

Proclamation

56th ANNUAL PROFESSIONAL MUNICIPAL CLERKS WEEK

May 4 - 10, 2025

Whereas, The Office of the Professional Municipal Clerk, a time honored and vital part of local government exists throughout the world, and

Whereas, The Office of the Professional Municipal Clerk is the oldest among public servants, and

Whereas, The Office of the Professional Municipal Clerk provides the professional link between the citizens, the local governing bodies and agencies of government at other levels, and

Whereas, Professional Municipal Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all.

Whereas, The Professional Municipal Clerk serves as the information center on functions of local government and community.

Whereas, Professional Municipal Clerks continually strive to improve the administration of the affairs of the Office of the Professional Municipal Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, provincial, county and international professional organizations.

Whereas, It is most appropriate that we recognize the accomplishments of the Office of the Professional Municipal Clerk.

Now, Therefore, I, Eugene Majchrzak, Supervisor of the Town of Orchard Park, do recognize the week of May 4 through 10, 2025, as Professional Municipal Clerks Week, and further extend appreciation to our Professional Municipal Clerk, Remy Orffeo and to all Professional Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.

Dated this _____ day of _____, 2025

Supervisor

Attest: _____

RESOLVED, that the Town Board does hereby approve a term correction for newly appointed Assessment Board of Review member, William Waltenbaugh. This term will fill a current vacancy on the Board of Assessment Review for a 5 year term, with a beginning date of 10/01/2023, and an end date of 09/30/2028, and be it further

RESOLVED, that this term supersedes the initial appointed term approved on 4/2/2025.



TOWN OF ORCHARD PARK

MEMORANDUM

S.4295 SOUTH BUFFALO STREET
ORCHARD PARK, NEW YORK 14127
(716) 662-6432

DATE: 5/2/25

TO: Town Clerk, Remy Orfeo, Jennifer Brady, and Building Inspector Tom Minor
FROM: Anna Worang-Zizzi
SUBJECT: 5/7/25 - TB Agenda "Old Business Item(s)"

OLD BUSINESS

The Planning Board at their 3/14/25 meeting recommended the following:

1. With regard to Lexington Heights (Birdsong Parts 4 & 5), located west of Transit Road and North of Jewett Holmwood, Zoned R-1 (SBL# 173.04-2-25.1), that the Town Board **APPROVE** the requested rezoning from R-1 to R-1 with a Conservation Management Overlay District (CMO) designation, for the purpose of constructing 129 single-family homes on 125 +/- acres based on the following conditions and stipulations:
 1. This recommendation does not constitute recommendation of the Plat Plan as proposed, but rather recognition that CMO housing desirable for potential owners, and of benefit to the Town.

PLEASE SET A PUBLIC HEARING DATE FOR JUNE 4, 2025



TOWN OF ORCHARD PARK

ENGINEERING DEPARTMENT

S 4295 South Buffalo Street Orchard Park, New York 14127-2609

Phone: (716) 662-6425
Fax: (716) 662-6488
Email: openg@orchardparkny.org

TOWN ENGINEER
WAYNE L. BIELER, P.E.

May 1, 2025

Honorable Town Board
Town of Orchard Park
4295 South Buffalo Street
Orchard Park, NY 14127

**Re: Proposed Change Order #2
Greenauer Blacktop Inc. Contract
Community Activity Center – Generators Installation Project (General)**

Dear Board Members:

The Engineering Department is requesting your approval of a Change Order #2 to the contract with Greenauer Blacktop Inc., for Community Activity Center Generator Installation Project (General Contract).

During the initial start up testing of the generators, Cummins determined that the gas pressure at the generators was greater than the maximum allowable pressure. They recommend that a regulator be installed at each generator to reduce the pressure to the recommended range. Because the generators have a sound reducing and protective enclosure, modification will be required to properly vent the regulator. The cost of this work is \$7,429.00.

