

**CITY OF WATERTOWN, NEW YORK**

**AGENDA**

**Monday, May 16, 2022**

**7:00 p.m.**

This shall serve as notice that the next regularly scheduled meeting of the City Council will be held on Monday, May 16, 2022, at 7:00 p.m. in the City Council Chambers, 245 Washington Street, Watertown, New York.

**MOMENT OF SILENCE**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**ADOPTION OF MINUTES**

**COMMUNICATIONS**

**PRIVILEGE OF THE FLOOR**

**RESOLUTIONS**

- Resolution No. 1 - Approving Agreement for Flat Fee Use of Watertown Municipal Arena – Italian American Civic Association
- Resolution No. 2 - Accepting Bid for William T. Field Drive Reconstruction Project, CCI Companies Inc
- Resolution No. 3 - Approving Agreement for Public Benefit Services with Thompson Park Conservancy, Inc. – Phase 1 Design
- Resolution No. 4 - Approving the Contract with Behan Planning And Design for the Update to the Draft Local Waterfront Revitalization Program
- Resolution No. 5 - Accepting Bid for WWTP Biosolid Disposal Services, New England Waste Services of ME, Inc
- Resolution No. 6 - Accepting Bid for CDBG Thompson Park ADA Ramps Repair Project, Concrete Slipform, Inc
- Resolution No. 7 - Approving the Professional Service Agreement for the Division Street East and Thompson Street Water Main Project, Barton and Loguidice

- Resolution No. 8 - Authorizing Sale of Real Property, Known as 330 Brett Street to David E. Stevens, 951 Gotham Street, Watertown, New York 13601
- Resolution No. 9 - Authorizing Sale of Real Property, Known as 330 Coffeen Street to Alexander J. Arines Garcia, 170 31<sup>st</sup>, Apartment 4F, Brooklyn, New York 11226
- Resolution No. 10 - Authorizing Sale of Real Property, Known as M24 Francis Street to Doreen Salerno, 238 Francis Street, Watertown, New York 13601
- Resolution No. 11 - Authorizing Sale of Real Property, Known as VL Haven Street to Brian Watson, 17481 US Route 11, Lot 8K, Watertown, New York 13601
- Resolution No. 12 - Authorizing Sale of Real Property, Known as 512 Jefferson Street to A. Brown Properties LLC, 248 High Street, Watertown, New York 13601
- Resolution No. 13 - Authorizing Sale of Real Property, Known as 428 Maple Avenue to Anthony Soto, 247 High Street, Watertown, New York 13601
- Resolution No. 14 - Authorizing Sale of Real Property, Known as 39 Wise Street to Warren Kellogg LLC, 800 Starbuck Avenue, Suite AB100, Watertown, New York 13601
- Resolution No. 15 - Authorizing Sale of Real Property, Known as 40 Wise Street to Warren Kellogg LLC, 800 Starbuck Avenue, Suite AB100, Watertown, New York 13601
- Resolution No. 16 - Authorizing Sale of Real Property, Known as VL-6 Wyoming Avenue to Brian Watson, 17481 US Route 11, Lot 8K, Watertown, New York 13601

## **ORDINANCES**

## **LOCAL LAW**

## **PUBLIC HEARING**

7:15 p.m.

2022-23 Operating Budgets and 2022-23 through 2026-27 Capital Budget

7:15 p.m.

Proposed Local Law No. 1 of 2022 - A Local Law  
Overriding the Tax Levy Limit established by New York  
General Municipal Law §3-c

**OLD BUSINESS**

Tabled

Resolution Proposing an Open-Door Employee Policy

**STAFF REPORTS**

1. Adjournment for Budget Adoption
2. Crow Management Program – Annual Report

**NEW BUSINESS**

**EXECUTIVE SESSION**

**WORK SESSION**

Next Work Session is scheduled for Monday, June 13, 2022, at 6:00 p.m.

**ADJOURNMENT**

**NEXT REGULARLY SCHEDULED CITY COUNCIL MEETING IS MONDAY,  
JUNE 6, 2022**

Res No. 1

May 2, 2022

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Agreement for Flat Fee Use of Watertown Municipal Arena - Italian American Civic Association

An agreement for the use of the Municipal Arena by the Italian American Civic Association for this year's BRAVO Italiano Festival has been drafted. The festival will be held on August 25-29. The proposed fee is \$3,500. This returns the fee to what it was before last year when they were given a \$1,000 reduction, because of COVID.

A resolution approving the Agreement is attached for Council consideration.

**RESOLUTION**

Page 1 of 1

Approving Agreement for Flat Fee Use of Watertown Municipal Arena – Italian American Civic Association

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

Total .....

YEA	NAY

***Introduced by***

\_\_\_\_\_

WHEREAS the Italian American Civic Association (“Association”) plans an annual Bravo Italiano Festival each year with a weekend of events for the community, and

WHEREAS the Association has made the Watertown Arena their permanent home for this annual event, and

WHEREAS the Association has requested a flat fee of \$3,500 for the use of the Arena for the 2022 Festival,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves the Agreement for Flat Fee Use of Watertown Municipal Arena between the City of Watertown and Italian American Civic Association with a fee of \$3,500, 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 sign the Agreement on behalf of the City Council.

***Seconded by***

## CITY OF WATERTOWN

### AGREEMENT FOR FLAT FEE USE OF WATERTOWN MUNICIPAL ARENA

This Agreement is being made and is intended to be effective as of \_\_\_\_\_, 2022 between City of Watertown, with an address of 245 Washington Street, Watertown NY 13601 (“City”) and the Italian American Civic Association (“Association”), with an address of 192 Bellew Avenue Watertown NY 13601.

#### RECITALS

WHEREAS, for a number of years, the Association has scheduled the use of Watertown Municipal Arena for BRAVO Italiano Festival;

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 seeks to schedule the use of the Arena from August 25<sup>th</sup> – 29<sup>th</sup> for the 2022 festival.
2. The fee to be charged the Association by the City for use of the Arena shall be \$3,500.
3. The Association agrees to provide the city with all applicable licenses, including but not limited to those required by NYS Department of Health and NYS Liquor Authority.
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 throughout the event. Parks and Recreation staff will provide general cleanup at the end of the event. The City reserves the right to require the Association to obtain a dumpster, and to charge for additional services, including services necessary for clean up after the event.
7. The Association must conform to all New York State Fire and Building codes and regulations, as well as the City of Watertown Ordinances, rules, and regulations.

ITALIAN AMERICAN CIVIC ASSOCIATION

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By: James Scordo  
President

CITY OF WATERTOWN

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By: Kenneth Mix  
City Manager

Res No. 2

May 6, 2022

To: The Honorable Mayor and City Council  
From: Dale Morrow, Purchasing Manager  
Subject: Bid #2022-13 William T. Field Drive Reconstruction Project  
Letter of Recommendation

The City's Purchasing Department advertised in the Watertown Daily Times on April 6, 2022, calling for sealed bids from qualified bidders for the William T. Field Drive Reconstruction Project, per City specifications.

The William T. Field Drive Reconstruction Project was part of the 2021-2022 Capital Budget, page 327 budgeted at \$320,000.

The Purchasing Department issued Invitations to Bid to (53) fifty-three contractors. The City received four (4) sealed bid submittals. The Purchasing Department publicly opened and read the sealed bids on May 3, 2022, at 2:00 pm local time. The bid tabulation for the bid is shown below.

William T Field Road Reconstruction Project	Barrett Paving Materials Inc	Luck Brothers Inc	JL Excavation LLC	CCI Companies Inc
	Watertown, NY	Plattsburgh, NY	Chaumont, NY	Canastota, NY
Total Price	\$356,883.25	\$411,686.74	\$351,056.00	\$333,982.00

The Purchasing Department and the Engineering Department reviewed the responses to ensure that they complied with the specifications.

Staff recommends that City Council award the bid for the William T. Field Drive Reconstruction Project to CCI Companies Inc as the lowest responsive responsible bidder at total price of **\$333,982**. The \$13,982 over the budget amount will be paid through a transfer from the Contingency account.

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

**RESOLUTION**

Page 1 of 1

Accepting Bid for William T.  
Field Drive Reconstruction Project,  
CCI Companies Inc

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

YEA	NAY

***Introduced by***

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WHEREAS the City Purchasing Department has advertised and received sealed bids for William T. Field Drive Reconstruction Project in Watertown, New York, as per City specifications, and

WHEREAS bid invitations were also issued to qualified bidders with four (4) sealed bids submitted to the Purchasing Department, and

WHEREAS on Tuesday, May 3, 2022, at 2:00 p.m., the bids received were publicly opened and read, and

WHEREAS City Purchasing Manager Dale Morrow reviewed the bids received with the Engineering Department, and it is their recommendation that the City Council accept the bid submitted by CCI Companies Inc, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown accepts the bid of CCI Companies Inc in the amount of \$333,982, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to sign all contracts associated with implementing the award to CCI Companies Inc.

***Seconded by***

FISCAL YEAR 2021-2022  
 CAPITAL BUDGET  
 FACILITY IMPROVEMENT  
 WASTEWATER TREATMENT FACILITY

PROJECT DESCRIPTION	COST
<p><b>Access Road Rehabilitation</b></p> <p>This project will rebuild a portion of William T Field Drive which serves as the main access route into the Pollution Control Facility. The current roadway width of 20' has resulted in significant deterioration of the roadway edges from the continual heavy truck traffic that utilizes the facility. The scope of work involves design/construction of a new, full depth 26' wide pavement section with 2' shoulders to accommodate the heavier truck traffic. Edge drainage will be installed as required along with consideration of either curbing, fencing or guiderail to provide a buffer from the adjacent playing fields.</p>  <p style="text-align: center;">WILLIAM T FIELD DR</p> <p>Funding to support this project will be from a transfer from the Sewer Fund (G.9950.0900).</p>	<p><b>\$320,000</b></p>
<b>TOTAL</b>	<b>\$320,000</b>

Res No. 3

May 10, 2022

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving Agreement for Public Benefit Services with Thompson Park Conservancy, Inc. – Phase 1 Design

The City Council allocated \$75,000 from American Rescue Plan Act funds for design of Phase 1 of the Zoo New York Master Plan by resolution re-adopting the Budget on March 21, 2022. The Thompson Park Conservancy has contracted with GYMO for the design services. A Public Benefit Services Agreement with the Conservancy is required to transfer the funds to them, and one has been drafted.

A resolution approving the Agreement is attached for Council consideration.

# RESOLUTION

Page 1 of 1

Approving Agreement for Public Benefit Services with Thompson Park Conservancy, Inc. – Phase 1 Design

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by***

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WHEREAS City of Watertown, owns the facility known as Thompson Park, located in the City of Watertown, County of Jefferson, State of New York, and

WHEREAS the City has entered into an Agreement with Thompson Park Conservancy, Inc., to lease certain premises located at the Park for the operation of the “Zoo New York”, and

WHEREAS the City of Watertown has provided both financial and in-kind services in support of the Thompson Park Conservancy, and

WHEREAS the City Council has determined that it is in the best interest of the taxpayers of the City of Watertown to provide direct support to the Thompson Park Conservancy to assist with schematic designs for Phase 1 of the Zoo New York Master Plan,

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 the Thompson Park Conservancy, Inc., 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 this Agreement on behalf of the City of Watertown.

***Seconded by***

**AGREEMENT FOR PUBLIC BENEFIT SERVICES**

**BETWEEN**

**THE CITY OF WATERTOWN, NEW YORK**

**and**

**THOMPSON PARK CONSERVANCY, INC.**

This Agreement made this \_\_\_\_ day of May, 2022, by and between the City of Watertown, New York (the “City”) and Thompson Park Conservancy, Inc. (“the Conservancy”).

**PREAMBLE**

WHEREAS the City owns a public park known as Thompson Park located in the City of Watertown; and

WHEREAS the Conservancy currently leases certain premises located in Thompson Park for its operation of the “Thompson Park Zoo,” also known as the “New York State Zoo at Thompson Park,” pursuant to a lease agreement between the parties effective July 1, 2020; and

WHEREAS the City provides both financial and in-kind services in support of the Conservancy’s operations including, but not limited to, leasehold concessions which benefit City-owned buildings within the leased premises and maintenance of those buildings as being City property; and maintenance of grounds which the City would otherwise maintain but for the Conservancy’s Lease; and

WHEREAS the Conservancy has evidenced a long-standing commitment to the promotion of education, amusement, and recreation of the citizens of the City and has many programs dedicated to the overall public good; and

WHEREAS the work of the Conservancy 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 an agreement with the Conservancy 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;”

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 Conservancy shall obtain the services of a qualified architect and/or engineer to schematically design the improvements referred to as Phase I of the Zoo New York Master Plan.

**Article II** ELIGIBLE ACTIVITIES. Eligible activities of the Conservancy which shall be considered reimbursable by the City as promoting a public purpose involve design services including: a survey, site development plan, coordination with an adventure park consultant, and schematic design.

**Article III** TERM OF THIS AGREEMENT. The term of this Agreement shall be from May 1, 2022 through April 30, 2023.

**Article IV** MANNER OF PAYMENT.

- a. The City agrees to provide Seventy-five Thousand Dollars (\$75,000.00) to the Thompson Park Conservancy for the term specified above.
- b. Payment shall be made by the City Comptroller as reimbursements for documented expenditures. Payments will only be made upon the City's receipt of a fully executed copy of this Agreement.

**Article V** PROVISIONS OF LAW. All provisions of law required to be made as part of this Agreement are hereby deemed incorporated herein. Performance of the terms and conditions of this Agreement shall be subject to, and in conformance with, all applicable laws.

**Article VI** ANNUAL REPORT. The Conservancy will provide the City of Watertown with a copy of its annual financial report. If not included in the annual financial report, an additional report shall be submitted which details the services provided by the Conservancy pursuant to this Agreement, inclusive of a detail of expenditures made for eligible activities, to the citizens of Watertown.

