

CITY OF WATERTOWN, NEW YORK

AGENDA

Monday, October 2, 2023

7:00 p.m.

This shall serve as notice that the next regularly scheduled meeting of the City Council will be held on Monday, October 2, 2023, 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

PUBLIC HEARING

RESOLUTIONS

- | | |
|--------------------|---|
| Resolution No. 1 - | Accepting Bid for Rotating Scum Trough Project – John R. Dudley Construction, Inc. |
| Resolution No. 2 - | Approving Lease Agreement with Watertown Industrial Center LDC for Space to Store Golf Carts |
| Resolution No. 3 - | Approving Change Order No. 1 with Howell Enterprises, Inc. dba Blackstone Electric for the William J. Flynn Municipal Swimming Pool Rehabilitation Contract #4 – Electrical |
| Resolution No. 4 - | Approving Inter-Municipal Agreement Relative to Commercial Driver's License Training with Jefferson, Lewis, Hamilton, Herkimer, Oneida BOCES |
| Resolution No. 5 - | Approving Change Order No. 2 with EDGE Civil Corporation for the Barben Avenue, Holcomb Street, Bugbee Drive and East Street Water Main Replacement Project |
| Resolution No. 6 - | Accepting Bid for CDBG Franklin Street Sidewalk ADA Ramp Repair Project - On Point Excavation & Consulting LLC |

Resolution No. 7 - Authorizing Master Federal Aid Local Project Agreement with New York State Dept. of Transportation, Contract No. D040966, for PIN 775418 US Rt. 11 (Mill St.) Over Black River Overflow, BIN 2220230

ORDINANCES

LOCAL LAW

OLD BUSINESS

Tabled Resolution - Authorizing Fund Raising Through the Northern New York Community Foundation for the Construction of a Dog Park

STAFF REPORTS

- 1 Cayuga Avenue
- 2 Sales Tax History

NEW BUSINESS

EXECUTIVE SESSION

WORK SESSION

Next Work Session is scheduled for Tuesday, October 10, 2023, at 7:00 p.m.

ADJOURNMENT

NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING IS MONDAY, OCTOBER 16, 2023.

Res No. 1

September 19, 2023

TO: The Honorable Mayor and City Council

FROM: Tina Bartlett-Bearup, Purchasing Manager

SUBJECT: Bid #2023-27 Rotating Scum Trough Project
Letter of Recommendation

The City's Purchasing Department advertised in the Watertown Daily Times for sealed bids from qualified bidders for the Rotating Scum Trough Project, per City specifications and publicly opened and read the sealed bids on August 25, 2023, at 11:00 a.m. EST. Invitation to bids were provided to seven (7) plan houses and sixty-two (62) potential vendors.

The Purchasing Department received three (3) sealed bid submittals and the bid tabulations are shown below:

John R. Dudley Construction, Inc.	Henerson Bros. Contracting	Powis Contracting, Inc.
Oswego, NY 13126	Central Square, NY 13036	Copenhagen, NY 13626
\$185,000.00	\$202,383.00	\$256,000.00

The Purchasing Manager and Engineering and Water Departments reviewed the responses to ensure compliance with the specifications and hereby recommend that City Council award the total base bid for the Rotating Scum Trough Project to John R. Dudley Construction, Inc. as the lowest responsive responsible bidder at a total bid price of **\$185,000.00**.

The Rotating Scum Trough Project, as adopted in the Fiscal Year 2023-24 Capital Budget, will be funded through the issuance of a 10-year serial bond as approved by City Council on September 18, 2023.

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

RESOLUTION

Page 1 of 1

Accepting Bid for Rotating Scum Trough
Project – John R. Dudley Construction, 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 replace and install (4) Mega-Skimmer scum troughs for the Final Settling Tank B located on W.T. Fields Drive (Wastewater Treatment Plant), and

WHEREAS the Purchasing Department advertised and received three (3) sealed bids for the Rotating Scum Trough Project, and

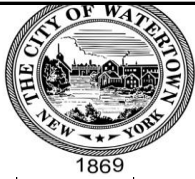
WHEREAS on August 25, 2023, at 11:00 a.m. the bids received were publicly opened and read, and


WHEREAS Purchasing Manager, Tina Bartlett-Bearup reviewed the bids received with the Engineering and Water Departments and it is their recommendation that the City Council accept the lowest responsive responsible bid submitted by John R. Dudley Construction, Inc., and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby accepts the bid received from John R. Dudley Construction, Inc. in the amount of \$185,000.00, and

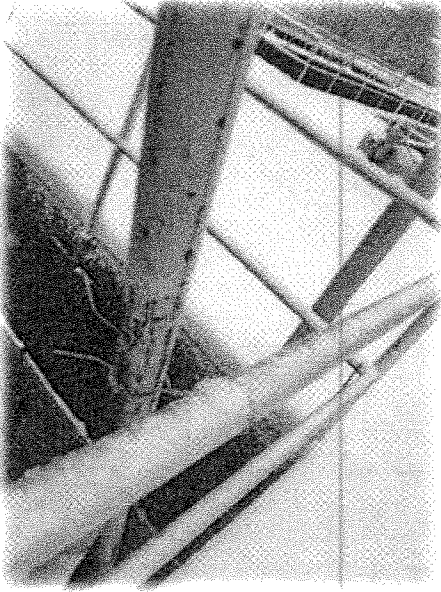
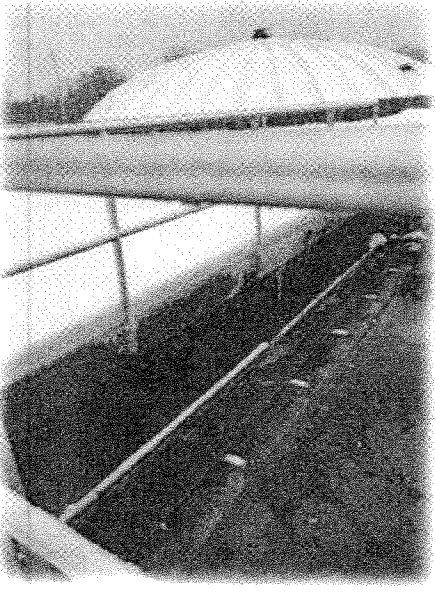
BE IT FURTHER RESOLVED that the City Manager of the City Watertown is hereby authorized and directed to execute the Agreement on behalf of the City of Watertown.

Seconded by _____



		CITY HALL			
		245 WASHINGTON STREET			
		WATERTOWN, NEW YORK 13601-3380			
		Project:	ROTATING SCUM TROUGH PROJECT		
		Bid / RFP Number:	Bid #2023-27		
		Opening Date:	Friday August 25, 2023 @ 11:00 AM		
		<i>The following results are bids as presented at the bid opening and do not represent an award.</i>			
Vendor Name, Address and Point of Contact		John R. Dudley Construction, Inc.	Henerson Bros. Contracting	Powis Contracting, Inc.	
		Oswego, NY 13126	Central Square, NY 13036	Copenhagen, NY 13626	
Total Base Bid		\$185,000.00	\$202,383.00	\$256,000.00	

FISCAL YEAR 2023-2024
CAPITAL BUDGET
FACILITY IMPROVEMENT
WASTEWATER TREATMENT

PROJECT DESCRIPTION	COST
<p data-bbox="175 457 768 489">Scum Troughs for Final Settling Tank B</p> <p data-bbox="175 531 1230 783">Final settling tank B was placed online late 1980s. Operators at this facility have made multiple modification to the FOG troughs to keep them working as long as they have. There are no other modifications the operators can make to ensure troughs can continue to function as designed. If there is a catastrophic failure of a trough, then the tank would need to be taken offline and repaired to prevent possible SPDES permit violations. In addition, if this is not a planned evolution having a tank down decreases capacity of outfall 002x (Effluent B) for a longer timeframe.</p> <div data-bbox="248 898 686 1486">  </div> <div data-bbox="735 898 1166 1486">  </div> <p data-bbox="167 1812 1206 1875">Funding to support this project will be from a 10-year serial bond with Fiscal Year 2024-25 debt service of \$32,900.</p>	<p data-bbox="1287 457 1442 489">\$235,000</p>
TOTAL	\$235,000

Res No. 2

September 27, 2023

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Lease Agreement with Watertown Industrial Center LDC for Space to Store Golf Carts

There is a need for building space to store golf carts over the Winter. The current Capital Budget did include construction of a building at the Golf Course using ARPA funds, but that was deleted with a budget readoption on July 3, 2023. The alternative is to lease building space.

The Watertown Industrial Center Local Development Corporation has space available and is willing to lease it for \$1,200 per month for six months. A lease agreement has been prepared and is attached for City Council review.

A resolution approving the lease agreement is attached for Council consideration.

RESOLUTION

Page 1 of 1

Approving Lease Agreement with Watertown Industrial Center LDC for Space to Store Golf Carts

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 need of building space to store golf carts over the Winter season, and

WHEREAS Watertown Industrial Center Local Development Corporation (WICLDC) has building space available for lease, and

WHEREAS WICLDC has agreed to lease the space needed to the City for \$1,200 per month for six months, and

WHEREAS a lease agreement with WICLDC has been drafted,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves the lease agreement with Watertown Industrial Center Local Development Corporation, a copy of which is attached and made part of this resolution, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Agreement on behalf of the City of Watertown.

Seconded by

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of the 18th day of September, 2023, by and between the Watertown Industrial Center Local Development Corporation (WICLDC), a Not-For-Profit corporation having an office at 800 Starbuck Avenue, Suite 804, Watertown, New York 13601 (the "**Landlord**"), and the City of Watertown, New York a Municipality, having an office at 245 Washington Street, Watertown, New York 13601 (the "**Tenant**").

The Landlord hereby lease to the Tenant, and the Tenant leases for the term, at the rental, and upon all the conditions set forth herein, **3 Bays 1,850 sq.ft in Building A at \$7.78/sq.ft in Year 1** located in the WICLDC facilities property fronting on Starbuck Avenue, Watertown, New York, as more particular shown on the drawing of said **Building A-22** attached hereto as **Exhibit "A"**, (the "**Demised Premises**"), provided however, Landlord reserves the right, on not less than twenty days prior written notice, to change the location of the Demised Premises to substantially equivalent space in other facilities on **WICLDC** property fronting on Starbuck Avenue, Watertown, New York. The Landlord shall pay the entire Tenant's moving expenses for such change in location. In addition to the Demised Premises, Tenant is granted the right in common with the Landlord and other Tenants and licensees of the Landlord to use common exits and entrances to and from the building of which the Leased Premises is a part, common loading docks, parking and receiving and shipping areas servicing the property, and sidewalks and all roadways all in areas and upon conditions as designated by Landlord. The Tenant is expressly prohibited from storing any and all merchandise, wares, or other property in any common area. The Tenant agrees to keep the common areas cleared of its merchandise, wares, goods, machinery, and other property at all times.

