

**CITY OF WATERTOWN, NEW YORK**

**AGENDA**

**Monday, March 18, 2024**

**7:00 p.m.**

This shall serve as notice that the next regularly scheduled meeting of the City Council will be held on Monday, March 18, 2024, 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**

**PROCLAMATION**

**PRIVILEGE OF THE FLOOR**

**PUBLIC HEARING**

**RESOLUTIONS**

- Resolution No. 1 - Change Order #4 for 2022 Fire Stations Upgrades to Station 1, 2, and 3 Project Scope of Work Increase
- Resolution No. 2 - Executing the Master Municipal Multi-Modal Agreement with New York State Department Of Transportation for funding for the Thompson Park West Sector Trail Project
- Resolution No. 3 - Authorizing Professional Services Supplemental Agreement #5 - Construction Inspection Services for the Massey Street, Coffeen Street, Court Street Project, PIN 775362, Fisher Associates
- Resolution No. 4 - Approving Franchise Agreement, The Greater Watertown Red and Black, Inc.
- Resolution No. 5 - Approving Agreement for Flat Fee Use of Athletic Fields, Watertown Pop Warner Football Association
- Resolution No. 6 - Approving Agreement for Flat Fee Use of Athletic Fields with Watertown American Little League
- Resolution No. 7 - Approving Agreement for Public Benefit Services, Disabled Persons Action Organization Foundation
- Resolution No. 8 - Authorizing the Waiver of Vendor Fees for Total Eclipse of the Park to be Held on April 8, 2024.

Resolution No. 9 - Approving Fire Engine Loan Agreement with Black River Fire Department Incorporated

## **ORDINANCES**

Ordinance No. 1 - Designating the Zoning Classification of an Approximately 0.198-acre Western Section of 414 Lincoln Street, Parcel Number 4-04-211.100 As Residential

## **LOCAL LAW**

## **OLD BUSINESS**

## **STAFF REPORTS**

1. Sale of Surplus Hydro-electricity – February 2024
2. Sales Tax Revenue – February 2024
3. 2023 Annual Urban Forestry Program Update

## **NEW BUSINESS**

## **EXECUTIVE SESSION**

1. To discuss the employment history of a particular individual.

## **WORK SESSION**

Next Work Session is scheduled for Monday, May 13, 2024, at 7:00 p.m.

## **ADJOURNMENT**

**NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING IS MONDAY, APRIL 1, 2024 AT 7:00 PM.**

Res No. 1

March 18, 2024

To: The Honorable Mayor and City Council  
From: Eric F. Wagenaar, City Manager  
Subject: 2022 Fire Stations Upgrades to Station 1,2, and 3 Change Order No.4

At the January 2, 2024, meeting, City Council approved the bid for the 2022 Fire Stations Upgrades to Station 1,2, and 3 Project to Northern Tier Contracting in the amount of **\$257,466.71**

Northern Tier Contracting has now submitted Change Order No. 4 in the amount of **\$3,499.40** due to an **increase** in the scope of work for the project, bringing the final construction cost to **\$260,966.11**. During construction it was discovered the project requires additional exterior lighting at Stations #2 and #3 and replacing VCT Flooring at Station #2.

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

# RESOLUTION

Page 1 of 1

Change Order #4 for 2022 Fire Stations Upgrades to Station 1, 2, and 3 Project Scope of Work Increase

Council Member KIMBALL, Robert O.

Council Member OLNEY III, Clifford G.

Council Member RUGGIERO, Lisa A.

Council Member SHOEN, Benjamin P.

Mayor PIERCE, Sarah V.C.

Total.....

YEA	NAY

### *Introduced by*

WHEREAS the City Council accepted the bid of **\$234,400.00** from Northern Tier Contracting, Inc., for the 2022 Fire Stations Upgrades to Stations 1,2, and 3 Project on July 17, 2023, and

WHEREAS Change Order No. 1 was approved on November 6,2023 for **\$10,161.20**, and

WHEREAS Change Order No. 2 was approved on December 4, 2023 for **\$15,215.51**, and

WHEREAS Change Order No. 3 was approved on January 2, 2024 for a credit of **\$2,310.00**, and

WHEREAS the City Engineering Department has received Change Order #4 from Norther Tier Contracting for an increase of **\$3,499.40**, and

WHEREAS City Engineering, reviewed the proposed Change Order and it is their recommendation that the City Council accept the Change Order submitted by Northern Tier Contracting, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown accepts Change Order No. 4 revising the Contract Agreement to **\$260,966.11**, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to sign Change Order No. 4 on behalf of the City.

### *Seconded by*

# Change Order

No. 4

Date of Issuance: 2-29-2024

Effective Date: 2-29-2024

Project: Project Fire Station Upgrades to Station 1,2 and 3	Owner: City of Watertown	Owner's Contract No.:2023-21
Contract: Fire Station Upgrades to Station 1,2 and 3		Date of Contract: 7-19-2023
Contractor: Northern Tier Contracting		Engineer's Project No.:

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

Description: install additional exterior lighting to mill street and state street entrance, Remove and Replace VCT flooring @ state street location

**Attachments: (List documents supporting change):**

Attached Quote from Northern Tier Contracting

**CHANGE IN CONTRACT PRICE:**

**CHANGE IN CONTRACT TIMES:**

Original Contract Price:

Original Contract Times:  Working days  Calendar days

\$ 234,400

Substantial completion (days or date): \_\_\_\_\_  
Ready for final payment (days or date): \_\_\_\_\_

**[Increase]** from previously approved Change Orders  
No. \_\_\_\_\_ to No. \_\_\_\_\_ :

**[Increase] [Decrease]** from previously approved Change Orders  
No. \_\_\_\_\_ to No. \_\_\_\_\_ :

Substantial completion (days): \_\_\_\_\_  
Ready for final payment (days): \_\_\_\_\_

Contract Price prior to this Change Order:

Contract Times prior to this Change Order:

\$ 257,466.71

Substantial completion (days or date): \_\_\_\_\_  
Ready for final payment (days or date): \_\_\_\_\_

**[Increase]** of this Change Order:

**[Increase] [Decrease]** of this Change Order:

\$ 3499.40

Substantial completion (days or date): \_\_\_\_\_  
Ready for final payment (days or date): \_\_\_\_\_

Contract Price incorporating this Change Order:

Contract Times with all approved Change Orders:

\$ 260,966.11

Substantial completion (days or date): \_\_\_\_\_  
Ready for final payment (days or date): \_\_\_\_\_

**RECOMMENDED:**

**ACCEPTED:**

**ACCEPTED:**

By: \_\_\_\_\_  
Engineer (Authorized Signature)

By: \_\_\_\_\_  
Owner (Authorized Signature)

By:   
Contractor (Authorized Signature)

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

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

Date: 2-29-2024

Approved by Funding Agency (if applicable): \_\_\_\_\_

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

# Change Order Instructions

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## **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.

Northern Tier Contracting Inc.  
 329A Scotch Settlement Rd.  
 Gouverneur, NY 13642

# PROPOSAL



**NORTHERN TIER CONTRACTING Inc.**

**Phone:** (315) 287-0208  
**Fax:** (315) 287-0797

**Change Order:** CO #8

**Job Number:** 23080

**Date:** 2/7/2024

**To:**  
 23080 Watertown Fire Departments Renovation

**Description**

Labor and materials to add 1 soffit can light and 1 goose neck fixture to Mill and State Street Locations.

Reference	Description	Quantity	UOM	Unit Price	Extended Price
<b>Life Safety Requirements</b>					
50.08	LIFE SAFETY	0.2500	%	15.2953	3.82
<b>Life Safety Requirements Total:</b>					3.82
<b>Performance Bond</b>					
50.06	BOND	1.4500	%	15.0768	21.86
<b>Performance Bond Total:</b>					21.86
<b>Electrical Distribution Equip/Fixtures</b>					
16.01.01	ELECTRICAL SUBCONTRACTOR	1.0000	LS	1,500.0000	1,500.00
<b>Electrical Distribution Equip/Fixtures Total:</b>					1,500.00
<b>Change Orders</b>					
50.05	(non-Subs) MARKUP	15.0000	%	0.2569	3.85
<b>Change Orders Total:</b>					3.85
<b>Proposal Total:</b>					<b>1,529.54</b>

**Acceptance**

Accepted by: \_\_\_\_\_

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

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

Northern Tier Contracting Inc.  
 329A Scotch Settlement Rd.  
 Gouverneur, NY 13642

# PROPOSAL



**NORTHERN TIER CONTRACTING Inc.**

**Phone:** (315) 287-0208  
**Fax:** (315) 287-0797

**Change Order:** CO #9

**Job Number:** 23080

**Date:** 2/19/2024

**To:**  
 23080 Watertown Fire Departments Renovation

**Description**

Remove damaged VCT and Replace with new State Street Location only.

Reference	Description	Quantity	UOM	Unit Price	Extended Price
<b>Life Safety Requirements</b>					
50.08	LIFE SAFETY	0.2500	%	19.6985	4.92
<b>Life Safety Requirements Total:</b>					4.92
<b>Final Cleanup</b>					
279	FINAL CLEAN	2.0000	HR	70.0000	140.00
<b>Final Cleanup Total:</b>					140.00
<b>Demo Flooring</b>					
200.903.04	REMOVE VCT	88.0000	SF	2.3864	210.00
200.903.13	REMOVE GLUE FROM FLOOR	88.0000	SF	3.7500	330.00
<b>Demo Flooring Total:</b>					540.00
<b>Resilient Flooring</b>					
450	LABOR & MATERIAL VCT	88.0000	SF	9.3636	824.00
503	LABOR & MATERIAL FOR RUBBER BASE	32.0000	LF	6.3750	204.00
<b>Resilient Flooring Total:</b>					1,028.00
<b>Mark-Up</b>					
50.05	(non-Subs) MARKUP	15.0000	%	17.1293	256.94
<b>Mark-Up Total:</b>					256.94
<b>Proposal Total:</b>					<b>1,969.86</b>

**Acceptance**

Accepted by: \_\_\_\_\_

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

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



Res. No. 2

March 12, 2024

To: The Honorable Mayor and City Council

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

Subject: Executing the Master Municipal Multi-Modal Agreement with New York State Department of Transportation for funding for the Thompson Park West Sector Trail Project

In December 2021, then State Assemblyman Mark Walczyk nominated the City of Watertown for funding for a Capital Project through the NYS DOT Multi-Modal #4 Program. The project that was nominated was an expansion of the trail system in Thompson Park. The Assemblyman requested that the City of Watertown receive a \$50,000 Multi-Modal grant for the expansion. The City will use the grant funding to create a new multi-use trail along Joseph M. Butler Jr. drive to allow park users to safely navigate the park and connect to existing multi-use trails.

The project is part of a larger trail project being paid for with ARPA funding that expands the trail system from North Down Drive, across the North Down to Joseph M. Butler Jr. Drive, parallel to the drive until it connects with the existing trail system by the Thompson Park Pool. It is anticipated that construction on this project will begin early this summer.

The New York State Department of Transportation (NYSDOT) has approved the City's application and associated documents, and the City has fulfilled all of the criteria necessary to receive the Multi-Modal grant. NYSDOT has sent the attached Master Municipal Multi-Modal Capital Project Agreement for the City to execute. Upon formally executing the agreement, the City will be able to proceed with the project and submit a requisition for reimbursement of the grant funds.

The attached resolution authorizes the acceptance of the Multi-Modal grant and directs Mayor to enter into and execute the Master Municipal Multi-Modal Capital Project Agreement on behalf of the City.

# RESOLUTION

Page 1 of 1

Executing the Master Municipal Multi-Modal Agreement with New York State Department Of Transportation for funding for the Thompson Park West Sector Trail Project

Council Member KIMBALL, Robert O.

Council Member OLNEY III, Clifford G.

Council Member RUGGIERO, Lisa A.

Council Member SHOEN, Benjamin P.

Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

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

WHEREAS former New York State Assemblyman Mark Walczyk requested that the City of Watertown receive a \$50,000 Capital Project Multi-Modal Grant for the expansion of the trail system in Thompson Park, and

WHEREAS the grant was secured to pay for the cost of the construction of a multi-use trail in Thompson Park, and

WHEREAS the New York State Department of Transportation (NYSDOT) has approved the City’s application and the City has fulfilled all of the criteria necessary to receive the Multi-Modal grant, and

WHEREAS the City must enter into and execute a Master Municipal Multi-Modal Agreement with NYSDOT for the project,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown approves the Master Municipal Multi-Modal Agreement with the New York State Department of Transportation for the construction of an expanded trail system in Thompson Park (Project ID # 7MA542.30A), a copy of which is attached and made a part of this resolution, and

BE IT FURTHER RESOLVED that the City Mayor, is hereby authorized and directed to enter into and execute the Master Municipal Multi-Modal Agreement on behalf of the City of Watertown.

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

UNIVERSAL MULTI-MODAL CAPITAL PROJECT AGREEMENT

**NYS COMPTROLLER'S CONTRACT NO. D025874**

THIS AGREEMENT is made by and between:

the New York State Department of Transportation (“**NYSDOT**”), having its principal office at  
50 Wolf Road, Albany, New York 12232  
and

the **City of Watertown** (the “**Sponsor**”),  
with offices at **245 Washington Street, Watertown, NY 13601**

This Agreement provides for the funding of, construction, reconstruction, improvement, reconditioning, and preservation of a project within the Multi-Modal Programs, consisting of rail passenger facility and equipment, rail freight facility, certain port facility; fixed ferry facility, municipal and private airport and aviation facility, and State, county, town, city, and village road, highway, parkway and bridge capital project, as more fully described for the purposes of this Agreement in Schedule A hereof (the “Project”). The amount of **NYSDOT’s** funding pursuant to this Agreement shall be limited to Project Eligible Costs actually incurred, in no event to exceed the amount(s) identified in Schedule A for funding by **NYSDOT**.

**WITNESSETH:**

WHEREAS, Transportation Law 14-k establishes the Multi-Modal Programs, that provide bond funding for projects authorized pursuant to such section as approved by the Commissioner of Transportation, following appropriation by the Legislature or pursuant to authorization by the Legislature for capital projects; and

WHEREAS, pursuant to appropriation or authorization for capital projects Multi-Modal Programs funding of the Project herein is authorized; and

WHEREAS, for the following project types the **Sponsor** also certifies as follows:

- for airports and aviation facilities, that federal funding is not available to the Project, and the Project is consistent with an approved Airport Layout Plan;
- for State or local roads, highways, and bridges, that the Multi-Modal Programs funding is not used for the mandated non-federal share of a federally funded project and the amount of municipal funds appropriated for transportation capital projects is not and shall not be reduced because of the Multi-Modal Programs funding; and

WHEREAS, the **Sponsor** is not a sectarian organization,

NOW, THEREFORE, the parties agree as follows:

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

- Agreement Form – this document titled “Universal Multi-Modal Program Capital Project Agreement”,
- Schedule A – titled “Multi-Modal Project - Schedule A” Project Description, Funding, and Development Schedule,
- Schedule B – Scope of Work,
- Appendix A – New York State Required Contract Provisions,
- Appendix A-1 – Supplemental Title VI Provisions (Civil Rights Act),
- Appendix B – Minority and Women-Owned Business Enterprises (M/WBE)-Service Disabled Veteran Owned Businesses (SDVOB)-Equal Employment Opportunity (EEO) Policy Statement,
- Municipal/Sponsor Resolution(s) – duly adopted Municipal/Sponsor or, as applicable, corporate resolution(s) authorizing the appropriate Municipal/Sponsor official to execute this Agreement on behalf of the Municipality/Sponsor and appropriating or otherwise providing the Project funding required therefor.

1.1. Within Appendix A-1, the term "Contractor" therein refers to any party other than the State, whether a **Sponsor**, contractor, licensor, licensee, lessor, lessee, or any other party to this Agreement, or a subcontractor to any party other than the State.

2. *Work, Maintenance & Operation.* **Sponsor** shall render all services and furnish all materials and equipment necessary to complete the Project described in Schedule A, inclusive of the Scope of Work described in Schedule B, and shall fund all costs attendant to such completion. 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 Schedules A as may hereafter be executed by the parties hereto and approved as required for a State agreement, and any additions or deletions made thereto by **NYSDOT** subsequent to the execution of such Schedules A for the purposes of conforming to New York State or to Federal requirements.

2.1 *Useful Life of Project.* Sponsor warrants that the useful life of the project is not less than ten (10) years.

2.2 *Operation and Maintenance of Project.* Upon Project completion, **Sponsor** will operate and maintain the Project at no expense to **NYSDOT** and, during the useful life of the Project according to federal guidelines, **Sponsor** shall not discontinue operation of the Project without the prior written approval of **NYSDOT**. The maintenance schedule shall remain in effect for a period of at least ten (10) years from Project completion and shall not be terminated without prior written authorization from **NYSDOT**.

2.3 *Disposition or Encumbrance of Project.* **Sponsor** will not dispose of or encumber the Project or cause the Project to be withdrawn from public service during its useful life without the prior approval of **NYSDOT**, which approval is reserved for the purposes of assuring compliance with: (1) **NYSDOT** or **Sponsor** assurances or certifications to any Federal agency in connection with any federal funding under a separate agreement or the Multi-Modal Funding made hereunder; and/or (2) Project restrictions that may apply because the Multi-Modal Funding is funded from the proceeds of tax-exempt debt obligations.

3. *Project Commencement, Completion.* Subject to the State Comptroller's approval of the Agreement, **Sponsor** will diligently pursue the Project to completion within the time set forth in Schedule A. Failing Project completion within such period, or agreement by **NYSDOT** to extend Project completion date for good cause, this Agreement will expire and be of no further force or effect.
4. *Municipal Deposit.* Where work is performed by consultant or construction contract entered into by **NYSDOT**, or by **NYSDOT** forces, the **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.
5. *Multi-Modal Funding; Reimbursement of Eligible Project Costs.* Subject to compliance with this Agreement, **NYSDOT** agrees to reimburse eligible project costs in accordance with, and not to exceed amounts identified in, Schedule A. Multi-Modal Program funding shall be used solely for the payment of Eligible Costs (hereinafter defined) **Sponsor** incurs in performing the Project. **Contractor obligations or expenditures that precede the start date of the Agreement shall not be reimbursed.** For work performed by **NYSDOT** or the Sponsor, Multi-Modal aid shall be applied as described below.
  - 5.1 *State-Administered Federal Aid* (not applicable to airport/aviation or *highway/bridge projects*). Multi-Modal funds are 100% state funds. If the sponsor receives federal funds to be administered by **NYSDOT** for the related project **NYSDOT** shall enter into a separate agreement with the Municipality for administration of the federal funds.
  - 5.2 *Multi-Modal Aid.* **NYSDOT** will: (a) for Multi-Modal Programs 1, 2, and 4 (MM#1, MM#2, and MM#4 in Schedule A) funding, **NYSDOT** will reimburse to the **Sponsor** from State monies in the first instance, and request corresponding reimbursement to **NYSDOT**; and/or, (b) for Multi-Modal Program 3 (MMP3 in Schedule A) funding, request Dormitory Authority of the State of New York (DASNY) reimbursement to the **Sponsor** or, for State-administered State highway system projects to **NYSDOT** for the Multi-Modal share of participating Project costs incurred in connection with the work covered by this Agreement, subject to the amounts thereof and limitations set forth on Schedule A. Only "Eligible Project Costs" (as defined in Multi-Modal Program criteria issued by **NYSDOT**) are reimbursable.
    - 5.2.1 *Multi-Modal Eligible Project Costs.* To be eligible for Multi-Modal aid, Project costs must: (a) be eligible pursuant to subdivision §5.2.2 below and such other Multi-Modal Program Policies and Criteria as are established for each mode by **NYSDOT** including but not limited to **NYSDOT**'s MM Program Guidelines criteria; and (b) be for work which, when completed, has a certifiable useful life of at least ten (10) years; and, (c) meets the requirements of the State Environmental Quality Review Act (SEQRA); and, (d) **must be submitted for reimbursement to NYSDOT no later than 15 months after the date the original expenditure is paid in order to comply with Federal Tax Law (26 CFR 1.150-2(d)(2)(i)), which governs the tax-exempt bonds issued to fund Multi-Modal projects.**
    - 5.2.2 *State Aid-Eligible Costs.* State Aid-Eligible Project costs include costs of acquisition, construction, repair, reconstruction, renovation, equipment and other related costs as set forth in the Project Description in Schedule A. **Sponsor** may also use as provided in this subdivision State-aid §5.2.2 hereunder for the reimbursement of salaries and wages to employees of **Sponsor** for carrying out the Project; fees to consultants and professionals

retained by **Sponsor** for planning and performing the Project, and such other costs and expenses directly related to such employees, consultants, and professionals for the Project.