If approved, this change order will increase the awarded Contract amount of \$157,300.00, to \$170,732.00. This is a net increase of 8.5%.

There is presently funding in AB018 Community Activity Senior Bocce/Generator \$80,352.00.

I, therefore, recommend that you approve Change Order #2 to the Contract with Greenauer Blacktop Inc., 391 French Road, West Seneca, New York 14224, for the Community Activity Center Generators Installation Project (General) at the amount not to exceed, \$7,429.00.

Respectfully submitted,

Wayne L. Bieler, P.E., CFM
Town Engineer

Attachments

Cc: Remy Orfeo, Town Clerk
Greenauer Blacktop Inc.
File # CDBG Cares Act
Timothy Gallagher, Town Attorney
Nichole Ruf, Drescher & Malecki

S:\Town Projects\TOWN FACILITIES\CAC Grant - Generators & Openers\Generators\GC Construction\TB letter for CO2 General Contract_Generators.doc

Visit the Town's website at www.orchardparkny.org



Barnum

391 French Road, West Seneca NY 14224
Phone: (716)826-6565 Fax: (716)826-4119

April 30, 2025

Orchard Park Community Center
4500 California Rd
Orchard Park, NY 14127

The following proposal has been monetized for your consideration:

- Furnish labor, tools, and material necessary to install (2) 243-12-2 211 1 ¼ 11 30 ORF GRN Sensus Gas Pressure Regulators on the gas supply within the Emergency Generator enclosures at the above referenced site. 111 vent relief piping will be routed to the exterior and terminated with a screened peck style vent. A 1-3/4" hole will be drilled in each enclosure and sealed with a watertight grommet.

Cost.....	\$6,396.00
15% OH/P.....	\$959.00
Subtotal.....	\$7,355.00
1% Bond.....	\$74.00
Grand Total.....	\$7,429.00

Thank You,

Tim McAllister

RESOLVED, that the Town Board does hereby approve the following 2025 Stable Permits:

- Sandybrook Farm & Stable located at 6265 Powers Rd. Orchard Park, NY 14127
- Hammersmith Farms at 6243 Benning Rd. West Falls, NY 14170

RESOLVED, that the Town Board does hereby approve Andrew Slotman Highway Superintendent to declare surplus of equipment for 2025; and be it further

RESOLVED, that the Town Board does hereby authorize Andrew Slotman Highway Superintendent to auction the 2025 surplus equipment, a list of the 2025 surplus equipment will be on file in the Town Clerk's Office.

2025 spring auction

2011 Ford F-250 vin 1FTBF2B61BEB42349

2005 Chevy Silverado 2500 vin 1GCHC24UX5E252061

2007 Freightliner m2 vin 1FVACYCS77HY37612

1979 Ford 540 industrial tractor

2000 Kubota M6800 4wd tractor

1994 Elgin sweeper

1960s model ARPS 70 3 point snow blower

Two 1979 model year leaf vac machines one diesel power one gas power

Kombi paint sprayers

Yazoo Mower

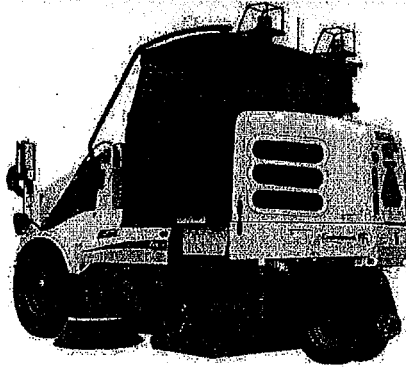
Ball Diamond Chalk liners

Unknown year semi trailer



Presents a Proposal Summary

of the



2017 Pelican P

Pelican NP Three Wheel Broom Street Sweeper with Dual Side Brooms and Belt Conveyor

for

Town of Orchard Park, NY

Aaron Gieseke
Regional Sales Manager

Joe Johnson Equipment LLC
62 Lagrange Avenue, Rochester, New York, 14613
Cell 585.474.2932
agieseke@jjeusa.com/www.jjei.com