1. DEFINED TERMS.

- a. "**Default**" or "**Defaults**" shall mean: The failure to perform any duty or obligation under this Lease by the Tenant or the Landlord.
- b. "**Demised Premises**" shall mean: The property above described.
- c. "**Environmental Laws**" shall mean: All federal, state, and local environmental, land use, zoning, health, chemical use, safety, sanitation laws, statutes, ordinances, and codes relating to the protection of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local government agencies and authorities with respect thereto.
- d. "**Environmental Permits**" shall mean: All permits, negative declarations, licenses, approvals, authorizations, consents, or registrations required by any applicable Environmental Law in connection with the ownership, use, and/or operation of the Premises for the storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Substances or the sale, transfer, or conveyance of the Premises.
- e. "**Hazardous Substances**" shall mean: Without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyl's, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, as defined in the Comprehensive and Liability Act of 1980, as amended, (42 U.S.C. Sections 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended, (49 U.S.C. Sections 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended, (42 U.S.C. Sections 6901 *et seq.*), the Toxic Substance Control Act, as amended, (15 U.S.C. Sections 2601 *et seq.*), Articles 15 and 27 of the New York State Environmental Conservation Law or any other applicable Environmental Law and the regulations promulgated thereunder.
- f. "**High Risk Use**" shall mean: (1) any business operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, recycling, reclaiming, or disposal of Hazardous Substances at the Demised Premises where the total quantity of Hazardous Substances at the Demised Premises stored or handled regularly at any one time exceeds five hundred pounds and where such business has a Standard Industrial Classification Number (1993) of

10, 12, 13, 261, 263, 28, 29, 301, 305, 306, 324, 3292, 33, 46, or 49, or any treatment, storage, or disposal facility subject to RCRA treatment, storage, and disposal permitting requirements, or any facility requiring a permit under the Toxic Substance Control Act's commercial storage provisions; (2) any use for residential, health care or child care, including but not limited to apartments, schools, playgrounds, child care facilities, nursing homes, extended care facilities, and health care facilities; (3) any use for food processing, storage, preparation, or sale purposes except when such uses are provided as ancillary services to those otherwise present at the Demised Premise; (4) any drum or barrel reconditioning operation or scrap yard; (5) any dry cleaning operation that uses hazardous materials or a motor vehicle gasoline and/or service station; (6) any operation involving the production of herbicide, pesticides, fungicides, or fertilizers; and (7) any operation involving the production or storage of explosives and munitions.

- g. **"Insurance"** shall mean: Valid liability insurance for the benefit of the Landlord on the Demised Premises with coverage limits as defined in Paragraph 12 below.
- h. **"Lease"** shall mean: This Lease Agreement.
- i. **"Landlord"** shall mean: WICLDC, its successors and assigns.
- j. **"Lease Commencement"** shall mean: The term of the Lease shall commence on October 15, 2023 and terminate on April 15, 2024.
- k. **"Rent Commencement"** shall mean: The Tenant shall begin paying monthly rent on October 15, 2023.
- l. **"Release" and "Threat of Release"** has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (42 U.S.C. Sections 9601 *et seq.*), and the regulations promulgated thereunder, ("CERCLA").
- m. **"Rent" and "Additional Rent"** shall mean: The Rent as set forth in Paragraph 4 of this Lease.
- n. **"Tenant"** shall mean: City of Watertown, New York Division of Parks and Recreation.

2. TERM.

The term of this lease commences on the 15th day of October, 2023, and terminates on the 15th day of April, 2024, unless sooner extended, renewed, or terminated pursuant to any provision hereof.

3. SECURITY DEPOSIT. None Required

4. RENT.

- a. **Base Rent.** During the Lease Term, Tenant covenants and agrees to pay the Landlord as base rent, in lawful money of the United States of America, as follows:

Year 1: October 15, 2023 – April 15, 2024 \$1,200.00 per month for six months.

- b. **Late Payment.** In the event any rental payment is more than 10 days late, there shall be a late payment penalty in the amount of two percent monthly.
- c. **Lease Renewal.** Tenant must provide the Landlord with written notice 60 days prior to the termination of the lease with their intent to either renew the lease or allow it to terminate.

5. USE AND OCCUPANCY.

Subject to and in accordance with all rules, regulations, laws, ordinances, statutes, and requirements of all governmental authorities, and any similar bodies having jurisdiction, Tenant covenants and agrees that it shall use the Demised Premises solely for storage of Golf Carts and/or Golf Course Maintenance Equipment. Under no circumstances may the Tenant use the Demised Premises for any High Risk Use.

6. CONDITION OF PREMISES, MAINTENANCE, AND REPAIRS.

- a) Tenant acknowledges that the Watertown Industrial Center is located upon land formerly owned by the General Signal and New York Air Brake Corporation. This land is part of a larger parcel that is currently listed on the New York Registry of Inactive Hazardous Waste Sites and which is subject of one or more agreements with the New York State Department of Environmental Conservation to clean up contamination of the soil and groundwater. The New York State Department of Environmental Conservation is aware of, and has approved the use of the Demised Premises for commercial purposes. All identified areas of contamination on or adjacent to the Demised Premises have been investigated and are scheduled for cleanup.
- b) **Tenant accepts the Demised Premises as they are now and acknowledges that said Premises are clean, orderly, and in good condition and repair.**
- c) Landlord is responsible to maintain the roof, exterior walls, and windows of the Demised Premises, as well as all common areas (including lavatories), parking areas, driveways, and utility systems servicing the Demised Premises. Tenant shall make any other repairs which are required in order to maintain the Demised Premises, which repairs shall be paid for by Tenant.
- d) Tenant shall reimburse the Landlord for any maintenance, repair, rebuilding, or other costs incurred by it as a result of damages caused by the negligence of the Tenant, its agents, employees, servants, and invitees.
- e) Landlord shall not be liable for any damage or injury incurred by Tenant for loss of business resulting from the Landlord's failure to comply with its maintenance and repair responsibilities set forth in subparagraph 6-b above, except where such failure on the part of the Landlord was willful.
- f) Landlord shall not be liable for failure to provide heat, water, hot water, steam, plumbing, gas, electricity, or any other service, or for the interruption thereof, or from any defect in the lines, or equipment by which same is furnished, whether or not required to be furnished by the Landlord, due to breakdown, fire, freeze-up, strikes, water, scarcity of fuel, stoppages, willful destruction, or other causes.
- g) Tenant shall not, without the Landlord's prior written approval, which Landlord may grant or withhold in its absolute discretion:
 - (1) remove any oil, grease, or other stain that was present on the Demised Premises at the commencement of the Lease Term;
 - (2) remove any asbestos or asbestos-containing materials;
 - (3) modify the existing sewer system; or
 - (4) remediate any condition at the Demised Premises that was present at the commencement of the Lease Term which involves a Hazardous Substance or a Release or a Threat of Release.

7. COMPLIANCE WITH REGULATIONS.

The Tenant and invitees of the Tenant shall observe and strictly comply with such reasonable rules and regulations as the Landlord may from time to time support.

8. ASSIGNMENT.

The Tenant and successors of the Tenant shall not assign, sell, mortgage, pledge, or otherwise encumber, transfer, or dispose of this Lease, any money or collateral deposited thereunder, or any of the rights of the Tenant thereunder, nor sublet or underlet the same, nor use or permit the Demised Premises or any part thereof to be used by others without obtaining the prior written consent of the Landlord in each and every instance. The consent or waiver of such consent by the Landlord in any instance shall not in any way be construed or deemed to relieve the Tenant or any successor of the Tenant, or the heirs, distributees, executors, administrators, committee, or legal representatives of any successor, administrators, committee, or legal representatives of any successor of the Tenant, or of any person claiming any right, title, or interest by or

through or under any successor of the Tenant, from obtaining the prior written consent of the Landlord in each and every subsequent instance.

9. COMPLIANCE WITH LAW.

- a. The Tenant shall promptly comply with all present and future laws, ordinances, rules, regulations, and requirements of the Village, County, State and Federal Governments, and of any agencies, bureaus, or subdivisions thereof, and the New York Board of Fire Underwriters or of any other board or organization exercising similar functions, and of any insurance companies writing policies insuring the Landlord or the Demised Premises, applicable to or occasioned by the nature or manner of the Tenant's use or occupancy of the Demised Premises, whether such laws, ordinances, rules, regulations, recommendations, and requirements relate to or require alterations of use in or of the Demised Premises. Notwithstanding any other provision in this subparagraph 9-a, if any use of the Demised Premises by Tenant permitted by this Lease is hereafter prohibited by any newly-enacted law or regulation, Tenant shall have the option to cancel the remaining portion of this Lease Term without obligation for rent or additional rent for such remaining portion.
- b. Tenant shall not use or permit to be used any part of the Demised Premises for any dangerous, noxious, or offensive trade of business and will not cause or maintain any nuisance in or upon the Demised Premises, nor any portion thereof, to be used by the public as such, in any way as might tend to impair Landlord's title thereto.
- c. The terms of subparagraphs 9-a and 9-b are in addition to the terms in paragraph 11 of this Lease.
- d. **Compliance with Federal Requirements**

TENANT acknowledges that the Demised Premises subject to this Lease Agreement were constructed with funding assistance from the United States Economic Development Administration and agrees to use the premises in a manner consistent with the authorized general and special purpose of the EDA grant.

- (1) TENANT agrees to comply with EDA's Nonrelocation regulation as set forth in 13 CFR 309.3 which prohibits employers from transferring one or more jobs from outside a 30-mile commuting area of the WCBI building until March 3, 2001. TENANT hereby agrees to execute an Employer's Certification of Nonrelocation acknowledging compliance with the requirements of Title VI of the Civil Rights Act of 1964.
- (2) TENANT agrees to provide services to all persons without discrimination regarding their age, race, color, religion, sex, handicap, or national origin. TENANT agrees to execute the EDA form "Assurances of Compliance with Civil Rights and Other Legal Requirements for Other Parties" acknowledging compliance with the requirements of Title VI of the Civil Rights Act of 1964.
- (3) TENANT acknowledges that use of the facility must comply with Federal regulations regarding Excessive Profits and Adequate Consideration and that lease rents are to be reviewed by the EDA/Public Works Division for compliance. TENANT acknowledges that rental rates reflect a fair market value for similar rental space in the area.
- (4) TENANT acknowledges that this lease agreement is subordinate, junior and inferior to the Economic Development Administration's first mortgage interest in the property which was executed on December 5, 1997 and recorded on December 5, 1997 in Liber 1475 of Deeds, page 48: and Liber 1475 of Deeds, page 69, respectively.

10. TENANT'S NEGATIVE COVENANTS.

The Tenant will not:

- a. Make or allow to be made any modifications, expansions, additions, or excavation at or to the Demised Premises without first submitting plans therefore and obtaining the written consent of the Landlord, which consent shall be totally at Landlord's discretion;
- b. Permit the filing of Mechanic's Lien against the premises for failure to pay for leasehold improvements authorized by Landlord (subparagraph 10-a) and should Tenant undertake leasehold improvements, the Landlord has the right to pay mechanics to remove any liens and take legal recourse against the Tenant to recover all direct and indirect costs, including, but not limited to, payment of mechanics, suppliers, penalties, and legal fees;
- c. Place any signs upon the walls of the building except with consent of the Landlord; in case permission is given the Tenant for the erection of any sign or signs, the Tenant agrees to save the Landlord harmless from any damage to person or property which may be caused by said sign in any manner;
- d. Permit the sale or consumption of any intoxicating liquors, beer, or drugs on the Demised Premises; or
- e. Use or occupy said Premises to be used or occupied for any purpose deemed hazardous on account of fire, beyond the "LOW" classification referred to above.