5.2.3 **Sponsor Debt Service.** Multi-Modal program funds shall not be used to pay a Sponsor for payments of the principal portion of a local bond, interest (debt Service), or issuance (indirect costs) payments on Multi-Modal projects for which the sponsor issued a local bond or note to finance the first instance local portion.

5.3 **Other State-Aid.** Subject to the terms of applicable appropriations and statutes associated with State-aid for the Project provided through this Agreement, **NYSDOT** will reimburse eligible Project costs from such other State-aid as may be identified in Schedule A hereof for payment under this Agreement. The eligibility of such costs shall be determined in accordance with subdivisions §5.2.2 and §5.2.3 hereof, subject to such further or other reimbursement eligibility requirements or restrictions imposed in connection with the applicable other State-aid funding source or program authorization.

6. **Payment of Applicable Federal-Aid, Multi-Modal, and Other State-Aid.** Payment of applicable Federal Aid, Multi-Modal, and other State-aid hereunder shall be as follows:

6.1 **Payment Upon Completion.** **The State has no obligation to make payment until all required approvals, including the approval of the Attorney General and State Comptroller, have been obtained.** Except where subdivision §6.2 applies, payment to **Sponsor** shall be made upon the application of **Sponsor** to **NYSDOT upon Project completion** on the basis of work accomplished and the submission of duly completed payment requests and certifications in a form approved by **NYSDOT**, including such information as **NYSDOT** deems necessary to assure compliance with the program requirements and this Agreement.

6.2 **Periodic Reimbursement.** If the **Sponsor** and **NYSDOT** find it desirable to have reimbursement made periodically in accordance with a payment cycle established by **NYSDOT** and, upon the request and certification therefor by the **Sponsor**, **NYSDOT** may authorize payments (DASNY, as applicable) based on billings prepared by the **Sponsor** in accordance with **NYSDOT** requirements, and based on costs incurred as disclosed by the records thereof, as required by the Project, with applicable adjustments to be made after audit by **NYSDOT** or, as applicable because of federal funding, Federal Highway Administration, the Federal Transit Administration or Federal Aviation Administration. These payments shall be made as monies become available therefor.

6.3 **Sponsor Certifications.** The **Sponsor** will certify in each payment request that: (i) Project work was performed in accordance with the State Environmental Quality Review Act (SEQRA); (ii) Project work was performed in accordance with the design and contractual requirements of **Sponsor** and **Sponsor's** design professional; and (iii) such payment request does not duplicate reimbursement of costs and services received from other sources.

6.4 **Electronic Contract Payments.** The **Sponsor** shall provide complete and accurate supporting documentation of eligible Local expenditures as required by this contract, **NYSDOT**, and the State Comptroller. Following **NYSDOT** approval of such supporting documentation, payment for invoices submitted by the contracting **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 from the Statewide Financial System (SFS). The contracting Sponsor shall comply with the State Comptroller's (or applicable Public Authority) procedures to authorize electronic payments. Instructions and authorization forms are available at the State Comptroller's website at <https://www.osc.state.ny.us/state-vendors> by E-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us). For referral to applicable Public Authority electronic payment registration procedures for certain State funded payments, Local Sponsors should refer to the cover letter instruction included with this document or, otherwise, contact their Regional NYSDOT Local Programs Liaison. The contracting Municipality/Sponsor herein acknowledges that it will not receive payment on any invoices submitted under this Contract agreement if it does not comply with the State Comptroller's (or applicable Public Authority) electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

7. *Records, Accounts, and Audits.* **Sponsor** shall maintain accurate records and accounts of all financial transactions which shall show in detail all income and all expenditures, including but not limited to, payments for Eligible Costs. Such records and accounts shall include, without limitation, property, personnel, and financial records, cash receipts, disbursements journal, and general subsidiary ledgers. All records and accounts shall be maintained in accordance with generally accepted accounting standards and as required by Appendix A annexed hereto. All expenditures of reimbursed costs hereunder shall be supported by invoices and/or other documentation sufficient to establish that such monies have been used in accordance with the terms of this Agreement. The Commissioner and/or Comptroller of the State of New York or their authorized representative shall have the right to examine and audit all records and accounts relating to **Sponsor's** financial transactions pertaining to the project under this Agreement, including the expenditure of the Multi-Modal Funding and all other funds secured and services rendered for the benefit of **Sponsor** in connection with the Project.

7.1 *Extended Records Retention Requirements.* To ensure that NYSDOT meets certain requirements under the Code of Federal Regulations (CFR), Part 26, including 26 CFR 1.148-5(d)(6)(iii)(E), 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.

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 costs(s).

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.

8. *Ethics Considerations.* In addition to **Sponsor's** conforming with the applicable provisions of Public Officers Law §73 (Business or Professional Activities by State Officers and Employees and Party Officers) and General Municipal Law §806 (Code of Ethics) as related to the expenditure of the Multi-Modal Funding made hereunder, no member of **Sponsor's** governing body, its officers or employees, or any member of the Board of Directors or staff, nor any member of their families shall benefit financially either directly or indirectly from the Multi-Modal Funding unless such action is otherwise in accordance with law and is necessary for the accomplishment of the Project. In such event, **Sponsor** shall disclose such relationship to **NYSDOT** and shall obtain prior written approval therefor from **NYSDOT**.
9. *NYSDOT Performance Review.* **NYSDOT** may review the **Sponsor's** performance of this Agreement in such manner and at such times as **NYSDOT** shall determine, and such review may include field visits by **NYSDOT** representatives to the Project and/or the offices of **Sponsor**. **Sponsor** shall at all times make available its employees, records, and facilities to authorized **NYSDOT** representatives in connection with any such review. Such review shall be for the purpose, among other things, of ascertaining the quality and quantity of **Sponsor's** performance of the Project, its use, and operation.
10. *Notice of Governmental Audit.* **Sponsor** shall notify **NYSDOT** of any audit by any governmental agency of any projects, operations, or reports of **Sponsor** within five (5) days of receiving information relating thereto.
11. *State Recovery of Ineligible Reimbursements.* **NYSDOT** shall be entitled to recover from the **Sponsor** any sums of money paid to the **Sponsor** pursuant to this Agreement which is subsequently determined to be ineligible for Multi-Modal Aid hereunder.
12. *Contract Executory.*
  - 12.1 This Agreement shall be deemed executory only to the extent of money available to the State for its performance and no liability on account thereof shall be incurred by the State beyond money available therefor.
  - 12.2 This Agreement shall remain in effect so long as State 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 lapse this Agreement, provided any necessary federal or State appropriations or other funding authorizations therefor are eventually enacted. **Sponsor's** continued performance during such a budgetary hiatus cannot, by itself, obligate the State to making expenditures without appropriations.



13. *Sponsor Liability.*

13.1 If the **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 **Sponsor**, its officers, agents, servants, or employees, contractors, subcontractors or others in connection therewith. The **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.

13.2 The **Sponsor** shall indemnify and save harmless **NYSDOT** and 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 **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 **Sponsor's** failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

14. *No Assignment of Transfer of Contract.* **Sponsor** agrees not to assign, transfer, convey, sublet, or otherwise dispose of this contract or any part thereof, or of its right, title, or interest therein, of its power to execute such contract to any entity, public or private, without the previous written consent of **NYSDOT** first having been obtained.

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

16. *Disqualification and Damages.* If the Sponsor fails to comply completely with any of the terms and conditions contained within this Agreement, including, but not limited to Sections 2, and 15, in their entirety at any time, the project shall be disqualified. If the project is disqualified the Sponsor must refund all funds received under this Agreement to NYSDOT and also pay to NYSDOT a liquidated damage fee of 5% of the total funds received under this Agreement.

17. *Term of Agreement.* The Project phase(s) and Term are identified in Schedule(s) A executed herewith and incorporated herein or as subsequently identified in any duly executed and approved supplemental Schedule(s) A as of the date of such supplemental Schedule(s) A. This Agreement shall remain in effect so long as applicable Multi-Modal 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 lapse this Agreement, provided any necessary federal or State appropriations or other funding authorizations, therefore, are eventually enacted.

18. *Reporting Requirements.* The Municipality/Sponsor agrees to comply with and submit to NYSDOT in a timely manner all applicable reports required under the provisions of this Agreement and the Multi-Modal guidelines and in accordance with current Federal and State laws, rules, and regulations.
19. *Compliance with legal requirements.* Sponsor must comply with all applicable federal, state, and local, laws, rules, and regulations, including but not limited to the following:
  - 19.1 *New York State Executive Law Article 15-A, Participation by Minority Group members and Women with Respect to State Contracts and New York State Executive Law Article 17-B, Participation by Service-Disabled Veterans with Respect to State Contracts*, including the requirements thereunder related to equal employment opportunity and utilization goals for contracting opportunities for minority and women-owned business enterprises. Sponsor's failure, to comply with Article 15-A and Article 17-B requirements in any of its contracts and sub-contracts funded in whole or in part by this Agreement, without prior written approval from NYSDOT approval, violates the contract and the Department may, at its discretion: (1) cancel, terminate or suspend this Agreement or such portion of this Agreement or (2) assess liquidated damages in the amount of up to 20% of the portion of any of the Sponsor's contracts and sub-contracts funded in whole or in part by this Agreement, to which contract goals are established.
  - 19.2 *New York Environmental Law, Article 6, the State Smart Growth Public Infrastructure Policy Act*, including providing true, timely, and accurate application information related to the project to ensure compliance with the Act.
  - 19.3 *New York Transportation Law, Section 427, Equal Employment Opportunity (EEO) program*, including the requirements thereunder related to equal employment opportunity and required contract provisions for inclusion in any of the Sponsor's contracts and sub-contracts funded in whole or in part by this Agreement.
20. *Compliance with procedural requirements.* Sponsor understands that funding is contingent upon the Sponsor's compliance with the applicable requirements of the Multi-Modal Program Guidelines and as such may be amended from time to time.
21. *Notice Requirements:*
  - 21.1 All notices permitted or required hereunder shall be in writing and shall be transmitted either (1) Via certified or registered United States mail, return receipt requested; (2) By facsimile transmission; (3) By personal delivery; (4) By expedited delivery service; or (5) By e-mail.
  - 21.2 For this Agreement such notices shall be addressed by the Sponsor to the officially designated Regional Local Program Liaison (RLPL) named in NYSDOT's initial request for a detailed Project "PIS" Application and, by NYSDOT, to the officially designated Sponsor's Contact

designated by formal Legislative Project Nomination, or to such different parties and addresses as the parties may from time-to-time mutually agree to designate. The parties herein agree to exchange such contact information above which shall include Organization Name, Individual Name, Title, Mailing Address, Telephone number, Facsimile number, and E-mail address.

- 21.3 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.
- 21.4 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.

**WITNESS WHEREOF, NYSDOT** has caused this Agreement to be signed by its authorized

representative and the **Sponsor** has caused this Agreement to be signed by its duly authorized officer

**MUNICIPALITY/SPONSOR:**

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

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

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

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

**STATE OF NEW YORK** )

**COUNTY OF** \_\_\_\_\_ ) ss:

On this \_\_\_\_\_ day \_\_\_\_\_, 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 Municipality/**Sponsor** described in and which executed the above instrument; that he/she was authorized to execute the document on behalf of said Municipality/**Sponsor** pursuant to a resolution which was duly adopted on \_\_\_\_\_ and to 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

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

**COMPTROLLER'S APPROVAL**

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

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

# SCHEDULE A

# Multi-Modal Project Agreement – Schedule A for PIN : 7MA542.30A\_\_\_\_\_

Page 1 of 2

Instruction: One Schedule may be used for all Phases

OSC Contract # \_\_D025874\_\_

Project Start Date: 9/01/2024

Project Completion Date: 12/07/2026

**AGREEMENT PURPOSE:**     **MAIN** (Master) Agreement     **SUPPLEMENTAL** Agreement

**AGREEMENT** (Check all boxes that apply as shown in area below):

- Multi-Modal (MM) Program #1 (MM#1)     MM#2     MM#3     MM#4  
 Multi-Modal Program #1, 2, 3 or 4 & other State Funding     Multi-Modal Program #1, 2, 3 or 4 & Federal Aid  
 Multi-Modal Program #1, 2, 3 or 4 & other State Funding & Federal Aid

**PROJECT TYPE** (Check only one box below):

- Rail     Port     Aviation     State System Highway/Bridge     Local Highway/Bridge     Fixed Ferry Facility

**MULTI-MODAL PROJECT ID NUMBER:**

Project Title: Expansion of Thompson Park trail system

Project Description/Scope: Create a multi-use trail along Joseph M Butler Jr. Drive to allow park users to safely navigate the park and connect to existing multi-use trails.

**Location:** Project Location: Thompson Park  
From: West Tower Drive

Route/Name: Joseph M. Butler Jr. Drive  
To: East Tower Drive

Project Owner/Operating & Maintenance Responsibility: City of Watertown

Type of Organization:

- Municipality**     **Public Authority**     **Not-for-Profit Corporation**     **Tax-exempt**  
 **Railroad Corporation**     **Transportation Corporation**     **Educational Corporation**  
 **Business Corporation**     **Partnership**     **Proprietorship**     **Other (list):**

**Check Project Phases Covered by this Agreement:**

- P.E./Design     ROW Incidentals     Acquisition     Construction, C/I, & C/S

List all applicable 6 or **9-digit PIN** Fiscal Shares eligible for Multi-Modal funding (e.g., 123456.101; 123456.201; **123456.301**):

Eligible Project Type: (Please check one)

- \_\_\_ Highway Resurfacing    \_\_\_ Bridge Rehabilitation    \_\_\_ New Highway Construction    \_\_\_ New Bridge Construction  
\_\_\_ Highway Reconstruction    \_\_\_ Bridge Replacement    \_\_\_ Interchange Const.\Reconstruction    \_\_\_ Intersection Improvement  
\_\_\_ Aviation (Is this project consistent with an approved Airport Layout Plan)?    \_\_\_ Yes    \_\_\_ No

x Other (Please explain): Pedestrian and bicycle path to create connection between Joseph M. Butler Jr. Drive and North down Drive.

**A. Legislatively Approved Multi-Modal Funding in Memorandum of Understanding**

Reference or, if applicable, List Project Identification Number	Project Title	Maximum Authorized Multi-Modal Funding Amount
7MA542.30A	Expansion of Thompson Park trail system	\$50,000.00
<b>TOTAL</b>		<b>\$50,000.00</b>

**Multi-Modal Project Agreement – Schedule A**

**B. Summary of Approved Multi-Modal Costs UNDER THIS CONTRACT Number**

List Eligible Funding Share(s) by applicable Project ID Number (PIN)	STATE MULTI-MODAL Funds	LOCAL Funding (If Applicable)	TOTALS
7MA542.30A	\$50,000.00	\$	\$50,000.00
<b>TOTAL ELIGIBLE COSTS</b>	\$50,000.00	\$	\$50,000.00

**C. Summary of Project Costs NOT Under this Contract #, if any (For Information Purposes Only)**

List any Other Funding or Fiscal Share(s) by Project ID Number or PIN (if applicable)	List Name of Fund SOURCE Type (e.g., Other MM1, MM2, MM3, MM4, 100% Local Expenditure, Other State Source (e.g., Member Item, CHIPS, etc.), Public Authority, Private, Utility, Other Federal Aid Category)	List any Other STATE Funding Amounts	List any Other FEDERAL or NON-STATE (Local) Funding Amounts	TOTALS
\$586,000	ARPA Funding		\$	\$586,000
		<b>TOTAL Other Costs:</b>	\$	\$586,000

**D. TOTAL PROJECT COST SUMMARY (all Section “B” + “C” funding listed above)**

TOTAL FEDERAL AID (if applicable)	TOTAL MULTI-MODAL STATE SHARE(S)	TOTAL LOCAL SHARE	TOTAL OTHER AID (including any Other State Aid)	TOTAL FUNDING (all sources)
\$586,000	\$50,000	\$	\$	<b>\$636,000</b>

Footnotes:

# 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 type="checkbox"/>
2. Perform data collection and analysis for design, including traffic counts and forecasts, accident data, Smart Growth checklist, land use and development analysis and forecasts.	<input type="checkbox"/>	<input type="checkbox"/>
3. Smart Growth Attestation (NYSDOT ONLY).	<input 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 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 type="checkbox"/>	<input type="checkbox"/>
6. Obtain aerial photography and photogrammetric mapping.	<input type="checkbox"/>	<input type="checkbox"/>
7. Perform all surveys for mapping and design.	<input type="checkbox"/>	<input 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 type="checkbox"/>
9. Perform landscape design (including erosion control).	<input type="checkbox"/>	<input 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 type="checkbox"/>

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
11. Prepare demolition contracts, utility relocation plans/contracts, and any other plans and/or contract documents required to advance, separate, any portions of the project which may be more appropriately progressed separately and independently.	<input type="checkbox"/>	<input 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 type="checkbox"/>
13. Conduct any required soils and other geological investigations.	<input type="checkbox"/>	<input 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 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 type="checkbox"/>
16. Prepare and execute any required agreements, including: <ul style="list-style-type: none"> <li>- Railroad force account</li> <li>- Maintenance agreements for sidewalks, lighting, signals, betterments</li> <li>- Betterment Agreements</li> <li>- Utility Work Agreements for any necessary Utility Relocations of Privately-owned Utilities</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
17. Provide overall supervision/oversight of design to assure conformity with State design standards or conditions, including final approval of PS&E (Contract Bid Documents) by NYSDOT.	<input type="checkbox"/>	<input type="checkbox"/>

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

<u>Phase/Sub-phase/Task</u>	<u>Responsibility: NYSDOT</u>	<u>Sponsor</u>
1. Prepare ARM or other mapping, showing preliminary taking lines.	<input type="checkbox"/>	<input 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>	<u>Responsibility: NYSDOT Sponsor</u>	
6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including <i>de minimis</i> determination, as may be applicable. <b>If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.</b>	<input type="checkbox"/>	<input 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>	<u>Responsibility: NYSDOT Sponsor</u>	
1. Perform all Right-of-Way (ROW) Acquisition work, including negotiations with property owners, acquisition of properties and accompanying legal work, payments to and/or deposits on behalf of property owners; Prepare, publish, and pay for any required legal notices; and all other actions necessary to secure title to, possession of, and entry to required properties. <b>If NYSDOT is to acquire property, including property described as an uneconomic remainder, on behalf of the Municipality/Sponsor, the Municipality/Sponsor agrees to accept and take title to any and all permanent property rights so acquired which form a part of the completed Project.</b>	<input type="checkbox"/>	<input 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 type="checkbox"/>	<input 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"/>

**C1. Advertise and Award Preparation**

<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 type="checkbox"/>	<input 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 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 type="checkbox"/>
4. Compile and submit Contract Award Documentation Package.	<input type="checkbox"/>	<input type="checkbox"/>
5. Review/approve any proposed subcontractors, vendors, or suppliers.	<input type="checkbox"/>	<input type="checkbox"/>

**C2. Construction Support**

6. 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"/>
7. Review and approve all shop drawings, fabrication details, and other details of structural work.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**C3. Construction Inspection**

8. 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"/>
9a. 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"/>
9b. For NHS or State Highway System Projects: Inspection and approval of materials such as bituminous concrete, Portland cement concrete, structural steel, concrete structural elements and/or their components to be used in a federal aid project will be performed by, and according to the requirements of NYSDOT. The Municipality/Sponsor shall make or require provision for such materials inspection in any contract or subcontract that includes materials that are subject to inspection and approval in accordance with the applicable NYSDOT design and construction standards associated with the federal aid project.	<input type="checkbox"/>	<input type="checkbox"/>
9c. For projects that fall under both 9a and 9b above, check boxes for each.		