PRODUCT DESCRIPTION

· USED 2017 Elgin Pelican Dual steer & gutter brooms, hydraulically driven, Tier 4F JD 4045TF low emission diesel engine, hydrostatic drive and steering, chassis and wheels powder coated standard white

STANDARD FEATURES

- Air cleaner, two-stage, dry type with restriction indicator
- Air Conditioner
- Alternator, 120 amp
- Anti Siphon water fill
- Automatic engine shutdown (oil pressure/engine temperature)
- Automatic pickup in reverse
- B20 biodiesel compatible
- Back up alarm, electric
- Battery, maintenance free
- Brakes, power
- Broom, main, hydraulically suspended
- Broom, main, in cab pressure control
- Broom, main, prefab, disposable
- Broom, side broom, hydraulically suspended
- Broom, side broom, in cab pressure control
- Broom Measurement Ruler
- Bumper pads, front jack
- Coolant recovery system
- Doors, see through glass, prop-able
- Electronic Throttle
- Engine, hour meter
- Gauges & Warning lights: engine oil temperature, engine oil pressure, fuel level, speedometer & odometer w/trip set
- Fenders, over front wheels
- Flushing system for hopper/conveyor
- Fuel tank, 35 gallons
- Fuel Water separator with indicator light
- Heater, pressurizer with filtered air, defroster
- Hose, hydrant fill, 16' 8" with coupling
- Light, spotlight, adjustable, one per side broom
- Lights, 2 combination, tail/stop lights
- Lights, headlights, multiple beam
- Lights, low water light
- Low Hydraulic Warning
- Main broom controls in cab
- Manuals, operator and parts
- Mirror, inside rear view
- Mirrors, outside, front mounted 6 inch fish eyes
- Mirrors, outside, front post mounted, west coast type, one each side
- Parking brake with interlock
- Rear Camera & in cab monitor
- Return to sweep feature
- Seat Belts (both sides for dual)
- Seats, extra wide cordura suspension seats with arm rests
- Signals, self-canceling directional with hazard switch
- Sprung guide wheel, heavy duty
- Steering wheel, tilt and telescoping
- Sun visors
- Tachometer, diesel engine
- Tires, tubeless radials

- Tow loops, four
- Water tank, fill gauge
- Water tank, molded polyethylene: 220 gallon total nominal capacity
- Wheels, dual guide
- Wheels painted grey
- Window, opening front opera
- Windshield washer
- Windshield wipers with intermittent setting
- Windshield, tinted
- Sweeper Painted Standard White
- Red Logo
- 1 Year Parts and Labor Warranty

ADDITIONAL FEATURES

- Sidebroom Tilt Option Right Hand
- Lower Conveyor Cleanout
- Lighting Package 5: One LED Strobe w/Guard
- Unheated Unmotorized Mirrors
- AM/FM/CD With (2) Map Lights
- License Plate Holder
- Right Hand Heavy Duty Limb Guard

Sourcewell Contract# 093021-ELG Total: \$124,000.00

Price valid for 7 Days from 3/26/25

Product Model: 2017 PELICANP

Proposal Date: 3/26/25

Quote Number: UA003012

Proposal Notes:

1. Multiple unit orders will be identical to signed proposal. Changes or deviations to any unit of a multiple unit order will require a new signed proposal.
2. Chassis specifications and data codes for customer supplied chassis must be submitted to and approved by Elgin Sweeper Company prior to submittal of customer purchase order.
3. All prices quoted are in US Dollars unless otherwise noted.

SIGNED BY:

_____ Date: _____

LIMITED WARRANTY

ELGIN SWEEPER COMPANY warrants each new machine manufactured by it against defects in material and workmanship provided the machine is used in a normal and reasonable manner. This warranty is extended only to the original user-purchaser for a period of twelve (12) months from the date of delivery to the original user-purchaser.