11. ENVIRONMENTAL COMPLIANCE.

- a. Covenants of Tenant. Tenant covenants and agrees as follows;
 - (1) Tenant shall not cause or permit the Demised Premises or any part thereof to be used for storage, treatment, generation, transportation, processing, handling, production, or disposal of any Hazardous Substance, except in compliance with all applicable Environmental Laws.
 - (2) Tenant shall comply with and cause all occupants of the Demised Premises to comply with all applicable Environmental Laws.
 - (3) Tenant shall obtain and comply with all Environmental Permits required for Tenant's use of the Demised Premises.
 - (4) Tenant shall promptly provide Landlord with a copy of all notifications which it gives or receives to any past or present Release or Threat of Release of any Hazardous Substance on, at, or from the Demised Premises or any property adjacent to or within the immediate vicinity of the Demised Premises.
 - (5) Tenant shall complete in accordance with applicable Environmental Laws all actions necessary to contain, remove, and clean up all Hazardous Substances that are placed at the Demised Premises during the Lease Term.
 - (6) If during the Lease Term, Landlord obtains any information having a reasonable degree of probability that (i) a violation of any Environmental Law or Environmental Permit has occurred at the Premises; or (ii) there has been a Release at the Demised Premises of any Hazardous Substance, Landlord may require the Tenant to obtain an environmental audit report, with respect to the Demised Premises, of the scope and level, reasonably satisfactory to Landlord, to be prepared, at Tenant's expense, by an environmental engineer or other qualified person acceptable to Landlord. If such audit report indicates the presence of any Hazardous Substance or a Release or Threat of Release of any Hazardous Substance at the Demised Premises that occurred during the Lease Term (x) in violation of any applicable Environmental Law or Environmental Permit; or (y) that would require remedial action pursuant to any Environmental Law or Environmental Permit, the Tenant shall promptly undertake and diligently pursue to completion all necessary, appropriate, and legally authorized remedial actions required by any Environmental Law or Environmental Permit, using methods acceptable to the appropriate Governmental Agency.
- b. **Indemnification**

- (1) The Tenant hereby covenants and agrees, that its sole cost and expense, to indemnify, protect, defend, and save harmless the Landlord from and against any and all damages, losses, liabilities, penalties, claims, litigations, demands, defenses, judgements, suits, actions, proceedings, costs, disbursements, and expenses (including, without limitation, reasonable attorney's fees, expert fees and expenses, and disbursements) of any kind or any nature whatsoever that may at any time be imposed upon, incurred by, or asserted or awarded against, the Landlord relating to, resulting from, or arising out of (i) the use of the Demised Premises by the Tenant for the storage, treatment, generation, transportation, processing, handling, production, or disposal of any Hazardous Substance; (ii) the presence of any Hazardous Substance at the Demised Premises arising during the Lease Term; (iii) a Release or Threat of Release during the Lease Term at the Demised Premises of any Hazardous Substance; (iv) human exposure to any Hazardous Substance, to the extent the same arises from the use of the Demised Premises by the Tenant; (v) a violation of any Environmental Law that is attributable to the use of the Demised Premises or an occurrence at the Demised Premises during the Lease Term; (vi) non-compliance with any Environmental Permit issued to the Tenant; and (vii) failure to perform any covenant made by the Tenant of this Lease.
- (2) The liability of the Tenant to the Landlord shall in no way be limited, abridged, impaired, or otherwise affected by (i) any applicable statute of limitations; (ii) the sale, transfer, sub-lease, or other conveyance of all or part of the Demised Premises; (iii) the release or discharge, in whole or in part, of the Tenant in any bankruptcy, insolvency, reorganization, or similar proceeding; or (iv) any other circumstance that might otherwise constitute a legal or equitable release or discharge, in whole or part, of the Tenant under this Lease.
- (3) The indemnification contained in this subparagraph 11-b is wholly independent of, and in addition to, any indemnification obligations of the Tenant pursuant to this Lease shall be and remain in full force and effect in perpetuity and shall survive any conveyance by Landlord of all or any part of the title to the Demised Premises or any other entity or person.

12. INSURANCE; INDEMNITY.

- a. **Tenant at its cost shall maintain public liability insurance with liability limits of not less than \$1,000,000.00 per occurrence, insuring against all liability of Tenant arising out of and in connection with Tenant's use or occupancy of the Demised Premises. The Landlord, Watertown Industrial Center Local Development Corporation (WICLDC), and the Jefferson County Industrial Development Agency (JCIDA) shall be named as an additional insured in such policies. Upon request, Tenant shall supply a certificate that such insurance is in force.**

Tenant will also keep in force the following insurance coverages: (1) General Liability Insurance and Property Damage; (2) Worker's Compensation; (3) Insurance for Tenant's Contents.

- b. Tenant shall hold harmless, indemnify, and defend Landlord from all liability, penalties, losses, damages, costs, expenses (including legal fees and costs), causes of action, claims, and/or judgements not covered by insurance, which arise by reason of any injury or death to any person or persons, or damage to the property of any person or persons resulting from the actions or inaction of the Tenant, its agents, servants, employees, and invitees while in, upon, or in any way connected with the Demised Premises or its appurtenances or common areas, during the term of this Lease or any occupancy hereunder.

13. LANDLORD'S RIGHT TO INSPECT AND SHOW THE PREMISES.

- a. Landlord shall have the right, at reasonable times during business hours, to enter the Demised Premises to inspect them.
- b. During the three months prior to the expiration of the Lease, Tenant will permit the Landlord or Landlord's agent to show the Demised Premises to persons interested in renting or purchasing the same, upon reasonable notice from the Landlord. Landlord, or its agents, may place upon the Demised Premises "For Sale" or "For Rent" signs or other signs to effectuate the sale or lease of the Demised Premises.

14. ACCESS TO GENERAL SIGNAL

Tenant shall provide reasonable access to the Demised Premises to General Signal Corporation and its contractors to carry on activities required to comply with certain Consent Orders issued by the New York State Department of Environmental Conservation on May 12, 1987, and February 8, 1990, and any subsequent Consent Orders relating to the same underlying facts.

15. DESTRUCTION OR LOSS BY FIRE OR OTHER CAUSES.

If the Demised Premises shall be partially damaged by fire or other cause without the fault or negligence of the Tenant, its employees or agents, the damages shall be repaired by and at the expense of the Landlord, and the rent until such repairs are completed shall be apportioned to the part of the Demised Premises which is unusable by the Tenant. In the event Landlord chooses not to undertake such repairs or fails to complete such repairs within sixty days after beginning same, this Lease shall cease, effective as of date of destruction if the repairs are not undertaken or at the expiration of the sixty day repair period if the repairs are begun. But if such partial damage is due to the fault and neglect of the Tenant, its agents, or employees, the damages may be repaired by Landlord at the expense of the Tenant to the extent the cost is not paid by Landlord's insurance. No penalties shall accrue for delay which may arise by reason of adjustment of insurance on the part of the Landlord or Tenant and for delay on account of any other causes. The Tenant hereby expressly agrees to be bound by the provisions of Section 227 of the Real Property Law in the event that the Demised Premises becomes un-tenantable and unfit for occupancy. Nothing herein contained shall prejudice the right of subrogation of the Landlord's insurer.

Tenant acknowledged and agrees that Landlord shall not be liable for any property owned or stored by Tenant on the Demised Premises in the event of loss. Tenant shall indemnify Landlord for all costs, fee and judgements, including reasonable attorney's fees accrued by Landlord as a result of suit by a third party due to such loss.

16. CONDEMNATION

If the whole or any part of the Demised Premises shall be taken or condemned by any competent authority for any public or quasi-public purpose or use, then, in that event, the term of this Lease shall expire as of the date when the possession of the part so taken shall be required for such use or purpose. The current rental, however, shall in any such case be apportioned.

17. DEFAULT BY TENANT.

If Tenant defaults in fulfilling any of the covenants of this Lease other than the covenants for the payment of base rent or additional rent, or if the Demised Premises becomes vacant or deserted, the Landlord may give the Tenant ten days' notice of intention to end the term of this Lease, and thereupon, at the expiration Of said ten days (if the default continues), the term under this Lease shall end as fully and completely as if that day were the date herein fixed for the expiration of the term, and the Tenant will then surrender the Demised Premises to Landlord, but the Tenant shall remain liable as hereinafter provided in Paragraph 18 below.

18. REMEDIES OF LANDLORD.

- a. If the notice provided for in Paragraph 18 above shall have been given and the term shall expire as aforesaid; or
- b. If Tenant shall default in the payment of the base rent or additional rent specified herein; or
- c. In case of any re-entry by Landlord, expiration, or dispossession by summary proceedings, or otherwise:
 - (1) The base rent and additional rent shall become due thereupon and be paid up to the time of such re-entry, dispossession, or expiration, together with such expenses as Landlord may incur for legal expenses, attorneys' fees, brokerage fees, or putting the Demised Premises in good order, preparing the same for re-rental, or the expense of re-renting the Leased Premises;

- (2) The Landlord may re-let the premises or any part or parts thereof, for a term or terms which may, at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free rent;
- (3) Tenant or the legal representatives of Tenant shall also pay Landlord, as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the base rent and additional rent herein specified and agreed to be paid, the net amount, if any, of the rents collected on account of any subsequent Lease or Leases of the Demised Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. In computing such liquidated damages, there shall be added to the said deficiency such expenses as Landlord may incur in connection with re-renting, such as legal expenses, attorneys' fees, brokerage fees, and for keeping the Demised Premises in good order or for preparing the same for re-renting. Any such liquidation damages shall be paid in monthly installments by Tenant on the rent day specified in this Lease, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by similar proceeding. The Landlord at its option may make such alteration or decorations in the Demised Premises as the Landlord in its sole option considers reasonable and necessary for the purpose of re-renting the Demised Premises; and the making of such alterations or decorations shall not operate or be construed to release Tenant from liability as specified herein.

19. DEFAULT BY LANDLORD; TENANT'S REMEDIES.

If Landlord defaults in fulfilling any of the covenants of this Lease binding upon and applicable to Landlord, the Tenant may give the Landlord thirty days' notice of intention to end the term of this Lease, and thereupon, at the expiration of said thirty days (if the default continues), the term under this Lease shall end as fully and completely as if that day were the date herein fixed for the expiration of the term, and the Tenant will then surrender the Demised Premises to the Landlord with no liability or obligation under this Lease for the balance of the Lease Term stated herein. Upon such expiration, Tenant shall have all rights and remedies against Landlord as provided by law.

20. SURRENDER.

Upon the expiration of the term of this Lease, the Tenant shall quit and surrender the property:

- a. in as good order, condition, and state of repair as the property existed at the beginning of the term, reasonable wear and use, and damage from fire or other insurance-covered casualty excepted; and
- b. free and clear of all liens, charges, or encumbrances thereon caused by any part of the Tenant; and
- c. free and clear of any and all violations thereon charged by a governmental authority.

21. SUBORDINATION.

This Lease, and all rights of the Tenant hereunder, shall be subject and subordinate to any mortgage or mortgages, and any renewal, modifications, consolidations, replacements, or extensions thereof, which now are, or which may hereafter from time to time be, placed on the real property of which the Demised Premises form a part. The Tenant will, upon the written request of the Landlord, execute and deliver any further instruments necessary to effectuate any such subordination, and in the event of the Tenant's failure so to do, the Landlord is hereby authorized and empowered to execute and deliver the same for and on behalf of, and as attorney-in-fact for, the Tenant. In consideration for and as a condition to Tenant granting such subordination, the mortgagee will give Tenant a nondisturbance and attornment agreement.