**Article VII** TERMINATION OF AGREEMENT. This Agreement may be terminated by either party, at any time, by the delivery to the other party of a written notice of termination of the Agreement, stating in good faith and for good and valid reasons why such party is unable to comply with and carry out the terms and substantive obligations of the Agreement in a meaningful manner. In the event of such termination, the City and the Conservancy shall perform such services and pay such monies as are necessary to carry out their respective obligations under the Agreement up to the date of termination of the Agreement. Any notice shall be delivered in person or by first class mail, return receipt requested, as the address of such party as hereinafter set out.

**Article VIII** EXTENT OF AGREEMENT. This Agreement represents the entire Agreement between the City and the Conservancy. This Agreement may be amended only by written instrument signed by both parties and such amendment shall be attached to this Agreement.

**Article IX** NOTICES. 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 or delivered in person to:

THE CITY:

City Manager  
City of Watertown  
245 Washington Street  
Suite 302  
Watertown, New York 13601

THOMPSON PARK CONSERVANCY, INC.:

Thompson Park Conservancy, Inc.  
1 Thompson Park  
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 Thompson Park Conservancy, Inc. have caused this Agreement to be executed by authorized agents to be effective as of the date heretofore written.

The City of Watertown

Thompson Park Conservancy, Inc.

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

\_\_\_\_\_  
By: Lawrence J. Sorel, Executive Director/CEO

May 5, 2022

To: The Honorable Mayor and City Council

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

Subject: Approving the Contract with Behan Planning and Design for the Update to the Draft Local Waterfront Revitalization Program

The City's current Local Waterfront Revitalization Program (LWRP) Plan has been in draft form since it was finalized in 2010. The Plan was never adopted by City Council and is therefore still considered to be a draft plan. The LWRP must be adopted by City Council to make the City eligible for grants to implement the recommendations within the plan.

Since the plan was drafted more than a decade ago, there have been many changes in the City, especially along the riverfront. To ensure that the goals and projects meet the City's current vision for the future, the LWRP document must be updated before being adopted.

At the direction of the City Council, staff applied for and received a grant from the New York State Department of State to complete the update. The grant will cover approximately eighty percent of the cost. The remaining twenty percent will be paid using funds previously budgeted as match as well as funds that will not be utilized in this fiscal year for grant writing services, training, and a vacant secretary position.

On January 27, 2022, City Staff issued a Request for Proposals (RFP) for the project. The RFP was sent to local firms, a statewide email list of planning, engineering, and consulting firms and the NYS Contract Reporter. Four (4) firms submitted proposals to the Purchasing Department, which Staff opened on March 4, 2022, at 4:00 p.m., local time.

The proposals were reviewed by staff from the City's Planning Department for compliance with the RFP. All four (4) firms provided acceptable proposals, however only one firm had extensive experience with the LWRP process. Behan Planning and Design is the same firm that wrote the City's current draft LWRP, and staff felt they were the most qualified to do the update to the plan.

Behan Planning and Design has prepared the attached contract with the City for the Update to the Draft LWRP Project in the amount of \$60,000 for City Council consideration. The City Attorney has reviewed the contract and has found it to be acceptable. The attached resolution approves the contract and authorizes the Mayor to execute it on behalf of the City.

**RESOLUTION**

Page 1

Approving the Contract with Behan Planning And Design for the Update to the Draft Local Waterfront Revitalization Program

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by***

WHEREAS the City’s current Local Waterfront Revitalization Program (LWRP) Plan has been in draft form since it was finalized in 2010, and

WHEREAS the LWRP must be adopted by City Council in order to make the City eligible for grants to implement the recommendations within the plan, and

WHEREAS since the Plan was drafted more than a decade ago, an update is needed to ensure that the goals and projects meet the City’s current vision for the future, and

WHEREAS the LWRP Update is being paid for with a grant received from the New York State Department of State, funds previously budgeted for this purpose and funds that will not be utilized in this fiscal year for grant writing services, training and a vacant secretary position, and

WHEREAS on January 27, 2022 the City issued a Request for Proposals (RFP) and four (4) proposals were submitted to the City’s Purchasing Department on March 4, 2022, and

WHEREAS a proposal review committee reviewed the proposals and determined that Behan Planning and Design was the most qualified and has the proven ability to complete the plan,

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown, New York, hereby approves the contract between Behan Planning and Design and the City of Watertown, a copy of which is attached and made part of this resolution, to complete the Update to the Local Waterfront Revitalization Program Project for an amount not to exceed \$60,000, and

BE IT FURTHER RESOLVED that the Mayor is hereby authorized and directed to execute the contract on behalf of the City.

***Seconded by***



American Society of  
Landscape Architects

**STANDARD SHORT FORM CONTRACT  
FOR PROFESSIONAL SERVICES BETWEEN  
LANDSCAPE ARCHITECT AND CLIENT**

**Preliminary Provisions**

**Date**

This Agreement is made as of May 16, 2022 \_\_\_\_\_, ~~2021~~, between the Client and Landscape Architect for the Landscape Architectural Services as provided herein.

**Client**

City of Watertown

NAME

245 Washington Street, c/o Planning Department, Suite 304 Watertown, NY 13601

ADDRESS / CITY / STATE / ZIP

RELATIONSHIP TO PROJECT OWNER

**Landscape Architect**

Behan Associates Landscape Architecture, DPC, dba Behan Planning and Design

NAME

ENTITY

SOLE PROPRIETOR  PARTNERSHIP  CORPORATION  LIMITED LIABILITY COMPANY

112 Spring Street, Suite 305, Saratoga Springs, NY 12866

ADDRESS / CITY / STATE / ZIP

John J. Behan, AICP. 518-583-4335, jbehan@behanplanning.com

CONTACT INFORMATION

**Project**

*(general description of Project: name, purpose, baseline information)*

Update to the draft local waterfront revitalization program for the Black River

**Compensation**

Compensation for the Scope of Services performed under this Agreement shall be the  
Stipulated sum of \$ 60,000 plus ~~Reimbursable Expenses~~.



**Article 1**  
**Landscape Architectural Services**

**1.1 Standard of Care**

The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the Project and appropriate for a project of the nature and scope of this Project.

**1.2 Scope of Services**

Landscape Architectural Services to be provided under this Agreement are:

See attached

**1.3 Supplemental Services**

Supplemental Services are in addition to the basic Scope of Services and, when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation beyond the Compensation stated above. Supplemental Services under this Agreement expressly include but are not limited to:

See attached

**1.4 Changes to Approved Services**

Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous Project budget parameters or Project requirements.

**1.5 Schedule of Performance**

The Client's signature on this Agreement shall be the basis for the Landscape Architect to begin providing services for the Project. The Landscape Architect shall perform the services as expeditiously as is consistent with the standard of care described in section 1.1, above.



# American Society of Landscape Architects

## **Article 2 Client's Responsibilities**

### **2.1 Information**

The Client shall provide data about the site and other information on which the design is to be based as well as Client's budget parameters for the Project. The Landscape Architect shall be entitled to rely on the accuracy and completeness of information provided by the Client.

### **2.2 Budget**

The Landscape Architect shall reasonably strive to propose designs and prepare documents consistent with the Client's budget parameters. If provided by the Landscape Architect as a part of the Scope of Services, opinions of probable construction costs are based on the Landscape Architect's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning. Such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated.

### **2.3 Approvals**

The Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services.

### **2.4 Project Permit and Review Fees**

The Client shall pay all fees required to secure jurisdictional approvals for the Project.

## **Article 3 Ownership of Documents**

The Landscape Architect shall be deemed the author and owner of all documents and deliverables developed pursuant to this Agreement and provided to the Client by the Landscape Architect (collectively, the "Design Materials"). Subject to payment by the Client of all fees and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project.

## **Article 4 Landscape Architect Compensation**



## American Society of Landscape Architects

**4.1** Compensation for the Landscape Architectural Services performed under this Agreement shall be as indicated in the Preliminary Provisions plus Reimbursable Expenses as defined below. Supplemental Services, when requested in writing by the Client, shall require additional compensation to be determined on an hourly basis or on the basis of a negotiated fee.

**4.2** Reimbursable Expenses are expenditures made by the Landscape Architect, its employees, and consultants in the interest of the Project plus an administrative fee of 0%. Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of contracting, and other, similar, direct Project-related expenditures.

**4.3** Monthly payments to the Landscape Architect shall be based on (1) the percentage of the Scope of Services completed, and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.

**4.4** Payments are due and payable 30 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and shall accrue 0% simple interest per month. At the Landscape Architect's option, overdue payments may be grounds for termination or suspension of services.

**4.5** If through no fault of the Landscape Architect, the Scope of Services to be provided under this Agreement has not been completed within schedule per scope of services (indicate calendar days or months) of the initial notice to proceed, the compensation for services rendered after that time period shall be equitably adjusted.

### **Article 5 Indemnification**

Client and Landscape Architect each agree to indemnify and hold harmless the other, and their respective officers, employees and representatives, from and against liability for losses, damages, and expenses, including reasonable attorney's fees, to the extent such losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event losses, damages, or expenses are caused by the joint or concurrent negligence of Client and Landscape Architect, they shall be borne by each party in proportion to its negligence.

### **Article 6 Dispute Resolution**

**6.1** If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions. If the dispute has not been settled within 14 days of the initial discussions, the parties shall submit the dispute to mediation, the cost of which shall be shared equally by the parties.



6.2 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

**Article 7  
Termination**

This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

**Article 8  
Other Terms and Conditions**

**8.1 Assignment**

Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

**8.2 Governing Law**

The law in effect at the Landscape Architect's principal place of business shall govern this Agreement.

**8.3 Complete Agreement**

This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement may be amended only in a writing signed by both the Client and the Landscape Architect.

*Landscape Architect*

**John J. Behan** Digitally signed by John J. Behan  
Date: 2022.05.03 10:06:58 -04'00'

John Behan

May 3, 2022

Date

*Client*

Date

# SCOPE OF WORK

## ***Project Approach***

Behan Planning and Design's team will collaborate with the city planning staff and local and regional constituents to document the opportunities and constraints to waterfront revitalization into a strategic plan of action. We will tap into the ongoing initiatives and look forward to continued transformation of the Black River shoreline as a recreational, environmental and economic asset.

We will consider the substantial existing local planning and design work that has been completed to date as a foundation for our efforts and as a point of departure to advance the program. We have followed the city's progress in planning including the downtown revitalization initiative, the comprehensive plan adopted in 2019, the Sewall's Island and Factory Square redevelopment plan and the ongoing major update to the zoning ordinance. We, of course, have a working knowledge of the issues present, as our company completed the Draft Local Waterfront Revitalization Program (LWRP) in 2010 and more recently were consulting team members in the downtown-riverfront connections study. We will use our unique cooperative community planning approach to create an updated LWRP that reflects the local needs and opportunities.

## ***Task 1: Project Kickoff***

The Behan Planning and Design team will lead a kick-off meeting with the the City of Watertown and the Department of State (NYSDOS) to discuss project requirements, site conditions, and roles and responsibilities; identify new information needs and next steps; and transfer any information to the consultant(s) which would assist in completion of the project. We will prepare a meeting agenda in collaboration with city staff including the creation of the Waterfront Advisory Committee. Either prior to or as part of this kick-off, we will tour the waterfront area with local representatives to learn the latest on the issues and opportunities for the area.

Behan Planning and Design will prepare and distribute a brief meeting summary clearly indicating the agreements/understandings reached at the meeting. Work on subsequent tasks will proceed with approval by NYSDOS of the proposed approach as outlined in the meeting summary.

Subsequent to the kick-off meeting, we will establish a schedule of meetings between the consultant and the Waterfront Advisory Committee in collaboration with the city's designated project manager and will assist the city in the formation of the committee, if desired. We will coordinate our work with the city's project manager to monitor progress and status of the project, answer questions, deal with logistics, and coordinate the consultant work with city. We suggest interim conference calls with the city's project manager to coordinate efforts in between committee and other meetings.

***Products:*** Project kick-off meeting held with the consultant and committee. Written meeting summary notes outlining agreements/understandings reached. Waterfront Advisory Committee list.

## ***Task 2: Preparation of a Community Outreach Process and Plan***

Behan Planning and Design, in cooperation with the city staff and the Waterfront Advisory Committee, will prepare a method and process to encourage community participation in the development of the revitalization program. We will host a series of public meetings during the plan development to engage local residents and stakeholders in the process to ensure this program reflects community perspectives.

Due to the unpredictability of public health restrictions associated with COVID 19, online and other non-contact public outreach and engagement activities can be implemented to replace in-person public meetings and similar events as needed. Our company has been successfully designing public involvement plans for LWRP processes during the COVID-19 pandemic and will use that experience when necessary.

Behan Planning and Design will prepare a public involvement program in collaboration with the city that outlines the various ways people can participate in the formulation of the updated LWRP. We will identify

key organizations and entities to be involved and identify the waterfront visioning process and the roles and responsibilities in coordinating the entire outreach process, logistics, and the proposed schedule of public meetings, on-line resources and each of the ways for interested citizens to engage in the planning process. All public meetings will be publicized in the community through press releases, announcements, and any other appropriate means in an attempt to maximize involvement. A summary of each public outreach session will be made available for public review. Behan Planning and Design will prepare a draft public engagement program for review by the city and the NYSDOS and will finalize the program for publication and distribution so the local community can fully understand the myriad ways to participate in the process.

Behan Planning and Design will help manage the outreach process. We will collaborate with the city to conduct stakeholder outreach in as inclusive a manner as possible. Our approach to public participation is to allow for several levels of participation by the community in a variety of settings. The following outline details the range and diversity of community outreach and public participation that will be considered for deployment:

A. Online survey. In our experience, we have found that in order to solicit a high response rate and meaningful input to community surveys it is best if they are brief, clearly written, easy to find and easy to return. For the updated LWRP an on-line survey will be considered for city-wide input. The consultant team will be responsible for development of the questionnaire and analysis of results presented within a summary report.