<u>Phase/Sub-phase/Task</u>	<b>Responsibility: <u>NYSDOT</u> <u>Sponsor</u></b>	
10. Administer construction contract, including the review and approval of all contactor 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"/>
11. Administer all construction contract claims, disputes or litigation.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Perform final inspection of the complete work to determine and verify final quantities, prices, and compliance with plans specifications, and such other construction engineering supervision and inspection work necessary to conform to Municipal, State and FHWA requirements, including the final acceptance of the project by NYSDOT.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

# 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, licenser, 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.** 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.** 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: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@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

## MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES-SERVICE DISABLED VETERAN OWNED BUSINESSES – EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

### M/WBE, SDVOB, AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the representative for (Municipality/Sponsor/Grantee) adopted, or agree to adopt, the following policies with respect to the project being developed or services rendered at

\_\_\_\_\_  
(Insert project/service description)

#### M/WBE/SDVOB

This organization will and will cause its contractors and subcontractors to take good-faith actions to achieve the M/WBE/SDVOB contract participation goals set by the State for that area in which the State-funded project is located by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs, WBEs, and SDVOBs, including solicitations to M/WBE and SDVOB contractor associations.
- (2) Obtain a list of State-certified M/WBEs from <https://ny.newnycontracts.com/> and solicit bids from them directly.
- (3) Obtain a list of State certified SDVOBs from <https://online.ogs.ny.gov/SDVOB/search> and solicit bids from them directly.
- (4) Ensure that plans, specifications, requests for proposals, and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs and SDVOBs.
- (5) Where feasible, divide the work into smaller portions to enhanced participation by M/WBEs/SDVOBs and encourage joint ventures and other partnerships among M/WBE/SDVOBs contractors to enhance their participation.
- (6) Document and maintain records of bid solicitation, including those to M/WBEs/SDVOBs and the results thereof. This organization will also maintain records of actions that its subcontractors have taken toward meeting M/WBE/SDVOB contract participation goals.
- (7) Ensure that progress payments to M/WBEs/SDVOBs are made on a timely basis so that undue financial hardship is avoided and that, if legally permissible, bonding and other credit requirements are waived, appropriate alternatives developed to encourage M/WBE/SDVOB participation.

#### EEO

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on state contracts.

(b) This organization shall state in all solicitation 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, disability, or marital status.

(c) At the request of the Sponsor, this organization shall request each employment agency, labor union, or authorized 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 this organization's obligations herein.

(d) This organization shall comply with the provisions of the Human Rights Law, all other State, and Federal statutory and constitutional non-discrimination provisions. This organization and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

By \_\_\_\_\_

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

## APPENDIX B

\_\_\_\_\_ (Name of Designated Liaison) is designated as this organization's Minority and Women-Owned Business Enterprise Liaison and Service-Disabled Veteran Owned Business Liaison responsible for administering M/WBE/SDVOB-EEO program.

The Municipality/Sponsor/Grantee agrees that the Standard M/WBE and/or SDVOB Contract Goals for projects let and funded (in whole or in part) with proceeds of this Agreement (Contract # \_\_\_\_\_) are provided below.

### STANDARD CONTRACT GOALS

CATEGORY/CONTRACT TYPE	MBE	WBE	SDVOB
C: Commodities	16.00%	18.00%	6.00%
CC: Construction Consultants (Architectural/Engineering)	19.00%	7.00%	6.00%
CN: Construction	8.00%	12.00%	6.00%
SC: Services/Consultants (Non-Architectural/Engineering)	5.00%	15.00%	6.00%

These Standard Contract Goals are based on the New York State Department of Transportation's (NYSDOT's) Agency M/WBE and SDVOB Goal Plan as a result of programmatic analysis. The plans are available at: [FY2021 M/WBE Goal Plan](#) and [FY2021 SDVOB Goal Plan](#). In furtherance of such goals, the Municipality/Sponsor/Grantee is also required to consider the following statutory factors in all related contracts executed by the Sponsor/Municipality/Grantee:

- (1) the contract and subcontract scope(s) of work,
- (2) the potential subcontract opportunities available in the prime contract,
- (3) the relevant availability data contained within the disparity study with respect to the scope of the contract and potential subcontracting opportunities,
- (4) the number and types of certified minority-owned and women-owned business enterprises (M/WBE) found in the directory of certified minority-owned and women-owned businesses available to perform the related contract work and the number and types of certified service-disabled veteran-owned businesses (SDVOB) found in the SDVOB directory available to perform the related contract work,
- (5) the geographic location of the contract performance,
- (6) the extent to which geography is material to the performance of the contract,
- (7) the ability of certified M/WBEs and SDVOBs located outside of the geographic location of contract performance, notwithstanding the regional location of the certified enterprise, to perform on the Municipality/Sponsor/Grantee's contract,
- (8) the total dollar value of the work required by the Municipality's/Sponsor's/Grantee's contract in relation to the dollar value of the subcontracting opportunities; and
- (9) the relationship of the monetary size and term of the Municipality's/Sponsor's/Grantee's contract to the monetary size and term of the project for which the contract is awarded (See 5 NYCRR 142.2 and 9 CRR-NY 252.2(h)).

**Pre-Advertisement:** As a result of Municipality's/Sponsor's/Grantee's analysis of the statutory factors in relation to a contract's work scope and circumstances, if the Municipality/Sponsor/Grantee believes a non-standard goal is appropriate and supportable, the Municipality/Sponsor/Grantee may obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Pre-Advertisement Goal Modification Request, with justification, prior to public advertisement of the contract.

## APPENDIX B

**Pre-Award:** If the Municipality/Sponsor/Grantee receives proposals or bids that do not provide commitments that meet or exceed the advertised goals, the Municipality/Sponsor/Grantee must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request *demonstrating the Contractor's Good Faith Efforts to meet the goals, along with supporting justification, prior to awarding the contract.*

**Post Award:** If any consultant/contractor fails to attain its M/WBE and/or SDVOB commitment on a contract, the Municipality/Sponsor/Grantee must obtain NYSDOT approval by submitting a M/WBE and/or SDVOB Waiver Request, *demonstrating Good Faith Efforts to meet the goals, along with supporting justification before NYSDOT will distribute final payment of grant proceeds.*

All forms referenced above are available at: <https://www.dot.ny.gov/main/business-center/civil-rights/>. Nothing stated within this or associated document(s) guarantees NYSDOT's approval of a goal modification or goal waiver.

Signature: \_\_\_\_\_

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

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

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

**Appendix MMPG-1  
GOALS FOR EQUAL EMPLOYMENT OPPORTUNITY (EEO) PARTICIPATION**

**GOALS FOR MINORITY PARTICIPATION**

<b>COUNTY</b>	<b>%</b>	<b>COUNTY</b>	<b>%</b>	<b>COUNTY</b>	<b>%</b>
Albany .....	3.2	Herkimer .....	2.1	* Richmond	
Allegany .....	6.3	Jefferson .....	2.5	Rockland .....	22.6
Broome .....	1.1	* Kings		St. Lawrence .....	2.5
* Bronx		Lewis .....	2.5	Saratoga .....	3.2
Cattaraugus .....	6.3	Livingston .....	5.3	Schenectady .....	3.2
Cayuga .....	2.5	Madison .....	3.8	Schoharie .....	2.6
Chautauqua .....	6.3	Monroe .....	5.3	Schuyler .....	1.2
Chemung .....	2.2	Montgomery .....	3.2	Seneca .....	5.9
Chenango .....	1.2	Nassau .....	5.8	Steuben .....	1.2
Clinton .....	2.6	* New York		Suffolk .....	5.8
Columbia .....	2.6	Niagara .....	7.7	Sullivan .....	17.0
Cortland .....	2.5	Oneida .....	2.1	Tioga .....	1.1
Delaware .....	1.2	Onondaga .....	3.8	Tompkins .....	1.2
Dutchess .....	6.4	Ontario .....	5.3	Ulster .....	17.0
Erie .....	7.7	Orange .....	17.0	Warren .....	2.6
Essex .....	2.6	Orleans .....	5.3	Washington .....	2.6
Franklin .....	2.5	Oswego .....	3.8	Wayne .....	5.3
Fulton .....	2.6	Otsego .....	1.2	Westchester .....	22.6
Genesee .....	5.9	Putnam .....	22.6	Wyoming .....	6.3
Greene .....	2.6	* Queens		Yates .....	5.9
Hamilton .....	2.6	Rensselaer .....	3.2		

\* The following goal ranges are applicable to the indicated trades in the Counties of Bronx, Kings, New York, Queens and Richmond.

Electricians.....	9.0 to 10.2	Bricklayers.....	13.4 to 15.5
Carpenters .....	27.6 to 32.0	Asbestos workers.....	22.8 to 28.0
Steam fitters .....	12.2 to 13.5	Roofers .....	6.3 to 7.5
Metal lathers.....	24.6 to 25.6	Iron workers (ornamental).....	22.4 to 23.0
Painters.....	26.0 to 28.6	Cement masons.....	23.0 to 27.0
Operating engineers .....	25.6 to 26.0	Glaziers.....	16.0 to 20.0
Plumbers .....	12.0 to 14.5	Plasterers .....	15.8 to 18.0
Iron workers (structural) .....	25.9 to 32.0	Teamsters.....	22.0 to 22.5
Elevator constructors .....	5.5 to 6.5	Boilermakers .....	13.0 to 15.5
		All others .....	16.4 to 17.5

**GOAL FOR PARTICIPATION OF WOMEN**

The goal for the participation of women is 6.9%.

(43 FR 14888 – 4/7/1978).

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted). If the Contractor performs construction work outside of New York State, it shall apply the goals established for the covered area where the work is actually performed.

Res. No. 3

March 12, 2024

To: The Honorable Mayor and City Council

From: Eric F Wagenaar, City Manager

Subject: Rehabilitation of Massey St., Coffeen St., Court Street Bridge - Inspection and Construction Management Services Fisher Associates, Supplementary Agreement #5 NYSDOT PIN: 775362

At the June 4, 2018 Council Meeting the City Council entered into an Agreement with Fisher Associates for the design of the Rehabilitation of Massey St., Coffeen St., and Court St. Bridge. In support of this project Fisher Associates was retained for the Construction Inspection and Management. The original cost for Inspection and Construction Management/Support of \$470,000 increased by \$78,000, due to additional time needed for extra work. The additional work included a redesign of a retaining wall to increase worker safety during construction. Also, the addition of underground repair work requested by the Department of Public Works on numerous deteriorated manhole and catch basins.

The construction portion of the project has been completed. The total construction cost by Tioga Construction is \$6,482,834.12 which is *\$545,844.88 under* the price bid. Federal, State and local funding have been used to fund the project.

Accordingly, a resolution has been prepared for City Council consideration.

# RESOLUTION

Page 1 of 1

Authorizing Professional Services Supplemental Agreement #5 - Construction Inspection Services for the Massey Street, Coffeen Street, Court Street Project, PIN 775362, Fisher Associates

Council Member KIMBALL, Robert O.

Council Member OLNEY III, Clifford G.

Council Member RUGGIERO, Lisa A.

Council Member SHOEN, Benjamin P.

Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS the City of Watertown, on October 2, 2017, entered into an Agreement with the New York State Department of Transportation for funding for the Rehabilitation of Massey Street, Coffeen Street, and the Court Street Bridge, and

WHEREAS the City on June 4, 2018, authorized a Professional Services Agreement between the City and Fisher Associates for the design of the Project, and

WHEREAS in support of this project the addition of underground repair to numerous deteriorated manhole and catch basins that was not included in the original Contract and requested by the Department of Public Works, and

WHEREAS in support of this project additional time was needed for engineering services for redesign and inspection of a retaining wall to increase worker safety during construction, and

WHEREAS the cost for inspection, construction administration and final closeout services for the Project will be an additional amount of \$78,000, and

WHEREAS THE City is financing this project using Federal and State Aid, and local funds, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves Supplemental Agreement # 5 between the City of Watertown and Fisher Associates, a copy of which is attached and made a 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*

**Supplemental Consultant Agreement #5  
for  
Massey Street, Coffeen Street & Court Street  
Bridge**

**PIN 7753.62**

Between

**City of Watertown**

and



**February 7, 2024**

**Architectural/Engineering  
Consultant Contract**

PIN 7753.62 Sponsor Contract No. \_\_\_\_\_

Agreement made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between

City of Watertown

(municipal corporation)

having its principal office at 245 Washington Street, in the City of Watertown, NY, (to be known throughout this document as the "**Sponsor**")

and

Fisher Associates, P.E., L.S., L.A., D.P.C.,

with its office at 180 Charlotte Street, Rochester, NY 14607 (to be known throughout this document as the "**Consultant**")

**WITNESSETH:**

WHEREAS, in connection with a federal-aid project funded through the New York State Department of Transportation (NYSDOT) identified for the purposes of this contract as the **Massey Street, Coffeen Street & Court Street Bridge** (as described in detail in Attachment A annexed hereto, the "Project") the Sponsor has sought to engage the services of a Consultant Engineer to perform the scope of services described in Attachment B annexed hereto; and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of NYSDOT and/or the Federal Highway Administration (FHWA), the Municipality has selected the Consultant to perform such services in accordance with the requirements of this Contract; and

WHEREAS, the **City Manager** is authorized to enter this Contract on behalf of the Sponsor,

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE 1. DOCUMENTS FORMING THIS CONTRACT**

This contract consists of the following:

Agreement Form – This document titled "Architectural/Engineering Consultant Contract";

Attachment "A" – Project Description and Funding;

Attachment "B" – Scope of Services;

Attachment "C" – as applicable, Staffing Rates, Hours, Reimbursables and Fee.

**ARTICLE 2. SCOPE OF SERVICES/STANDARD PRACTICES AND REQUIREMENTS**

2.1 The CONSULTANT shall render all services and furnish all materials and equipment necessary to provide the Sponsor with plans, estimates and other services and deliverables more specifically described in Attachment "B".

2.2 The CONSULTANT shall ascertain the applicable practices of the Sponsor, NYSDOT and/or FHWA prior to beginning any of the work of this PROJECT. All work required under this Contract shall be performed in



## **Architectural/Engineering Consultant Contract**

accordance with these practices, sound engineering standards, practices and criteria, and any special requirements, more particularly described in Attachment "B".

- 2.3 The CONSULTANT will commence work no later than ten (10) days after receiving notice to proceed from the Sponsor.

### **ARTICLE 3. COMPENSATION METHODS, RATES AND PAYMENT**

As full compensation for Consultant's work, services and expenses hereunder the Sponsor shall pay to the CONSULTANT, and the CONSULTANT agrees to accept compensation based on the methods designated and described below. Payment of the compensation shall be in accordance with the Interim Payment procedures shown in the table and the final payment procedure in Article 6.

(Continued next page)

## Architectural/Engineering Consultant Contract

<b>3.1 Cost Plus Fixed Fee Method</b>			
<b>ITEM</b>	<b>DESCRIPTION OF ITEMS WITHIN METHOD</b>	<b>APPLICABLE RATE/ AMOUNT OR PERCENTAGE</b>	<b>INTERIM PAYMENTS</b>
<b>ITEM I</b>	<ul style="list-style-type: none"> <li>• Actual Direct Technical Salaries, regular time plus straight time portion of overtime compensation of all employees assigned to this PROJECT on a full-time basis for all or part of the term of this Contract, plus properly allocable partial salaries of all persons working part-time on this PROJECT.</li> <li>• The cost of Principals', Officers' and Professional Staffs' salaries (productive time) included in Direct Technical Salaries is eligible for reimbursement if their comparable time is also charged directly to all other projects in the same manner. Otherwise, Principals' salaries are only eligible as an overhead cost, subject to the current limitations, generally established therefore by the Sponsor.</li> <li>• If, within the term of this Contract, any direct salary rates are paid in excess of the maximums shown in Attachment A, the excess amount shall be borne by the CONSULTANT WITHOUT REIMBURSEMENT either as a direct cost or as part of the overhead allowance.</li> </ul>	<ul style="list-style-type: none"> <li>• Actual cost incurred in the performance of this contract as identified in Attachment C or otherwise approved in writing by the Sponsor or its representative.</li> <li>• Not to exceed the maximum allowable hourly rates of pay described in Attachment C of this Contract, all subject to audit.</li> <li>• Actual overtime premium portion of Direct Technical Salaries, all subject to audit and prior approval by the Sponsor.</li> </ul>	<ul style="list-style-type: none"> <li>• The CONSULTANT shall be paid in monthly progress payments based on the maximum salary rates and allowable costs incurred during the period as established in Attachment C.</li> <li>• Bills are subject to approval of the Sponsor and Sponsor's Representative.</li> </ul>
<b>ITEM II</b>	Actual Direct Non-Salary Project-related Costs incurred in fulfilling the terms of this Contract; all subject to audit.	All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the per diem rates established by the NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Department of Labor.	
<b>ITEM III</b>	Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Sponsor at the completion of the work or at the option of the Sponsor.	Salvage value	

**Architectural/Engineering  
Consultant Contract**

<b>3.1 Cost Plus Fixed Fee Method</b>			
<b>ITEM</b>	<b>DESCRIPTION OF ITEMS WITHIN METHOD</b>	<b>APPLICABLE RATE/ AMOUNT OR PERCENTAGE</b>	<b>INTERIM PAYMENTS</b>
<b>ITEM IV</b>	<ul style="list-style-type: none"> <li>Overhead Allowance based on actual allowable expenses incurred during the term of this Contract, subject to audit. Submitted overhead amounts will be audited based upon the Federal Acquisition Regulations (FAR), sub-part 1-31.2 as modified by sub-part 1-31.105, and applicable policies and guidelines of the Sponsor, NYSDOT, and FHWA.</li> <li>For the purpose of this Contract, an accounting period shall be the CONSULTANT'S fiscal year. An audit of the accounting records of the CONSULTANT shall be made by the Sponsor for each accounting period. For monthly billing purposes, the latest available overhead percentage established by such audit shall be applied to the charges lade, under Item IA of this subdivision to determine the charge to be made under this Item.</li> </ul>	<ul style="list-style-type: none"> <li>The overhead allowance shall be established as a percentage of Item IA only (Actual Direct Technical Salaries) of this ARTICLE, and shall be a FAR compliant rate initially established as 136%, in all events not to exceed 136%, subject to audit.</li> </ul>	
<b>ITEM V</b>	<ul style="list-style-type: none"> <li>Negotiated Lump Sum Fixed Fee.</li> <li>Payment of the Fixed Fee for the described scope of services is not subject to pre-audit and is not subject to review or modification based on cost information or unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.</li> </ul>	<ul style="list-style-type: none"> <li>A negotiated Lump Sum Fee which in this CONTRACT shall equal \$8,200.</li> </ul>	
<b>ITEM VI</b>	The Maximum Amount Payable under this Contract including Fixed Fees unless this Contract is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	Maximum Amount Payable under this Method shall be \$78,000.	

# Federal Aid Requirements for Architectural/Engineering Consultant Contracts

## ARTICLE 4. INSPECTION

The duly authorized representatives of the Sponsor, and on Federally aided projects, representatives of the NEW YORK STATE DEPARTMENT OF TRANSPORTATION and the FEDERAL HIGHWAY ADMINISTRATION, shall have the right at all times to inspect the work of the CONSULTANT.

## ARTICLE 5. AUDITS

- 5.1 Payment to the Consultant is subject to the following audit rights of the Sponsor:
- A. For Cost Plus Fixed Fee Method - All costs are subject to audit, i.e., labor, direct non-salary, overhead, and fee.
  - B. For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the Sponsor.
  - C. For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$300,000, an audit may be waived by the Sponsor.
- 5.2 In order to enable the Sponsor to process the final payment properly and expeditiously, the CONSULTANT is advised that all of the following documents and submissions, as the same may be appropriate to this contract, are considered to be necessary to enable the commencement of the audit.
- A Records of Direct Non-Salary Costs;
  - B Copies of any subcontracts relating to said contract;
  - C Location where records may be examined; and
  - D Name, address, telephone number of person to contact for production.

The application for final payment is not considered complete until receipt of these documents and information.

## ARTICLE 6. FINAL PAYMENT

- 6.1 The Sponsor will make final payment within sixty (60) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.
- 6.2 The acceptance by the CONSULTANT of the final payment shall operate as and shall be a release to the Sponsor from all claims and liability to the CONSULTANT, its representatives and assigns for any and all things done, furnished for or relating to the services rendered by the CONSULTANT under or in connection with this Contract or for any part thereof except as otherwise provided herein.

## ARTICLE 7. EXTRA WORK

- 7.1 Consultant's performance of this Contract within the compensation provided shall be continuously reviewed by the CONSULTANT. The CONSULTANT shall notify the Sponsor of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Sponsor on a monthly basis or such alternative interval as the Sponsor directs in writing.
- 7.2 If the CONSULTANT is of the opinion that any work the CONSULTANT has been directed to perform is beyond the scope of the PROJECT Contract and constitutes extra work, the CONSULTANT shall promptly notify the Sponsor, in writing, of this fact prior to beginning any of the work. The Sponsor shall be the sole

## **Federal Aid Requirements for Architectural/Engineering Consultant Contracts**

judge as to whether or not such work is in fact beyond the scope of this Contract and constitutes extra work. In the event that the Sponsor determines that such work does constitute extra work, the Sponsor shall provide extra compensation to the CONSULTANT in a fair and equitable manner. If necessary, an amendment to the PROJECT CONTRACT, providing the compensation and describing the work authorized, shall be prepared and issued by the Sponsor. In this event, a Supplemental Agreement providing the compensation and describing the work authorized shall be issued by the Sponsor to the CONSULTANT for execution after approvals have been obtained from necessary Sponsor officials, and, if required, from the Federal Highway Administration.