22. NOTICES.

All notices required to be given hereunder unless either party informs the other party of a change of address shall be as follows:

To Landlord: Billy Soluri

Director of Site Facilities
WICLDC
800 Starbuck Avenue Suite 804
Watertown, New York 13601
Office: 315-782-9277
Cell: 315-767-1235
Fax: 315-405-4728
E-mail: bsoluri@wicldc.com

To Tenant: Kenneth Mix
City of Watertown Manager
245 Washington Street
Watertown, New York 13601
Office: 315-785-7730
Fax: 315-782-9014
E-mail: kmix@watertown-ny.gov

INSOLVENCY OF TENANT.

In the event that the Tenant shall be declared insolvent or be adjudicated a bankrupt under the United States Bankruptcy Code, shall make an assignment for the benefit of creditors, or in the event that title to this Lease shall devolve involuntarily by operation of law upon any person or persons other than Tenant, successors or assigns, then in any such event, Landlord may, at its sole option, terminate this Lease, upon giving Tenant ten days' prior written notice of Landlord's intention to terminate this Lease, and at the end of said ten-day period, this Lease shall be terminated, and notwithstanding any contrary provision of this Lease, upon such termination, Landlord shall forthwith be entitled to recover damages in the amount equal to the amount of Rent reserved in this Lease for the residue thereof.

23. QUIET ENJOYMENT.

Landlord covenants and agrees that, upon Tenant's paying the base rent and additional rent and performing all other obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Demised Premises for the term of this Lease and any extension of renewal thereof. This covenant shall be binding upon subsequent owners of the Demised Premises and/or the successors-in-interest of Landlord to the extent of this interest as and when they shall acquire the same and so long as they may remain such owners and/or successors-in-interest.

24. PROVISIONS SEVERABLE.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. RELATIONSHIP OF THE PARTIES.

Nothing contained in this Lease shall be deemed or construed as creating the relationship of principle and agent or of partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computing the base rent or the additional rent, nor any other provision contained herein, nor any acts of the parties hereto shall be deemed to create any relationship between the parties other than that of Landlord and Tenant.

26. MISCELLANEOUS.

- a. The failure of the Landlord to insist in **any** one or more instances upon a strict performance of any of the covenants of this Lease shall not be construed as a waiver or relinquishment for the future of such covenant, but the same shall continue in full force and effect. The receipt by the Landlord of rent with knowledge of the breach of any covenant shall not be deemed a waiver of such breach.

No waiver by the Landlord of any provision hereof shall in any event be deemed to be made unless it is in writing signed by the Landlord.

- b. The giving of a particular remedy or remedies to the Landlord hereunder shall not preclude the Landlord from invoking any other remedy or remedies in law or equity, whether specifically mentioned herein or not.
- c. Paragraph headings are inserted for convenience of reference only, and they shall in no way define, limit, or affect the provisions of the paragraphs which they preface.

27. ENTIRE AGREEMENT.

This Lease sets forth all of the promises, agreements, conditions, and understandings between the parties hereto relevant to the Demised Premises and to such other matters as are referred to herein, and there are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, by or between the parties hereto other than as herein set forth. Any executory agreement hereafter made by or between the parties hereto shall be ineffective to change, waive, modify, discharge, or terminate this Lease in whole or in part unless such executory agreement is in writing and signed by the party against whom such change, waiver, modification, discharge, or termination is sought to be enforced.

28. EARLY TERMINATION.

This Lease shall terminate and the parties shall have no further obligation to each other upon the term of this Lease being completed.

29. APPLICABLE LAW.

This Lease and all extensions, renewals, modifications, and amendments thereof and thereto shall be governed by and construed in accordance with the laws of the State of New York.

30. EXECUTION.

This Lease shall not be binding or effective until it has been duly executed by both parties hereto and executed copies thereof have been delivered by the parties, each to the other.

31. SUCCESSORS AND ASSIGNS.

This Lease shall be binding upon and enure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns, including, without limitation, the Watertown Industrial Local Development Corporation as the Landlord.

IN WITNESS WHEREOF, the Landlord and Tenant have hereunto signed and acknowledge this Lease Agreement on the date and year first above written.

Landlord

Watertown Industrial Center Local Development Corporation



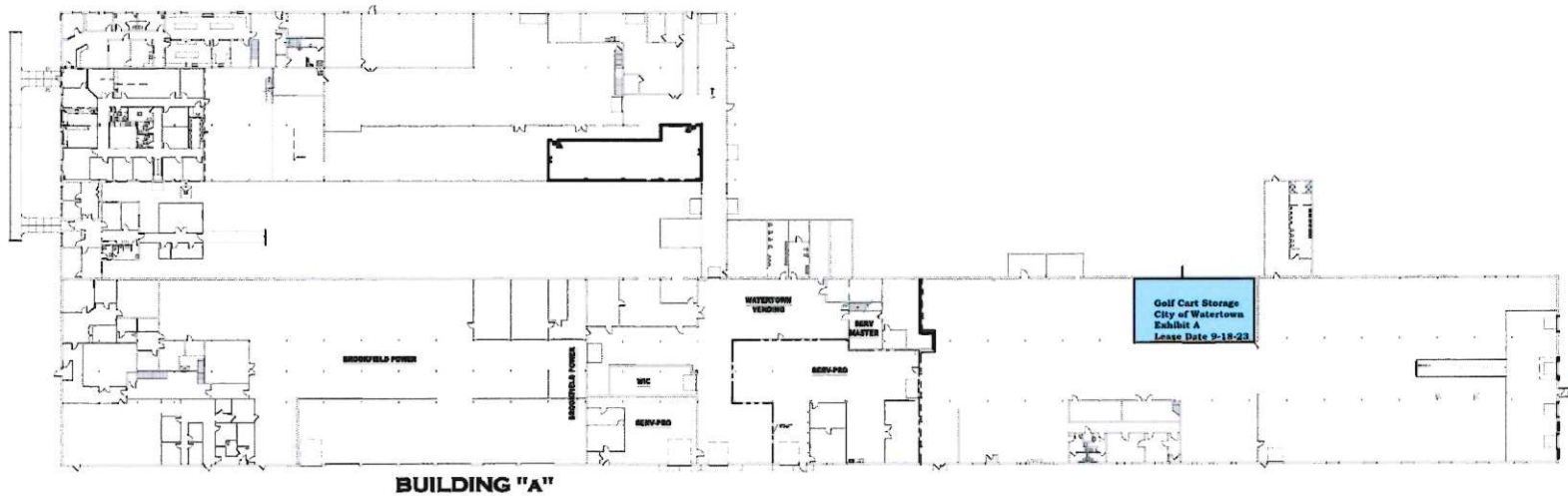
Name: Billy Soluri
Title: Director of Site Facilities
Date: 9-18-23

Tenant

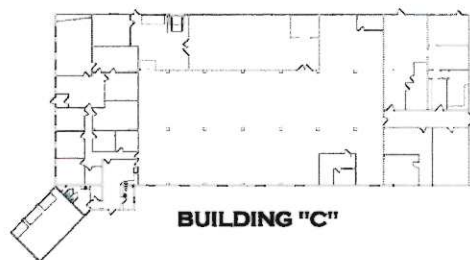
City of Watertown New York

Name: Kenneth Mix
Title: City Manager
Date: _____

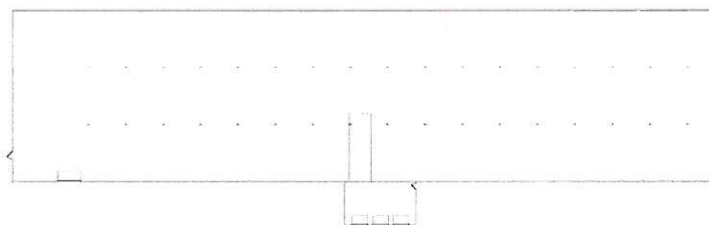
STARBUCK AVE



BUILDING "A"



BUILDING "C"



BUILDING "D"

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Change Order No. 1 with Howell Enterprises, Inc. dba Blackstone Electric for the William J. Flynn Municipal Swimming Pool Rehabilitation Contract #4 - Electrical

At the June 05, 2023 meeting, City Council awarded the contract for the William J. Flynn Municipal Swimming Pool Rehabilitation Contract #4 – Electrical to Howell Enterprises, Inc. DBA Blackstone Electric in the amount of \$361,935.00.

Howell Enterprises, Inc. DBA Blackstone Electric has now submitted Change Order No. 1 in the amount of \$12,204.00 more for expediting the required electrical panels, bringing the final construction cost to \$374,139.00. This change order will allow for the required electric panel to be expedited and delivered by January 1st, instead of June 27th. This will also allow for construction to maintain its projected timeline.

A resolution approving this change order has been prepared for City Council consideration.

RESOLUTION

Page 1 of 1

Approving Change Order No. 1 with
Howell Enterprises, Inc. dba
Blackstone Electric for the William J. Flynn
Municipal Swimming Pool Rehabilitation
Contract #4 – Electrical

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 at its June 05, 2023, meeting, the City Council accepted a bid from Howell Enterprises, Inc. dba Blackstone Electric in the amount of \$361,935.00 for the William J. Flynn Municipal Swimming Pool Rehabilitation Contract #4 – Electrical, and

WHEREAS the electrical panels required for this project have a long lead time due to supply chain issues, resulting in expected delivery of the panel being on June 27, 2024, and

WHEREAS Howell Enterprises, Inc. dba Blackstone Electric has received a quote from Cooper Electric stating that the panel can be expedited and delivered by January 1, 2024 for a fee, and

WHEREAS Howell Enterprises, Inc. dba Blackstone Electric has now submitted Change Order No. 1 in the amount of \$12,204.00,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves Change Order No. 1 with Howell Enterprises, Inc. dba Blackstone Electric in the amount of \$12,204.00, a copy of which is attached and made part of this Resolution, bringing the total contract amount to \$374,139.00, and

BE IT FURTHER RESOLVED that City Manager Kenneth A. Mix is hereby authorized and directed to execute Change Order No. 1 on behalf of the City of Watertown.

Seconded by

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

Instructions

Before you use any EJCDC document:

1. Read the License Agreement. You agree to it and are bound by its terms when you use the EJCDC document.
2. Make sure that you have the correct version for your word processing software.

How to Use:

1. While EJCDC has expended considerable effort to make the software translations exact, it can be that a few document controls (e.g., bold, underline) did not carry over.
2. Similarly, your software may change the font specification if the font is not available in your system. It will choose a font that is close in appearance. In this event, the pagination may not match the control set.
3. If you modify the document, you must follow the instructions in the License Agreement about notification.
4. Also note the instruction in the License Agreement about the EJCDC copyright.

License Agreement

You should carefully read the following terms and conditions before using this document. Commencement of use of this document indicates your acceptance of these terms and conditions. If you do not agree to them, you should promptly return the materials to the vendor, and your money will be refunded.

The Engineers Joint Contract Documents Committee ("EJCDC") provides **EJCDC Design and Construction Related Documents** and licenses their use worldwide. You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from **EJCDC Design and Construction Related Documents**.