B. Dedicated website/link to city website with meeting information, plan materials, and important contact information. An easy to find web link on the city (and if desired, county) web site that includes all of the relevant information about the project can be especially useful and serve as a clearinghouse for project materials such as meeting announcements, minutes, power point presentations, draft reports, and contact information. We will collaborate with the city to integrate the updated LWRP information into local access portals. Behan Planning and Design can provide content for the local sites as material and communications are developed.

C. Newsletters and project update mailings. Similar to other methods, newsletters can help keep the public updated regarding progress, meetings, and other announcements. These can be mailed, posted on the web, and made available at key locations such as libraries and government offices. We propose to develop three print/email-ready newsletters (project kick-off, update #1, and a draft plan summary newsletter; printable on one-sheet 8.5 x 11 paper, two-sided.). We can also provide print-ready flyers to be posted at city buildings and other areas within the city announcing the waterfront planning public meeting and the presentation of the draft waterfront plan.

D. Press releases and media outreach. Keeping the media involved and knowledgeable regarding planning process, progress, and meetings is an important component of public outreach. Our team can work with the city to develop a series of press releases at key points in the process to ensure news media are kept apprised of the planning efforts and can report on the work being conducted.

E. Charrettes/public meetings and presentations events. These are the “main events” of the planning process. Our public meetings are always uniquely tailored to the specific needs of our client communities. We encourage an active and engaging process where participants may work in small groups with maps, aerial photographs, and other materials to help guide planning recommendations or where they are provided a chance to record their “vote” on a design preference or sketch out a place where public improvements would be recommended.

The city would assist in convening these meetings—inviting participants, arranging meeting venues, etc. The city will identify other partners that can assist with creating public involvement in the project and will outreach to these groups to solicit participation. The city could explore finding a local educational/environmental/nonprofit partner(s) to ensure a robust public outreach program is achieved.

**Products:** Community outreach plan, meeting agendas, maps, materials and presentations as needed for meetings, meeting notes.

### ***Task 3: Revision of Section I - Waterfront Revitalization Area Boundary***

As necessary, the consultant(s), in cooperation with the city and the Waterfront Advisory Committee shall

update the narrative description and map of the waterfront revitalization area which includes surface waters and underwater lands.

**Products:** Updated Section I- Waterfront Revitalization Area, including narrative and map(s), accepted by the city, committee and NYSDOS.

#### **Task 4: Revision of Section II - Inventory and Analysis**

As necessary, the consultant(s), in cooperation with the city and the Waterfront Advisory Committee shall update the inventory and describe existing natural and built resources and conditions within the waterfront revitalization area. The inventory and analysis will be broad enough to ensure consideration of important waterfront resources, problems, and opportunities and detailed enough to support development of a specific and realistic LWRP.

The inventory and analysis will rely on recent comprehensive planning, zoning, hazard mitigation, riverfront parks and Downtown Revitalization Initiative (DRI) completed by the city, as well as available published data (e.g., GIS, natural resources inventories, FEMA maps, coastal/local flood data, sea level rise mapping, historic resource inventories, economic development reports, state, county and city databases, available topographic surveys, etc. and not including new empirical data development such as a new topographic survey, historic structures report, archaeological study or testing, etc.) All compulsory topics will be addressed.

**Products:** Updated Section II - Inventory and Analysis with accompanying maps to depict the resources, issues and opportunities, accepted by the city, committee and approved by the NYSDOS.

#### **Task 5: First Public Information Meeting**

##### **"Envisioning our Waterfront" - Kick-off public meeting Public Meeting #1**

This meeting would introduce the project to the community and solicit public input. Participants will be encouraged to look at the entire study area, reflect on the many positive projects that have shaped the revitalization efforts to date and look ahead together and identify concepts that resound throughout and/or major additional issues to tackle and provide input toward an overall updated community vision for the waterfront.

Created as a way to facilitate remote meetings, but useful before and during in person meetings, Behan Planning and Design will develop and record a series of "pre-recorded" PowerPoint videos which will be posted on the city and county websites and which can be viewed by the public at their leisure at any time. These presentations will include instructions for people to participate in other interactive exercises, such as online surveys or polls, as may be appropriate for the topic. There are a number of advantages to these pre-recorded presentations versus a live videoconference presentation, such as that participants can view the presentation at any time, and are not limited to being available for a specific date/time and that they can pause the presentation and come back later, rewind or re-watch if they missed something or want to see it again.

We propose to develop the following presentation "Chapters":

Chapter 1: Introduction & Background. This presentation will describe what an LWRP is, how it works, and will include much of the information from the "Project Primer" distributed to the committee at the start of the project.

Chapter 2: Existing Conditions & Analysis. This presentation will include much of the information developed for Section II of the LWRP. Viewers will be invited to submit any comments or questions via an online form.

Chapter 3: Visioning. This presentation will review the different planning areas along the riverfront, and solicit ideas and comments from the public about what can be done to improve the area. Viewers will be invited to take a survey which asks about the opportunities they see for different areas of the waterfront, and what issues they would like to see addressed (see Focus Area Input, below.)

Products: Material to be presented at the meeting will be submitted for prior review and approval to DOS, the city, and the committee. Public information meeting held. Minutes of the public meeting.

***Task 6: Revision of Section III - Local Waterfront Revitalization Program Policies***

Behan Planning and Design will review the draft 2010 City of Watertown LWRP policies section which was prepared using the Long Island Coastal 13 State Policies (a reorganization of the Inland Coastal 44 State Policies) and update based on the information provided in the inventory and analysis task.

**Products:** Updated Section III - Local Waterfront Revitalization Policies, approved by the city and accepted by NYSDOS.

***Task 7: Revision of Section IV - Proposed Land Uses and Water Uses and Proposed Projects***

The Behan team's approach to this section of the LWRP will focus on advancing the community's prior efforts, refining the vision and addressing potential conflicts and reaching agreements on priority projects to continue revitalization. We will update the set of proposed projects recognizing the city may have many new projects as a result of the recent planning projects that included the waterfront area. Further, our team can develop conceptual plans and opinions on probable cost for the top priority projects that can be used as a foundation for future grant applications. It is helpful to be able to illustrate how the existing cityscape and riverfront corridor can be better connected and revitalized to create an improved foundation for economic stability.

**Products:** Updated Section IV - Proposed Land and Water Uses and Proposed Projects approved by the city and approved by NYSDOS.

***Task 8: Second Public Information Meeting***

Preparing Watertown's Updated Local Waterfront Revitalization Program: (public meeting number 2). Recognizing the community has advanced several ideas previously for the waterfront, the Behan Planning and Design team will include those aspects along with new and emerging ideas for the city. Specific topics at this public meeting (set up in workshop/charrette format with maps, etc.) would likely focus on issues of importance, such as land use, waterfront access and livability, transportation and infrastructure, business growth and housing mix and transitioning an industrial waterfront into the next generation of sustainable waterfront uses.

**Products:** Meeting materials submitted for prior review and approval by DOS, the city, and the committee. Information meeting held. Minutes of the meeting.

***Task 9: Revision of Section V - Techniques for Local Implementation of the Program***

Behan Planning and Design will describe existing local laws and regulations that have been updated or added since the 2010 draft LWRP, which are necessary to implement Sections III and IV. Behan Planning and Design shall update the local management structure for reviewing proposed waterfront projects for consistency with the approved LWRP, and the financial resources required to implement the approved LWRP.

**Products:** Updated Section V - Techniques for Local Implementation of the Program, approved by the city and accepted by the NYSDOS.

***Task 10: Revision of Section VI - Federal and State Actions and Programs Likely to Affect Implementation of the LWRP***

**Products:** Replace Section VI in the draft 2010 City of Watertown LWRP with the updated Section VI provided by the Department.

**Task 11: Revision of Section VII - Local Commitment and Consultation**

Behan Planning and Design will describe the public consultation efforts undertaken in the preparation of the LWRP.

**Products:** Updated Section VII - Local Commitment and Consultation, approved by the city and accepted by NYSDOS.

**Task 12: Determination of Significance and Compliance with SEQRA**

Behan Planning and Design will assist the city as Lead Agency in the preparation, distribution and filing a Full Environmental Assessment Form for purposes of evaluating the importance/significance of the impacts associated with preparing and adopting a LWRP.

**Products:** Completed SEQRA documents shall be submitted to DOS for review and approval.

**Task 13: Draft LWRP**

Behan Planning and Design will submit a hard copy and electronic copy (.pdf format) of a complete Preliminary Updated Draft LWRP document, including the integration of a Draft Generic Environmental Impact Statement (as applicable) incorporating comments provided on each component section, to the NYSDOS for approval. If revisions to the Preliminary Draft LWRP are needed, based on NYSDOS review, the consultant(s), in cooperation with the city and the Waterfront Advisory Committee will make the required changes and resubmit the document to the NYSDOS for review prior to advancing the document to 60-Day Review.

**Products:** (1) Draft LWRP acceptable to the city project manager and NYSDOS; (2) GIS shapefile of the LWRP boundary in a format compatible with the DOS's Geographic Information Gateway. (3) Revised Appendix A – Maps.

**Task 14: Third Public Information Meeting**

Presentation of Draft Updated LWRP (public meeting number 3). This meeting would be set up as a public presentation of the draft waterfront revitalization program. At this point, the Waterfront Advisory Committee would be presenting the ideas and concepts developed to date with the assistance of the Behan Planning and Design team. Our team will present the major recommendations for future land and water uses and revitalization projects for community feedback. Our staff will facilitate discussion and record comments for consideration for the final waterfront revitalization program.

**Products:** Meeting materials submitted for prior review and approval by NYSDOS, the city, and the committee. Public meeting held. Minutes of the public information meeting and identification of changes to be made to the Draft Program resulting from the public meeting submitted to the city project manager for review and approval.

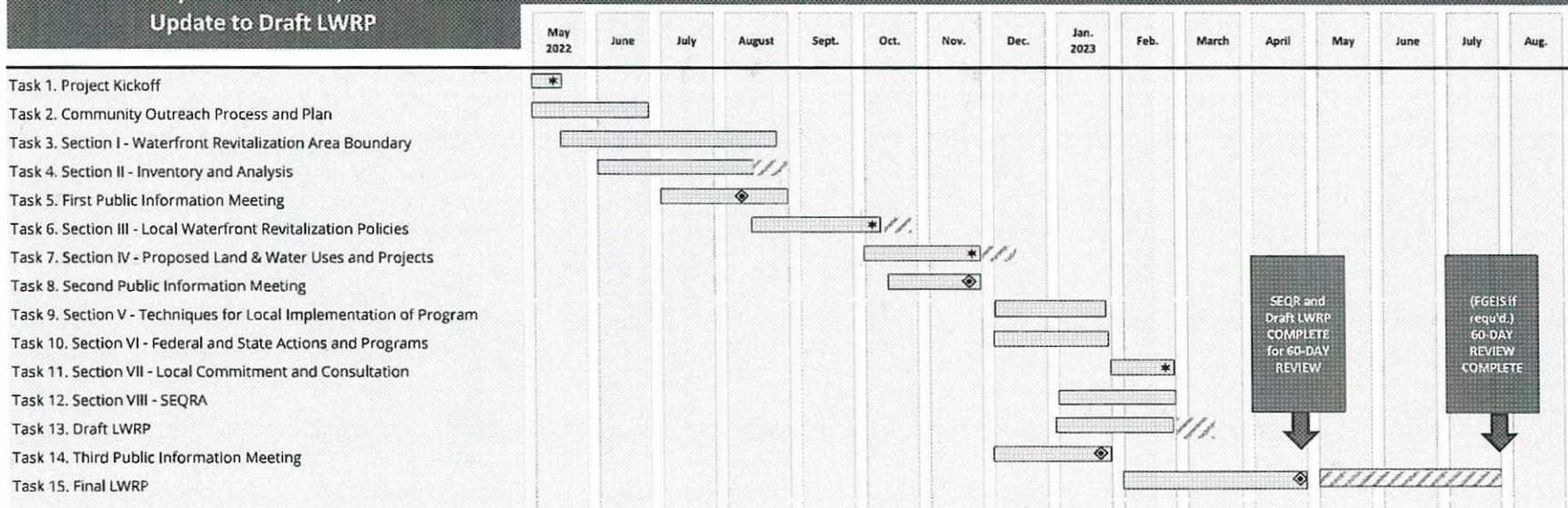
**Task 15: Final LWRP**

Responses to the comments received will be incorporated into the Final LWRP document (and Final Environmental Impact Statement, if applicable) to the satisfaction of the NYSDOS.

