts are up \$237,778 or 3.62%, while the year-to-date receipts on a budget basis are up \$106,510 or 1.59%.

The State is withholding \$482,925 of County sales tax to fund a fiscally distressed health facilities fund which in turn lowers the City's sales tax revenue by **\$115,900**. The State will intercept a portion of the County's sales tax for the May, August, November and January distributions of \$120,731 each quarter (City share is \$28,975).

	<u>Actual 2019-20</u>	<u>Actual 2020-21</u>	<u>Actual 2021-22</u>	<u>Actual 2022-23</u>	<u>Variance</u>	<u>Monthly % Inc/(Dec)to Prior Year</u>	<u>Quarterly % Inc/(Dec)to Prior Year</u>
July	\$ 1,763,856	\$ 1,493,210	\$ 1,948,809	\$ 2,035,333	\$ 86,524	4.44%	
August	\$ 1,763,893	\$ 1,515,827	\$ 1,888,806	\$ 2,008,482	\$ 119,676	6.34%	
September	\$ 2,129,882	\$ 2,783,423	\$ 2,725,797	\$ 2,757,376	\$ 31,578	1.16%	
October	\$ 1,499,868	\$ 1,488,167	\$ 1,678,723				
November	\$ 1,410,364	\$ 1,331,668	\$ 1,643,509				
December	\$ 1,868,004	\$ 2,493,688	\$ 2,374,453				
January	\$ 1,436,294	\$ 1,290,702	\$ 1,649,030				
February	\$ 1,203,572	\$ 1,181,566	\$ 1,429,187				
March	\$ 1,750,746	\$ 2,284,533	\$ 2,253,672				
April	\$ 988,797	\$ 1,566,858	\$ 2,064,386				
May	\$ 925,025	\$ 1,626,958	\$ 2,023,137				
June	<u>\$ 2,258,456</u>	<u>\$ 3,144,514</u>	<u>\$ 1,949,070</u>				
YTD	<u>\$ 18,998,780</u>	<u>\$ 22,201,114</u>	<u>\$23,628,579</u>	<u>\$ 6,801,190</u>	<u>\$ 237,778</u>	<u>3.62%</u>	
			<u>Original Budget 2022-23</u>	<u>Actual 2021-22</u>	<u>Variance</u>	<u>%</u>	<u>%</u>
July			\$ 1,987,785	\$ 2,035,333	\$ 47,548	2.39%	
August			\$ 1,926,582	\$ 2,008,482	\$ 81,900	4.25%	
September			\$ 2,780,313	\$ 2,757,376	\$ (22,937)	(0.82%)	
October			\$ 1,712,297				
November			\$ 1,796,461				
December			\$ 2,421,942				
January			\$ 1,682,011				
February			\$ 1,457,771				
March			\$ 2,298,745				
April			\$ 1,630,159				
May			\$ 1,808,891				
June			<u>\$ 3,273,043</u>				
YTD			<u>\$ 24,776,000</u>	<u>\$ 6,801,190</u>	<u>\$ 106,510</u>	<u>1.59%</u>	