You acknowledge that you understand that the text of the contract documents of **EJCDC Design and Construction Related Documents** has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You further acknowledge that EJCDC documents are protected by the copyright laws of the United States.

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You have a limited nonexclusive license to:

1. Use **EJCDC Design and Construction Related Documents** on any number of machines owned, leased or rented by your company or organization.
2. Use **EJCDC Design and Construction Related Documents** in printed form for bona fide contract documents.
3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

You agree that you will:

1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.
2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

You may not use, copy, modify, or transfer **EJCDC Design and Construction Related Documents**, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of **EJCDC Design and Construction Related Documents** in printed or machine-readable format for resale or educational purposes is expressly prohibited.

If you transfer possession of any copy, modification or merged portion of **EJCDC Design and Construction Related Documents** to another party, your license is automatically terminated.

Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related**

Documents along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

Limitations of Remedies:

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

Change Order

No. 1

Date of Issuance: 09/20/2023

Effective Date: 10/02/2023

Project: William J. Flynn Municipal Swimming Pool
Rehabilitation - Contract #4 Electrical

Owner:

Owner's Contract No.:

Contract:

Date of Contract:

Contractor: Howell Enterprises, Inc. DBA Blackstone Electric

Engineer's Project No.:

The Contract Documents are modified as follows upon execution of this Change Order:

Description: Due to supply chain issues, the electrical panels required for this project have an extended lead time, resulting in delivery of them being after the desired construction deadline. This change order will allow for the Panels to be expedited and delivered by January 1, 2024.

Attachments: (List documents supporting change): Letter from Blackstone Electric with quote

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ 361,935.00

[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:

\$ 0.00

Contract Price prior to this Change Order:

\$ 361,935.00

[Increase] [Decrease] of this Change Order:

\$ 12,204.00

Contract Price incorporating this Change Order:

\$ 374,139.00

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☐ Calendar days

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:

Substantial completion (days): _____

Ready for final payment (days): _____

Contract Times prior to this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

Contract Times with all approved Change Orders:

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

RECOMMENDED: C&S COMPANIES ACCEPTED:

By: [Signature]
Engineer (Authorized Signature)

By: _____
Owner (Authorized Signature)

Date: 9/20/23

Date: _____

ACCEPTED:

By: [Signature]
Contractor (Authorized Signature)

Date: 9-20-2023

Approved by Funding Agency (if applicable): _____

Date: _____

M. G. 09/20/2023

EJCDC No. C-941 (2002 Edition)

Prepared by the Engineers' Joint Contract Documents Committee and endorsed by the Associated General Contractors of America and the Construction Specifications Institute.

Change Order

Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.



**Howell Enterprises Inc.
dba Blackstone Electric, Inc.
17421 NYS Rt 12F
Dexter, NY
(315) 639-6190
Fax (315) 918-4444**

DATE: September 18, 2023
TO: Patrick Currier, C&S Companies
FROM: Mitch Howell, Owner/Vice President
RE: Flynn Pool- Lead Time Issues

Due to supply chain issues, the electrical panels for the Flynn Pool project have an extended lead time, with an estimated delivery date of June 27th, 2024.

To meet the anticipated pool opening at the beginning of June 2024, we propose expediting the panels to be delivered before January 1st. This will give us the time needed to get the new panels installed, wired, and turned on prior to the pool opening.

See attached quote from the supplier for expediting the manufacturing process, for the additional cost of \$10,704.00. This will push these panels to the front of the line.

\$ 10,704.00- Panel Expedite
\$ 1,500.00- Administrative Fees / Markup
\$ 12,204.00- Total

Please let me know if you have any questions.

Accepted By: _____ **Date:** _____



sonepar
usa

COOPER ELECTRIC
23763 NY-12
WATERTOWN, NY 13601
315-782-0704

Jonathan.Steele@cooper-electric.com

QUOTE TO:

HOWELL ENTERPRISES INC
DBA BLACKSTON ELECTRIC INC
17421 NYS ROUTE 12F
DEXTER, NY 13634
315-639-6190

SHIP TO:

WILLIAM J FLYNN POOL
HOWELL ENTERPRISES INC
17421 STATE ROUTE 12F
DEXTER, NY 13634-3064
315-639-6190

Quotation

QUOTE DATE	QUOTE NUMBER
09/18/23	S053013712
PAGE NO.	
1 of 1	

CUSTOMER NUMBER		CUSTOMER ORDER NUMBER		JOB NAME		QUOTED TO	
492188		WILLIAM FLYNN POOL				MITCH HOWELL	
SALESPERSON		SHIP VIA		FREIGHT ALLOWED		EXPIRATION DATE	
JONATHAN STEELE		WTR1		No		11:59pm ET 10/03/23	
ORDER QTY	UPC	DESCRIPTION			UNIT PRICE	U	EXT PRICE
1ea		^LOTBILL-EATONPOW-14370 EATON CORPORATION			10704.000		10704.00
Qty	Type	This Lot Shipment Consists of:					
1		EATON FACTORY PANEL EXPEDITE FOR PANELS (LRP1, MDP, MP1) PANELS TO BE DELIVERED BY 1/1/24			10704.000		10704.00

TERMS & CONDITIONS

OUR PRODUCTS AND SERVICES ARE SUBJECT TO, AND GOVERNED EXCLUSIVELY BY, OUR TERMS AND CONDITIONS OF SALE, WHICH ARE INCORPORATED HEREIN AND AVAILABLE AT www.cooper-electric.com/terms. ADDITIONAL OR CONFLICTING TERMS ARE REJECTED, VOID, AND OF NO FORCE OR EFFECT. WIRE & PIPE PRICES ARE ONLY GOOD FOR THE CURRENT DAY.

Subtotal	10704.00
S&H CHGS	0.00
Sales Tax	0.00
Amount Due	10704.00



sonepar
usa

COOPER ELECTRIC
23763 NY-12
WATERTOWN, NY 13601
315-782-0704

Jonathan.Steele@cooper-electric.com

QUOTE TO:
HOWELL ENTERPRISES INC
DBA BLACKSTON ELECTRIC INC
17421 NYS ROUTE 12F
DEXTER, NY 13634
315-639-6190

Quotation

QUOTE DATE	QUOTE NUMBER
09/18/23	S053013712
PAGE NO.	
1 of 1	

SHIP TO:
WILLIAM J FLYNN POOL
HOWELL ENTERPRISES INC
17421 STATE ROUTE 12F
DEXTER, NY 13634-3064
315-639-6190

CUSTOMER NUMBER		CUSTOMER ORDER NUMBER		JOB NAME		QUOTED TO	
492188		WILLIAM FLYNN POOL				MITCH HOWELL	
SALESPERSON		SHIP VIA		FREIGHT ALLOWED		EXPIRATION DATE	
JONATHAN STEELE		WTR1		No		11:59pm ET 10/03/23	
ORDER QTY	UPC	DESCRIPTION			UNIT PRICE	U	EXT PRICE
lea		^LOTBILL-EATONPOW-14370 EATON CORPORATION			10704.000		10704.00
Qty	Type	This Lot Shipment Consists of:					
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TERMS & CONDITIONS					Subtotal		10704.00

Res No. 4

October 2, 2023

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Inter-Municipal Agreement Relative to Commercial Driver's License Training with Jefferson, Lewis, Hamilton, Herkimer, Oneida BOCES

The Federal Motor Carrier Safety Act requires that anyone wishing to obtain a Commercial Driver's License (CDL) must first pass an Entry Level Driver Training (ELDT) course. Many of the of the positions in the Department of Public Works and Water Department require the employee to have a Class B CDL.

Jefferson, Lewis Hamilton, Herkimer, Oneida BOCES has been providing this training for the City via a previously approved inter-municipal agreement. They have submitted a new agreement which includes a substantial cost decrease from \$5,220 to \$4,380 per employee that is trained by BOCES.

A resolution approving the Inter-Municipal Agreement with BOCES is attached for City Council consideration.

RESOLUTION

Page 1 of 1

Approving Inter-Municipal Agreement
Relative to Commercial Driver's
License Training with Jefferson, Lewis,
Hamilton, Herkimer, Oneida BOCES

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 Jefferson, Lewis, Hamilton, Herkimer, Oneida BOCES is a duly constituted Board of Cooperative Educational Services formed pursuant to the provisions of Article 40 of the New York State Education Law; and

WHEREAS City of Watertown is a municipal corporation formed pursuant to the laws and the Constitution of the State of New York; and

WHEREAS New York State General Municipal Law, Article 5-G (§§119-m through 119-oo) authorizes the Parties to each enter into an inter-municipal cooperation agreement ("ICA") to carry out any function or responsibility each has authority to undertake alone; and

WHEREAS BOCES, as part of its educational mission offers Entry Level Driver Training Instruction pursuant to the Federal Motor Carrier Safety Act ("FMSCA") which prepares trainees to seek a Commercial Driver's License ("CDL") from the New York State Department of Motor Vehicles ("DMV"); and

WHEREAS City desires to have individuals in its employ participate in BOCES program of Entry Level Driver Training; and

WHEREAS BOCES is willing to accept City's designees into its Entry Level Driver Training, subject to the terms and conditions set forth below and City's agreement to abide by the same; and

WHEREAS an Inter-Municipal Agreement with BOCES to provide its Entry Level Driver Training has been drafted,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves the Inter-Municipal Agreement relative to Entry Level Commercial Driver's License Training with Jefferson, Lewis, Hamilton, Herkimer, Oneida BOCES, a copy of which is attached and made part of this resolution, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Agreement on behalf of the City of Watertown.

Seconded by

Memorandum of Inter-Municipal Agreement

Between

Jefferson, Lewis, Hamilton, Herkimer, Oneida BOCES

and

CITY OF WATERTOWN

This Agreement, dated 10/1/2023, by and between Jefferson, Lewis, Hamilton, Herkimer, Oneida BOCES, (hereinafter “BOCES”), with offices at 20104 State Route 3, Watertown, New York 13601, and City of Watertown (hereinafter “Entity”), with offices at 245 Washington Street, Watertown, NY 13601 (together, the “Parties”).

RECITALS

Whereas, BOCES is a duly constituted Board of Cooperative Educational Services formed pursuant to the provisions of Article 40 of the New York State Education Law; and

Whereas, City of Watertown is a municipal corporation formed pursuant to the laws and the Constitution of the State of New York; and

Whereas, New York State General Municipal Law, Article 5-G (§§119-m through 119-oo) authorizes the Parties to each enter into an inter-municipal cooperation agreement (“ICA”) to carry out any function or responsibility each has authority to undertake alone.

Whereas, BOCES, as part of its educational mission offers Entry Level Driver Training Instruction pursuant to the Federal Motor Carrier Safety Act (“FMSCA”) which prepares trainees to seek a Commercial Driver’s License (“CDL”) from the New York State Department of Motor Vehicles (“DMV”); and

Whereas, City of Watertown desires to have individuals in its employ participate in BOCES program of Entry Level Driver Training; and

Whereas, BOCES is willing to accept City of Watertown designees into its Entry Level Driver Training, subject to the terms and conditions set forth below and City of Watertown’s agreement to abide by the same.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, and other good and valuable consideration, receipt of which is hereby mutually acknowledged, it is agreed as follows.