**Products:** Final LWRP (and Final Environmental Impact Statement, if applicable) local laws and schedule of adoption.

**City of Watertown, NY  
Update to Draft LWRP**

**PROPOSED SCHEDULE**



Behan Planning Team  
Public / Municipal Review Period

◆ Public Workshop / Public Presentation  
● Staff / Stakeholder Interviews

\* Municipal / Committee Meetings

SEQR and Draft LWRP COMPLETE for 60-DAY REVIEW

(FGEIS if req'd.) 60-DAY REVIEW COMPLETE

Update to Watertown LWRP for the Black River LWRP and SEQRA	Behan Planning and Design (WBE)					Upstate GIS		
	John J. Behan, AICP, Principal	Amy Fitzgerald, Senior Planner & Project Manager	Cary Engle, RLA, Landscape Architect	Dana Brady, Environment al Planner	Rick Lederer- Barnes, AICP, Principal	Total Hours	Total Budget Per Task	
<i>Billing Rate</i>	\$200	\$90	\$100	\$60	\$100			
<i>Total Hours</i>	<b>100</b>	<b>236</b>	<b>48</b>	<b>136</b>	<b>48</b>	<b>568</b>		
initial Project Coordination with City	4	4				8	\$ 1,160.00	
Task 1. Project Kickoff	8	12				20	\$ 2,680.00	
Task 2. Community Outreach Program (Including meetings and coordination)	12	32		8		52	\$ 5,760.00	
Task 3. Section I - Waterfront Revitalization Area Boundary	4	4			8	16	\$ 1,960.00	
Task 4. Section II - Inventory and Analysis	4	16		40	28	88	\$ 7,440.00	
Task 5. First Public Information Meeting	8	16		8		32	\$ 3,520.00	
Task 6. Section III - Local Waterfront Revitalization Policies	6	16				22	\$ 2,640.00	
Task 7. Section IV - Proposed Land Uses and Water Uses and Proposed Projects	16	40	40	4	8	108	\$ 11,840.00	
Task 8. Second Public Information Meeting	8	16		4		28	\$ 3,280.00	
Task 9. Section V - Techniques for Local Implementation of Program	2	4		8		14	\$ 1,240.00	
Task 10. Section VI - Federal and State Actions and Programs	2	4				6	\$ 760.00	
Task 11. Section VII - Local Commitment and Consultation	4	8				12	\$ 1,520.00	
Task 12. Section VIII - SEQRA (Full EAF)	2	4		16		22	\$ 1,720.00	
Task 13. Draft LWRP	8	40	8	32	4	92	\$ 8,320.00	
Task 14. Third Public Information Meeting	8	12		8		28	\$ 3,160.00	
Task 15. Final LWRP	4	8		8		20	\$ 2,000.00	
	<b>100</b>	<b>236</b>	<b>48</b>	<b>136</b>	<b>48</b>			
	\$20,000	\$21,240	\$4,800	\$8,160	\$4,800	Services	\$ 59,000.00	
	33%	35%	8%	14%	8%	Expenses	\$ 1,000.00	
	<b>TOTAL PROFESSIONAL SERVICES—Lump Sum Fee</b>						<b>\$</b>	<b>60,000.00</b>

Res No. 5

May 6, 2022

To: The Honorable Mayor and City Council  
From: Dale Morrow, Purchasing Manager  
Subject: Bid #2022-16 WWTP Biosolid Disposal Services  
Letter of Recommendation

The City's Purchasing Department advertised in the Watertown Daily Times on April 17, 2022, calling for sealed bids from qualified bidders for the WWTP Biosolid Disposal Services, per City specifications.

The Purchasing Department issued Invitations to Bid to (7) seven service providers. The City received one (1) sealed bid submittal. The Purchasing Department publicly opened and read the sealed bid on May 4, 2022, at 11:00 am local time. The bid tabulation for the bid is shown below.

WWTP Biosolid Disposal Service	Anticipated Tons Hauled	New England Waste Services	
		Portsmouth, NH	
		Unit Price	Total Price
Year One - 2022-2023	5,000	\$53.50	\$267,500.00
Year Two - 2023-2024	5,000	\$56.18	\$280,900.00
Year Three - 2024-2025	5,000	\$58.99	\$294,950.00
Year Four - 2025-2026	5,000	\$61.94	\$309,700.00
Year Five - 2026-2027	5,000	\$65.04	\$325,200.00
Total Contract			\$1,478,250.00

The Purchasing Department and the Waste Water Treatment Department reviewed the responses to ensure that they complied with the specifications.

Staff recommends that City Council award the bid for the WWTP Biosolid Disposal Services to **New England Waste Services of ME, Inc.** as the lowest responsive responsible bidder at total price of **\$1,478,250**. The current unit price is \$50.30 per ton.

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

# RESOLUTION

Page 1 of 1

Accepting Bid for WWTP Biosolid Disposal Services, New England Waste Services of ME, Inc

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

Total.....

YEA	NAY

***Introduced by***

WHEREAS the City Purchasing Department has advertised and received sealed bids for the WWTP Biosolid Disposal Services in Watertown, New York, as per City specifications, and

WHEREAS bid invitations were also issued to qualified bidders with one (1) sealed bid submitted to the Purchasing Department, and

WHEREAS on Wednesday, May 4, 2022, at 11:00 a.m., the bids received were publicly opened and read, and

WHEREAS City Purchasing Manager Dale Morrow reviewed the bids received with the Waste Water Treatment Department, and it is their recommendation that the City Council accept the bid submitted by New England Waste Services of ME, Inc, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown accepts the bid of New England Waste Services of ME, Inc in the amount of \$1,478,250, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to sign all contracts associated with implementing the award to New England Waste Services of ME, Inc.

***Seconded by***

Res No. 6

May 6, 2022

To: The Honorable Mayor and City Council  
From: Dale Morrow, Purchasing Manager  
Subject: Bid #2022-18 CDBG Thompson Park ADA Ramps Repair Project  
Letter of Recommendation

The City's Purchasing Department advertised in the Watertown Daily Times on April 14, 2022, calling for sealed bids from qualified bidders for the CDBG Thompson Park ADA Ramps Repair Project, per City specifications.

The CDBG Thompson Park ADA Ramps are budgeted at \$75,000 and the engineer's estimate is roughly \$79,000.

The Purchasing Department issued Invitations to Bid to (52) fifty-two contractors. The City received two (2) sealed bid submittals. The Purchasing Department publicly opened and read the sealed bids on May 4, 2022, at 2:00 pm local time. The bid tabulation for the bid is shown below.

CDBG Thompson Park ADA Ramps Repair Project	Concrete Slipform, Inc	B&T Construction & Masonry, Inc.
	Canastota, NY	Watertown, NY
Total Bid	\$58,382.50	\$96,929.50

The Purchasing Department and the Engineering Department reviewed the responses to ensure that they complied with the specifications.

Staff recommends that City Council award the bid for the CDBG Thompson Park ADA Ramps Repair Project to **Concrete Slipform, Inc** as the lowest responsive responsible bidder at total price of **\$58,382.50**.

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

**RESOLUTION**

Page 1 of 1

Accepting Bid for CDBG Thompson Park  
ADA Ramps Repair Project,  
Concrete Slipform, Inc

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

Total.....

YEA	NAY

***Introduced by***

WHEREAS the City Purchasing Department has advertised and received sealed bids for CDBG Thompson Park ADA Ramps Repair Project in Watertown, New York, as per City specifications, and

WHEREAS bid invitations were also issued to qualified bidders with two (2) sealed bids submitted to the Purchasing Department, and

WHEREAS on Wednesday, May 4, 2022, at 2:00 p.m., the bids received were publicly opened and read, and

WHEREAS City Purchasing Manager Dale Morrow reviewed the bids received with the Engineering Department, and it is their recommendation that the City Council accept the bid submitted by Concrete Slipform, Inc, and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown accepts the bid of Concrete Slipform, Inc in the amount of \$58,382.50, and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to sign all contracts associated with implementing the award to Concrete Slipform, Inc.

***Seconded by***

Res No. 7

May 03, 2022

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Approving the Professional Services Agreement for the Division Street East and Thompson Street Water Main Project, Barton and Loguidice

A proposal was requested and received from Barton and Loguidice regarding the Civil Engineering and Design Services involved in the Division Street East and Thompson Street Water Main Replacement Project. The attached Agreement for Professional Services outlines the scope of services to be performed to replace pipe on Division Street East from Woodbury Street to Starbuck Avenue and on Thompson Street from West Lynde Street to Gale Street. Barton and Loguidice is proposing to complete design services for \$59,200.00, and to complete other services such as resident project representative for \$39,800.00.

This project was added to the Capital Budget by resolution adopted September 7, 2021 to be funded with the American Rescue Plan Act funds.

A resolution approving this Agreement for Professional Services has been prepared for City Council consideration.

# RESOLUTION

Page 1 of 1

Approving the Professional Service Agreement for the Division Street East and Thompson Street Water Main Project, Barton and Loguidice

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

Total .....

YEA	NAY

***Introduced by***

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WHEREAS on February 28, 2022, the City of Watertown requested a proposal from Barton and Loguidice regarding Civil Engineering and Design Services associated with the Division Street East and Thompson Street Water Main Project occurring from Woodbury Street to Starbuck Avenue on Division Street East, and from West Lynde Street to Gale Street on Thompson Street.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Watertown hereby approves the Professional Service Agreement from Barton and Loguidice in the amount of \$59,200.00 for design services, and \$39,800.00 in services pertaining to construction services such as resident project representative, a copy of which is attached and made part of this Resolution, and

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

***Seconded by***



April 4, 2022

Mr. Mike Delaney  
City of Watertown  
245 Washington Street, Room 302A  
Watertown, New York 13601

Re: City of Watertown Thompson Street and E Division Street Water Main Replacement Project  
Subj: Engineering Services Agreement  
File: 702.4614

Dear Mr. Dalaney:

Barton & Loguidice, D.P.C. (B&L) is pleased to present this agreement to assist the City with the Thompson Street and E Division Street Water Main Replacement Project.

### Scope of Services

The project scope includes the services identified in the City of Watertown Request for Proposals. The project consists of replacing approximately 950 feet of 8 inch transite pipe and appurtenances on Thompson Street between West Lynde Street and Gale Street as well as replacing approximately 1,450 feet of 10 inch transite pipe and appurtenances on E. Division Street between Woodbury Street and Starbuck Avenue. The following professional services have been requested:

- Conduct a topographical survey of the project area with special emphasis on sub-surface utility locations.
- Prepare contract plan drawings detailing the proposed water main replacement project.
- Prepare project specifications incorporating the City of Watertown standard details.
- Prepare bid documents.
- Prepare an estimate for construction.
- Delivery of signed and sealed hard copies of all documents in addition to electronic versions of the contract documents and plan drawings. (Drawings to be in .dwg format)
- Provide construction observation services (resident project representative)
- Preparation of as-built drawings at project completion.

### Fee for Services

For Scope of Service item A through C (Preliminary Design Phase, Final Design Phase, and Bidding Phase), B&L proposes to be compensated on a total lump sum basis in the amount of Fifty-Nine Thousand Two Hundred Dollars **(\$59,200.00)**.



Mr. Mike Delaney  
City of Watertown  
April 4, 2022  
Page 2

For Scope of Service Item D through G (Construction Phase, Post-Construction Phase, Additional Services, and Resident Project Representative), B&L proposes to be compensated on a time plus expense basis with an initial authorization of Thirty-Nine Thousand Eight Hundred Dollars (**\$39,800.00**).

We trust that this proposal will meet the City's needs, and are available to proceed immediately with the Scope of Services included herein upon authorization. We appreciate this opportunity to be of service to the City and look forward to working with you on this project. If our proposal meets your satisfaction, please have the City review and authorize the attached EJCDC Agreement.

If you have any questions regarding any item of this proposal, please feel free to contact our office.

Sincerely,

BARTON & LOGUIDICE, D.P.C.

A handwritten signature in black ink, appearing to read 'Eric A. Pond', written over a horizontal line.

Eric A. Pond, P.E.  
Senior Vice President

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

FOR THE

**CITY OF WATERTOWN  
THOMPSON AND E. DIVISION STREET  
WATER MAIN REPLACEMENT PROJECT**

Prepared by



Issued and Published Jointly by



This Agreement has been prepared for use with EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 or 2018 Edition. Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC® E-001, Commentary on the EJCDC Engineering Services Agreements, 2013 Edition.

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American Society of Civil Engineers  
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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – SERVICES OF ENGINEER .....	1
1.01 Scope .....	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES .....	1
2.01 General.....	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement.....	2
3.02 Time for Completion .....	2
ARTICLE 4 – INVOICES AND PAYMENTS.....	2
4.01 Invoices .....	2
4.02 Payments.....	2
ARTICLE 5 – OPINIONS OF COST.....	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit .....	3
5.03 Opinions of Total Project Costs .....	3
ARTICLE 6 – GENERAL CONSIDERATIONS.....	3
6.01 Standards of Performance.....	3
6.02 Design Without Construction Phase Services.....	5
6.03 Use of Documents.....	6
6.04 Electronic Transmittals.....	6
6.05 Insurance.....	7
6.06 Suspension and Termination .....	8
6.07 Controlling Law .....	9
6.08 Successors, Assigns, and Beneficiaries.....	9
6.09 Dispute Resolution.....	10
6.10 Environmental Condition of Site .....	10
6.11 Indemnification and Mutual Waiver .....	10
6.12 Records Retention.....	11
6.13 Miscellaneous Provisions.....	12
ARTICLE 7 – DEFINITIONS .....	12
7.01 Defined Terms .....	12
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS.....	16
8.01 Exhibits Included:.....	16
8.02 Total Agreement:.....	17
8.03 Designated Representatives:.....	17
8.04 Engineer's Certifications:.....	17

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of April 4, 2022 (“Effective Date”) between  
City of Watertown (“Owner”) and  
Barton & Loguidice, D.P.C. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Thompson and E Division Street Water Main Replacement Project (“Project”).

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

Design, Bidding and Negotiating, Construction Phase, Resident Project Representative, and Additional Services.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
  - 1. any development that affects the scope or time of performance of Engineer’s services;
  - 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 Commencement**

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### **3.02 Time for Completion**

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### **4.01 Invoices**

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### **4.02 Payments**

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

### 5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.

### 5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar

circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
  - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
    - a. changes after the Effective Date to Laws and Regulations;
    - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
    - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 or 2018 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

### 6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

### 6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
  - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. by Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

#### 6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

#### 6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and

702.4614 Engineer-Owner Agreement City of Watertown-033122 (ID 2568564)

judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**

- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

#### 6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

## 6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## ARTICLE 7 – DEFINITIONS

### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
  - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
  - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  - 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
  - 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design

professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included*:

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses – **Lump Sum**.
- D. **Exhibit C, Payments to Engineer for Services and Reimbursable Expenses – Standard Hourly Rates.**
- E. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- F. Exhibit E, Notice of Acceptability of Work.
- G. Exhibit F, Construction Cost Limit. **Not Included.**
- H. Exhibit G, Insurance.
- I. Exhibit H, Dispute Resolution.
- J. Exhibit I, Limitations of Liability.
- K. Exhibit J, Special Provisions. **Not Included.**

- L. Exhibit K, Amendment to Owner-Engineer Agreement.
- M. Exhibit L, ~~RUS Bulletin 1780-26~~, Exhibit C. City of Watertown Request for Proposals.
- N. ~~Exhibit M, NYSEFC Program Requirements and Bid Packet for Non-Construction Contracts.~~

#### 8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

#### 8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

#### 8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Watertown

Engineer: Barton & Loguidice, D.P.C.