- 7.3 In the event of any claims being made or any actions being brought in connection with the PROJECT, the CONSULTANT agrees to render to the Sponsor all assistance required by the Sponsor. Compensation for work performed and costs incurred in connection with this requirement shall be made in a fair and equitable manner. In all cases provided for in this Contract for the additional services above described, the Sponsor's directions shall be exercised by the issuance of a separate Contract, if necessary.

### **ARTICLE 8. CONSULTING LIABILITY**

The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees in the performance of his service under this Contract.

Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the Sponsor from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Contract, and such indemnity shall not be limited by reasons of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Contract shall create or give to third parties any claim or right of action against the Sponsor beyond such as may legally exist irrespective of this Article or this Contract.

The CONSULTANT shall procure and maintain for the duration of the work for such project(s), Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) per project, issued to and covering damage for liability imposed on the CONSULTANT by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the Contract. The CONSULTANT shall supply any certificates of insurance required by the Sponsor and adhere to any additional requirements concerning insurance.

### **ARTICLE 9. WORKER'S COMPENSATION AND LIABILITY INSURANCE**

This contract shall be void and of no effect unless the CONSULTANT shall secure Workman's Compensation Insurance for the benefit of, and keep insured during the life of this contract, such employees as are necessary to be insured in compliance with the provisions of the Workman's Compensation Law of the State of New York.

The CONSULTANT shall secure policies of general and automobile liability insurance, and maintain said policies in force during the life of this contract. Said policies of insurance shall protect against liability arising from errors and omissions, general liability and automobile liability in the performance of this contract in the sum of at least \$1,000,000.00 (One Million dollars) each.

The CONSULTANT shall furnish a certified copy of said policies to the Sponsor at the time of execution of this contract.

### **ARTICLE 10. INTERCHANGE OF DATA**

All technical data in regard to the PROJECT existing in the office of the Sponsor or existing in the offices of the CONSULTANT shall be made available to the other party to this Contract without expense to such other party.

# Federal Aid Requirements for Architectural/Engineering Consultant Contracts

## ARTICLE 11. RECORDS RETENTION

The CONSULTANT shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively called the "Records"). The Records must be kept for a minimum of six (6) years or three (3) years after final payment is received, whichever is later. The Sponsor, State, Federal Highway Administration, or any authorized representatives of the Federal Government, shall have access to the Records during normal business hours at an office of THE CONSULTANT within the State of New York or, a mutually agreeable reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

## ARTICLE 12. DAMAGES AND DELAYS

The CONSULTANT agrees that no charges or claim for damages shall be made by him for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Contract. Such delays or hindrances, if any, shall be compensated for by an extension of time for such reasonable period as the Sponsor may decide, it being understood however, that the permitting of the CONSULTANT to proceed to complete any services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Sponsor of any of its rights herein. Nothing in this ARTICLE will prevent the CONSULTANT from exercising his rights under ARTICLE 7 of this Contract.

## ARTICLE 13. TERMINATION

The Sponsor shall have the absolute right to terminate this Contract, and such action shall in no event be deemed a breach of contract:

- A. for convenience of the Sponsor - if a termination is brought about for the convenience of the Sponsor and not as a result of unsatisfactory performance on the part of the CONSULTANT, final payment shall be made based on the basis of the CONSULTANT'S compensable work delivered or completed prior to and under any continuing directions of such termination.
- B. for cause - if the termination is brought about as a result of the Sponsor's determination of unsatisfactory performance or breach of contract on the part of the CONSULTANT, the value of the work performed by the CONSULTANT prior to termination shall be established by the percent of the amount of such work satisfactorily delivered or completed by the CONSULTANT to the point of termination and acceptable to the Sponsor, of the total amount of work contemplated by the PROJECT CONTRACT.

## ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT

In case of the death or disability of one or more but not all the persons herein referred to as CONSULTANT, the rights and duties of the CONSULTANT shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Contract, and the Sponsor shall make all payments due to him, her or them.

In case of the death or disability of all the persons herein referred to as CONSULTANT, all data and records pertaining to the PROJECT shall be delivered within sixty (60) days to the Sponsor or its duly authorized representative. In case of the failure of the CONSULTANT's successors or personal representatives to make such delivery on demand, then in that event the representatives of the CONSULTANT shall be liable to the Sponsor for any damages it may sustain by reason thereof. Upon the delivery of all such data to the Sponsor, the Sponsor will pay to the representatives of the CONSULTANT all amounts due the CONSULTANT, including retained percentages to the date of the death of the last survivor.

# **Federal Aid Requirements for Architectural/Engineering Consultant Contracts**

## **ARTICLE 15. CODE OF ETHICS**

The CONSULTANT specifically agrees that this Contract may be canceled or terminated if any work under this Contract is in conflict with the provisions of any applicable law establishing a Code of Ethics for Federal, State or Municipal officers and employees.

## **ARTICLE 16. INDEPENDENT CONTRACTOR**

The CONSULTANT, in accordance with his status as an independent contractor, covenants and agrees that he will conduct himself consistent with such status, that he will neither hold himself out as, nor claim to be, an officer or employee of the Sponsor by reason hereof, and that he 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 Sponsor, including but not limited to Worker's Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement membership or credit.

## **ARTICLE 17. COVENANT AGAINST CONTINGENT FEES**

The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Sponsor shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **ARTICLE 18. TRANSFER OF AGREEMENT**

The CONSULTANT specifically agrees, that he is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of the Contract or of his right, title or interest therein, or his power to execute such Contract, to any other person, company or corporation, without the previous consent in writing of the Sponsor.

If this provision is violated, the Sponsor may revoke and annul the Contract and the Sponsor shall be relieved from any and all liability and obligations there under to the person, company or corporation to whom the CONSULTANT shall purport to assign, transfer, convey, sublet or otherwise dispose of the Contract without such consent in writing of the Municipality.

## **ARTICLE 19. PROPRIETARY RIGHTS**

The CONSULTANT agrees that if patentable discoveries or inventions should result from work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the CONSULTANT. However, the CONSULTANT agrees to and does hereby grant to the United States Government and the State of New York and the Sponsor a nonexclusive, nontransferable, paid-up license to make, use, and sell each subject invention throughout the world by and on behalf of the Government of the United States and states and domestic municipal governments, all in accordance with the provisions of 48 CFR 1-27.

## **ARTICLE 20. SUBCONTRACTORS/SUBCONSULTANTS**

All SUBCONTRACTORS and SUBCONSULTANTS performing work on this project shall be bound by the same required contract provisions as the CONSULTANT. All agreements between the CONSULTANT and a subcontractor or other SUBCONSULTANT shall include all standard required contract provisions, and such agreements shall be subject to review by the Sponsor.

# Federal Aid Requirements for Architectural/Engineering Consultant Contracts

## ARTICLE 20.1 PROMPT PAYMENT

While federal regulation (49 CFR 26.29) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment for all public works contract. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all tasks called for in the subcontract have been accomplished and documented. When the Sponsor 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.

## ARTICLE 21. CERTIFICATION REQUIRED BY 49 CFR, PART 29

The signator to this Contract, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership)

- A. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- B. has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- C. does not have a proposed debarment pending; and
- D. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

## ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS

The prospective participant certifies, by signing this Contract to the best of his or her knowledge and belief, that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the standard "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



## **Federal Aid Requirements for Architectural/Engineering Consultant Contracts**

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be, included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

### **ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT**

- A. The CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the CONSULTANT under this contract. The CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services. However, the Sponsor may in certain circumstances, provide compensation for such work.
- B. Neither the Sponsor's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the CONSULTANT shall be and remain liable to the Sponsor in accordance with applicable law for all damages to the Sponsor caused by the CONSULTANT'S negligent performance or breach of contract of any of the services furnished under this contract.
- C. The rights and remedies of the Sponsor provided for under this contract are in addition to any other rights and remedies provided by law.
- D. If the CONSULTANT is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

### **ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS**

The CONSULTANT agrees to comply with all applicable Federal, State and Sponsor Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with 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 CONSULTANT shall not discriminate against any employee, applicant for employment because of any race, creed, color, sex, national origin, age, disability or marital status. 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 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, CONSULTANT agrees that neither it nor its SUBCONSULTANTS 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. CONSULTANT 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.

### **ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5**

If the work of the PROJECT includes the preparation of an Environmental Impact Statement (EIS), the signator to this Contract, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the project including:

- A. an existing contract for the PROJECT's ROW incidental work or construction engineering; or
- B. ownership of land, options to buy land, or some business enterprise which would be financially enhanced or diminished by any of the PROJECT alternatives.

## **Federal Aid Requirements for Architectural/Engineering Consultant Contracts**

This does not preclude the CONSULTANT from being awarded a future contract covering the work described in this Article or being awarded Phases V & VI Final Design after the EIS has been approved.

### **ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS**

For all contracts other than personal services in excess of \$5,000, the consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$10,000, the consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation which is fully responsive to the invitation to submit a quote/bid.

### **ARTICLE 27. 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 Consultant'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, Consultant and its subconsultants 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.

### **ARTICLE 28. 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 Consultant agrees, as a material condition of the contract, that neither the Consultant 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 Consultant, or any of the aforesaid affiliates of Consultant, 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 Sponsor and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (See, 2 NYCRR 105.4).

### **ARTICLE 29. SERVICE OF PROCESS**

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

### **ARTICLE 30, DISPOSITION OF PLANS, ESTIMATES AND OTHER DATA.**

At the time of completion of the work, the Consultant shall make available to the Sponsor all survey notes, computations, maps, tracings, original aerial film and photo indices if any, and all other documents and data pertaining to the work or to the project which material at all times shall be the property of the Sponsor. Or in the event that this Agreement is terminated for any reason, then, within ten (10) days after such termination, the Consultant shall make available to the Sponsor all the aforementioned engineering data and material. All original tracings of maps and other engineering data furnished to the Sponsor by the Consultant shall bear thereon the endorsement of the Consultant. All plans, estimates and other data prepared in accordance with this Agreement shall be considered confidential and shall be released only to the Sponsor.

Federal Aid Requirements for Architectural/Engineering Consultant Contracts

ARTICLE 31. MISCELLANEOUS

31.1 Executory Contract. This Contract shall be deemed only executory to the extent of the monies available, and no liability shall be incurred by the Sponsor beyond the monies legally available for the purposes hereof.

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

Reference: Sponsor Contract # \_\_\_\_\_

Table with 2 columns: Sponsor and Consultant. Includes fields for 'by:' and 'Date:' with handwritten signatures and dates.

SPONSOR:

STATE OF NEW YORK

ss:

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024 before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the \_\_\_\_\_, New York; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he/she is authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Sponsor.

\_\_\_\_\_  
Notary Public, \_\_\_\_\_ County, N.Y.

CONSULTANT:

STATE OF NEW YORK

ss:

COUNTY OF Monroe

On this 11th day of March, 2024 before me, the subscriber, personally appeared to me known, who, being by me duly sworn, did depose and say; that he/she resides in the Town of Victor, New York; that he/she is the Vice President of the Fisher Associates, the corporation described in and which executed the foregoing instrument; that he/she is authorized with the execution of the matter herein provided for, and that he/she signed and acknowledged the said instrument in his/her position as a duly authorized representative of Consultant.

Guinevere M. Woods-Sealy  
Notary Public, Monroe County, N.Y.

GUINEVERE M. WOODS-SEALY  
Notary Public - State of New York  
No. 01W06388547  
Qualified in Monroe County  
My Commission Expires March 11, 20\_\_

## **APPENDIX A-1 SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)**

(To be included in all contracts)

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

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

  - a) Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - b) Cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

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

**ATTACHMENT A**

**Attachment A**  
**Architectural/ Engineering Consultant Contract**  
**Project Description and Funding**

PIN: 7753.62  
BIN: 2220220

*Term of Agreement Ends: September 2024*

Main Agreement     Amendment to Contract [add identifying #]     Supplement to Contract #5  
[add identifying #]

***Phase of Project Consultant to work on:***

P.E./Design     ROW Incidentals     ROW Acquisition  
 Construction, C/I, & C/S

Dates or term of Consultant Performance:  
Start Date: Notice to Proceed Issued Previously  
Finish Date: February 2024

***PROJECT DESCRIPTION:***

*The Massey Street, Coffeen Street & Court Street Bridge Project involves preserving the long-term integrity of Coffeen Street from the West City line to Massey Street; Massey Street from the Court Street bridge to Holcomb Street and the Court Street bridge by utilizing cyclic/element specific treatments/repairs.*

Project Location:

*City of Watertown*

Consultant Work Type(s): See Attachment B for more detailed Scope of Services.

**MAXIMUM AMOUNT OF FUNDS FOR ALL COMPENSATION PAYABLE UNDER THIS AGREEMENT FOR THE SCOPE OF WORK DESCRIBED IN ATTACHMENT B FOR THE PROJECT DESCRIBED IN THIS ATTACHMENT A, OTHERWISE IN ACCORDANCE WITH THE CHOSEN METHOD OF COMPENSATION AND OTHER TERMS OF THIS AGREEMENT:**

\$78,000

**ATTACHMENT B**



# Massey Street, Coffeen Street & Court Street Bridge Project

**City of Watertown**

**NYSDOT PIN: 7753.62**

**Scope of Services  
Supplemental #5**

**February 7, 2024**

## Section 1 - General

### 1.01 Project Description and Location

Project Name: Massey Street, Coffeen Street & Court Street Bridge

PIN: 7753.62

Project Description/Limits: The project involves the rehabilitation of the Court Street Bridge in order to extend the service life of the structure and the roadway resurfacing of Massey Street from Court Street bridge to Holcomb Street and Coffeen Street from Massey Street to the City Line.

Sponsor: City of Watertown

City, Town, County: City of Watertown, Jefferson County

### 1.02 Project Manager

The **Sponsor's** Project Manager for this project is Meredith Griffin, who can be reached at (315) 785-7740 or mgriffin@watertown-ny.gov.

All correspondence to the **Sponsor** should be addressed to:

Meredith Griffin  
Civil Engineer II  
City of Watertown  
City Hall, Suite 305  
245 Washington Street  
Watertown, NY 13601

The Project Manager should receive copies of all project correspondence directed other than to the **Sponsor**.

### 1.03 Project Classification

This project is assumed to be a Class II action under USDOT Regulations, 23 CFR 771.

Classification under the New York State Environmental Quality Review Act (SEQRA) Part 617, Title 6 of the Official Compilation of Codes, Rules, and Regulations of New York State (6 NYCRR Part 617) is assumed to be Type II.

### 1.04 Categorization of Work

Project work is generally divided into the following sections:

~~Section 1 General~~  
~~Section 2 Data Collection & Analysis~~  
~~Section 3 Preliminary Design~~  
~~Section 4 Environmental~~  
~~Section 5 Right-of-Way~~  
~~Section 6 Detailed Design~~  
~~Section 7 Advertising, Bid Opening and Award~~  
Section 8 Construction Support

Section 9 Construction Inspection  
Section 10 Estimating & Technical Assumptions

When specifically authorized in writing to begin work the **Consultant** will render all services and furnish all materials and equipment necessary to provide the **Sponsor** with reports, plans, estimates, and other data specifically described in Sections 8, 9 and 10.

**1.05 Project Familiarization**

Not in supplemental agreement.

**1.06 Meetings**

Meetings per assumptions.

**1.07 Cost and Progress Reporting**

For the duration of this agreement, the **Consultant** will prepare and submit to the **Sponsor** on a monthly basis a Progress Report in a format approved by the **Sponsor**. The Progress Report must contain the Cost Control Report. The beginning and ending dates defining the reporting period must correspond to the beginning and ending dates for billing periods, so that this reporting process can also serve to explain billing charges. (In cases where all work under this contract is officially suspended by the **Sponsor**, this task will not be performed during the suspension period.)

**1.08 Policy and Procedures**

- The design of this project will be progressed in accordance with the current version of the *NYSDOT Procedures for Locally Administered Federal Aid Projects (PLAFAP) Manual* including the latest updates.
- If there are conflicts between local policies and procedures and those listed in the *PLAFAP* those listed in the *PLAFAP* take precedence.

**1.09 Standards & Specifications**

The project will be designed and constructed in accordance with the current edition of the NYSDOT Standard Specifications for Construction and Materials, including all applicable revisions.

**1.10 Subconsultants**

The **Consultant** will be responsible for:

- Coordinating and scheduling work, including work to be performed by subconsultants.

- Technical compatibility of a subconsultant’s work with the prime consultant’s and other subconsultants’ work.

### **1.11 Subcontractors**

Procurement of subcontractors must be in accordance with the requirements set forth in the *NYSDOT PLAFAP Manual*

## **Section 2 – Data Collection & Analysis**

No work to be done under Supplemental Agreement.

## **Section 3 - Preliminary Design**

No work to be done under Supplemental Agreement.

## **Section 4 – Environmental**

No work to be done under Supplemental Agreement.

## **Section 5 - Right-of-Way**

No work to be done under Supplemental Agreement.

## **Section 6 - Detailed Design**

No work to be done under Supplemental Agreement.

## **Section 7 - Advertisement, Bid Opening and Award**

No work to be done under Supplemental Agreement.

## Section 8 - Construction Support

### 8.01 Construction Support

The **Consultant** will provide design response to unanticipated or changed field conditions, analyze and participate in proposed design changes, and interpret design plans.

Work under this section will always be in response to a specific assignment from the **Sponsor** under one of the tasks below:

- In response to unanticipated and/or varying field conditions or changes in construction procedures, the **Consultant** will conduct on-site field reconnaissance and, where required, prepare Field Change Sheets modifying pertinent contract plan sheets.
- The **Consultant** will analyze and make recommendations on the implementation of changes proposed by the **Sponsor** or the construction contractor. This includes the Traffic Control Plan.
- The **Consultant** will interpret and clarify design concepts, plans and specifications.
- The **Consultant** will review and approve shop drawings for construction.
- The **Consultant** will prepare record drawings.

Not reimbursable under this Section are:

- Corrections of design errors and omissions
- Straightforward interpretations of plans and designer intentions

## Section 9 - Construction Inspection

### 9.01 Equipment

The **Contractor** will furnish office space and basic office furnishings for the **Consultant**, as part of the contract.

The **Consultant** will furnish all other office, field and field laboratory supplies and equipment required to properly perform the inspection services listed below.

### 9.02 Inspection

The **Consultant** must provide, to the satisfaction of the **Sponsor**, contract administration and construction inspection services from such time as directed to proceed until the completion of the final agreement and issuance of final payment for the contract. The **Consultant** must assume responsibility, as appropriate, for the administration of the contract including maintaining complete project records, processing payments, performing detailed inspection work and on-site field tests of all materials and items of work incorporated into the contract consistent with federal policies and the specifications and plans applicable to the project.

### 9.03 Municipal Project Manager

This Project Manager will be the **Municipality's** official representative on the contract and the **Consultant** must report to and be directly responsible to said Project Manager.

### 9.04 Ethics

Prior to the start of work, the **Consultant** will submit to the **Sponsor** a statement regarding conflicts of interest.

### 9.05 Health and Safety Requirements

The **Consultant** must provide all necessary health and safety related training, supervision, equipment and programs for their inspection staff assigned to the project.

### 9.06 Staff Qualifications and Training

The **Consultant** must provide sufficient trained personnel to adequately and competently perform the requirements of this agreement. The **Consultant** will recommend inspectors to the Sponsor for approval prior to their assignment to the project. Resumes, proof of required certification and the proposed initial salary shall be furnished. The Sponsor may want to interview before approval, and reserves the right to disapprove any application. The employment of all consultant personnel is conditional, subject to satisfactory performance, as determined by the Sponsor.

For all construction inspection agreements, it is mandatory that all technician personnel be identified by the National Institute for Certification in Engineering Technologies (NICET) certification levels in the staffing tables. In addition, all Transportation Engineering Technicians-Construction assigned to the project at and above level III, Engineering and Senior Engineering Technicians, must be certified by NICET. Transportation Engineering Technicians-Construction below level III assigned to the project must have successfully completed the General Work Element requirements and at least those Special Work Elements which apply to their specific project assignments at the level of their rating.