COVENANTS

1. Term and Termination.

This agreement shall be for one school year, 2023-2024, and may be renewed, in writing, for successive one year terms at a mutually agreed upon reimbursement rate for services for the successive years.

Both Parties reserve the right to terminate this Agreement upon providing sixty (60) days written notice to the other.

2. Course Description.

In the 2023 – 2024 school year (July 1, 2023 to June 30, 2024) the Entry Level Driver Training Instruction is made up of three components together with an option to use the BOCES Class B vehicle for the DMV road test as follows:

- Component #1 – Theory Course:
 - 24/7 online access from a personal computer for one-year from start date.

- Personal Computer or Computer Lab, BOCES Transportation Office (days/times limited).
- Component #2 – Behind the Wheel Range Course:
 - 20-hour instructor-driver course.
 - BOCES Campus, Watertown.
- Component #3– Behind the Wheel Public Road Course:
 - 10-hour instructor-driver course.
 - Driver training public road course is conducted on local public roadways in the vicinity of BOCES Campus, Watertown.
- Option for DMV Road Test
 - Instructor facilitated use of BOCES Class B vehicle for the DMV Road Test in either Jefferson or Lewis County.

Enrollment capacity is determined by instructor availability. The driver training components for behind the wheel training (BTW) are based on a one student to one instructor ratio. The BTW courses are offered according to BOCES academic calendar with limited Saturday availability.

3. **BOCES Responsibilities.**

- BOCES will hire and supervise staff possessing the qualifications to provide professional services as a *driver training instructor*, in accordance with the FMCSA and New York State standards, for a Class B driver training program to be held at BOCES Watertown campus.
- BOCES, through its selected instructor, will be responsible for the Entry Level Driver Training curriculum as approved by FMCSA.
- BOCES will provide a Class B vehicle with manual transmission and driver training range course on JLB property for Component # 2 referenced above.
- BOCES will provide a Class B vehicle with manual transmission for use on local NYS public roadways in the vicinity of BOCES for Component # 3 referenced above.
- BOCES, through its selected instructor, will evaluate the various skill and knowledge proficiency competencies required by course curriculum in order to grade the course as a pass or fail.
- BOCES will update the FMCSA Training Registry in the event the driver trainee achieved a passing grade, and is deemed to have successfully completed the component.

4. **City of Watertown Responsibilities.**

- City of Watertown will refer only qualified driver trainees who possess a DMV learner's permit appropriate for a Class B CDL, NYS DOT Medical Examiner's Certificate, NYS DOT Drug Screen, and confirmed enrollment in FMCSA Drug & Alcohol Clearinghouse.
- City of Watertown will ensure driver trainee compliance to program policies and procedures.
- City of Watertown acknowledges that entry into this Agreement does not guarantee a space in any specific component of the program, enrollment being on a "first come, first served" basis.
- City of Watertown acknowledges that participation in the course by a trainee does not guarantee acquiring the skill and knowledge proficiency competencies required in order to achieve a grade of pass in the course.
- City of Watertown will in consideration of the services provided, compensate BOCES according to the fee schedule annexed to this Agreement at "Addendum A".

5. **Fees, Participation, Withdrawal and Cancellation.**

- **Fee Policy.** Tuition and fees are specific to one driver trainee. No substitutions are permitted for the original driver trainee who may not complete a course. Tuition costs may fluctuate based on changes in market pricing and costs of personnel, supplies, and required equipment. City of

Watertown will be noticed of fluctuations and thereafter invoiced respective to tuition adjustments.

- Refresher Course Policy. If a driver trainee fails to achieve a competency in Component #2 or Component #3, the driver trainee has the option to enroll in a Refresher Course. Referral to the Refresher Course is based on instructor evaluation and driver trainee ability. The City of Watertown will be invoiced at an hourly rate, respectively. If a driver trainee fails the NYS DMV Road Test, the driver trainee has the option to enroll in a Refresher Course. The City of Watertown will be invoiced at an hourly rate, respectively.
- Cancellation Policy: If City of Watertown cancels a course registration for a driver trainee, City of Watertown must notify the BOCES in writing at least 5 days prior to the start date of the course. If written notification is not received City of Watertown will be invoiced for the course.
- Withdrawal Policy: If a driver trainee withdraws, or incurs absences that prohibit the attainment of the skill and knowledge proficiency competencies required to achieve a passing grade in the Entry Level Driver Training course, City of Watertown will still be required to pay invoiced charges as set forth in Addendum A.

6. **Miscellaneous.**

- The Parties hereby acknowledge that this Agreement has been properly authorized pursuant to the process and procedure established by their respective governing boards.
- This Agreement represents the entire agreement of the Parties and may not be modified, changed, altered or extended except in writing duly signed and acknowledged by the Parties.
- This Agreement shall be interpreted by and in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have affixed their respective signatures below.

Jefferson, Lewis, Hamilton, Herkimer, Oneida BOCES:

By: Stephen J. Todd, District Superintendent

Date

City of Watertown:

By: [Name], [Title]

Date

Addendum A

Component #1: Theory Course

Tuition	\$275 ** (one-year from start date)
Total	\$275

** Use of BOCES Computer Lab, Transportation Office - \$150 additional

Component #2: Behind the Wheel Range Course

Tuition	\$1,875
Total	\$1,875

Component #3: Behind the Wheel Public Road Course

Tuition	\$1,775
Total	\$1,775

Option for NYS DMV Road Test

Tuition	\$455
Total	\$455

Option for Refresher Course

Tuition, hourly rate	\$175
Total	\$175 per hour

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Change Order No. 2 with EDGE Civil Corporation for the Barben Avenue, Holcomb Street, Bugbee Drive and East Street Water Main Replacement Project

At the April 17, 2023 meeting, City Council approved the bid for the Barben Avenue, Holcomb Street, Bugbee Drive, and East Street Water Main Replacement Project to EDGE Civil Corporation in the amount of \$1,597,319.00.

At the August 21, 2023 meeting, City Council approved Change Order No. 1 in the amount of \$141,550.00, bringing construction cost to \$1,738,869.00.

EDGE Civil Corporation has now submitted Change Order No. 2 in the amount of \$74,100.00 more for additional work, bringing the final construction cost to \$1,812,969.00. East Street and approximately 70 feet of Holcomb Street will be paved from Curb to Curb instead of just where the new water main was installed. This paving will repair the poor condition of the original asphalt on East Street as well as repair this section of Holcomb Street that has had main breaks over the years. The remainder of Holcomb Street from Mullin to Ten Eyck Street will only be paved where the new water main was installed.

A resolution approving this change order has been prepared for City Council consideration.

RESOLUTION

Page 1 of 1

Approving Change Order No. 2 with
EDGE Civil Corporation for the Barben
Avenue, Holcomb Street, Bugbee Drive and
East Street Water Main Replacement Project

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 at its April 17, 2023, meeting, the City Council accepted a bid from EDGE Civil Corporation in the amount of \$1,597,319.00 for the Barben Avenue, Holcomb Street, Bugbee Drive and East Street Water Main Replacement Project, and

WHEREAS at its August 21, 2023, meeting, the City Council approved Change Order No. 1 from EDGE Civil Corporation in the amount of \$141,550.00 bringing construction cost to \$1,738,869.00, and

WHEREAS East Street's asphalt is in poor condition, and approximately 70 feet of Holcomb Street from Mullin Street to Ten Eyck Street is in poor condition due to water main breaks, and

WHEREAS it was determined that instead of paving only where the new water main was installed on East Street and in this section of Holcomb Street, both areas would be paved curb to curb, and

WHEREAS EDGE Civil Corporation has now submitted Change Order No. 2 in the amount of \$74,100.00,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves Change Order No. 2 with EDGE Civil Corporation in the amount of \$74,100.00, a copy of which is attached and made part of this Resolution, bringing the total contract amount to \$1,812,969.00, and

BE IT FURTHER RESOLVED that City Manager Kenneth A. Mix is hereby authorized and directed to execute Change Order No. 2 on behalf of the City of Watertown.

Seconded by

**Engineers Joint Documents Committee
Design and Construction Related Documents
Instructions and License Agreement**

Instructions

Before you use any EJCDC document:

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2. Make sure that you have the correct version for your word processing software.

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1. While EJCDC has expended considerable effort to make the software translations exact, it can be that a few document controls (e.g., bold, underline) did not carry over.
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4. Also note the instruction in the License Agreement about the EJCDC copyright.

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3. Copy **EJCDC Design and Construction Related Documents** into any machine readable or printed form for backup or modification purposes in support of your use of **EJCDC Design and Construction Related Documents**.

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1. Reproduce and include EJCDC's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program. All proprietary rights in **EJCDC Design and Construction Related Documents** are and shall remain the property of EJCDC.
2. Not represent that any of the contract documents you generate from **EJCDC Design and Construction Related Documents** are EJCDC documents unless (i) the document text is used without alteration or (ii) all additions and changes to, and deletions from, the text are clearly shown.

You may not use, copy, modify, or transfer EJCDC Design and Construction Related Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of EJCDC Design and Construction Related Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited.

If you transfer possession of any copy, modification or merged portion of EJCDC Design and Construction Related Documents to another party, your license is automatically terminated.

Term:

The license is effective until terminated. You may terminate it at any time by destroying **EJCDC Design and Construction Related Documents** altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy **EJCDC Design and Construction Related**

Documents along with all copies, modifications and merged portions in any form.

Limited Warranty:

EJCDC warrants the CDs and diskettes on which **EJCDC Design and Construction Related Documents** is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in **EJCDC Design and Construction Related Documents** will meet your requirements or that the operation of **EJCDC Design and Construction Related Documents** will be uninterrupted or error free.

Limitations of Remedies:

EJCDC's entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC's "Limited Warranty" which is returned to EJCDC's selling agent with a copy of your receipt, or
2. if EJCDC's selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use **EJCDC Design and Construction Related Documents** even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

General:

You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
General Counsel
National Society of Professional Engineers
1420 King Street
Alexandria, VA 22314

Phone: (703) 684-2845
Fax: (703) 836-4875
e-mail: aschwartz@nspe.org

You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions. You further agree that it is the complete and exclusive statement of the agreement between us which supersedes any proposal or prior agreement, oral or written, and any other communications between us relating to the subject matter of this agreement.

No. 2

Effective Date: 10/02/2023

Owner's Contract No.:

Date of Contract:

Engineer's Project No.:

Description: Due to the poor conditions of East Street and approximately 70 feet of Holcomb Street, it has been decided that paving on East Street and this section of Holcomb Street will be curb to curb, instead of just where the new water main has been installed. The rest of Holcomb Street from Muttin Street to Ten Eyck Street will only be paved where the new water main has been installed.

East Street and Holcomb Street.

Ready for final payment (days or date):

Date:

Change Order

Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.