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

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

Print name: \_\_\_\_\_

Print name: Eric A. Pond

Title: Mayor

Title: Senior Vice President

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

Date Signed: 3/31/2022

Engineer License or Firm's Certificate No. (if required):

LICENCE NO. 077487

State of: New York

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

Watertown, New York 13601

443 Electronics Parkway

Liverpool, New York 13088

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

John F. Brusa, P.E.

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

Title: President

Phone Number: \_\_\_\_\_

Phone Number: 315-457-5200

E-Mail Address: \_\_\_\_\_

E-Mail Address: jbrusa@bartonandloguidice.com

This is **EXHIBIT A**, consisting of 18 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### ***A1.01 Study and Report Phase***

**A. Engineer shall:**

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.~~
  - ~~a. If Owner has already identified one or more potential solutions to meet its Project requirements, then proceed with the study and evaluation of such potential solutions:~~
  - ~~b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.~~
  - ~~c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.~~
- ~~2. Identify potential solution(s) to meet Owner's Project requirements, as needed.~~
- ~~3. Study and evaluate the potential solution(s) to meet Owner's Project requirements.~~
- ~~4. Visit the Site, or potential Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.~~
- ~~5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Project related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Project requirements, and preparation of a related report.~~

- ~~6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Project.~~
- ~~8. Prepare a Preliminary Engineering Report report (the "Report", "PER") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.~~
- ~~9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.~~
- ~~10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Project Strategies, Technologies, and Techniques."~~
- ~~11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.~~
- ~~12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.~~
- ~~13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.~~
- ~~14. Perform or provide the following other Study and Report Phase tasks or deliverables:~~
- ~~15. Furnish 2 review copies and an electronic PDF copy of the draft Report and any other Study and Report Phase deliverables to Owner within 60 days of the Effective Date and review it with Owner. Within 10 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.~~
- ~~16. Revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish 2 copies and an electronic PDF copy of~~

~~the revised Report and any other Study and Report Phase deliverables to the Owner within 20 days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.~~

#### A1.02 *Preliminary Design Phase*

A. After acceptance by Owner of the Report and any other Study and Report Phase deliverables; selection by Owner of a recommended solution; issuance by Owner of any instructions of for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design; and indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, (1) Engineer and Owner shall discuss and resolve any necessary revisions to Engineer's compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies, Technologies, or Techniques, sustainable design instructions, or specific modifications to the Project, and (2) upon written authorization from Owner, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.

The Project scope includes the work identified in the City of Watertown Request for Proposals which are attached as Exhibit L. The project consists of replacing approximately 950 feet of 8 inch transite pipe and appurtenances on Thompson Street between West Lynde Street and Gale Street as well as replacing approximately 1,450 feet of 10 inch transite pipe and appurtenances on E. Division Street between Woodbury Street and Starbuck Avenue. The following professional services have been requested:

- Conduct a comprehensive topographical survey of the project area detailed in the attached map with special emphasis on sub-surface utility locations.
- Prepare contract plan drawings detailing the proposed water main replacement project.
- Prepare project specifications incorporating City of Watertown standard details.
- Prepare bid documents.
- Prepare an estimate for construction.
- Delivery of signed and sealed hard copy of all documents in addition to electronic versions of the contract documents and plan drawings. (Drawings to be in dwg. Format)
- Preparation of as built drawings at project completion.

Preliminary Design Phase deliverables include:

- 50% Contract Drawings
- Outline of Contract Specifications
- Opinion of Probably Project Cost

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#### Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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2. In preparing the Preliminary Design Phase documents, use any specific applicable Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
- ~~3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information. Field survey and utility mapping will be provided as an Additional Service.~~
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 or 2018 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.
- ~~9. Perform or provide the following other Preliminary Design Phase tasks or deliverables:~~
10. Furnish 2 review copies and an electronic PDF copy of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner within 60 days of authorization to proceed with this phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items.

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Exhibit A – Engineer's Services

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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and American Society of Civil Engineers. All rights reserved.

11. Revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner 2 copies and an electronic PDF copy of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other Preliminary Design Phase deliverables, subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
  2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
  3. ~~Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such~~
  4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
  5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
  6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
  7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.

8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
  9. ~~Perform or provide the following other Final Design Phase tasks or deliverables:~~
  10. Furnish for review by Owner, its legal counsel, and other advisors, 2 copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, within 30 days of authorization to proceed with the Final Design Phase, and review them with Owner. Within 30 days of receipt, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
  11. Revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit 2 final copies of such documents to Owner within 30 days after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is TBD. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

#### A1.04 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the final Drawings and Specifications, other Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
  2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
  3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
  4. Consult with Owner as to the qualifications of prospective contractors.
  5. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
  6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
  7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
  8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
  9. Perform or provide the following other Bidding or Negotiating Phase tasks or deliverables:
    - a. **Prepare conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.**
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

**The fee for Bidding and Negotiating Phase is based on a 1 month period occurring immediately following the design phase.**

#### A1.05 Construction Phase

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 or 2018 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
  2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
  3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.
  4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
  5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
  6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

7. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
- ~~8. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.~~
9. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.
10. *Defective Work*: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding

whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.

11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
14. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
15. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
16. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
17. *Shop Drawings, Samples, and Other Submittals:* Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

18. *Substitutes and "Or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
19. *Inspections and Tests*:
  - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
  - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
  - c. Pursuant to the terms of the Construction Contract, require special inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations

of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.

23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.

~~24. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:~~

25. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is

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Exhibit A – Engineer's Services

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acceptable (subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.

26. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.D, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative Services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract. **The estimated fee for Construction Phase services is based on an estimated 2 month duration of construction commencing immediately upon completion of Bidding or Negotiating Phase services.**

#### A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
  2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
  - ~~3. Perform or provide the following other Post-Construction Phase tasks or deliverables:~~
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

## **PART 2 – ADDITIONAL SERVICES**

### **A2.01 *Additional Services Requiring Owner’s Written Authorization***

- A. If authorized in writing by Owner, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit C.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
  2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
  3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project’s design requirements, including, but not limited to, changes in size, complexity, Owner’s schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer’s control.
  4. Services resulting from Owner’s request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
  5. Services required as a result of Owner’s providing incomplete or incorrect Project information to Engineer.
  6. Providing renderings or models for Owner’s use, including services in support of building information modeling or civil integrated management.
  7. Undertaking investigations and studies including, but not limited to:
    - a. detailed consideration of operations, maintenance, and overhead expenses;
    - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
    - c. preparation of appraisals;

- d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
  - e. detailed quantity surveys of materials, equipment, and labor; and
  - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
  9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
  10. Providing the following services:
    - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
    - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
  11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Part 1 of Exhibit A).
  12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
  13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
  14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.
  - ~~15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.~~
  16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
  17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.

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**Exhibit A – Engineer's Services**

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18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
30. **Additional Services Authorized:** Below is a description of Additional Services anticipated and authorized by execution of this Agreement:
  - a. **Subcontract Administration** – Services relating to soliciting and reviewing quotations and qualifications of sub-consultants, sub-consultant coordination, layout of sub-consultant work, and Minority/Women Owned Business (MWBE) and Equal Employment Opportunity (EEO) requirements for sub-consultant participation.

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**Exhibit A – Engineer's Services**

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- b. Subcontracted Services – The following Subcontracted Services are anticipated. The scope of subcontracted services and budgets presented are estimates.
  - 1) Survey and Base Mapping – Provide necessary field surveys and topographic and utility mapping for Engineer’s design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, “Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data,” as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
- c. Verification of Existing Conditions – Provide services relating to item nos. 2 and 19 above.
- d. Permits – Provide technical criteria, written descriptions, field assessments and design data for Owner’s use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate. The permits/approvals may include, but are not limited to:
  - 1) NYS Department of Health
  - 2) Stormwater Pollution Prevention Plan (SWPPP) and Construction Stormwater SPDES Permit Application
- e. Record Drawings/O&M Manuals – Provide services relating to item nos. 17 through 23 above.
- f. Reimbursable Expenses – All Reimbursable Expenses for Basic Services and Additional Services.
- g. Other Additional Services – See A2.02 below

**A2.02 Additional Services Not Requiring Owner’s Written Authorization**

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner.
  - 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  - 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than “or equal” items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed “or equal” or substitution which is found to be inappropriate

for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.

3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2013 or 2018 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  1. Property descriptions.
  2. Zoning, deed, and other land use restrictions.

3. Utility and topographic mapping and surveys.
  4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
  7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.
- ~~T. Perform or provide the following:~~

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated April 4, 2022.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

**C2.01 Compensation for Basic Services (other than Construction Phase, Post-Construction Phase and Resident Project Representative) – Lump Sum Method of Payment**

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of **\$59,200.00** based on the following estimated distribution of compensation:

- a. ~~Study and Report Phase~~
- b. Preliminary Design Phase **\$37,000.00**
- c. Final Design Phase **\$14,800.00**
- d. Bidding and Negotiating Phase **\$7,400.00**
- e. ~~Construction Phase~~ ~~\$( )~~
- f. ~~Post-Construction Phase~~ ~~\$( )~~

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor costs, overhead, profit, expenses (other than any expressly allowed Reimbursable Expenses), and Consultant charges.

4. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following Reimbursable Expenses (see Appendix 1 for rates or charges):

5. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period. If any Reimbursable Expenses are expressly allowed, Engineer may also bill for any such Reimbursable Expenses incurred during the billing period.
- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 12 months. If such period of service is extended, the compensation amount for Engineer's services shall may be appropriately adjusted.

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

C2.01 *Compensation For Basic Services (other than Study and Report Phase, Preliminary Design Phase, Final Design Phase, Bidding or Negotiating Phase and Resident Project Representative) – Standard Hourly Rates Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants' charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
3. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
4. The total compensation for services under Paragraph C2.01 is estimated to be \$27,300.00 based on the following estimated distribution of compensation:

a. Study and Report Phase	\$[ ]
b. Preliminary Design Phase	\$[ ]
c. Final Design Phase	\$[ ]
d. Bidding or Negotiating Phase	\$[ ]
e. Construction Phase	\$11,100.00
f. Post-Construction Phase	\$3,700.00
g. Additional Services	\$12,500.00

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein, **including Standard Hourly Rate Basic Services, Additional Services, and Resident Project Representative Services**, to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.
6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultants' charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>) to reflect equitable changes in the compensation payable to Engineer.

#### C2.02 *Compensation For Reimbursable Expenses*

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 12 to this Exhibit C.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, ~~the latter multiplied by a factor of [ ]~~.

#### C2.03 *Other Provisions Concerning Payment*

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. *Estimated Compensation Amounts:*

1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET RPR-2:  
Resident Project Representative – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**C2.04 Compensation for Resident Project Representative Basic Services – Standard Hourly Rates Method of Payment**

**A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:**

1. **Resident Project Representative Services:** For services of Engineer's Resident Project Representative under Paragraph A1.05.A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this paragraph is estimated to be TBD based upon full-time RPR services for 1 inspector(s) on an 8 hour workday, Monday and Friday, over a 2 month ~~day~~ construction schedule.

**B. Compensation for Reimbursable Expenses:**

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix ~~± 2~~ to this Exhibit C.
2. Reimbursable Expenses include the expenses identified in Appendix ~~± 2~~ and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, ~~the latter multiplied by a factor of [ ]~~.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1<sup>st</sup>) to reflect equitable changes in the compensation payable to Engineer.
5. Engineer may alter the distribution of compensation between individual phases of the work noted herein, including Standard Hourly Rate Basic Services, Additional Services, and Resident Project Representative Services, to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.

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Exhibit C – Compensation Packet RPR-2: Resident Project Representative Services—  
Standard Hourly Rates Method of Payment.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

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C. *Other Provisions Concerning Payment Under this Paragraph C2.04:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. *Estimated Compensation Amounts:*
  - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
  - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

**COMPENSATION PACKET AS-1:  
Additional Services – Standard Hourly Rates**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment**

- A. Owner shall pay Engineer for Additional Services, if any, as follows:
1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.
- B. *Compensation For Reimbursable Expenses:*
1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
  2. Reimbursable Expenses include the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items; and Consultants' charges. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
  3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, ~~the latter multiplied by a factor of [ ]~~.
  4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.
  5. Engineer may alter the distribution of compensation between individual phases of the work noted herein, including Standard Hourly Rate Basic Services, Additional Services, and Resident Project Representative Services, to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner.

C. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.
2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

**Summary of Fees & Reimbursable Expenses Schedule**

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<u>Description of Service</u>	<u>Amount</u>	<u>Basis of Payment</u>
<b>1</b> <u>Study and Report Phase Services</u>		
<b>2</b> <u>Basic Services:</u>		
a. Preliminary Design Phase	\$37,000	Lump Sum
b. Final Design Phase	\$14,800	Lump Sum
c. Bidding Phase	\$7,400	Lump Sum
d. Construction Phase	\$11,100	Hourly
e. Post-Construction Phase	\$3,700	Hourly
<b>3</b> <u>Additional Services:</u>		
a. Subcontract Administration	\$500	Hourly
b. Subcontracted Services	\$8,300	Hourly
c. Verification of Existing Conditions	\$700	Hourly
d. Permits	\$500	Hourly
e. Record Drawings / O&M Manuals	\$2,000	Hourly
f. Reimbursable Expenses	\$500	Hourly
g. Other Additional Services (A2.02 from Exhibit A)	TBD	Hourly
<b>4</b> <u>Resident Project Representative:</u>	\$12,500	Hourly
<b>TOTAL ESTIMATED CONTRACT AMOUNT</b>	<b>\$99,000</b>	

Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates and charges for Reimbursable Expenses as of the date of the Agreement are in accordance with the standard billing rates in effect at the time services are performed. Current billing rates are delineated in the "Barton & Loguidice, D.P.C., Billing Rates Schedule for 2022" attached hereto.