In lieu of the NICET certification requirements, the Sponsor may accept evidence that the person proposed for employment (1) has satisfactorily performed similar duties as a former NYS Department of Transportation (NYSDOT) employee or (2) has a combination of education and appropriate experience commensurate with the scope of the position in question.

Technicians employed by the **Consultant** that perform field inspection of Portland cement concrete shall possess a current certification from the American Concrete Institute (ACI) as a Concrete field-testing Technician-Grade 1, or have completed all of the following NICET work elements, which are equivalent to the ACI certification:

NICET LEVEL	NICET CODE	NICET WORK ELEMENT
I	82019	Sample Fresh Concrete
I	82020	Slump Test
II	84068	Air Content, Pressure
II	84069	Air Content, Gravimetric
II	84070	Air Content, Volumetric
II	84076	Field Prepared Test Specimens

Inspectors designated as the responsible person in charge of work zone traffic control must have sufficient classroom training, or a combination of classroom training and experience, to develop needed knowledge and skills. Acceptable training should consist of a formal course presented by a recognized training program which includes at least two full days of classroom training. A minimum of two days classroom training is normally required, although one day of classroom training plus responsible experience may be considered. Recognized training providers include American Traffic Safety Services Association (ATSSA), National Safety Council (NSC), Federal Highway Administration's National Highway Institute (FHWA-NHI), and accredited colleges and universities with advanced degree programs in Civil/Transportation/Traffic Engineering. Former DOT employees may be considered on the basis of at least one day of formal classroom training combined with responsible M&PT experience.

Technicians employed by the **Consultant** who perform field inspection of geotechnical construction (earthwork), including, but not limited to embankment construction, subbase placement, structure and culvert backfill placement, and testing of earthwork items for in-place



density and/or gradation, shall possess a current certification and/or proof of training from the following organization:

North East Transportation Technician Certification Program (NETTCP) Soils and Aggregate Inspector Certification. An alternative to the certification/training listed above would be proof of previous training (within the past 5 years) of the NYSDOT Earthwork Inspectors School, given by the Department's Geotechnical Engineering Bureau.

## 9.07 Scope of Services/Performance Requirements

### A Quality

The Consultant will enforce the specifications and identify in a timely manner to the **Sponsor** local conditions, methods of construction, errors on the plans or defects in the work or materials which would conflict with the quality of work, and conflict with the successful completion of the project.

### B. Record Keeping & Payments to the Contractor

- 1) All records must be kept in accordance with the directions of the **Sponsor and must be consistent with the requirements of the [NYSDOT Manual of Uniform Recordkeeping \(MURK\)](#)**. The **Consultant** must take all measurements and collect all other pertinent information necessary to prepare daily inspection reports, monthly and final estimates, survey notes, record plans showing all changes from contract plans, photographs of various phases of construction, and other pertinent data, records and reports for proper completion of records of the contract.
- 2) Any record plans, engineering data, survey notes or other data provided by the Sponsor should be returned to the Sponsor at the completion of the contract. Original tracings of record plans, maps, engineering data, the final estimate and any other engineering data produced by the Consultant will bear the endorsement of the Consultant. Any documents that require an appropriate review and approval of a Professional Engineer (P.E.) licensed and registered to practice in New York State must be signed by the P.E.
- 3) Unless otherwise modified by this agreement, the **Consultant** will check, and when acceptable, approve all structural shop drawings.
- 4) The **Consultant** must submit the final estimate of the contract to the **Sponsor** within four (4) weeks after the date of acceptance of the contract. All project records must be cataloged, indexed, packaged, and delivered to the **Sponsor** within five (5) weeks after the date of the acceptance of the contract.

### C. Health & Safety/Work Zone Traffic Control

- 1) The **Consultant** must ensure that all inspection staff assigned to the project are knowledgeable concerning the health and safety requirements of the contract per

**Sponsor** policy, procedures and specifications and adhere to all standards. Individual inspectors must be instructed relative to the safety concerns for construction operations they are assigned to inspect to protect their personal safety, and to ensure they are prepared to recognize and address any contractor oversight or disregard of project safety requirements.

- 2) The **Consultant** is responsible for monitoring the Contractor's and Subcontractor's efforts to maintain traffic and protect the public from damage to person and property within the limits of, and for the duration of the contract.

D. Monitoring Equal Opportunity/Labor Requirements

The **Consultant** must assign to one individual the responsibility of monitoring the Contractor's adherence to Equal Opportunity and Labor requirements contained in the contract. When monitoring the Contractor's Equal Opportunity and Labor compliance, the Consultant, will utilize the guidance contained in the contract, standard specifications and the **Sponsor's** policies. The Consultant is also to input required disadvantaged business enterprise (DBE) information into the NYSDOT maintained [Equitable Business Opportunities \(EBO\) database](#).

## **Section 10 - Estimating & Technical Assumptions**

### **10.01 Estimating & Technical Assumptions**

Section 8 Estimate 4 progress meetings during the life of this agreement (not included elsewhere).

Construction Support will include but not be limited to:

- Providing technical support during construction on questions relating to the design.
- Review of shop drawings.
- Preparation of record drawings.

Estimate 0 field visits will be made to address issues as they arise.

Section 9 Construction Inspection will include but not be limited to:

- Providing on-site construction inspection and oversight to ensure the quality of construction and conformity with the final plans and specifications.
- Preparation of as-built plans.

Estimate additional months (November through January) of full-time inspection for the RE

Estimate 2 months of part-time inspection for a Level II Inspector.

Estimate 4 progress meetings

**ATTACHMENT C**

Exhibit A, Page 1  
Salary Schedule

**FISHER ASSOCIATES, PE, LS, LA, DPC**  
D and PIN 7753.62  
Name Massey Coffeen Court  
Location Watertown, NY  
Date Jan-24

JOB TITLE	ASCE (A) OR NICET (N) GRADE	AVERAGE HOURLY RATES		MAX. HOURLY RATES			OVERTIME CATEGORY
		PRESENT (2/2023)	PROJECTED Jan-23	2023	2024	2025	
Project Manager	VIII (A)	109.25	100.00	100.00	100.00	100.00	A
Project Manager	VII (A)	79.38	81.76	85.00	87.55	90.00	A
Sr. Technician IV	IV (N)	58.12	59.86	66.00	67.98	70.02	C
Technician III	III (N)	45.04	46.39	47.25	48.67	50.13	C
Technician II	II (N)	33.45	34.45	38.90	40.07	41.27	C
Junior Technician I	I (N)	25.13	25.88	32.00	32.96	33.95	C
Party Chief	III (N)	33.20	34.20	40.95	42.18	43.45	C
Instrument Person	I (N)	25.00	25.75	25.00	25.75	26.52	C
Party Chief (Field)*	III (N)	33.20	34.20	39.00	40.17	41.38	C
Instrument Person (Field)*	I (N)	25.00	25.75	30.50	31.42	32.36	C

NOTES:

- (1) Hourly rates shall not exceed those shown above or the current NYSDOT Maximum Allowable, as described in Exhibit E, whichever is less.
- (2) Written approval from the Regional Construction Engineer must be received by the Consultant before using titles shown in the Salary Schedule but not shown in the Staffing Table.

OVERTIME POLICY

Category A - No overtime compensation.

Category B - Overtime compensated at straight time rate.

Category C - Overtime compensated at straight time rate x 1.50.

Overtime applies to hours worked in excess of the normal working hours of 40 hours per week.

\*Prevailing Wage Rates - The difference between the required prevailing wage rate and the normal hourly rate is considered a direct cost:

		Prevailing Rate	Projected Rate	Normal Rate	Difference	Payroll Additive	Total
Party Chief (P.C.)	III (N)	\$47.37	\$48.79	\$34.20	\$14.59	\$1.97	\$16.56
Instrumentperson (I.P.)	I (N)	43.51	44.82	25.75	19.07	2.57	21.64

Supplemental Benefits are also considered direct costs. The net benefit is the difference between required amounts and deductions made

Exhibit A, Page 2  
Staffing Table

**FISHER ASSOCIATES, PE, LS, LA, DPC**  
 D and PIN 7754  
 Name Massey Coffeen Court  
 Location Watertown, NY  
 Date Jan-24

JOB TITLE	ASCE OR NICET GRADE	2023												2024												(1)	(2)	(3)	(4)	(5)	(6)
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D						
Project Manager	VIII (A)																									0	109.25				0
Project Manager	VII (A)									16	16	2			16											50	60.00				3,000
Sr. Technician IV	IV (N)									150	140	120			50											460	50.00				23,000
" " Overtime	IV (N)									10	10																20	50.00	\$25.00	\$500	1,000
Technician III	III (N)									44		56			20											120	38.00				4,560
" " Overtime	III (N)																										0	38.00	19.00	0	0
Cad Operator/Tech II	II (N)																									0	33.45				0
" " Overtime	II (N)																									0	33.45	16.73		0	0
Junior Technician I	I (N)																									0	25.13				0
" " Overtime	I (N)																									0	25.88	12.94		0	0

NOTES:

\*\* Overtime Hours

(1) Total Hours (straight time)

(2) Total Hours (overtime)

(3) Projected Hourly Rate (straight time rate)

(4) Projected Hourly Rate (premium rate)

(5) Direct Technical Salaries (premium portion)

(6) Direct Technical Salaries (straight time portion)

TOTALS 630 20 \$500 \$31,560

TOTAL SALARIES (PREMIUM PORTION) \$500

TOTAL SALARIES (STRAIGHT TIME PORTION) \$31,560

Exhibit B, Page 1  
 Estimate of Expendable Direct Non-Salary Cost

**FISHER ASSOCIATES, PE, LS, LA, DPC**  
 D and PIN 7754  
 Name Massey Coffeen Court  
 Location Watertown, NY  
 Date Jan-24

1. TRAVEL						
a) On-Job Travel -	inspectors x	21 days/month x	months x	miles/day @ \$0.655 /mile		\$0.00
TOTAL TRAVEL						\$0.00
2. OWNER'S PROTECTIVE INSURANCE (Estimated)						0.00
3. EXPENDABLE EQUIPMENT						
Cloth Tapes & Thermometers						
4. POSTAGE, SHIPPING AND PRINTING (Estimated)						0.00
TOTAL DIRECT NON-SALARY COST						\$0.00
MATERIAL TESTING						
IN-PLANT STEEL INSPECTION						
TOTAL SUB-CONTRACTOR COST						\$0.00

Exhibit C  
Summary

-----  
**FISHER ASSOCIATES, PE, LS, LA, DPC**  
D and PIN 7753.62  
Name Massey Coffeen Court  
Location Watertown, NY  
Date Jan-24

Item IA, Direct Technical Salaries (estimated) subject to audit				\$31,560
Item IB, Direct Technical Salaries, Premium Portion of Overtime (estimated) subject to audit				500
Item IIA, Expendable Direct Non-Salary Cost (estimated) subject to audit				0
Item IIB Nonexpendable Direct and subject to audit (Sub-Contractor Cost)				0
Item III, Overhead (136%) (estimated) subject to audit				42,922
Item IV, Net Fee (negotiated)				8,200
Item IIC Direct Non-Salary Cost (estimated) subject to audit (Sub-Consultant Cost)	Subconsultant 1	0		
	Subconsultant 2	0		
	Subconsultant 3	0		0
Total Estimated Cost				----- \$83,182
Less Unused Subconsultant Budget				(\$6,100)
MAXIMUM AMOUNT PAYABLE				\$78,000 =====



Res No. 4

March 13, 2024

To: The Honorable Mayor and City Council

From: Scott Weller, parks & Recreation Superintendent

Subject: Approving Franchise Agreement with the Greater Watertown Red and Black, Inc.

The current agreement allowing Greater Watertown Red and Black, Inc. to play at Alex T. Duffy Fairgrounds expires on March 31, 2024. A new three-year Franchise Agreement has been drafted for City Council consideration and approval. The proposed agreement will expire on March 31, 2027.

The fees for the use of the fields have been increased. The flat fee for the season's practice schedule is \$1655 and the game fee is \$190 for a day game and \$250 for a night game. The rental of storage space has been increased to \$715 per year. The fee for concession rights has increased to \$425. The flat fee for advertisement is \$320. This pricing, as well as the terms and conditions, was agreed to by the Red and Black.

A Resolution approving the agreement is attached for Council consideration.

**RESOLUTION**

Page 1 of 2

Approving Franchise Agreement, The Greater Watertown Red and Black, Inc.

Council Member KIMBALL, Robert O.

Council Member OLNEY III, Clifford G.

Council Member RUGGIERO, Lisa A.

Council Member SHOEN, Benjamin P.

Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

***Introduced by***

\_\_\_\_\_

WHEREAS the City is a municipal corporation organized under the laws of the State of New York and, as such, owns a facility known as the Alex T. Duffy Fairgrounds within the City of Watertown, and the Fairgrounds are a community recreational facility, and

WHEREAS the City desires to promote future recreational activities at the Fairgrounds for the valid public purpose of the benefit, recreation, entertainment, amusement, convenience and welfare of the people of the City, and

WHEREAS in pursuit of that public purpose, the City desires to contract for the use, operations, management and maintenance of the Fairgrounds multi-purpose field and all football-related activities, and

WHEREAS the Greater Watertown Red and Black, Inc. owns and operates a football team as a member and franchise of the Empire Football League, and

WHEREAS Greater Watertown Red and Black, Inc. desires to have its team, Red and Black, play football games within the confines of the Fairgrounds,

NOW THEREFORE BE IT RESOVLED that the City Council of the City of Watertown approves the Franchise Agreement between the City of Watertown and the Greater Watertown Red and Black, Inc., attached hereto and made part thereof, and

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

***Seconded by***



**LEASE AGREEMENT**

**THE CITY OF WATERTOWN, NEW YORK  
AND  
GREATER WATERTOWN RED AND BLACK, INC.**

This Lease is being made and is intended to be effective as of April 1, 2024 between the City of Watertown, New York, with its principal offices located at 245 Washington Street, Watertown, New York 13601 (“City”) and Greater Watertown Red and Black, Inc., with its principal offices located at 1358 Washington Street, Watertown, New York, (“Football”).

**INTRODUCTION**

WHEREAS, the City is a municipal corporation organized under the laws of the State of New York and, as such, owns a facility known as the Alex T. Duffy Fairgrounds (the “Fairgrounds”) within the City of Watertown, and the Fairgrounds are a community recreational facility; and

WHEREAS, the City desires to promote future recreational activities at the Fairgrounds for the valid public purpose of the benefit, recreation, entertainment, amusement, convenience and welfare of the people of the City; and

WHEREAS, in pursuit of that public purpose, the City desires to contract for the use, operation, management and maintenance of the Fairgrounds multi-purpose field and all Empire Football League football-related activities; and

WHEREAS, Football owns and operates a seasonal football team as a member and franchise of the Empire Football League; and

WHEREAS Football desires to have its team, Red and Black (the “Team”), play football games within the confines of the Fairgrounds; and

WHEREAS, the City has undertaken a substantial capital improvement project for the Fairgrounds in furtherance of the public purpose of keeping football in the City for the recreation, entertainment and welfare of the people of the City, including the economic benefit such a team can bring.

NOW, THEREFORE, in consideration of mutual covenants and agreements as stated herein, the City and Football agree as follows:

## **AGREEMENT**

### Section I – Term of Lease

The initial term of this Lease shall be for a three-year period from April 1, 2024 through March 31, 2027.

### Section II – Premises Leased

The City agrees to lease to Football the premises generally known as the Alex T. Duffy Fairgrounds football field and all incidents thereto, including the bleachers and scoreboard, consisting of essentially the area bounded by the multi-purpose field fence separating the field from the remainder of the Fairgrounds, together with the immediately adjacent parking areas (the “Premises”). This lease also provides for rental of the storage/locker areas highlighted in yellow on the map attached as Exhibit A to this Agreement. Restrooms and locker rooms in the Grandstand are part of the Leased Premises when Football is practicing or playing a game on leased fields owned by the City. Restrooms and additional locker rooms may be used as needed depending upon availability. The Fairgrounds multi-purpose #5 field will be made available for practice purposes. In the event this field cannot be used, one of the other nearby fields may be used.

### Section III – Non-Assignability and Non-Exclusivity

a. The City and Football agree that it is the purpose of this Agreement to contract for the use, operation, management and maintenance of the Premises, and that this is an agreement for the privilege of Football to use the Premises only for the purpose of semi-pro football. This Lease Agreement may not be assigned by Football to any person or entity, and Football agrees that the City’s consent to any assignment may be withheld for any reason, and in its sole discretion.

b. The City agrees not to enter into a lease for the Premises with any other Professional or Semi-Pro Football team during the term of this lease, without the written consent of Football.

c. It is further understood that this Lease Agreement is non-exclusive, meaning that, at those times when the Premises are not being used for Football’s purposes, the City retains the right to make the Premises available for other uses to the extent that the use will not interfere with those purposes. By express understanding, it will not be interference for the City to allow the playing field to be used by college, high school, youth leagues or other sporting teams. At such times, it shall be the City’s responsibility to maintain the Premises in good repair.

Section IV – Compensation (Rent)

a. As a compensation for the use of the Premises, and during the term of this Lease, Football shall pay to the City fees as follows:

Rental of Storage Space	\$715.00 per year
Day Game	\$190.00per game
Night Game	\$250.00 per game
Practice	\$1655.00 for the season

Day game means any game that ends before 6:00 p.m.

Night game means any game that begins at or extends beyond 6:00 p.m.

When scheduling the use of the City’s fields, the City will give games priority over practices and events.

Football will provide the City Department of Parks and Recreation and the City Comptroller’s Office with a schedule detailing all planned field use for games, practices and camps no later than April 1<sup>st</sup> of each year

b. Payment must be made to the City by the 1<sup>st</sup> day of the month for that month’s scheduled field time. If full payment is not made by Football by the 1<sup>st</sup> day of the month for that month’s scheduled field time or any other unpaid invoice is over 30 days outstanding, Football will not be authorized use of the facility until full payment is made. An invoice will be generated by the City at the month’s end for any additional field time used above and beyond scheduled time by Football, payable within 30 days. Football shall not receive credit for any unused, but scheduled, field time unless 48 hours of notice is given to the Parks and Recreation Department or in the event of inclement weather.

Section V – Concessions and Advertising

a. The City and Football agree that for Football events during the term of this Lease Agreement, concessions rights for the sale of food and non-alcoholic drink as well as for football souvenir items sold on the Premises shall be exclusive to Football. The City shall not permit nor allow mobile units or other vendors or concessions upon the Premises during events or activities being conducted by Football without the written consent of Football

b. All expenses incurred in providing concessions shall be at the sole expense of Football.

c. Football shall pay the City \$425.00 for rights to sell concessions on the Leased Premises for the term of this lease. Full payment must be made to the City by April 1<sup>st</sup> of each year.

d. Football will be allowed to sell Advertising to be placed upon the sideline fences, ticket booths and the press box, on the Leased Premises and on the scoreboard. Mounting of advertising on City property must be approved in advance by the City. Football is not authorized to hang political signage of any kind. Football is not authorized to sell advertising and install signs in any other areas of the Leased Premises without the written consent of the City. It will be the responsibility of Football to install and remove the Advertising. By April 1<sup>st</sup> of each year, Football will be responsible for a flat fee of \$320 to have exclusive rights for signage.

e. An Alcohol Permit is to be obtained with the City for any home game or event where outside alcohol is permitted. A flat fee of \$50 will be charged for said permits for the season.

Section VI – Adequacy of Leased Premises

a. Football represents that the premises satisfy the requirements of the Northeast Football Alliance and that the City shall not be obligated to make any change to the Premises during the term of this Lease to satisfy any requirements of Football or the Northeast Football Alliance.

b. Football shall certify in writing to the City that it has accepted, in good order and repair, the Premises. This certification by Football shall include a statement that Football has examined and knows the condition of the Premises and has received the same in good repair and working order. Any exceptions by Football to the condition of the Premises at the time of their receipt shall be provided to the City in writing.