Edge Civil Corporation
 2723A County Route 26
 Parish, NY 13131
 Phone (315) 420-6551 Fax (315) 303-1615

Submitted To:
 City Of Watertown

Project: Barben Holcomb, Bugbee and East Street

Change Request

DATE 21-Sep-23
Change Order # BHBE CO 2
Project # 2021-039

Due By 06-Oct-23
Prepared by: Ed Banach

Contact Name Kevin Bamann

Work Performed	AMOUNT
East Street Paving	
Sawcut Driveways and Intersections	
Remove Existing Asphalt Pavement (+/- 4895 SF) Additional not included in contract	
Shlm To crown Roadway to 2%	
Fine Grade Roadway	
Adjust Structures in Road	
Additional Roadway Layout	
Lump Sum \$38,000.00	
Add For Complete Box out and Installation of 12" NYDOT Type 2 Stone	
Lump Sum \$15,000.00	
Total \$53,000.00	
Total Change	\$ 53,000.00

Any Questions Please Call Ed Banach 315 420 6551



Edge Civil Corporation
 2723A County Route 26
 Parish, NY 13131
 Phone (315) 420-6551 Fax (315) 303-1615

Submitted To:
 City Of Watertown

Project: Barben Holcomb, Bugbee and East Street

Change Request

DATE 25-Sep-23
Change Order # BHBE CO 2
Project # 2021-039

Due By 10-Oct-23
Prepared by: Ed Banach

Contact Name Kevin Bamann

Work Performed		AMOUNT
Holcomb Street Paving		
Sawcut Driveways and Intersections		
Remove Existing Asphalt Pavement (+/- 1960 SF) Additional not included in contract		
Shim To crown Roadway to 2%		
Fine Grade Roadway		
Adjust Structures in Road		
Additional Roadway Layout		
Lump Sum	\$15,200.00	
Add For Complete Box out and Installation of 12" NYDOT Type 2 Stone		
Lump Sum	\$5,900.00	
Total	\$21,100.00	
Total Change		\$ -

Any Questions Please Call Ed Banach 315 420 6551

September 27, 2023

TO: The Honorable Mayor and City Council

FROM: Tina Bartlett-Bearup, Purchasing Manager

SUBJECT: Bid #2023-30 CDBG Franklin Street Sidewalk ADA Ramp Repair Project
Letter of Recommendation

The City's Purchasing Department advertised in the Watertown Daily Times for sealed bids from qualified bidders for the CDBG Franklin Street Sidewalk ADA Ramp Repair Project, per City specifications and publicly opened and read the sealed bids on September 25, 2023, at 11:00 a.m. EST. Invitation to bids were provided to seven (7) plan houses and fifty-five (55) potential vendors.

The Purchasing Department received three (3) sealed bid submittals and the bid tabulations are shown below:

On Point Excavation	Powis Contracting	D.C. BUILDING SYSTEMS
Dexter, NY 13634	Copenhagen, NY 13626	Watertown, NY 13601
\$103,145.00	\$224,270.00	\$397,500.00

The Purchasing Manager and Engineering and Planning Departments reviewed the responses to ensure compliance with the specifications and hereby recommend that City Council award the total base bid for the CDBG Franklin Street Sidewalk ADA Ramp Repair Project to On Point Excavation & Consulting LLC as the lowest responsive responsible bidder at a total price of **\$103,145.00**.

The CDBG Franklin Street Sidewalk ADA Ramp Repair Project will be funded using funds from the Community Development Block Grant (CDBG) and CHIPS funding. The City's Program Year 2022 Annual Action Plan budgeted \$100,000 for the Franklin Street ADA Ramp project. The City spent \$16,900 on design services which Barton & Loguidice provided, leaving \$83,100 of CDBG funds available. The City will use CHIPS funding to fill in the \$20,045 budget gap for the project.

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

RESOLUTION

Page 1 of 1

Accepting Bid for CDBG Franklin Street
Sidewalk ADA Ramp Repair Project -
On Point Excavation & Consulting LLC

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 reconstruct twelve (12) ADA handicap ramps along Franklin Street and Gotham Street, replacing the existing handicap ramps and to install new five-foot-wide sidewalk ramps in the marked-out areas, and all other associated work, and

WHEREAS the Purchasing Department advertised and received three (3) sealed bids for the CDBG Franklin Street Sidewalk ADA Ramp Repair Project, and

WHEREAS on September 25, 2023, at 11:00 a.m. the bids received were publicly opened and read, and

WHEREAS Purchasing Manager, Tina Bartlett-Bearup reviewed the bids received with the Engineering and Planning Departments and it is their recommendation that the City Council accept the lowest responsive responsible bid submitted by On Point Excavation & Consulting LLC,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby accepts the bid received from On Point Excavation & Consulting LLC in the amount of \$103,145.00, 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

Project:

CDBG Franklin St ADA Replacement

Bid / RFP Number:

Bid #2023-30

Opening Date:

Monday September 25, 2023 @ 11:00 AM

*The following results are bids as presented at the bid opening and do not represent an award.***Vendor Name, Address and Point of Contact****On Point Excavation****Powis Contracting****D.C. BUILDING SYSTEMS**

Dexter, NY 13634

Copenhagen, NY 13626

Watertown, NY 13601

Total Base Bid**\$103,145.00****\$224,270.00****\$397,500.00**

Res. No. 7

October 2, 2023

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Authorizing Master Federal Aid Local Project Agreement with New York State Dept. of Transportation, Contract No. D040966, for PIN 775418 US Rt.11 (Mill St.) Over Black River Overflow, BIN 2220230

The City of Watertown has received notification from the State of New York Department of Transportation that the Bridge NY Program awarded the City \$1.465 million for the rehabilitation of the Mill St. South Span Bridge.

A Federal Aid Local Project Agreement has been provided for the Preliminary Engineering Phase of work for the project. The estimated cost associated with completing this Phase is \$165,000. Federal funds will pay 95% of that.

A resolution authorizing the Local Project Agreement has been prepared for City Council consideration.

RESOLUTION

Page 1 of 2

Authorizing Master Federal Aid Local Project Agreement with New York State Dept. of Transportation, Contract No. D040966, for PIN 775418 US Rt. 11 (Mill St.) Over Black River Overflow, BIN 2220230

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 US Route 11 (Mill Street) over Black River Overflow, P.I.N. 775418 (the Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs such program to be borne at the ratio of 95% Federal funds and 5% non-federal funds, and

WHEREAS the City of Watertown will design, let and construct the Project, and

WHEREAS the City of Watertown desires to advance the Project by making a commitment of 100% of the costs of the work for or portions thereof,

NOW THEREFORE BE IT RESOLVED that the City Council of Watertown does hereby approve 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 100% of the federal and non-federal share of the cost of the preliminary engineering design for Project or portions thereof, with the understanding that qualified costs may be eligible for federal-aid, state-aid, or reimbursement from Bridge NY funds, and

BE IT FURTHER RESOLVED that a sum of \$165,000 is hereby appropriated from the City of Watertown Capital Budget and be made available to cover the cost of participation in the above phase of the Project, and

BE IT FURTHER RESOLVED that the City Council hereby agrees that the City of Watertown shall be responsible for all costs of the Project which exceed the amount of the federal-aid, state-aid, or NY Bridge funding awarded to the City of Watertown, and

RESOLUTION

Page 2 of 2

Authorizing Master Federal Aid Local Project Agreement with New York State Dept. of Transportation, Contract No. D040966, for PIN 775418 US Rt. 11 (Mill St.) Over Black River Overflow, BIN 2220230

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 in event the Project costs by federal-aid, state-aid, or NY Bridge funding exceed 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 the notification by the City Manager's Office thereof, and

BE IT FURTHER RESOLVED that City Council hereby agrees that construction of the Project shall begin no later than twenty-four (24) months after award and the construction phase of the Project shall be completed within thirty (30) months, and

BE IT FURTHER RESOLVED that the City Manager of the City of Watertown be and is hereby authorized to execute on behalf of the City of Watertown all necessary agreements, certifications or reimbursement requests for federal-aid and/or state aid with the New York Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the City of Watertown's funding of Project costs and permanent funding of the local share of federal-aid 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 _____



Department of Transportation

KATHY HOCHUL
Governor

MARIE THERESE DOMINGUEZ
Commissioner

KENNETH M. BIBBINS, P.E.
Regional Director

September 13, 2023

Mr. Kenneth Mix, City Manager
Watertown City Hall
245 Washington Street, Room 302
Watertown, NY 13601

RE: PIN 775418 – MASTER FEDERAL AID LOCAL PROJECT AGREEMENT
Contract #: D040966
Project: Mill Street over Black River Overflow, BIN 2220230
PHASE: Preliminary Engineering
MUNICIPALITY: City of Watertown

Dear Mr. Mix,

It is our understanding that the City of Watertown is ready to begin the **Preliminary Engineering Phase** of work for the above captioned BridgeNY Project. This Phase will utilize Bridge Formula Main (BFN) funds through the 2022 Bridge NY Program and therefore requires the enclosed agreement to be initiated to enable the City to receive reimbursement.

The City must obligate 100% of the Project costs for all phases within this agreement.

Enclosed is a complete copy of the above captioned Agreement text package containing the following:

- Schedule "A" (Preliminary Engineering);
- Schedule "B" (Preliminary Engineering, Construction & CI);
- Appendix "A" NYS Required contract Provisions.
- Appendix "A-1" Supplemental Title VI Provisions;
- Appendix "B" Government Required Clauses; and
- A Sample BridgeNY Resolution

To complete the Enclosed Agreement:

The City completes the agreement by:

1. Sign and date 3 copies of the Signature Sheet (**page 10**) and have notarized the affirmation statement on the same page. The Signature Sheet (**page 10**) requires the signature of the local official authorized to act on the Sponsors

- behalf, and the signature of the Sponsor's Attorney, each at the place indicated. The Acknowledgment Statement on Page 10 requires a Notary's signature and stamp affixed as indicated
2. A Resolution authorizing 100% first instance payment of the Preliminary Design Phase costs must be enacted by the City and contain the Municipal Seal. Either embossed or foil self-adhesive seals are acceptable.
 3. Signatures on all copies of both the Signature Page and the Resolution should be in original ball point pen (*Blue Ink*).


To Progress the Project:

Please execute and return to my office:

- One (1) complete agreement
- Three (3) additional signed signature sheets
- Four (4) original resolutions

Questions concerning this project should be addressed to Barbara R. Cadwell, Regional PPM Office, Regional Local Project Liaison at 315-785-2499 or by email at barbara.cadwell@dot.ny.gov.

Sincerely,



Kristopher H. Reff
Acting Director, Regional Planning & Program Management

Copy:

Thomas Mauer, PE, Engineering Department, City of Watertown
James E. Mills, City Comptroller, City of Watertown
Barbara R. Cadwell, Regional PPM Office, Local Project Liaison (Center File)

MUNICIPALITY/SPONSOR: **City of Watertown**

PROJECT ID NUMBER: **775418** BIN: **2220230**

CFDA NUMBER: **20.205**

PHASE: PER SCHEDULES A

Federal aid Local Project Agreement

COMPTROLLER'S CONTRACT NO **D040966**

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 **9/6/2023**.

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 **US Rt. 11 (Mill Street) over Black River Overflow, BIN 2220230** (as more specifically described in such Schedule A, the "Project").

W I T N E S S E T H:

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

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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 City Manager 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

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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.

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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.

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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.