This is **Appendix 2 to EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

## **Standard Hourly Rates Schedule**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are in accordance with the standard billing rates in effect at the time services are performed. Current billing rates are delineated in the "Barton & Loguidice, D.P.C., Billing Rates Schedule for 2022" attached hereto.

**Barton & Loguidice**  
**Billing Rates For Calendar Year 2022**



Travel by passenger vehicle\* .....IRS standard mileage rate  
 Overnight travel & subsistence .....at cost  
 Telephone, postage, overnight delivery, etc.....at cost  
 In-house printing..... Unit rate schedule for printed material  
 Field equipment & expendables ..... Unit rate schedule  
 Outside services including lab services & printing .....Cost plus 15%

**INDIVIDUAL TECHNICAL EMPLOYEES AT THE FOLLOWING HOURLY RATES:**

<u>Billing Title</u>	<u>Hourly Rate</u>
Executive Manager	\$270.00
Manager V	\$232.00
Manager IV	\$210.00
Manager III	\$195.00
Manager II	\$183.00
Manager I	\$170.00
Professional VI	\$156.00
Professional V	\$140.00
Professional IV	\$126.00
Professional III	\$114.00
Professional II	\$99.00
Professional I	\$82.00
Technician VII	\$139.00
Technician VI	\$131.00
Technician V	\$115.00
Technician IV	\$107.00
Technician III	\$96.00
Technician II	\$80.00
Technician I	\$69.00
Construction III	\$131.00
Construction II	\$111.00
Construction I	\$99.00
Technical Assistant III	\$97.00
Technical Assistant II	\$82.00
Technical Assistant I	\$70.00

\* IRS standard mileage rate in effect at time of travel (exclusive of operator time).

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

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**Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 1 - SERVICES OF ENGINEER**

D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions.
  
- B. Through RPR’s observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor’s work in progress, for the coordination of the Constructors’ work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor’s failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.05, of this Agreement are applicable.
  
- C. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* RPR’s dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  
  - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
  
  - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor’s safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
  - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. *Shop Drawings and Samples:*
  - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
  - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
  - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.

11. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
  - e. Maintain records for use in preparing Project documentation.
  - f. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
12. *Reports:*
- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
  - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
  - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
  - d. Immediately inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
15. *Completion:*
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
  - b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.

- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.



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**NOTICE OF ACCEPTABILITY OF WORK**

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**PROJECT:**

**OWNER:**

**CONTRACTOR:**

**OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:**

**EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:**

**ENGINEER:**

**NOTICE DATE:**

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**To:**

\_\_\_\_\_  
**Owner**

**And To:**

\_\_\_\_\_  
**Contractor**

**From:**

\_\_\_\_\_  
**Engineer**

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, and the following terms and conditions of this Notice:

**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer’s professional opinion.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner’s reservations of rights with respect to completion and final payment.

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

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

Dated: \_\_\_\_\_

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

**Insurance**

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Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability --
  - 1) Bodily injury, each accident: \$100,000
  - 2) Bodily injury by disease, each employee: \$100,000
  - 3) Bodily injury/disease, aggregate: \$500,000
- c. General Liability --
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
  - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability --
  - 1) Per Occurrence: \$1,000,000
  - 2) General Aggregate: \$1,000,000
- e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):  
\$1,000,000
- f. Professional Liability --
  - 1) Each Claim Made \$1,000,000
  - 2) Annual Aggregate \$1,000,000
- g. Other (specify):

2. By Owner:

- a. Workers' Compensation: Statutory

---

**Exhibit G – Insurance.**

b. Employer's Liability --

- |  |           |
|--|-----------|
| 1) Bodily injury, Each Accident            | Unlimited |
| 2) Bodily injury by Disease, Each Employee | Unlimited |
| 3) Bodily injury/Disease, Aggregate        | Unlimited |

c. General Liability --

- |   |             |
|---|-------------|
| 1) General Aggregate:                                   | \$2,000,000 |
| 2) Each Occurrence (Bodily Injury and Property Damage): | \$1,000,000 |

d. Excess Umbrella Liability

- |                       |             |
|-----------------------|-------------|
| 1) Per Occurrence:    | \$2,000,000 |
| 2) General Aggregate: | \$4,000,000 |

e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage):

\$1,000,000

f. Other (specify):

B. *Additional Insureds:*

1. The following individuals or entities are to be listed on Owner's general liability policies of insurance as additional insureds:

a. Barton & Loguidice, D.P.C.

Engineer

b. \_\_\_\_\_

Engineer's Consultant

c. \_\_\_\_\_

Engineer's Consultant

d. \_\_\_\_\_

[other]

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.05.A.

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Exhibit G – Insurance.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### **H6.08 *Dispute Resolution***

- A. ***Mediation:*** Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a **mutually acceptable mediator**. Owner and Engineer agree to participate in the mediation process in good faith **and to share the cost of the mediation equally**. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.
  
- B. **If a dispute involves a claim by Engineer for payment of fees and the parties fail to resolve the dispute through negotiation then Engineer may seek to have its claim for fees resolved by a court of competent jurisdiction without first participating in mediation.**

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated **April 4, 2022**.

## **Limitations of Liability**

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Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. ~~If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$[\_\_\_\_\_].~~
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project,

- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use

resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

The Effective Date of this Amendment is: \_\_\_\_\_.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- \_\_\_ Additional Services to be performed by Engineer
- \_\_\_ Modifications to services of Engineer
- \_\_\_ Modifications to responsibilities of Owner
- \_\_\_ Modifications of payment to Engineer
- \_\_\_ Modifications to time(s) for rendering services
- \_\_\_ Modifications to other terms and conditions of the Agreement

Description of Modifications:

***Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.***

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER: City of Watertown

ENGINEER: Barton & Loguidice, D.P.C.

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

Print  
name: \_\_\_\_\_

Mayor

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

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

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

Print  
name: \_\_\_\_\_

Eric A. Pond, P.E.

Senior Vice President

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

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

This is **EXHIBIT L**, ~~RUS Bulletin 1780-26~~, Exhibit ~~C~~, City of Watertown Request for Proposals referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated April 4, 2022.



1869

## **CITY OF WATERTOWN, NEW YORK**

Department of Engineering  
Room 305B, City  
Hall 245  
Washington Street  
Watertown, New York 13601

Tel. (315) 785-7740

**Barton & Loguidice, D.P.C.**

**Attn; Mr. Donald H. Fletcher,**

**P.E.120 Washington Street**

**Watertown, NY 13601**

Greetings Donald; the City of Watertown is requesting a proposal to provide Engineering services for the design of a water main replacement project identified in our Capital Budget. This project is intended to replace an existing 938 feet of 8 inch transite pipe on Thompson Street running from West Lynde Street to Gale Street.

The current piping has reached its use expectancy.

The City of Watertown is requesting the following professional services:

- Conduct a comprehensive topographical survey of the project area detailed in the attached map with special emphasis on sub-surface utility locations.
- Prepare contract plan drawings detailing the proposed water main replacement project.
- Prepare project specifications incorporating City of Watertown standard details.
- Prepare bid documents.
- Prepare an estimate for construction.
- Delivery of signed and sealed hard copy of all documents in addition to electronic versions of the contract documents and plan drawings. (Drawings to be in dwg. Format)
- Preparation of as built drawings at project completion.

Project Timeline: The City would like to have the completed plans and contract documents available for bidding by March 07, 2022. The City Engineering and GIS Departments will provide related record drawings as required. Public Workscan provide additional records as well as potentially assisting with any test holes required to verify critical elevations of existing infrastructure.

This project is included in our upcoming Capital Budget, however, given the advanced deterioration of the water pipes, we are moving ahead with design with the intent of undertaking repairs late Summer 2022.

Please let me know if you require additional information to facilitate submission of your proposal.

Regards, Michael Delaney.

## GIS Images

Thompson Street:





1869

## **CITY OF WATERTOWN, NEW YORK**

Department of Engineering  
Room 305B, City  
Hall 245  
Washington Street  
Watertown, New York 13601

Tel. (315) 785-7740

**Barton & Loguidice, D.P.C.**

**Attn; Mr. Donald H. Fletcher, P.E.**

**120 Washington Street**

**Watertown, NY 13601**

Greetings Donald; the City of Watertown is requesting a proposal to provide Engineering services for the design of a water main replacement project identified in our Capital Budget. This project is intended to replace an existing 1443 feet of 10 inch transite pipe on Division Street East running from Woodbury Street to Starbuck Avenue.

The current piping has reached its use expectancy.

The City of Watertown is requesting the following professional services:

- Conduct a comprehensive topographical survey of the project area detailed in the attached map with special emphasis on sub-surface utility locations.
- Prepare contract plan drawings detailing the proposed water main replacement project.
- Prepare project specifications incorporating City of Watertown standard details.
- Prepare bid documents.
- Prepare an estimate for construction.
- Delivery of signed and sealed hard copy of all documents in addition to electronic versions of the contract documents and plan drawings. (Drawings to be in dwg. Format)
- Preparation of as built drawings at project completion.

Project Timeline: The City would like to have the completed plans and contract documents available for bidding by March 07, 2022. The City Engineering and GIS Departments will provide related record drawings as required. Public Workscan provide additional records as well as potentially assisting with any test holes required to verify critical elevations of existing infrastructure.

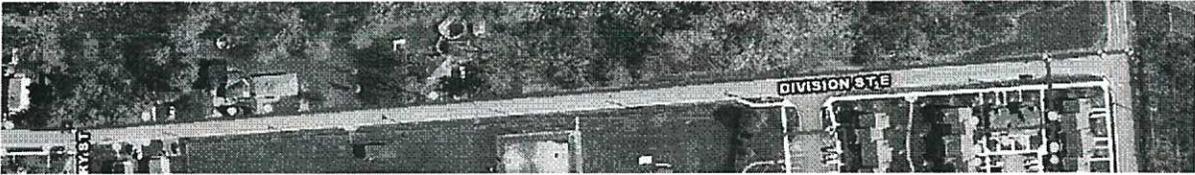
This project is included in our upcoming Capital Budget, however, given the advanced deterioration of the water pipes, we are moving ahead with design with the intent of undertaking repairs late Summer 2022.

Please let me know if you require additional information to facilitate submission of your proposal.

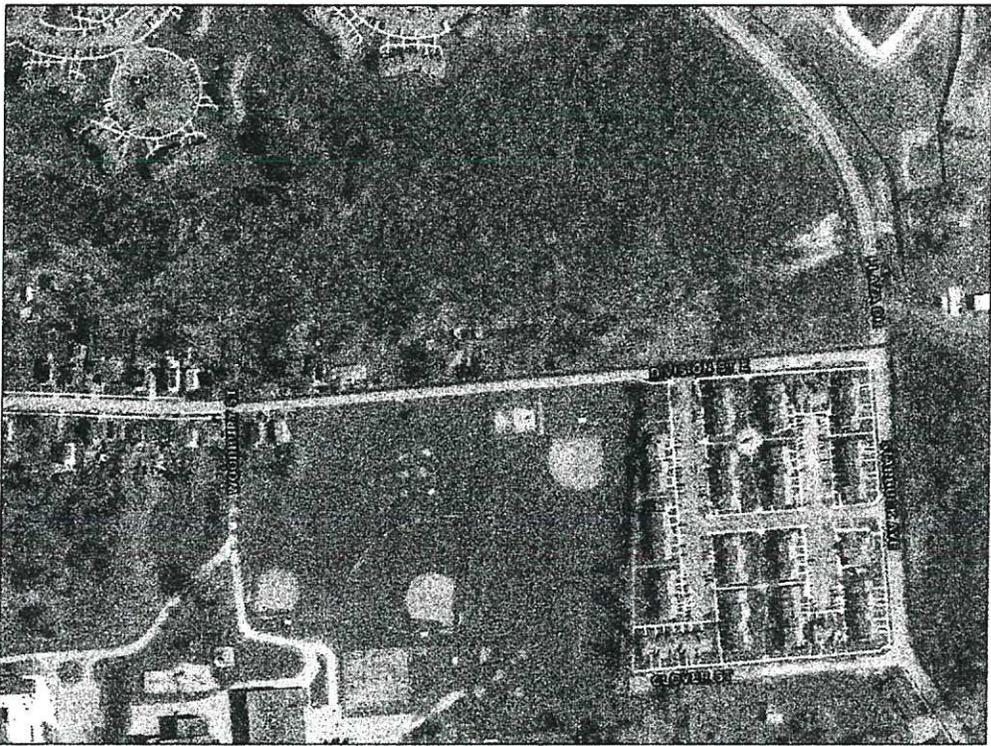
Regards, Michael Delaney.

## GIS Images

Division Street East:



FISCAL YEAR 2021-2022  
 CAPITAL BUDGET  
 INFRASTRUCTURE  
 WATER MAIN

PROJECT DESCRIPTION	COST
<p><b>Division Street East Water Main</b></p> <p>This project includes the replacement of 1443' of 10" transite pipe on East Division Street, from Woodbury Street to Starbuck Avenue. The pipe was installed in 1951-1955 and has been in service beyond its use expectancy.</p>  <p>Funding to support this project will be from the American Rescue Plan of 2021.</p>	<p><b>\$500,000</b></p>
<p><b>TOTAL</b></p>	<p><b>\$500,000</b></p>

FISCAL YEAR 2021-2022  
 CAPITAL BUDGET  
 INFRASTRUCTURE  
 WATER MAIN

PROJECT DESCRIPTION	COST
<p data-bbox="224 478 721 520"><b>Thompson Street Water Main</b></p> <p data-bbox="224 554 1224 667">This project includes the replacement of 938' of 8" transite pipe on Thompson Street, from West Lynde Street to Gale Street. The pipe was installed in 1958 and has been in service beyond its use expectancy.</p> 	<p data-bbox="1289 478 1442 520"><b>\$350,000</b></p>
<p data-bbox="212 1829 1198 1860">Funding to support this project will be from the American Rescue Plan of 2021.</p> <p data-bbox="1097 1871 1235 1906" style="text-align: right;"><b>TOTAL</b></p>	<p data-bbox="1279 1871 1430 1906"><b>\$350,000</b></p>

Resolutions No. 8, 9, 10, 11, 12, 13, 14, 15, 16

May 10, 2022

To: The Honorable Mayor and City Council

From: James E. Mills, City Comptroller

Subject: Sale of City Property

On May 10<sup>th</sup> the City Comptroller's Office held a public auction of City owned properties which received bids totaling \$20,700. The following is a list of the bids received for which resolutions have been prepared for City Council consideration.