Section VII – Maintenance

a. The City agrees that it will keep the Premises, including any structural or capital repairs and improvements, in good repair during the term of this Lease, and at its own expense. The City further agrees that it shall bear the cost of electric facilities and electric service to the Premises.

b. Football agrees to provide custodial maintenance of the Premises during the term of the Lease. Football is responsible for cleaning the Leased Premises after every game or practice. If Football has not cleaned the Leased Premises by 10:00 a.m. the day following a game or practice, the City will clean the Leased Premises and Football will reimburse the City as described below:

1 <sup>st</sup> offense	\$50 Fee, plus actual cost
2 <sup>nd</sup> offense	\$100 Fee plus, actual cost
3 <sup>rd</sup> offense	\$250 Fee plus, actual cost
After 3 offenses (each offense)	\$500 Fee plus, actual cost

If the City is compelled to do custodial maintenance, as described above, Football will pay the bill for such work performed by the City before they will be allowed to use the Leased Premises for a game or practice.

c. Football shall keep the Premises secure and keep unauthorized persons out of the grandstand area.

d. The City agrees that it will maintain the football field. Football acknowledges, however, that the City's employees are not responsible for the laying and removal of football equipment prior to, during, or after any particular football game or practice.

e. If all or any part of the Premises are damaged or destroyed by Football, or by any of its agents or employees, or by any of Football's patrons, or during any event for which Football is responsible, (for example, damage, or destruction to the goal post), Football agrees that it will immediately cause repairs or, if the City repairs the damage, that it will reimburse the City for such damage or destruction. The City reserves the right to close any non-paved or unimproved areas from parking in order to avoid damage to our fields and green areas.

#### Section VIII – Parking Fees

Football acknowledges that the City reserves the right to assess a one dollar (\$1.00) parking charge, per car, at each home game for the Team. This amount may increase at the City's sole discretion. The parties agree that the City shall be responsible for collecting the fee, and that all proceeds from parking shall inure to the City.

#### Section IX – Insurance

a. Football agrees to name the City as an additional named insured for its liability coverages, and to provide proof of general liability insurance in the amount of \$1,000,000/2,000,000 combined single limit. Football shall provide the City with copies of its declaration pages for the policy or policies during the duration of the Lease Agreement. Football's policies of insurance may not limit the City's coverage as an additional insured to vicarious liability issues only.

b. The City will insure the Premises to cover only the City's interest in the event of damage due to fire or other hazard. Football agrees that, if the Premises are materially damaged by fire or other casualty, the City is not obligated to restore the Premises, and Football will have no claim under this Lease against the City for not restoring the Premises.

#### Section X – Hold Harmless

Football shall indemnify and hold the City harmless, including reimbursement for reasonable attorneys' fees, from any and all loss, costs or expense arising out of any liability or claim of liability for injury or damages to persons or to property sustained by



any person or entity by reason of Football's operation, use, or occupation of the Premises, or by or resulting from any act or omission of Football or any of its officers, agents, employees, guests, patrons or invitees. The liability insurance in the type and amounts identified at Section X, naming the City as an additional named insured, shall be sufficient for purposes of meeting Football's obligations under this paragraph.

#### Section XI – Venue and Applicable Law

a. The City and Football agree that the venue of any legal action arising from a claimed breach of this Lease is in the Supreme Court, State of New York, in and for the County of Jefferson.

b. This Agreement shall be construed in accordance with the laws of the State of New York.

#### Section XII – Right of Access

The City reserves the right to enter the Premises by its duly authorized representatives at any reasonable time which does not interfere or conflict with the conduct of business of Football, for the purposes of inspecting the Premises, performing any work necessary required on the part of the City, exhibiting the Premises, or in the performance of its police powers.

#### Section XIII – Return of Premises

Football agrees to return the Premises to the City, upon the expiration of this Lease, in as good condition as when Football received possession of the Premises, reasonable wear and tear excepted, and excepting damage to the Premises caused by others when the Premises were not under the control of Football. The City and Football will conduct a walk-through of the Premises at the beginning of the Lease term. The City and Football will conduct an initial walk-through of the Premises at the end of each season. Upon expiration of the Lease, the City and Football will conduct a final walk through of the Premises.

#### Section XIV – Desire to Renew Notice

Football shall provide the City with a ninety (90) day written notice of its desire to discuss the option to renew this Agreement.

Section XV – Notice

All notices required to be given under this Lease shall be in writing and shall be deemed to have been duly given on the date mailed if sent by certified mail, return receipt requested, to:

To City: Eric Wagenaar, City Manager  
City of Watertown  
245 Washington Street  
Watertown, New York 13601

To Football: George Ashcraft, General Manager  
Greater Watertown Red and Black, Inc.  
1358 Washington Street  
Watertown, New York 13601

A party may change the address to which notices are to be sent by written notice actually received by the other party.

IN WITNESS WHEREOF, the City and Football will have caused this Lease to be executed by authorized agents to be effective as of April 1, 2024

THE CITY OF WATERTOWN, NEW YORK

By: \_\_\_\_\_  
Eric F. Wagenaar, City Manager

GREATER WATERTOWN RED AND BLACK,  
INC.

By: \_\_\_\_\_  
William Caprara, Owner

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

On \_\_\_\_\_, 2024 before me, the undersigned, a Notary Public, in and for said State personally appeared Sharon Addison, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon whose behalf the individual acted, executed the instrument.

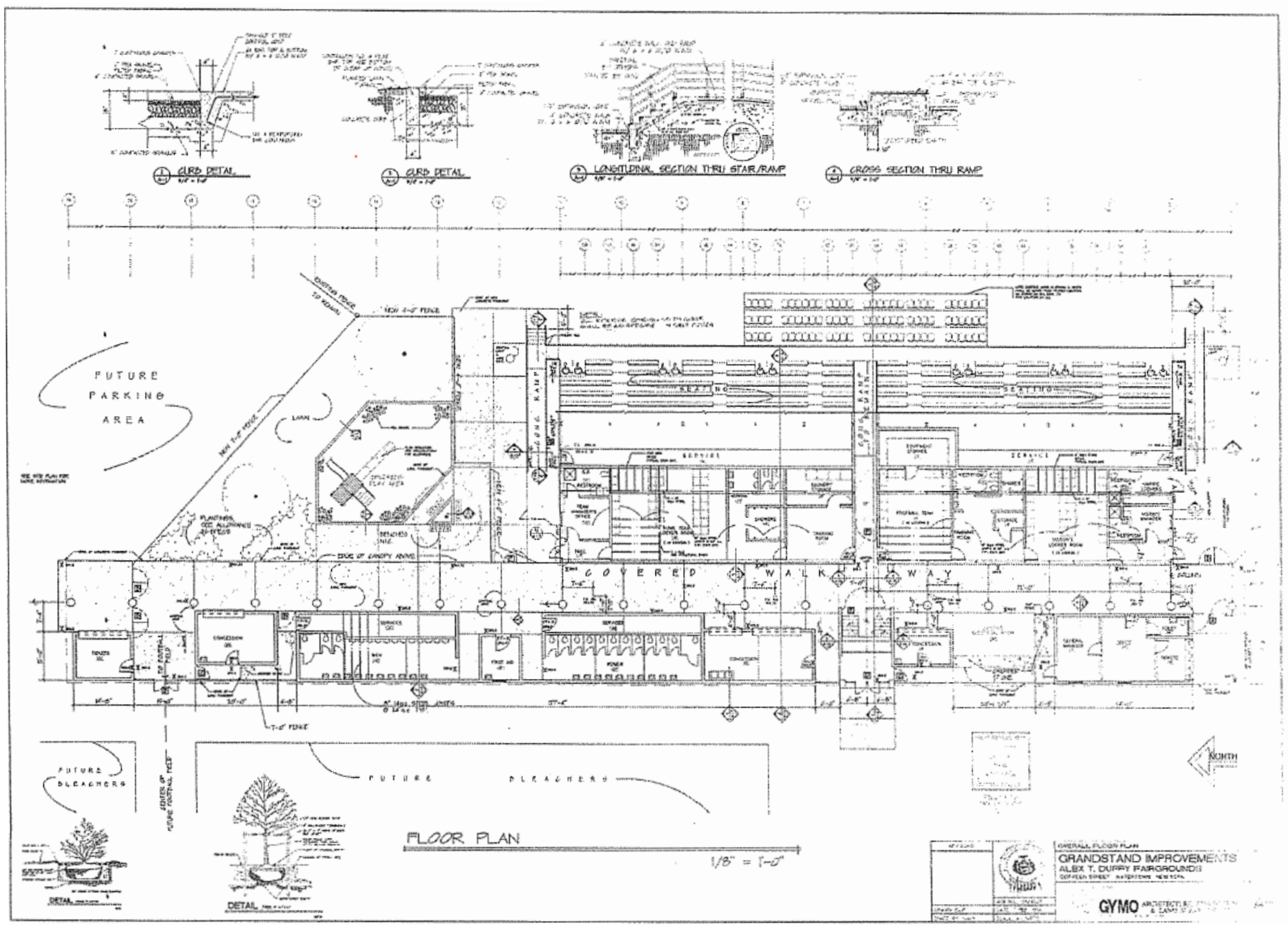
\_\_\_\_\_  
Notary Public

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

On \_\_\_\_\_, 2024, before me, the undersigned, a Notary Public, in and for said State, personally appeared William Caprara, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me he executed the same in his capacity and that by his signature on the instrument, the individual or the person upon whose behalf the individual acted, executed the instrument.

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

Exhibit A



Res No. 5

March 13, 2024

To: The Honorable Mayor and City Council

From: Scott Weller, Parks & Recreation Superintendent

Subject: Approving Agreement for Flat Fee Use of Athletic Fields, Watertown Pop Warner Football Association

Attached is a three-year Agreement for the Flat Fee Use of Athletic Fields between the City of Watertown and the Watertown Pop Warner Association. The Association will be using the "Red & Black field" for games and the fields at North Elementary School for fall practices. New to this agreement is the use of additional multipurpose fields during the spring season, for an additional fee

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

**RESOLUTION**

Page 1 of 1

Approving Agreement for Flat Fee Use of Athletic Fields, Watertown Pop Warner Football Association

Council Member KIMBALL, Robert O.

Council Member OLNEY III, Clifford G.

Council Member RUGGIERO, Lisa A.

Council Member SHOEN, Benjamin P.

Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

***Introduced by***

WHEREAS the City of Watertown owns and operates numerous athletic fields throughout the City, and

WHEREAS the Pop Warner Football Association has expressed their desire to enter into an Agreement for Flat Fee Use of Athletic Fields for practice events, and

WHEREAS City Council of the City of Watertown desires to promote recreational activities at these community recreational facilities,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown, New York, that it hereby approves the Agreement for Flat Fee Use of Athletic Fields between the City of Watertown and the Pop Warner Football Association, a copy of which is attached and made a part of this resolution, and

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

***Seconded by***

## CITY OF WATERTOWN

### AGREEMENT FOR FLAT FEE USE OF ATHLETIC FIELDS

This Agreement is being made and is intended to be effective as of April 1, 2024 for a period of three (3) seasons between City of Watertown, with an address of 245 Washington Street, Watertown NY 13601 (“City”) and the Watertown Pop Warner Association (“Association”), with an address of 124 Willow Street Watertown NY 13601.

#### RECITALS

WHEREAS, for a number of years, the Association has scheduled the use of City-owned athletic fields at the Kostyk field for practice events, which previously did not require a fee;

WHEREAS, the payment of the fees listed in Section A320 of the City Code of the City of Watertown would prove to be cost-prohibitive for the Association; and

WHEREAS, the parties desire to enter into an Agreement for the payment of a flat fee to simplify the usage and payment therefore;

The parties agree as follows:

#### AGREEMENT

1. The Association shall seek to schedule the use of the fields as desired, and as are available, for the 2024-2026 seasons. Spring practice shall begin on or after May 1<sup>st</sup> and fall practices shall begin on or after August 1st.
2. Fees:
  - a. The fee to be charged the Association by the City for the use of the fields for fall practices, pursuant to the City’s “Facility and Athletic Field Agreement,” for the year 2024, shall be \$1,535.00. In year 2025 this fee will increase to \$1,580.00 and in year 2026 to \$1,630.00.
  - b. The fee to be charged the Association by the City for the use of the fields for spring practices, pursuant to the City’s “Facility and Athletic Field Agreement,” for the year 2024, shall be \$1,000.00. In year 2025 this fee will increase to \$1,030.00 and in year 2026 to \$1,060.00.
  - c. The Association will be charged \$135.00 for game-days on multi-purpose field #1. There will be an additional charge of \$50.00 if lights are used.
  - d. Payment for practice fields must be paid 100% in advance of the first field usage, annually.
  - e. Payment for game-day fields and concessions must be made by the 1<sup>st</sup> day of the month for that month’s scheduled field time.
  - f. The Association shall not receive credit for any unused, but scheduled, field time unless 48 hours of notice is given to the Parks & Recreation Department or in the event of inclement weather.
3. Concessions:
  - a. The Association agrees to pay the vendor fee of \$150.00, per season, for scheduled home games.
  - b. The Association agrees to provide the City with all applicable licenses, including but not limited, required by NYS Department of Health.

4. **Hold Harmless:** The Association shall indemnify and hold the City harmless, including reimbursement for reasonable attorney's fees, from any and all loss, costs or expense arising out of any liability or claim of liability for injury or damages to persons or to property sustained by any person or entity by reason of the Association's operation, use or occupation of the Premises, or by resulting from any act or omission of the Association or any of its officers, agents, employees, guests, patrons or invitees. The liability insurance in the type and amounts identified in section five (5), naming the City as an additional named insured, shall be sufficient for the purposes of meeting the Associations obligations under this paragraph.
5. **Insurance:** The Association agrees to name the City as an additional named insured for its liability coverage, and to provide proof of general liability insurance in the amount of \$1,000,000 individual/\$2,000,000 aggregate, and property damage coverage in the amount of \$100,000. The Association shall provide the City with copies of its declarations pages for the policy or policies during the duration of the Agreement. The Association's policies of insurance may not limit the City's coverage as an additional insured to vicarious liability issues only.
6. The Association is responsible for ensuring the cleanliness of the Premises after every game or practice.
7. The undersigned individual(s), signing for the Association, shall ultimately be personally responsible to the City for payment of the fees.
8. It is explicitly understood by the Association that all fall practices must take place on the City-owned fields at North Elementary School.

WATERTOWN POP WARNER ASSOCIATION

---

By: Kellie Hoff  
President-Pop Warner

CITY OF WATERTOWN

---

By: Eric Wagenaar  
City Manager



Res No. 6

March 13, 2024

To: The Honorable Mayor and City Council

From: Scott Weller, Parks & Recreation Superintendent

Subject: Approving Agreement for Flat Fee Use of Athletic Fields with Watertown American Little League

Attached is an Agreement for Flat Fee Use of Athletic Fields with the Watertown American Little League for practices during the 2024-2027 seasons. Unlike past years, this is a multi-year agreement.

Attached for City Council review and consideration is a resolution approving of the Agreement.

**RESOLUTION**

Page 1 of 1

Approving Agreement for Flat Fee Use of Athletic Fields with Watertown American Little League

Council Member KIMBALL, Robert O.  
 Council Member OLNEY III, Clifford G.  
 Council Member RUGGIERO, Lisa A.  
 Council Member SHOEN, Benjamin P.  
 Mayor PIERCE, Sarah V.C.

YEA	NAY

Total .....

***Introduced by***

\_\_\_\_\_

WHEREAS the City of Watertown owns and operates numerous athletic fields throughout the city, and

WHEREAS the Watertown American Little League has expressed its desire to enter into an Agreement for Flat Fee Use of Athletic Fields, and

WHEREAS City Council of the City of Watertown desires to promote recreational activities at these community recreational facilities,

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown, New York, that it hereby approves the Agreement for Flat Fee Use of Athletic Fields between the City of Watertown and the Watertown American Little League, a copy of which is attached and made a part of this resolution, and

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

***Seconded by***

## CITY OF WATERTOWN

### AGREEMENT FOR FLAT FEE USE OF ATHLETIC FIELDS

This Agreement is being made and is intended to be effective as of April 1, 2024 for a period of three (3) seasons between City of Watertown, with an address of 245 Washington Street, Watertown NY 13601 (“City”) and the Watertown American Little League (“League”), with an address of 27264 Keyser Road, Evans Mills, NY 13637.

#### RECITALS

WHEREAS, for the last 68 years the Watertown American Little League has served the youth of the Watertown Community, the Association has used select City Fields in the past when no fee was charged

WHEREAS, the payment of the fees listed in Section A320 of the City Code of the City of Watertown would prove to be cost-prohibitive for the Association; and

WHEREAS, the parties desire to enter into an Agreement for the payment of a flat fee to simplify the usage and payment therefore;

The parties agree as follows:

#### AGREEMENT

1. The League shall seek to schedule the use of the fields as desired, and as are available, for the 2024-2026 seasons. Practices shall begin after April 15.
2. Fees and Reservations:
  - a. The fee to be charged the League by the City for the use of the fields for practices, pursuant to the City’s “Facility and Athletic Field Agreement,” for the year 2024, shall be \$1,535.00. In year 2025 this fee will increase to \$1,580.00 and in year 2026 to \$1,630.00.
  - b. The League will pay the regular City rate for any games it requests to play. There will be an additional charge of \$50.00 if lights are used.
  - c. Payment for practice fields must be paid 100% in advance of the first field usage.
  - d. Payment for game-day fields and concessions must be made by the 1<sup>st</sup> day of the month for that month’s scheduled field time.
  - e. The League shall not receive credit for any unused, but scheduled, field time unless 48 hours of notice is given to the Parks & Recreation Department or in the event of inclement weather.
  - f. The League will provide the names of the managers of each team in the league who can reserve fields.
  - g. The Parks and Recreation Department will determine which fields are available and what is best suited for the requested practice.
  - h. Field reservations can be made beginning on Friday of the week prior to the reservation.
  - i. Limited field availability may occur following inclement weather and during select events.

3. **Hold Harmless:** The League shall indemnify and hold the City harmless, including reimbursement for reasonable attorney's fees, from any and all loss, costs or expense arising out of any liability or claim of liability for injury or damages to persons or to property sustained by any person or entity by reason of the League's operation, use or occupation of the Premises, or by resulting from any act or omission of the League or any of its officers, agents, employees, guests, patrons or invitees. The liability insurance in the type and amounts identified in section five (5), naming the City as an additional named insured, shall be sufficient for the purposes of meeting the Leagues obligations under this paragraph.
4. **Insurance:** The League agrees to name the City as an additional named insured for its liability coverage, and to provide proof of general liability insurance in the amount of \$1,000,000 individual/\$2,000,000 aggregate, and property damage coverage in the amount of \$100,000. The League shall provide the City with copies of its declarations pages for the policy or policies during the duration of the Agreement. The League's policies of insurance may not limit the City's coverage as an additional insured to vicarious liability issues only.
5. The League is responsible for ensuring the cleanliness of the Premises after every game or practice.
6. The undersigned individual(s), signing for the League, shall ultimately be personally responsible to the City for payment of the fees.

WATERTOWN AMERICAN LITTLE LEAGUE

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By: Derek Ward  
Watertown American Little League President

CITY OF WATERTOWN

---

By: Eric F. Wagenaar  
City Manager

Res No. 7

March 13, 2024

To: The Honorable Mayor and City Council

From: Scott Weller, Parks & Recreation Superintendent

Subject: Agreement for Public Benefit Services,  
Disabled Persons Action Organization Foundation

The current 3-year Agreement for Public Benefit Services with the Disabled Persons Action Organization Foundation for providing concerts expires on March 31, 2024. A new agreement that runs through March 31, 2027 has been drafted. The new agreement is essentially the same as the current one, with fee increases for outdoor shows.

The attached Resolution and Agreement for Public Benefit Services Between the City of Watertown and the Disabled Persons Action Organization Foundation have been prepared for the Council's consideration.

# RESOLUTION

Page 1 of 2

Approving Agreement for Public Benefit Services, Disabled Persons Action Organization Foundation

Council Member KIMBALL, Robert O  
 Council Member OLNEY III, Clifford G.  
 Council Member RUGGIERO, Lisa A.  
 Council Member SHOEN, Benjamin P.  
 Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

### *Introduced by*

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WHEREAS the Disabled Persons Action Organization Foundation (“the Foundation”) provides quality and effective individualized services to developmentally disabled children and adults in the City of Watertown, and

WHEREAS the work of the Foundation serves the public and/or municipal purposes set forth at Section 21 of the New York General City Law, and, thereby, promotes the general welfare of the citizens of the City of Watertown, and

WHEREAS the City of Watertown (City) desires to enter into a contract with the Foundation to provide those services which fall within the ambit of General City Law Section 21 in furtherance of the City’s “public or municipal purposes,” and

WHEREAS the City owns a public park known as The Alex T. Duffy Fairgrounds (the “Fairgrounds”) located in the City of Watertown and the Fairgrounds is home to the Watertown Municipal Arena, and

WHEREAS the City further owns a public park known as the John C. Thompson Park (“Thompson Park”), and

WHEREAS the Foundation promotes and, in part, funds its services through the sponsorship of music concerts at the Fairgrounds, which concerts also serve to promote amusement and recreational opportunities in the City, which is also a valid City public or municipal purpose and may, in the future, sponsor concerts or other performances at Thompson Park, and

WHEREAS the City desires to provide both financial and in-kind services in support of the Foundation’s operations including, but not limited to, providing a venue at reasonable cost to the Foundation in order to facilitate the Foundation’s promotion of public or municipal purposes,

# RESOLUTION

Page 2 of 2

Approving Agreement for Public  
Benefit Services, Disabled Persons  
Action Organization Foundation

Council Member KIMBALL, Robert O  
 Council Member OLNEY III, Clifford G.  
 Council Member RUGGIERO, Lisa A.  
 Council Member SHOEN, Benjamin P.  
 Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves the Agreement for Public Benefit Services Between the City of Watertown and Disabled Persons Action Organization Foundation, a copy of which is attached and made a part of this resolution, and

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

***Seconded by:***

**AGREEMENT FOR PUBLIC BENEFIT SERVICES**  
**between**  
**THE CITY OF WATERTOWN, NEW YORK**  
**and**  
**DISABLED PERSONS ACTION ORGANIZATION FOUNDATION**

This Agreement made this \_\_\_\_ day of March 2024, by and between the City of Watertown, New York (the “City”) and Disabled Persons Action Organization Foundation (“the Foundation”).