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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,

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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

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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: **Barbara R. Cadwell**

Title: **RLPL**

Address: **317 Washington Street**

Telephone Number: **315-785-2499**

Facsimile Number: **315-785-2315**

E-Mail Address: **Barbara.cadwell@dot.ny.gov**

[Municipality/Sponsor] City of Watertown

Name: **Ken Mix**

Title: **City Manager**

Address: **245 Washington Street, Watertown, NY 13601**

Telephone Number: **315-785-7730**

Facsimile Number: **315-782-9014**

E-Mail Address: **kmix@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

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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 or by email at 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

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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, City of Watertown, D040966**)

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

SCHEDULE A – Description of Project Phase, Funding and Deposit Requirements
NYSDOT/ State-Local Agreement - Schedule A for PIN 7754.18

OSC Contract #: <u>D040966</u>	Contract Start Date: <u>9/7/2023</u> (mm/dd/yyyy) Contract End Date: <u>9/7/2028</u> (mm/dd/yyyy) <input type="checkbox"/> Check, if date changed from the last Schedule A
Purpose: <input checked="" type="checkbox"/> Original Standard Agreement <input type="checkbox"/> Supplemental Schedule A No.	
Agreement Type: <input checked="" type="checkbox"/> Locally Administered Municipality/Sponsor (Contract Payee): City of Watertown Other Municipality/Sponsor (if applicable): _____ <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> <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Municipality: _____ % of Cost share <input type="checkbox"/> Municipality: _____ % of Cost share <input type="checkbox"/> Municipality: _____ % of Cost share </div>	
Authorized Project Phase(s) to which this Schedule applies: <input checked="" type="checkbox"/> PE/Design <input type="checkbox"/> ROW Incidentals <input type="checkbox"/> ROW Acquisition <input type="checkbox"/> Construction/CI/CS	
Work Type: BR REHAB	County (If different from Municipality): _____
(Check, if Project Description has changed from last Schedule A): <input type="checkbox"/> Project Description: US Rt. 11 over Black River Overflow, BIN 2220230	
Marchiselli Eligible <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

A. Summary of Participating 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	Funding Source (Percentage)	TOTAL Costs	FEDERAL Funds	STATE Funds	LOCAL Funds	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
7754.18.121	Current	Other (see FN) (95%)	\$165,000.00	\$156,750.00	\$0.00	\$8,250.00	\$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
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL CURRENT COSTS:			\$165,000.00	\$156,750.00	\$ 0.00	\$8,250.00	\$ 0.00

NYSDOT/State-Local Agreement – Schedule A PIN 7754.18

B. Local Deposit(s) from Section A:	\$ 0.00
Additional Local Deposit(s)	\$0.00
Total Local Deposit(s)	\$ 0.00

C. Total Project Costs <i>All totals will calculate automatically.</i>			
Total FEDERAL Cost	Total STATE Cost	Total LOCAL Cost	Total ALL SOURCES Cost
\$156,750.00	\$ 0.00	\$8,250.00	\$165,000.00
		Total FEDERAL Cost	\$156,750.00
		Total STATE Cost	\$ 0.00
SFS TOTAL CONTRACT AMOUNT			\$156,750.00

D. Point of Contact for Questions Regarding this Schedule A (Must be completed)	Name: <u>Barbara Cadwell</u> Phone No: <u>315-785-2499</u>
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See Agreement (or Supplemental Agreement Cover) for required contract signatures.

Footnotes (FN): (See [LPB's](#) SharePoint for link to sample footnotes)

- This is a 2022 Bridge NY Bridge project and is funded with 95% federal aid with the addition of toll credits, as provided for under Title 23 USC 120(i). The remaining 5% of the project cost will be non-federal (i.e., local) match.
- PIN 775418, D040966, US Rt. 11 (Mill Street) over Black River Overflow
- Funding for this project is Bridge Formula Main.
- Projects must begin construction no later than 24 months after award; award is defined as approved State-Local Agreement (SLA) by the NYS Office of the State Comptroller. The Project Sponsor must expeditiously progress the execution of the SLA.
- Projects must be fully completed within 30 months of commencing construction; construction is defined as an award to a contractor or commencement of work by municipal/sponsor work forces. Therefore, Sponsors are strongly encouraged to have projects substantially completed within two years of commencing construction.
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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>	Responsibility: <u>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. Prepare Smart Growth Checklist for NYSDOT Attestation.	<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"/>

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>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: - 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

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

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u> <u>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. 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.	<input type="checkbox"/>	<input 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 type="checkbox"/>

B. Right-of-Way (ROW) Acquisition

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u> <u>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. 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.	<input type="checkbox"/>	<input 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 type="checkbox"/>
3. Conduct eminent domain proceedings, court and any other legal actions required to acquire properties.	<input type="checkbox"/>	<input type="checkbox"/>
4. Monitor all ROW Acquisition work and activities, including review and processing of payments of property owners.	<input type="checkbox"/>	<input 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 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 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 ensure 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"/>

<u>Phase/Sub-phase/Task</u>	Responsibility: <u>NYSDOT</u>	<u>Sponsor</u>
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 had 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, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) 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, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

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, citizenship or immigration status, 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 and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.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 May 2023, 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 899-bb and State Technology Law § 208).

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/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, national origin, and/or 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 agency¹ 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.

¹ 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

The Catalog of Federal Domestic Assistance ([CFDA](http://www.cfda.gov/)²), 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:

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

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

² <http://www.cfda.gov/>

prime contractor to the subcontractor within 7 calendar days after the subcontractor's work is satisfactorily completed.

(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. 6 Tabled

September 27, 2023

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Authorizing Fund Raising Through the Northern New York Community Foundation for the Construction of a Dog Park

The attached resolution was tabled on September 18, 2023. It was prepared at the request of Council Member Olney. Rande Richardson of the Northern New York Community Foundation has reviewed the resolution and is satisfied with it.

A desire to place a time limit on fund raising was voiced. If the Council wishes to do that, I suggest the resolution be amended by adding the following language as the seventh paragraph: "BE IT FURTHER RESOLVED that if enough funds to completely pay for the construction of the dog park are not raised within one year from the date of this resolution, then the money will be used for the alternative of making dog friendly improvements to city parks, and".

Scott Gates has informed us that he is not in favor of building the dog park in the location identified in the resolution. There was also concern about funds going into Mr. Gates' other fund at the Community Foundation. I understand that Mr. Richardson has the same concern.

RESOLUTION

Page 1 of 1

Authorizing Fund Raising Through the Northern
New York Community Foundation for the
Construction of a Dog Park

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 Council Member Lisa A. Ruggiero

WHEREAS Scott "S.G." Gates has offered to raise funds for construction of a dog park,
and

WHEREAS the Northern New York Community Foundation was previously designated
to serve as a vehicle through which individuals, organizations, and businesses can make
charitable contributions in support of City programs, projects and initiatives, and

WHEREAS the City Council of the City of Watertown believes that it is in the best
interest of the citizens of the City to authorize fund raising for the construction of a dog park, and

WHEREAS the recently completed Thompson Park Master Plan identified a suitable area
for a dog park within Thompson Park, and

WHEREAS in the event that adequate funds are not raised, such charitable contributions
will be used by the city for dog friendly improvements to city parks,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown
authorizes fund raising through the Northern New York Community Foundation for the purpose
of providing resources to construct a dog park in Thompson Park in the location identified in the
Master Plan, and

BE IT FURTHER RESOLVED that the City of Watertown is willing to accept the
donated funds from the Northern New York Community Foundation for said purpose.

Seconded by Council Member Sarah V.C. Pierce

September 26, 2023

To: The Honorable Mayor and City Council
From: Kenneth A. Mix, City Manager
Subject: Cayuga Avenue

At the September 18, 2023 City Council meeting two residents living on Cayuga Avenue north of Kelsey Creek complained about the condition of the street and lack of services.

Cayuga Avenue beyond Erie Street is not an accepted City street, and the City does not own it. Therefore, it is a private street. We give private streets minimal care only to ensure access for emergency vehicles. The City is prohibited from doing more than that.

The fire hydrant is in working condition though it is an old model that sometime freezes in the Winter. The water line it is on is a 4" cast iron pipe that is more than 100 years old.

The street is plowed with a pick-up truck like most of our dead-end streets.

We can find no reason that trash cannot be picked up.

Staff Report 2

September 27, 2023

To: The Honorable Mayor and City Council

From: James E. Mills, City Comptroller

Subject: Sales Tax History

At the request of Council Member Olney the following sales tax history was prepared.

	Fiscal Year 2013-14	Fiscal Year 2014-15	Fiscal Year 2015-16	Fiscal Year 2016-17	Fiscal Year 2017-18	Fiscal Year 2018-19	Fiscal Year 2019-20	Fiscal Year 2020-21	Fiscal Year 2021-22	Fiscal Year 2022-23	Fiscal Year 2023-24
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual
July	\$ 1,492,579	\$ 1,412,829	\$ 1,509,325	\$ 1,536,214	\$ 1,573,554	\$ 1,606,413	\$ 1,763,856	\$ 1,493,210	\$ 1,948,809	\$ 2,035,333	\$ 2,353,567
August	1,463,877	1,247,954	1,494,788	1,435,666	1,498,230	1,573,047	1,763,893	1,515,827	1,888,806	2,008,482	2,186,214
September	1,760,254	2,206,655	1,683,486	1,982,777	1,918,505	2,226,468	2,129,882	2,783,423	2,725,797	2,757,376	
October	1,584,174	1,405,774	1,339,731	1,295,166	1,381,534	1,423,970	1,499,868	1,488,167	1,678,723	1,847,562	
November	1,116,784	1,398,402	1,375,619	1,355,551	1,435,650	1,466,279	1,410,364	1,331,668	1,643,509	1,818,188	
December	1,543,425	1,540,727	1,351,562	1,752,250	1,754,106	1,718,512	1,868,004	2,493,688	2,374,453	2,323,223	
January	1,238,468	1,261,235	1,332,286	1,363,372	1,360,442	1,384,533	1,436,294	1,290,702	1,649,030	1,849,036	
February	1,076,005	1,059,321	1,084,467	1,087,663	1,163,558	1,149,846	1,203,572	1,181,566	1,429,187	1,643,774	
March	1,471,964	1,295,074	1,426,339	1,548,314	1,511,911	1,420,276	1,750,746	2,284,533	2,253,672	2,041,305	
April	1,271,765	1,286,204	1,333,096	1,313,100	1,392,815	1,410,924	988,797	1,566,858	2,064,386	1,888,370	
May	1,298,653	1,288,547	1,348,173	1,325,536	1,383,659	1,501,095	925,049	1,626,958	2,023,137	1,835,982	
June	1,699,052	1,726,963	1,789,321	1,821,198	2,051,011	1,864,710	2,258,456	3,144,514	1,949,070	2,566,086	
YTD	<u>\$17,017,001</u>	<u>\$17,129,685</u>	<u>\$17,068,193</u>	<u>\$17,816,807</u>	<u>\$18,424,974</u>	<u>\$18,746,071</u>	<u>\$18,998,780</u>	<u>\$22,201,114</u>	<u>\$23,628,579</u>	<u>\$24,614,716</u>	<u>\$ 4,539,781</u>
Year-to-year Change (\$)	\$ (230,800)	\$ 112,684	\$ (61,492)	\$ 748,614	\$ 608,168	\$ 321,097	\$ 252,709	\$ 3,202,333	\$ 1,427,465	\$ 986,137	
Year-to-year Change (%)	-1.34%	0.66%	-0.36%	4.39%	3.41%	1.74%	1.35%	16.86%	6.43%	4.17%	
Annual CPI-U change (July to June)	2.07%	0.12%	1.00%	1.63%	2.87%	1.65%	0.65%	5.39%	9.06%	2.97%	