Parcel Number	Location	Minimum	Auction	Bidder
		Bid	Bid	
11-12-128.000	330 Brett Street	\$5,500	\$5,500	David E. Stevens
07-07-304.000	330 Coffeen Street	\$1,000	\$7,100	Alexander J Arines Garcia
03-06-207.000	M24 Francis Street	\$100	\$100	Doreen Salerno
03-12-133.000	VL Haven Street	\$200	\$200	Brian Watson
06-04-115.000	512 Jefferson Street	\$500	\$5,000	A Brown Properties LLC
01-14-105.000	428 Maple Avenue	\$500	\$1,000	Anthony Soto
04-19-207.000	39 Wise Street	\$500	\$1,200	Warren Kellogg LLC
04-19-206.000	40 Wise Street	\$100	\$500	Warren Kellogg LLC
05-11-308.001	VL-6 Rear Wyoming Avenue	\$100	\$100	Brian Watson

The required 10% deposit has been received for each parcel. The resolutions for the sales to those bidders include a requirement that all outstanding property taxes be paid prior to the deed being issued.

The following parcels did not receive a minimum bid.

Parcel Number	Location	Assessment	Lot size	Zoning	Minimum Bid
11-12-130.001	VL Flower Avenue East	\$1,400	14' x 45'	Residential B	\$100
06-07-206.000	659 Olive Street	\$4,300	50' x 98'	Residential C	\$2,500

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 330 Brett Street to David E.  
Stevens, 951 Gotham Street  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 330 Brett Street, approximately 50' x 311' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 11-16-108.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$5,500 submitted by David E. Stevens for the purchase of Parcel No. 11-16-108.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 330 Brett Street to David E.  
Stevens, 951 Gotham Street  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to David E. Stevens upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 330 Coffeen Street to  
Alexander J. Arines Garcia, 170 31<sup>st</sup> Street,  
Apartment 4F, Brooklyn, New York 11226

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 330 Coffeen Street, approximately 61' x 92' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 07-07-304.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$7,100 submitted by Alexander J. Arines Garcia for the purchase of Parcel No. 07-07-304.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 330 Coffeen Street to  
Alexander J. Arines Garcia, 170 31<sup>st</sup> Street,  
Apartment 4F, Brooklyn, New York 11226

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to Alexander J. Arines Garcia upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as M24 Francis Street to  
Doreen Salerno, 238 Francis Street,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as M24 Francis Street, approximately 0.94 acres in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 03-06-207.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$100 submitted by Doreen Salerno for the purchase of Parcel No. 03-06-207.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as M24 Francis Street to  
Doreen Salerno, 238 Francis Street,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to Doreen Salerno upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as VL Haven Street to Brian  
Watson, 17481 US Route 11, Lot 8K,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by***

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as VL Haven Street, approximately 50' x 160' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 03-12-133.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$200 submitted by Brian Watson for the purchase of Parcel No. 03-12-133.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as VL Haven Street to Brian  
Watson, 17481 US Route 11, Lot 8K,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to Brian Watson upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 512 Jefferson Street to A. Brown  
Properties, 248 High Street,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 512 Jefferson Street, approximately 35' x 95' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 06-04-115.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$5,000 submitted by A. Brown Properties, LLC for the purchase of Parcel No. 06-04-115.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 512 Jefferson Street to A. Brown  
Properties, 248 High Street,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to A. Brown Properties, LLC upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 428 Maple Avenue to  
Anthony Soto, 247 High Street,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 428 Maple Avenue, approximately 50' x 129' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 01-14-105.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$1,000 submitted by Anthony Soto for the purchase of Parcel No. 01-14-105.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 428 Maple Avenue to  
Anthony Soto, 247 High Street,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to Anthony Soto upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

***Seconded by***

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 39 Wise Street to Warren  
Kellogg LLC, 800 Starbuck Avenue,  
Suite AB100, Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 39 Wise Street, approximately 50' x 100' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 04-19-207.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$1,200 submitted by Warren Kellogg LLC for the purchase of Parcel No. 04-19-207.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 39 Wise Street to Warren  
Kellogg LLC, 800 Starbuck Avenue,  
Suite AB100, Watertown, New York 13601

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

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to Warren Kellogg LLC upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as 40 Wise Street to Warren  
Kellogg LLC, 800 Starbuck Avenue,  
Suite AB100, Watertown, New York 13601

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

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as 40 Wise Street, approximately 50' x 100' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 04-19-206.000, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$500 submitted by Warren Kellogg LLC for the purchase of Parcel No. 04-19-206.000, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

**RESOLUTION**

Page 2 of 2

Authorizing Sale of Real Property,  
Known as 40 Wise Street to Warren  
Kellogg LLC, 800 Starbuck Avenue,  
Suite AB100, Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to Warren Kellogg LLC upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

# RESOLUTION

Page 1 of 2

Authorizing Sale of Real Property,  
Known as VL-6 Rear Wyoming Avenue to  
Brian Watson, 17481 US Route 11, Lot 8K,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

### *Introduced by*

WHEREAS there has heretofore been bid in by the City of Watertown at a tax sale a certain lot of land known as VL-4 Rear Wyoming Avenue, approximately 18' x 50' in size, and also known and designated on the map of the Department of Assessment and Taxation of the City of Watertown, New York as Parcel No. 05-11-308.001, and

WHEREAS title to said land has since been retained by the City of Watertown as acquired at said tax sale, which title was retained by reason of the failure of anyone to redeem the same, and

WHEREAS said real property has never been assigned by the Council for a public use, and

WHEREAS the City Council desires to ensure that properties such as this property be brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers,

NOW THEREFORE BE IT RESOLVED that pursuant to Section 23, Subdivision (b) of the General City Law, Section 247 of the Charter of the City of Watertown as amended by Local Law No. 1, 1985, adopted December 3, 1984, effective January 17, 1985, and the ordinance, Municipal Code, Chapter 16 adopted by the Council on June 6, 1977, that the offer of \$100 submitted by Brian Watson for the purchase of Parcel No. 05-11-308.001, is a fair and reasonable offer therefore and the same is hereby accepted subject to the conditions which follow, and

# RESOLUTION

Page 2 of 2

Authorizing Sale of Real Property,  
Known as VL-6 Rear Wyoming Avenue to  
Brian Watson, 17481 US Route 11, Lot 8K,  
Watertown, New York 13601

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

BE IT FURTHER RESOLVED that the Mayor, Jeffrey M. Smith be and he hereby is authorized, empowered and directed to execute and deliver a Quit Claim Deed of said real property to Brian Watson upon receipt of the above mentioned sum of money in cash only by the City Comptroller, and

BE IT FURTHER RESOLVED that the Quit Claim Deed shall not be issued unless and until all outstanding property taxes owed by the putative purchaser on all parcels owned by said purchaser within the City shall have been satisfactorily paid to the City Comptroller.

BE IT FURTHER RESOLVED that the deed issued by the City contain a provision that if the property sold is not brought into compliance with all applicable provisions of the Uniform Construction Codes, as defined by Watertown City Code Chapter 120, and the Code of the City of Watertown within one (1) year from the date of delivery of the quit claim deed of their sale to subsequent buyers, the City shall have the right to seek and be entitled to receive reversion of title to the premises to the City.

*Seconded by*

Public Hearings – 7:15 p.m.

May 9, 2022

To: The Honorable Mayor and City Council  
From: Kenneth A. Mix, City Manager  
Subject: Public Hearings for 2022-23 Operating Budgets and 2022-23 Through  
2026-27 Capital Budget

As part of the Budget review process, the City provides the public with an opportunity to voice their opinions about the Proposed Budgets, both Operating and Capital. Public Hearings on the Proposed Budgets, as well as the Proposed Local Law to override the tax levy limit, have been scheduled as follows:

Monday, May 16, 2022

7:15 p.m. 2022-23 Operating Budgets and 2022-23 through  
2026-27 Capital Budget

7:15 p.m. Proposed Local Law No. 1 of 2022 - A Local Law  
Overriding the Tax Levy Limit Established by New  
York General Municipal Law §3-c

LOCAL LAW

Page 1 of 1

A Local Law Overriding the Tax Levy Limit Established by New York General Municipal Law §3-c

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

Total .....

Table with 2 columns: YEA, NAY. It contains 6 empty rows for recording votes.

Introduced by Council Member Lisa A. Ruggiero

A local law to override the tax levy limits established by New York General Municipal Law §3-c.

WHEREAS, the City Council of the City of Watertown desires to override the limit on the amount of real property taxes that may be levied by the City of Watertown pursuant to General Municipal Law §3-c, and to allow the City of Watertown to adopt a budget for the fiscal year beginning July 1, 2022 and ending June 30, 2023 that requires a real property tax levy in excess of the "tax levy limit" as defined by General Municipal Law §3-c; and

WHEREAS, such override is authorized by the provisions of subdivision 5 of General Municipal Law §3-c, which expressly authorizes the City Council to override the tax limit by adoption of a local law approved by a vote of at least sixty percent (60%) of the City Council.

WHEREAS a public hearing on this was held on May 16, 2022, at 7:15 p.m. in the City Council Chambers;

NOW THEREFORE BE IT ENACTED by the City Council of the City of Watertown, New York, as follows:

Tax Levy Limit Override: The City Council of the City of Watertown, County of Jefferson is hereby authorized to adopt a budget for the fiscal year 2022-2023 that requires a real property tax levy in excess of the amount otherwise prescribed in General Municipal Law §3-c.

Severability: If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person, individual, firm or corporation, or circumstance, shall be adjudicated by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this Local Law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Effective Date: This local law shall take effect immediately upon filing with the Secretary of State.

Seconded by Council Member Sarah V.C. Pierce

Tabled Resolution

May 10, 2022

To: The Honorable Mayor and City Council  
From: Kenneth A. Mix, City Manager  
Subject: Proposing an Open-Door Employee Policy

The attached resolution was tabled on April 18th and again on May 2<sup>nd</sup>. An opinion from the City Attorney on the process for adoption was included with the May 2<sup>nd</sup> agenda and is included here also.

# RESOLUTION

Page 1 of 2

Proposing an Open-Door Employee Policy

Council Member HICKEY, Patrick J.

Council Member OLNEY III, Clifford G.

Council Member PIERCE, Sarah V.C.

Council Member RUGGIERO, Lisa A.

Mayor SMITH, Jeffrey M.

Total .....

YEA	NAY

***Introduced by Council Member Lisa A. Ruggiero***

WHEREAS all Employees of the City of Watertown are a vital resource and are entitled to due process with regard to their employment or in all other matters. It is understood that in most departments there are processes in place to deal with employee concerns, and

WHEREAS in most cases, the chain of command needs to be respected so that employee concerns can be dealt with in a manner that allows a progression of the matter up the chain of command when feasible, and

WHEREAS according to the current “unwritten policy”, employees are not allowed to bring their concerns directly to the Mayor or another Member of City Council. In fact, taking such an action can be construed as an act of insubordination and result in discipline up to and including the employees discharge, and

WHEREAS in the interest of fairness and as a means to improve employee relations, it is the intent of this City Council to establish an “**open-door employee policy**” for city employees,

NOW THEREFORE BE IT RESOLVED it is proposed that this Council adopt an “**open-door employee policy**” that reads:

Every employee of the City of Watertown is entitled to fair treatment and due process. When employee issues arise, employees are encouraged to utilize their rights and processes that were afforded under a collective bargaining agreement and rules within the Employee Handbook. As is the case, employees should first bring their concerns to their immediate supervisor, and they should follow the chain of command up to and including the City Manager.

In those cases, where the issue involves an individual along their chain of command, the employee may choose to escalate their issue to the next person along the chain of command without fear of that action being deemed “Insubordinate”.

No city employee shall be disciplined, retaliated against or discharged for bringing an issue to light nor shall they be retaliated against for such actions or for reaching out to any Member of City Council.

# RESOLUTION

Page 2 of 2

Proposing an Open-Door Employee Policy

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

Total .....

YEA	NAY

In all cases where the employee has attempted to resolve the issue through the normal recourses and the issue has not been resolved adequately, according to the employee, the employee may bring the issue to any Member of the City Council without fear of retaliation. **Any City Employee may now initiate a conversation with any City Council Member for any reason.**

Once an issue has been brought forward to a Council Member, the City Council Member will seek to resolve the issue in concert with other Members of City Council and the City Manager.

**When any City Department Head or Employee has been contacted by any Member of City Council, they will accept the call or return the call as soon possible.** If the Employee is on sick leave or vacation, the Employee will contact the City Council Member within 2 business days; once they have returned to work. Employees will also cooperate in all City Council Members' inquiries and be truthful in their responses.