**PREAMBLE**

WHEREAS the Foundation provides quality and effective individualized services to developmentally disabled children and adults in the City of Watertown; and

WHEREAS the work of the Foundation serves the public and/or municipal purposes set forth at Section 21 of the New York General City Law, and, thereby, promotes the general welfare of the citizens of the City; and

WHEREAS the City desires to enter into a contract with the Foundation to provide those services which fall within the ambit of General City Law Section 21 in furtherance of the City’s “public or municipal purposes;”

WHEREAS the City owns a public park known as The Alex T. Duffy Fairgrounds (the “Fairgrounds”) located in the City of Watertown and the Fairgrounds is home to the Watertown Municipal Arena; and

WHEREAS the City further owns a public park known as the John C. Thompson Park (“Thompson Park”); and

WHEREAS the Foundation who assists people with special needs, promotes and, in part, funds its services through the sponsorship of music concerts at the Fairgrounds, which concerts also serve to promote amusement and recreational opportunities in the City, which is also a valid City public or municipal purpose and may, in the future, sponsor concerts or other performances at Thompson Park; and

WHEREAS the City desires to provide both financial and in-kind services in support of the Foundation’s operations including, but not limited to, providing a venue at reasonable cost to the Foundation in order to facilitate the Foundation’s promotion of public or municipal purposes.

NOW, THEREFORE, the parties, in consideration of the mutual covenants and agreements contained herein, hereby mutually agree as follows:



## AGREEMENT

**Article I** DESCRIPTION OF SERVICES. The Foundation will continue to provide services to developmentally disabled individuals in the City, thereby promoting the general welfare of the City. The Foundation desires to obtain funding of those services, in part, through the sponsorship of concerts and other events at Watertown Municipal Arena, all of which are deserving of public support to the end of assisting the City in meeting its responsibilities and authority under Section 21 of the General City Law.

**Article II** TERM OF THIS AGREEMENT. The term of this Agreement shall be for a three-year period from April 1, 2024 through March 31, 2027.

**Article III** MANNER OF CITY'S FINANCIAL SUPPORT. The City agrees to support the Foundation's promotion of the public welfare by allowing the Foundation to pay reduced fees for the use of the Watertown Municipal Arena on the following schedule:

Municipal Arena Concert/Show	\$4,000.00 per show
Fairgrounds Concert/Show	\$7,000.00 per show

The City further agrees to allow the Foundation to utilize Thompson Park on agreed-upon dates for similar concerts or shows and will negotiate in good faith to arrive at reasonable rates for Thompson Park's use and for its cleanup and restoration after any such event.

The Foundation will provide the City Department of Parks and Recreation with potential dates for concerts and/or shows.

Payment must be made by the Foundation to the City in advance of each concert or show.

**Article IV** FRANCHISE FOR SALE OF ALCOHOLIC BEVERAGES. The Foundation desires to provide for the sale of beer at the professional shows to be held pursuant to this Agreement, and the City grants such franchise upon the terms outlined in this section. The Foundation may provide such sales itself or enter into a sub-franchise agreement with a person or entity who or which shall obtain an appropriate State Liquor Authority license for beer sales for the Watertown Municipal Fairgrounds and/or Municipal Arena.

The Foundation, and any sub-franchisee agreement shall ensure that they shall be bound by the terms of the City's "ABC Law, Rules and Guidelines," as the same may, from time to time, be amended. A copy of the City's current "ABC Law, Rules and Guidelines" is attached to this Agreement as Exhibit "A". The Foundation and any sub-franchisee shall also be specifically bound by the terms and conditions of any license issued by the State Liquor Authority.

The Foundation or its sub-franchisee shall provide the City with a copy of any application for the license, and shall, at a minimum as part of the application, show the locations of all points of sale; indicate the manner in which control of the sale of alcoholic beverages will be maintained; contain an acknowledgement that it will discontinue the service of alcohol at any time when directed to do so by the shift supervisor of the Watertown City Police; provide proof of its liquor liability insurance coverage in the amount of \$1,000,000.00 individual/

\$2,000,000.00 aggregate; and represent that the times of alcohol service must be no earlier than two hours prior to the commencement of any concert/show.

The Foundation acknowledges that, as either the provider or as the party responsible for the sub-franchisee, it is obligated not to permit the sale of alcoholic beverages in violation of the New York Alcoholic Beverage and Control Law, the New York Penal Law, and/or the New York General Obligations Law. If it is determined that the Foundation or its sub-franchisee has sold beverages in violation of any of the applicable rules and regulations, including any term of this agreement, the Foundation's right to sell or contract with a sub-franchisee for the sale of alcohol on the premises will be immediately revoked.

The Foundation acknowledges that the City of Watertown is not involved in the sale of alcoholic beverages, and agrees to defend and indemnify the City, including reimbursement of the City's reasonable attorneys' fees, from any and all claims, civil or criminal, arising from any claimed violations of law pertaining to, or statutory duty arising from, the sale of alcoholic beverages.

- (1) Concerts/shows: At no time shall alcohol sales begin more than two hours prior to the start of the concert/show.
- (2) Other events: Approval of other events is at the discretion of the City Manager.

**Article V MISCELLANEOUS OBLIGATIONS.**

a. During concerts and/or shows, the Foundation shall keep the applicable City premises secure and keep unauthorized persons out of the designated concert/show area.

b. The City maintains final say for all matters on the Premises, including placement of equipment and removal of unruly patrons.

c. The City agrees that it will maintain the Fairgrounds and Municipal Arena. The Foundation acknowledges, however, that the City's employees are not responsible for the placement or removal of non-City equipment before, during or after any concert or show.

d. If all or any part of the Premises are damaged or destroyed by the Foundation, or by any of its agents or employees, or by any of the Foundation patrons, or during any event for which the Foundation is responsible, (for example, damage, or destruction to any City property), the Foundation agrees that it will immediately cause repairs or, if the City repairs the damage, that it will reimburse the City for such damage or destruction. The City reserves the right to close any non-paved or unimproved areas from parking in order to avoid damage to its fields and green areas.

**Article VI PARKING FEES.** Parking fees are inclusive in the fees represented in Article III.

**Article VII INSURANCE.** The Foundation agrees to name the City as an additional named insured for its liability coverages, and to provide proof of general liability insurance in the amount of \$1,000,000.00 individual/ \$2,000,000.00 aggregate. The Foundation shall provide the City with copies of its declaration pages for the policy or policies during the duration of each concert or event. The Foundation's policies of insurance may not limit the City's coverage as an additional insured to vicarious liability issues only.

**Article VIII HOLD HARMLESS.** The Foundation shall indemnify and hold the City harmless, including reimbursement for reasonable attorneys' fees, from any and all loss, costs or expense arising out of any liability or claim of liability for injury or damages to persons or to property sustained by any person or entity by reason of the Foundation's operation, use, or occupation of the Premises, or by or resulting from any act or omission of the Foundation or any of its officers, agents, employees, guests, patrons or invitees. The liability insurance in the type and amounts identified at Section X, naming the City as an additional named insured, shall be sufficient for purposes of meeting the Foundation's obligations under this paragraph.

**Article IX NOTICE.** All notices required to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date mailed if sent by certified mail, return receipt requested, to:

To City: Eric F. Wagenaar, City Manager  
City of Watertown  
245 Washington Street  
Watertown, New York 13601

To The Foundation: Mike Campbell, Foundation Director  
Disabled Person Action Organization Foundation  
617 Davidson Street  
Watertown, New York 13601

A party may change the address to which notices are to be sent by written notice actually received by the other party.

IN WITNESS WHEREOF, the City of Watertown and Disabled Persons Action Organization Foundation have caused this Agreement to be executed by authorized agents to be effective as of the date heretofore written.

THE CITY OF WATERTOWN, NEW YORK

By: \_\_\_\_\_  
Eric F. Wagenaar, City Manager

DISABLED PERSONS ACTION ORGANIZATION  
FOUNDATION

By: \_\_\_\_\_  
Mike Campbell, Foundation Director

## **Exhibit A - ABC Law Rules and Guidelines**

- You must provide the City of Watertown with a copy of your license certificate at least 24 hours before the start of your event.
- You as the licensee are responsible for the activities of employees and patrons in all parts of the licensed premises, even if you are not always physically present, to ensure that the business is operating in accordance with the ABC Law.
- Your license certificate must be displayed so that it is in a conspicuous place inside the premises near the point of sale. Copies of the certificate for posting purposes are not acceptable.
- If you wish to make any changes in the structure of your corporation, or if you wish to change the individuals on the license, you must file the appropriate application and obtain approval from the Authority before making these changes.
- Appropriate books and records detailing purchases with invoices and the amount of each sale must be maintained at the premises and made available for inspection by SLA investigators.
- Bartenders, waitresses, waiters, hostesses and/or any persons who handle and receive payment for alcoholic beverages must be at least 18 years old.
- Bus persons and dishwashers who handle containers which have held alcoholic beverages must be at least 16 years old and must be directly supervised by someone at least 21 years old.
- According to Section 260.21 of the Penal Law, persons under the age of 16 must be accompanied by a parent or guardian to enter an on premises establishment.
- Alcoholic beverages must be consumed on the premises.
- Hours of sale are determined by the closing hours in the county where your establishment is located and your license/permit. Be sure you know the proper hours.
- You must have a valid bond in effect at all times.
- Purchases of alcoholic beverages must be made from duly licensed manufacturers and wholesalers. Purchases from retail stores or from any other retail licensee for resale are not permitted.
- Gambling of any type, either professional or social, is not permitted on any licensed premises. Exceptions are the sale of lottery tickets when licensed by the Division of the Lottery and bingo or games of chance when authorized by the State Racing and Wagering Board.

- Refilling or tampering with the contents of any container containing alcoholic beverages is not permitted.
- An alcoholic beverage must be dispensed from the container in which it was received from the wholesaler.
- Any plans to make major physical changes or to substantially alter the licensed premises in any way may require permission from the authority prior to construction.
- Patrons may consume drinks purchased before closing hours up until one-half hour after the legal closing hours.
- To prevent sales to minors, ask for proof. It is a crime to give or sell alcoholic beverages to anyone under the age of 21. You should instruct your employees to check for proof of age before selling any alcoholic beverages. Acceptable documents for identification:
  - Valid New York State driver's license or a valid driver's license from any other state or Canada.
  - Valid identification issued by the New York Department of Motor Vehicles (non-Driver ID card).
  - Valid United States military identification.
  - Valid passport or visa from the United States government or any other country.

<p><b>College ID OR Sheriff's ID Cards are <i>NOT</i> acceptable Proof of Age.</b></p>
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- Have a written policy on what you expect from employees when making alcoholic beverage sales and post the policy for all employees to see.
- Post a "Date Born After" sign in close proximity to all cash registers.
- Establish an ongoing training and education program for all employees.
- Be sure your bartenders, wait staff and clerks understand that they can be arrested for selling alcoholic beverages to minors and/or intoxicated people.
- Support your employees when they refuse to make a sale.
- Encourage responsible drinking when advertising your establishment. Do not use advertising and/or promotions which are designed as inducements for teenagers to drink.

### Recognize the signs of intoxication

Slurred speech  
 Mood swings  
 The smell of alcohol  
 Loud, abusive, profane language  
 Staggering or falling

Res. No. 8

March 13, 2024

To: The Honorable Mayor and City Council

From: Scott Weller, Parks & Recreation Superintendent

Subject: Request for Waiver of Fees for Vendors at the Solar Eclipse Event

On April 8, 2024 the City of Watertown will be in the path of totality for a solar eclipse. City staff and community volunteers have been working to plan a viewing event in Thompson Park for this extremely rare occurrence. Given the rarity of the event, we are requesting that fees be waived for vendors who wish to participate. While we don't see the fee as a significant obstacle, there are several other variables that potential vendors must consider, thus limiting the number of vendors to date. By waiving this fee our hope is that it will encourage more vendors to participate.

# RESOLUTION

Page 1 of 1

Authorizing the Waiver of Vendor Fees for Total Eclipse of the Park to be Held on April 8, 2024.

Council Member KIMBALL, Robert O.  
 Council Member OLNEY III, Clifford G.  
 Council Member RUGGIERO, Lisa A.  
 Council Member SHOEN, Benjamin P.  
 Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

### *Introduced by*

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WHEREAS by City Code there is a Parks & Recreation charge for vendors at City events, and

WHEREAS the City Council has received a request from City Staff that vendor fees be waived for this extremely rare event in order to encourage vendor participation, and

WHEREAS the City Council of the City of Watertown desires to waive the vendor fee for the solar eclipse event to be held on Monday, April 8, 2024, and

WHEREAS the City Code authorizes the City Council, to charge a fee other than what is contained in the City Code,

NOW THEREFORE BE IT RESOLVED that City Manager, Eric F. Wagenaar, and City Staff are hereby authorized to waive vendor fees for Total Eclipse of the Park.

### **Seconded by**

Res No. 9

March 13, 2024

To: The Honorable Mayor and City Council  
From: Eric F. Wagenaar, City Manager  
Subject: Approving Fire Engine Loan Agreement with Black River Fire Department  
Incorporated

The City of Watertown Fire Department has two fire engines that suffer from frame corrosion issues. Engine #2 sees limited reserve service and is awaiting replacement. Engine #5 is scheduled for frame repair and won't be back in service until early April. This has left the department without reliable reserve fire engines. These reserve engines are placed in service when frontline units need service, when needed for special events, and when staffed with recalled personnel for large incidents.

In the interest of maintaining the level of fire service needed by our community, the City has contacted the Black River Fire Department to request the use of one of their fire engines. The attached agreement, if approved, will allow the City of Watertown Fire Department to borrow a fire engine from the Black River Fire Department for a period of up to 6 months for a nominal fee of five dollars. During this period the City hopes to have Engine #5 repaired and secure a replacement for Engine #2. The loaner engine will serve in a reserve capacity and hopefully will see limited service. The attached agreement sets forth the provisions related to insurance and routine maintenance work, which the City will be required to provide. The City is appreciative of the assistance of The Black River Fire Department in helping avoid service disruptions in the event of multiple failures within our fleet.

A resolution for Council consideration is attached.



# RESOLUTION

Page 1 of 1

Approving Fire Engine Loan Agreement with  
Black River Fire Department Incorporated

Council Member KIMBALL, Robert O.

Council Member OLNEY III, Clifford G.

Council Member RUGGIERO, Lisa A.

Council Member SHOEN, Benjamin P.

Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

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

WHEREAS, the City of Watertown Fire Department is currently experiencing operational limitations due to frame corrosion issues on two of its fire engines; and

WHEREAS, these issues have resulted in the department being without reliable reserve fire engines, which are essential for maintaining uninterrupted fire service; and

WHEREAS, in the interest of maintaining the level of fire service needed by the citizens of Watertown, the City has proactively reached out to the Black River Fire Department to request the use of one of their fire engines; and

WHEREAS, the Black River Fire Department has graciously agreed to loan a fire engine to the City of Watertown Fire Department for a period of up to six months for five dollars, under an agreement that outlines provisions related to insurance and routine maintenance work, for which the City will be responsible; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Watertown hereby approves the Agreement with the Black River Fire Department Incorporated, 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 with the Black River Fire Department Incorporated on behalf of the City.

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

## **EQUIPMENT LOAN AGREEMENT**

THIS AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, 2024, by the CITY OF WATERTOWN, NEW YORK, a municipal corporation located at 245 Washington Street, Watertown, NY 13601 (the “City”) and the Black River Fire Department Incorporated (“BRFD”), a private incorporated fire company, 218 LeRay Street, Black River, NY 13612. The City and BRFD are referred to collectively in this Agreement as the “Parties.”

WHEREAS, the City has a temporary need for a reserve fire engine due to maintenance issues with its own fleet; and

WHEREAS, BRFD has agreed to loan a fire engine to the City for the period specified in this Agreement to assist the Watertown Fire Department (“WFD”) in responding to, and mitigating emergency incidents; and

WHEREAS, the Watertown City Council has authorized the City Manager to enter into this Agreement to accept a loan of the Loaned Vehicle from BRFD; and

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. **TERM.** This Agreement shall be effective for six (6) months, beginning on the latest date of execution of the Agreement by the Parties (the “Term”). Either party is permitted to terminate the Agreement upon thirty days (30) written notice to the other party.
2. **LOAN.** BRFD agrees to loan, and the City agrees to accept, a 1994 Pierce Sabre with VIN# 4P1CT02U5RA000255 (the “Loaned Vehicle”) for the purpose of responding to emergency incidents within the WFD services area.
3. **CONSIDERATION.** The City agrees to compensate the BRFD in the amount of \$5.00 for the entire Term of the Agreement.
4. **MAINTENANCE.** The Parties will inspect the Loaned Vehicle prior to execution of this Agreement, and the City agrees to accept the Loaned Vehicle “as is.” The parties shall jointly document any known damage to the Loaned Vehicle prior to the City’s acceptance of possession. The City shall maintain the Loaned Vehicle, as required by BRFD’s preventative maintenance schedule, throughout the Term of this Agreement. The City agrees to return the vehicle in the same condition in which it was received, except the City shall not be liable for normal wear and tear.
5. **INDEMNIFICATION.** The City agrees, at its sole cost and expense, to indemnify, protect, defend, and hold harmless BRFD, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, attorneys’ and experts’ fees) of any kind or nature whatsoever, which may at any time be imposed upon, incurred by, or asserted or

awarded against BRFD relating to, resulting from, or arising out of the negligent or intentional acts or omissions of the City or its agents or employees.

6. **LOANED VEHICLE.** Prior to the commencement of this Agreement, the Loaned Vehicle which is the sole subject of this Agreement is a 1994 Pierce Sabre with VIN# 4P1CT02U5RA000255 and no other. The Parties will inspect the Loaned Vehicle and the City accepts it "as is". The City will maintain the Loaned Vehicle, as required by BRFD's preventative maintenance schedule, throughout the Term of this Agreement. The City agrees to return the vehicle in the same condition in which it was received, normal wear and tear excepted.
7. **INSURANCE.** During the Term of the Agreement, the City shall maintain Automobile Liability Insurance coverage with a limit of liability of at least \$1,000,000 per occurrence for Bodily Injury and Property Damage. BRFD acknowledges that the City is self-insured for General Liability Insurance. The City agrees to carry comprehensive/collision coverage at replacement value (\$1,000,000) on Loaned Vehicle during the Term of the Agreement. The BRFD shall be named as an additional insured on the insurance policies. Protection for the BRFD for General and Automobile Liability shall be on a primary non-contributory basis. The insurance policies shall be amended to eliminate the provisions applicable to the insurance carriers' rights of subrogation as it pertains to the BRFD and all related entities. All insurance will be at the City's sole expense. Drivers of the Loaned Vehicle will be employee(s) of the City, and each shall carry a valid commercial driver's license.
8. **COMPLIANCE.** The parties shall abide by all a laws, ordinances, regulations, and other rules, Federal, State or municipal, as are in any way applicable to the performance of this Agreement.
9. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments, and writings. It shall not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of the Parties.
10. **AUTHORIZATION.** BRFD represents and warrants that it holds the title to the Loaned Vehicle and has the full right, power, and authority to enter into this Agreement, to grant the City the rights and licenses set forth herein, and to perform its obligations hereunder.
11. **NOTICE.** The contact person for each of the Parties hereto will be Joseph Paige, President of the Black River Fire Department Incorporated and Eric Wagenaar, City Manager for the City of Watertown or such other person as designated by either Party in writing.