***Seconded by*** Council Member Sarah V.C. Pierce

**SLYE LAW OFFICES, P.C.**

ATTORNEYS AT LAW

104 WASHINGTON STREET

WATERTOWN, NEW YORK 13601

ROBERT J. SLYE  
CHRISTINA E. STONE

(315) 786-0266  
FAX: (315) 786-3488

April 26, 2022

Mayor Jeffrey M. Smith  
Members of Watertown City Council  
City of Watertown  
245 Washington Street  
Watertown, New York 13601

**Re: Proposed Resolution #18**

Dear Mayor Smith and Members of Watertown City Council:

At the City Council's regular meeting held on April 18, 2022, Council was presented with Resolution #18, proposing an "Open-Door Employee Policy." I questioned, at the time, whether the topic could be addressed by resolution, or must be instead be addressed by Local Law. I further questioned whether such a Local Law would be subject to mandatory referendum. For the reasons outlined below, I reaffirm my opinion that changes such as those contemplated by proposed Resolution #18 must be accomplished by Local Law and, upon research of the matter, believe that such a Local Law is subject to mandatory referendum.

Section 5 of the Watertown City Charter, originally adopted on May 22, 1923, provides:

The City of Watertown having adopted the simplified form of government, defined as Plan C under the Optional City Government Law, being Chapter 444 of the Laws of 1914, shall hereafter be governed by the provisions thereof, and nothing in this act contained shall be construed to alter, abridge, enlarge, restrict or in anywise affect the application of said Act or of any of the provisions thereof to said city.

City of Watertown Charter Section 5.

Importantly, Plan C of the Optional City Government Law is titled: "Government by Limited Council, with Appointive City Manager." Plan C is described at Sections 85-93 of Chapter 444 of the Laws of 1914. The provisions of Plan C relevant to the proposed Council action are as follows:

**§90 – Administrative and executive powers.**

The administrative and executive powers of the City, including the power of appointment of officers and employees, are vested in an official to be known as the city manager....

**§91 – General duties of city manager.**

The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the state and the ordinances, resolutions and by-laws of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial condition, and its future financial needs; (5) prepare and submit to the council a tentative budget for the next fiscal year.

**§92 – Appointment of city officers and employees.**

Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by the city manager; but the city manager shall report each such appointment and removal to the council at the next meeting thereof following any such appointment or removal.

**§93 – Powers and duties of other city officers.**

The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the council.

In summary, then, the Watertown City Charter vests all authority in connection with employee appointment and removal with the City Manager. Moreover, as "appointing authority," the City Manager is solely vested with authority to remove or to impose other disciplinary action against the officers or employees whom he or she has appointed. See, generally, New York Civil Service Law §75(1) (McKinney Supp. 2022), which applies to charges and procedures concerning employee misconduct or incompetence.

Examples of misconduct include, but are not limited to, acts of dishonesty, including relating untruthful facts and theft or misappropriation of funds; and/or insubordination to the authority of a duly appointed senior employee.

It is this potential for discipline, which can only be administered by the City Manager for those employees who fall within the Manager's appointing authority, which is addressed by proposed Resolution #18. Specifically, Resolution #18 would allow a City employee to have a disagreement with the Manager or a department head, either on matters of policy or direction, and essentially appeal directly to members of City Council, without the Manager's permission,

for redress of the employee's concerns. The proposed "Open Door Employee Policy" would further approve of a Councilmember's attempt to "resolve the issue in concert with other members of City Council and the City Manager." I respectfully submit that the proposed resolution is in direct conflict with the authority of the City Manager under Plan C of the Optional City Government Law and is therefore in conflict with the City Charter.

The Watertown City Charter is, itself, a local law. As such, under the "hierarchy of legislative action," consisting of "resolutions, ordinances, and local laws," any matter once adopted by one of those forms may only be amended by using the same form. Accordingly, an ordinance may only be amended by an ordinance; a resolution by a resolution; and a local law by a further local law. This is generally referred to as the "doctrine of equivalence."

It follows then, that an amendment of the powers of the City Manager, originally adopted by charter (local law) can only be effected by another local law, or "Home Rule Legislation." By way of explanation, the State generally governs what laws can and cannot be adopted: for example, State law allows each city to establish parking regulations and to call for penalties in the event of a violation of those regulations. State law further allows for the adoption of zoning rules and regulations. Local legislation adopted pursuant to State authorization takes the form of "ordinances." When a local legislature desires to adopt rules which are not specifically authorized by statute, yet are legitimate subjects of "home rule," the City's right to adopt legislation is governed by New York's "Municipal Home Rule Law." In certain circumstances, an adopted local law may be subject to either a mandatory referendum to be conducted at the next general election, or subject to a petition for a "permissive referendum." Local laws subject to mandatory referendum are described at Section 23 of the New York Municipal Home Rule Law and those subject to permissive referendum (or referendum on petition) are described at Section 24 of the Municipal Home Rule Law.

Section 23(2)(a) the Municipal Home Rule Law provides that "except as otherwise provided by or under authority of a state statute, a local law shall be subject to mandatory referendum if it...in the case of a city, provides a new charter for such city." (N.Y. Mun. Home Rule Law §23(2)(a) (McKinney 1994). The relevant question, therefore, is whether the proposed resolution, if re-cast as a local law, would "provide a new charter for [Watertown]."

At the beginning of this letter, I cited Section 5 of the Charter, which not only recites the City's adoption of Plan C of the Optional City Government Law, but continues by stating "nothing in this act contained shall be construed to alter, abridge, enlarge, restrict or in anywise affect the application of said Act or of any of the provisions there to said city." See, Watertown City Charter, Section 5. In other words, the application of Plan C to Watertown, specifically recited in the City's Charter in 1923, may not be "alter[ed], abridg[ed], enlarg[ed], restrict[ed] or in anywise affect[ed]" in its application of "any of the provisions" to the city. This raises the question of whether City Council's abridgment of the City Manager's authority to impose discipline under Section 75 of the Civil Service Law or, indeed, to "remove" an officer or employee under Section 92 of Plan C, constitutes a "new charter" for the City. The question posed is: if the Charter grants certain powers to the City Manager, under a structured form of

government, can Council remove that authority in a piecemeal fashion by the simple adoption of a local law, or must that local law be subject to public referendum?

Case law provides only two examples of a municipality's struggle with this issue, or an issue like it. In Commission of Public Charities of City of Hudson v. Wortman, 255 App. Div. 241 (3<sup>rd</sup> Dep't 1938), aff'd 279 N.Y. 711 (1938), the Third Department held that a proposed local law, adopted to abolish previously existing commissions and creating new "departments" for discharge of certain duties previously undertaken by those commissions, did not provide a new charter within the meaning of a provision of the then-"City Home Rule Law" requiring a referendum. Id. According to the Court, the new law "simply change[d] the form of certain commissions to that of departments..." In the case of Meredith v. Connally, 38 AD2d 385 (3<sup>rd</sup> Dep't 1972), that same court (albeit 34 years later) addressed a local law which transferred the power to appoint corporation counsel from the City Manager to the City Council. The question in the Meredith case was whether the change of a particular power of City Council to appoint a corporation counsel constituted "so substantial a change as to require a referendum." The Meredith Court determined that a referendum was not a requirement.

Here, the Watertown City Charter makes it exceedingly clear that "nothing...shall be construed to alter, abridge, enlarge, restrict or in anywise affect the application of [Plan C of the Optional City Government Law]." There can be no question that the powers of the City Manager, under Plan C, are quite broad. The manager has the power to appoint and the power to terminate that appointment. Indeed, only the City Manager can do so. Yet the proposed Resolution #18 (if it is appropriately cast as a local law) would greatly affect that power: the manager's authority would or could possibly be called into question by a member or members of City Council, and the manager would be powerless to press a change of insubordination, if it applied. I respectfully submit that this represents a significant change in the powers accorded the office of City Manager by the Charter and that, therefore, the change represents one essentially representing a new charter, supplanting Plan C by imposing legislative involvement in personnel matters. Accordingly, it is my opinion that any local law drafted to contain the provisions now contained in the proposed resolution, if adopted by Council, would be subject to mandatory referendum under Section 23 of the Municipal Home Rule Law.

Very truly yours,

SLYE LAW OFFICES, P.C.

By:

  
Robert J. Slye

RJS/dg

Staff Report

May 11, 2022

To: The Honorable Mayor and City Council

From: Kenneth A. Mix, City Manager

Subject: Adjournment for Budget Adoption

The City Council should consider adjourning this meeting until 6:30 pm on June 6, 2022 for the purpose of adopting the FY 2022-23 Budget.

Staff Report

May 5, 2022

To: The Honorable Mayor and City Council

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

Subject: Crow Management Program – Annual Report

The 2021-2022 crow harassment season was the third in a three-year contract between the City and Loomacres Wildlife Management, which has been the City's chosen crow harassment contractor since 2011. Similar to the previous year, the City requested that Loomacres frontload their harassment efforts, with a majority of harassment nights taking place early in the winter season.

Each year, Loomacres submits a season-ending report, which summarizes the crow hazing activities that were conducted within the City during that harassment season. Attached for City Council review is the report from the 2021-22 season.

As this was the final year of the contract, the City will need to enter into a new agreement with Loomacres Wildlife Management prior to the 2022-23 winter season. If the City Council wishes to continue the crow management program and directs Staff to continue the relationship with Loomacres, Staff will work with Loomacres to prepare a new contract during the summer months of 2022.



April 8, 2022

Geoff Urda  
245 Washington Street  
Watertown, NY 13601

Mr. Urda,

Below you will find a summary of our effort during the 2021-2022 crow management program in Watertown, New York. Report completed by Bradley Lewis, Loomacres Wildlife Biologist.

Loomacres Wildlife Management Inc. conducted crow harassments from October 2021 through March 2022 in the city of Watertown, New York. Harassment was conducted in response to the large flocks of American crows (*Corvus branchyrhynchos*) that would roost throughout the city's residential and commercial areas. These birds have produced undesirable conditions throughout the city including noise disturbances from their loud calls when congregated in large numbers, as well as the fecal matter produced by flocks in roosting locations.

Initial harassment commenced on the 26<sup>th</sup> of October, 2021. During the beginning of the crow hazing season, crows were observed in high numbers near Mechanic and Polk, and the river near Knowlton Technologies. Larger groups formed by the Black river near Newell and Mill streets. As the season progressed on, larger numbers of crows congregated in the city. Each evening, as sunset progressed, small groupings of crows had moved towards the city and took refuge in trees adjacent to the Black River, West Main St, between Moulton St. and Factory Street, and Mill Street near NAPA Auto Parts. Initial harassments began with flock sizes estimated around 550-700 birds, and as the season progressed, flock sizes increased to 500-2,300. Loomacres staff utilized several harassment techniques and were able to break the flock up into smaller groups ranging in size of 50-300 individuals, dispersed throughout the city. On succeeding visits, initially observed flock sizes prior to the days harassment, were estimated to range from 1,000-3,500 individuals. On repeat visits, Loomacres staff noticed initial congregations of crows near West Main and Mill St. Locations within the city that had increased crow hazing activity included the edges of Black River off Newell St., Keyes Ave., Lillian Street, Washington Street, East Main Street, Waterman Drive, the church by Parker Street, Marshall plaza, the collection of trees off Main Avenue, forested area near Casey St., and the collection of trees near the City Snow Dump site off Mill St.

Loomacres staff continued to be vigilant with hazing flocking of crows, with efforts focused at reducing flock sizes concentrated in one location and directing flocks out of the city. Loomacres personnel used a variety of non-lethal harassment techniques including: pyrotechnics, lasers, spotlights,

*" Bringing Wildlife Management To A Higher Level "*

Loomacres Wildlife Management • 242 Hallenbeck Road • Cobleskill, NY 12187

Ph: 800-243-1462 • Fax: 518-618-3129 • [www.AirportWildlife.com](http://www.AirportWildlife.com)

E-mail: [info@loomacres.com](mailto:info@loomacres.com)

distress callers, and paintball marker to disperse from city roosting areas. Loomacres did use lethal harassment techniques this year because the flocks were becoming less scared of non-lethal techniques.

Similar to previous years, staff fielded phone calls and emails from city residents to help locate and confirm crow related problems throughout the city. A total of thirty one (31) sighting reports were filed, a significant increase from the previous year (11 reports in 2020-2021). First reports were submitted in October. The greatest number of reports from city residents were collected during February, with fourteen (14) entries. During the subsequent months, nine (9) reports in November, three (3) in December, three (3) in January, six (6) in March, and one (1) in October. Flock size estimates reported by Watertown residents were similar for each month during the hazing season, with estimates between 150-1000 crows reported.

Harassment efforts wrapped up in March 2022 as flock sizes of crows attempting to roost in the city were observed to be less than 1,000 crows and flocks gradually were less persistent to stay within the city. The remaining crows were continually harassed until they were spread out in flocks consisting of a couple hundred individuals, reducing the negative effects they had on residents and their property.

Overall, the crow harassment operations during the Watertown 2021-2022 winter season were viewed as a success. Loomacres personnel conducted harassments on nine occasions, with a total of 165 harassment instances performed. Overall, total number of crows observed increased compared to previous years of hazing efforts (2016-2017, 87,950 crows harassed, 2017-2018, 77,200 crows harassed, 2018-2019, 44,975 crows harassed, 2019-2020, 126,005 crows harassed, 2020-2021 64,006 crows harassed, 2021-2022 180,785 crows harassed). During the 2021-2022 hazing season, Loomacres resorted to lethal reinforcement, when flocks became resistant of non-lethal techniques. Continued availability of the reinforcement method will assist with future harassments in the city. The goals of reducing overall flock sizes by means of harassment into small groupings greater dispersed around the city were attained with great success. Public participation in reporting efforts helped to establish an overall positive perception of the effects the harassment has on the city's crows.

**Total Number of Crows Harassed: 180,785**

**Total Number of Harassment Instances: 165**

**Total Number of Pyrotechnics Used: 67**

**Total Number of Laser/Distress Deterrents Used: 75**

**Total Number of Paintball harassments: 10**

**Total Number of Lethal Crow Takes: 106**

American crows are likely to be a continued issue for the city of Watertown during the winter months. Loomacres recommends that the city continue to take a proactive approach to manage crow populations. Thank you for the opportunity to work with the City of Watertown. I hope that you will find this information useful. If you have any questions or would like additional information, please do not hesitate to contact me.

Sincerely,

*" Bringing Wildlife Management To A Higher Level "*

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