IN WITNESS WHEREOF, the City of Watertown, New York and the Black River Fire Department Incorporated have executed this Agreement in duplicate.

CITY OF WATERTOWN, NEW YORK

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

Eric Wagenaar, City Manager

BLACK RIVER FIRE DEPARTMENT INCORPORATED

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

\_\_\_\_\_

Ord No. 1

March 12, 2024

To: The Honorable Mayor and City Council

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

Subject: Designating the Zoning Classification of a 0.198-acre Western Section of 414 Lincoln Street, Parcel Number 4-04-221.100 as Residential

On February 21, 2023, the City Council adopted a new Zoning Ordinance for the City of Watertown. This new ordinance created entirely new zoning districts and a new zoning map, with every parcel in the City on the date of adoption receiving a zoning designation in one of the eight newly created districts.

In the case of 414 Lincoln Street, the parcel, as described by its current metes and bounds, only came into legal existence on April 1, 2023, after the City filed its final assessment roll for the year, leaving a significant portion of the parcel un-zoned. This occurred as a result of the City conveying a former paper street to an adjacent property owner, Frederick, A. McWayne.

Planning Staff initiated a request with the Planning Commission to zone the remainder of the parcel as Residential. The Planning Commission reviewed the request at its March 5, 2024 meeting and adopted a motion recommending that City Council approve the zoning designation request as submitted. Attached is the Staff Report prepared for the Planning Commission as well as an excerpt from their meeting minutes.

The Ordinance attached for City Council consideration approves the zoning designation as proposed. The City Council must hold a public hearing on the ordinance before it may vote. Staff recommends that City Council schedule a public hearing for 7:15 p.m. on Monday, April 1, 2024. Staff will also prepare a SEQRA resolution for City Council consideration at that meeting.

# ORDINANCE

Page 1 of 1

Designating the Zoning Classification of an Approximately 0.198-acre Western Section of 414 Lincoln Street, Parcel Number 4-04-211.100 As Residential.

Council Member KIMBALL, Robert O.

Council Member OLNEY III, Clifford G.

Council Member RUGGIERO, Lisa A.

Council Member SHOEN, Benjamin P.

Mayor PIERCE, Sarah V.C.

Total .....

YEA	NAY

***Introduced by***

BE IT ORDAINED where the City of Watertown has made an application by petition filed with the City Clerk, pursuant to Section 83 of the New York General City Law to designate the zoning classification of an approximately 0.198-acre western section of 414 Lincoln Street, Parcel Number 4-04-211.100 as Residential, and

WHEREAS the Planning Commission of the City of Watertown considered the zoning designation request at its March 5, 2024 meeting and adopted a motion recommending that City Council approve the zoning designation, and

WHEREAS a public hearing was held on the proposed zoning designation on April 1, 2024, after due public notice, and

WHEREAS the City Council has made a declaration of Negative Findings of the impacts of the proposed zoning designation according to the requirements of SEQRA, and

WHEREAS the City Council deems it in the best interest of the citizens of the City of Watertown to approve the requested zoning designation,

NOW THEREFORE BE IT ORDAINED that the zoning classification an approximately 0.198-acre western section of 414 Lincoln Street, Parcel Number 4-04-211.100 shall be designated as Residential, and

BE IT FURTHER ORDAINED that the Zoning Map of the City of Watertown shall be amended to reflect the zone change, and

BE IT FURTHER ORDAINED this amendment to the Zoning Ordinance of the City of Watertown shall take effect as soon as it is published once in the official newspaper of the City of Watertown, or otherwise printed as the City Manager directs.

***Seconded by***



# MEMORANDUM

CITY OF WATERTOWN, NEW YORK  
PLANNING AND COMMUNITY DEVELOPMENT DEPARTMENT  
245 WASHINGTON STREET, ROOM 305, WATERTOWN, NY 13601  
PHONE: 315-785-7741 – FAX: 315-782-9014

TO: Planning Commission Members

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

PRIMARY REVIEWER: Geoffrey Urda, Planner

SUBJECT: Zoning Designation Request - 414 Lincoln Street

DATE: February 29, 2024

---

**Request:** To designate the zoning classification of an approximately 0.198-acre western section of **414 Lincoln Street**, Parcel Number 4-04-221.100 as Residential

**Applicant:** City of Watertown

**Owner(s):** Frederick A. McWayne

**SEQRA:** Unlisted

**County review:** No

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**Comments:** On February 21, 2023, the City Council adopted a new Zoning Ordinance for the City of Watertown. This new ordinance created entirely new zoning districts and a new zoning map, with every parcel in the City on the date of adoption receiving a zoning designation in one of the eight newly created districts.

In the case of 414 Lincoln Street, the parcel, as described by its current metes and bounds, only came into existence on April 1, 2023, leaving a significant portion of the parcel un-zoned. Planning Staff recommends zoning the western section of the parcel Residential to create uniform zoning.

This existing condition arises from the timing of formal parcel creation. The un-zoned western section of parcel was formerly a paper street; specifically, the uncompleted northern terminus of Hancock Street. The property owner, Frederick A. McWayne, acquired the lands that formerly composed the paper street in February 2022 and subsequently assembled it in with the rest of his property in April 2022 to form a single parcel. However, new parcels do not formally enter existence until the filing of that year's final assessment roll, thus the April 1, 2023 creation date.

Given this timeline, 414 Lincoln Street (at that time still assigned Parcel Number 4-04-221.000) did not yet contain any portion of the unimproved Hancock Street per the City's formal parcel map on February 21, 2023. Thus, only the parcel as it then existed received a zoning designation. The paper street did not.

When the City then filed its 2023 final assessment roll, the newly assembled parcel formally entered existence on April 1, 2023 essentially as a split-zoned parcel between Residential and un-zoned. This Zoning Designation Request would uniformly zone the parcel Residential.

**Zoning and Comprehensive Plan:** The City's adopted Comprehensive Plan recommends the future land use for this area as Residential Low Density. It is part of a large, approximately 275-acre Residential Low Density Future Land Use Character Area that encompasses much of the central part of the City's north side. The surrounding parcels are all zoned Residential.

Section §20(25) of New York State General City Law, which empowers Cities to enact zoning laws, requires such regulations to be "in accord with a well-considered plan." Per the quoted Code, the Planning Commission must consider whether that request is consistent with the Comprehensive Plan when it makes its recommendation to the City Council.

**SEQR:** Staff has completed a State Environmental Quality Review (SEQR) Short Environmental Assessment Form (EAF) as part of the application for the zone change. The City Council, as the lead agency, will complete Part 2 of the EAF.

**Action:** As amending the Zoning Map is a legislative act, the City Council retains sole authority to adopt amendments. The Planning Commission's role is to make a recommendation to the City Council before the Council acts on the recommended zoning designation.

cc: City Council Members













Meredith Griffin, Civil Engineer II

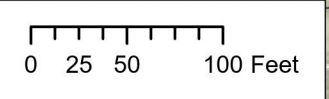
Frederick A. McWayne, 414 Lincoln Street, Watertown, NY 13601

Shawn McWayne, 24571 Crane Lane, Watertown, NY 13601



**Legend**

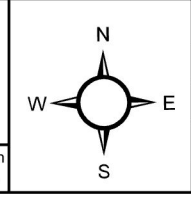
-  Planned Development District
-  City Center Overlay
-  Waterfront Overlay
-  Downtown
-  Residential
-  Neighborhood Mixed Use
-  Urban Mixed Use
-  Commercial
-  Planned Campus
-  Industrial
-  Parks & Open Space
-  REQUESTED ZONE CHANGE



**CITY OF WATERTOWN GIS**  
 245 WASHINGTON STREET  
 2ND FLOOR  
 WATERTOWN, NEW YORK 13601  
 (315) 785-7793  
 gis@watertown-ny.gov

**Not Zoned to Residential**  
**Part of 414 Lincoln St**  
 (4-04-221.100)

The City of Watertown does not warrant, guarantee or accept any liability for the accuracy, precision or completeness of any information shown or described hereon or for any inferences made therefrom. Any use made from this information is solely at the risk of the user.



<b>ZONE CHANGE MAP</b>	
Requested By: G. Urda	
Author: mowen	
Date: 2/27/2024	
Scale : 1 in= 100 ft	

**ZONING DESIGNATION – 414 LINCOLN STREET  
PARCEL NUMBER 4-04-221.100**

The Planning Commission then considered a request for a Zoning Designation submitted by the City of Watertown to designate the approved zoning classification of an approximately 0.198-acre western section of 414 Lincoln Street, Parcel Number 4-04-221-100, as Residential.

Mr. Urda began by saying that this was a City-initiated request. He said that when the City adopted its new Zoning Ordinance in February 2023, the Zoning map created at that time designated a zoning district for every parcel that existed. He then said that when the City subsequently filed its final assessment roll, it resulted in a parcel entering existence on April 1, 2023 without having a zoning designation.

Mr. Urda pointed out that the hatched piece of land on the map (and subject of this request) was formerly a paper street that the City sold to the neighboring property owner. The timing of that sale and the creation of the parcel in GIS and on the assessment roll occurred after the new Zoning map was adopted. Mr. Urda said the hatched parcel is now part of the adjacent property resulting in split zoned land between residential and un-zoned and the city is requesting that the un-zoned land be zoned residential to create uniform zoning on the parcel.

Hearing no further discussion, Ms. Fields made a motion to recommending that the City Council designate the approved zoning classification of an approximately 0.198-acre western section of 414 Lincoln Street, Parcel Number 4-04-221.100, as Residential.

Ms. Godek seconded the motion, all voted in favor.

Mr. Urda noted that the application would be considered by the City Council and they will set a public hearing for their April 1, 2024 meeting following which the Council would be free to vote on the zoning designation.

March 12, 2024

To: The Honorable Mayor and City Council  
 From: James E. Mills, City Comptroller  
 Subject: Sale of Surplus Hydro-electricity – February 2024

The City has received the monthly hydro-electricity production and consumption data from National Grid. In comparison to last February, the sale of surplus hydro-electric power on an actual-to-actual basis was up \$148,883 or 31.19%. In comparison to the budget projection for the month, revenue was up \$327,563 or 109.70%. The year-to-date actual revenue is up \$371,634 or 12.86%, while the year-to-date revenue on a budget basis is up \$490,521 or 17.70%.

	<u>Actual</u> <u>2020-21</u>	<u>Actual</u> <u>2021-22</u>	<u>Actual</u> <u>2022-23</u>	<u>Actual</u> <u>2023-24</u>	<u>Variance</u>	<u>%</u> <u>Inc/(Dec)to</u> <u>Prior Year</u>
July	\$ 1,937	\$ 673,456	\$ 165,435	\$ 380,883	\$ 215,448	130.23%
August	\$ 1,819	\$ 612,155	\$ 157,460	\$ 26,670	(\$ 130,790)	(83.06%)
September	\$ 1,164	\$ 307,692	\$ 442,559	\$ 181	(\$ 442,378)	(99.96%)
October	\$ 117,331	\$ 523,734	\$ 216,702	\$ 184,779	(\$ 31,924)	(14.73%)
November	\$ 410,218	\$ 731,273	\$ 373,674	\$ 682,240	\$ 308,566	82.58%
December	\$ 366,126	\$ 702,586	\$ 533,542	\$ 826,789	\$ 293,247	54.96%
January	\$ 255,650	\$ 293,374	\$ 522,759	\$ 533,340	\$ 10,581	2.02%
February	\$ 175,736	\$ 246,124	\$ 477,279	\$ 626,162	\$ 148,883	31.19%
March	\$ 449,166	\$ 661,611	\$ 612,321			
April	\$ 669,698	\$ 897,945	\$ 872,321			
May	\$ 433,690	\$ 539,059	\$ 471,237			
June	\$ 85,233	\$ 418,974	\$ 234,979			
YTD	\$2,967,768	\$6,604,983	\$5,080,268	\$3,261,044	\$ 371,634	12.86%

	<u>Original</u> <u>Budget</u> <u>2023-24</u>	<u>Actual</u> <u>2023-24</u>	<u>Variance</u>	<u>%</u>	<u>Power</u> <u>Purchased</u> <u>from</u> <u>National</u> <u>Grid</u>
July	\$ 303,717	\$ 380,883	\$ 77,166	25.61%	\$ -
August	\$ 164,291	\$ 26,670	(\$ 137,621)	(83.77%)	\$ 23,562
September	\$ 150,939	\$ 181	(\$ 150,758)	(99.88%)	\$ 30,739
October	\$ 399,149	\$ 184,779	(\$ 214,370)	(53.71%)	\$ -
November	\$ 583,691	\$ 682,240	\$ 98,549	16.88%	\$ -
December	\$ 492,044	\$ 826,789	\$ 334,745	68.03%	\$ -
January	\$ 378,093	\$ 533,340	\$ 155,247	41.06%	\$ -
February	\$ 298,599	\$ 626,162	\$ 327,563	109.70%	
March	\$ 536,386				
April	\$ 820,488				
May	\$ 606,884				
June	\$ 415,719				
YTD	\$5,150,000	\$3,261,044	\$ 490,521	17.70%	\$ 54,301

March 12, 2024

To: The Honorable Mayor and City Council  
 From: James E. Mills, City Comptroller  
 Subject: Sales Tax Revenue – February 2024

Sales tax revenue was up \$2,147 or 0.13% compared to last February. In comparison to the original budget projection for the month, sales tax was down \$14,290 or 0.86%. The year-to-date actual receipts are up \$280,586 or 1.72%, while the year-to-date receipts on a budget basis are up \$117,757 or 0.72%.

	<u>Actual 2020-21</u>	<u>Actual 2021-22</u>	<u>Actual 2022-23</u>	<u>Actual 2023-24</u>	<u>Variance</u>	<u>Monthly % Inc/(Dec)to Prior Year</u>	<u>Quarterly % Inc/(Dec)to Prior Year</u>
July	\$ 1,493,210	\$ 1,948,809	\$ 2,035,333	\$ 2,353,567	\$ 318,234	15.64%	
August	\$ 1,515,827	\$ 1,888,806	\$ 2,008,482	\$ 2,186,214	\$ 177,732	8.85%	
September	\$ 2,783,423	\$ 2,725,797	\$ 2,757,376	\$ 2,490,458	(\$ 266,917)	(9.68%)	3.37%
October	\$ 1,488,167	\$ 1,678,723	\$ 1,847,562	\$ 1,907,106	\$ 59,544	3.22%	
November	\$ 1,331,668	\$ 1,643,509	\$ 1,818,188	\$ 1,904,366	\$ 86,178	4.74%	
December	\$ 2,493,688	\$ 2,374,453	\$ 2,232,223	\$ 2,223,964	(\$ 99,259)	(4.27%)	0.78%
January	\$ 1,290,702	\$ 1,649,030	\$ 1,849,036	\$ 1,851,962	\$ 2,926	0.16%	
February	\$ 1,181,566	\$ 1,429,187	\$ 1,643,774	\$ 1,645,921	\$ 2,147	0.13%	
March	\$ 2,284,533	\$ 2,253,672	\$ 2,041,305				
April	\$ 1,566,858	\$ 2,064,386	\$ 1,888,370				
May	\$ 1,626,958	\$ 2,023,137	\$ 1,835,982				
June	<u>\$ 3,144,514</u>	<u>\$ 1,949,070</u>	<u>\$ 2,566,086</u>				
YTD	<u>\$ 22,201,114</u>	<u>\$23,628,579</u>	<u>\$ 24,614,716</u>	<u>\$ 16,563,558</u>	<u>\$ 280,586</u>	<u>1.72%</u>	

	<u>Original Budget 2023-24</u>	<u>Actual 2023-24</u>	<u>Variance</u>	<u>%</u>	<u>%</u>
July	\$ 2,055,686	\$ 2,353,567	\$ 297,881	14.49%	
August	\$ 2,028,566	\$ 2,186,214	\$ 157,648	7.77%	
September	\$ 2,784,949	\$ 2,490,458	(\$ 294,491)	(10.57%)	2.34%
October	\$ 1,866,037	\$ 1,907,106	\$ 41,069	2.20%	
November	\$ 1,836,370	\$ 1,904,366	\$ 67,996	3.70%	
December	\$ 2,346,455	\$ 2,223,964	(\$ 122,491)	( 5.22%)	( 0.22%)
January	\$ 1,867,527	\$ 1,851,962	(\$ 15,565)	(0.83%)	
February	\$ 1,660,211	\$ 1,645,921	(\$ 14,920)	(0.86%)	
March	\$ 2,061,718				
April	\$ 2,147,581				
May	\$ 2,104,669				
June	<u>\$ 2,025,231</u>				
YTD	<u>\$ 24,785,000</u>	<u>\$ 16,563,558</u>	<u>\$ 117,757</u>	<u>0.72%</u>	

To: The Honorable Mayor and City Council

From: Michael A Lumbis, Planner and Community Development Director

Subject: 2023 Annual Urban Forestry Program Update

On March 21, 2024, the City of Watertown anticipates receiving the designation of a 2023 Tree City USA by the National Arbor Day Foundation, in cooperation with the New York State Department of Environmental Conservation. This important recognition marks the 24<sup>th</sup> consecutive year that the City has met or exceeded the Tree City USA standards, that include: 1) Maintaining a tree board or department, 2) Having a community tree ordinance, 3) Spending at least \$2 per capita on urban forestry, and 4) Celebrating Arbor Day.

This report outlines the City's 2023 Urban and Community Forestry Program's achievements, projects, and initiatives undertaken during the past year. The City's Urban and Community Forestry Program, administered by the Planning and Community Development Department, focuses on annual tree planting, pruning and maintenance, and the necessary removal of City-owned trees. City Planner, Michael J. DeMarco, an ISA Certified Arborist, serves as the City's urban forestry coordinator, and is supported by other Planning and Community Development staff.

The City of Watertown's Community Forestry Program, funded through various sources, showcased a range of impactful projects and collaborations in 2023. The Department of Public Works and other qualified vendors played essential roles in planting, pruning, maintaining, and removing trees; ensuring more livable neighborhoods, and safer parks and playgrounds.

The following initiatives highlight the City's commitment to community safety, environmental stewardship, and the development of a resilient urban forest.

1) Community Forestry Projects:

- *Young and Small Tree Pruning Program:* Approximately 1,000 trees pruned by DPW, with a focus on westside neighborhoods, playgrounds, and parks.
- *ARPA Funded Tree Pruning Project:* Contracted pruning of over 50 mature trees to enhance public safety and prolong tree life.
- *Emerald Ash Borer (EAB) Management:* Strategic removal of 69 ash trees and treatment of 91 ash trees to slow the spread of EAB and reduce future removal costs.
- *Tree Removal Project:* Removal of 60 dead, dying, or potentially hazardous trees of various species.
- *Annual Spring and Fall Tree Planting Projects:* Funded through local grant matches and city allocations, 120 trees were planted at various locations involving community volunteers, school districts, organizations, City Council and staff, area partners, and contractors.
- *CDBG Tree Planting Project:* 39 trees planted in the NW section of the City.

- *Training:* DPW Forestry staff recertified their Line Clearance Certificate with ACRT, Inc., ensuring competence in working near potentially energized lines, in addition to a safety training with Burrville Power Supply for added equipment related experience.

## 2) Collaborative Efforts:

- *Leadership:* Planner, Mike DeMarco, accepted a two-year term as Vice-President of the New York State Urban Forestry Council.
- *Vandalism Response:* Pursuit of restitution for a vandalized tree, emphasizing accountability for unauthorized tree damage.
- *National Grid Collaboration:* Over 60 volunteer hours dedicated to hazard mitigation pruning in Bicentennial Park. Anticipation of grant reimbursement exceeding \$2,500 for planting suitable tree species beneath powerlines.
- *Invasive Species Awareness Week:* Collaboration with SLELO-PRISM for a guided tour of the Downtown Arboretum to raise awareness of invasive threats.
- *Urban and Community Forestry Society:* Planner Mike DeMarco presented Watertown's program strengths in the organization's Learning Series.
- *Arbor Day Observance:* Tree Watertown's 26th Annual Arbor Day Observance, planting a bur oak tree in honor of former Mayor T. Urling Walker at First Presbyterian Church.

As outlined in the City's 2018 Tree Management Plan, the collective annual monetary benefit of all city-owned trees is reported at \$715,343. Additionally, the estimated replacement value for trees across the entire city surpasses \$20 million. These calculations were determined using i-Tree, a tree benefit software developed by the USDA Forest Service. The figures underscore the substantial economic and environmental contributions of the city's tree canopy, emphasizing the importance of strategic tree management and preservation efforts.