ELGIN SWEEPER COMPANY will cause to be repaired or replaced, as the Company, may elect, any part or part of such machine which the Company's examination discloses to be defective in material or workmanship.

Repairs or replacements are to be made at the selling Elgin distributor's location or at other locations approved by ELGIN SWEEPER COMPANY.

The ELGIN SWEEPER COMPANY warranty shall not apply to:

1. Major components or trade accessories such as but not limited to, trucks, engines, tires or batteries that have a separate warranty by the original manufacturer.
2. Normal adjustments and maintenance services.
3. Normal wear parts such as but not limited to, broom filters, broom wire, shoe runners and rubber deflectors.
4. Failures resulting from the machine being operated in a manner or for a purpose not recommended by ELGIN SWEEPER COMPANY.
5. Repairs, modifications or alterations without the consent of ELGIN SWEEPER COMPANY which, in the Company's sole judgment, have adversely affected the machine's stability or reliability.
6. Items subjected to misuse, negligence, accident or improper maintenance.

The use in the product of any part other than parts approved by ELGIN SWEEPER COMPANY may invalidate this warranty. ELGIN SWEEPER COMPANY reserves the right to determine, in its sole discretion, if the use of non-approved parts operates to invalidate the warranty.

Nothing contained in this warranty shall make ELGIN SWEEPER COMPANY liable for loss, injury, or damage of any kind to any person or entity resulting from any defect or failure in the machine.

TO THE EXTENT LIMITED BY LAW, THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

This warranty is also in lieu of all other obligations or liabilities on the part of ELGIN SWEEPER COMPANY, including but not limited to, liability for incidental and consequential damages on the part of the Company or the seller.

ELGIN SWEEPER COMPANY makes no representation that the machine has the capacity to perform any functions other than as contained in the Company's written literature, catalogs or specifications accompanying delivery of the machine.

No person or affiliated company representative is authorized to give any other warranties or to assume any other liability on behalf of ELGIN SWEEPER COMPANY in connection with the sale, servicing or repair of any machine manufactured by the Company.

ELGIN SWEEPER COMPANY reserves the right to make design changes or improvements in its products without imposing any obligation upon itself to change or improve previously manufactured products.

WHEREAS, the Town Board has approved the surplus of equipment for 2025; and

WHEREAS, the Town has conducted an auction to sell the surplus equipment;

NOW, THEREFORE be it,

RESOLVED, that the Town board does hereby authorize Andrew Slotman Highway superintendent to accept the results of the auction that closed on April 15, 2025. A list of the auction results will be on file in the Town Clerk's Office.

RESOLVED, that based on the recommendation of Andrew Slotman, Highway Superintendent, the Town Board does hereby authorize the purchase of a 2017 Elgin, Pelican P Three wheel broom street sweeper with dual side brooms and belt conveyor from Joe Johnson Equipment. The purchase is utilizing Sourcewell contract number 040924-FSC with a purchase price of \$124,000.00.

WHEREAS, the Orchard Park, Parks and Grounds Department has a vacant laborer position; and

WHEREAS, there are funds in the 2025 budget to fund a laborer position; and

WHEREAS, Andrew Slotman, Orchard Park Highway Superintendent, has determined that Sean Kelley is ready and able to serve as a laborer in the Orchard Park, Parks and Grounds Department.

NOW, THEREFORE be it

RESOLVED, that based on the recommendation of Andrew Slotman, Orchard Park Highway Superintendent, Sean Kelley is appointed as a full time laborer in the Orchard Park, Parks and Grounds Department as a Blue Collar Laborer at Step 1 of the Blue Collar Contract at a rate of \$24.57 per hour effective April 21, 2025.

WHEREAS, the Orchard Park Highway Department has a vacant laborer position; and

WHEREAS, there are funds in the 2025 budget to fund a laborer position; and

WHEREAS, Andrew Slotman, Orchard Park Highway Superintendent, has determined that Colten Little is ready and able to serve as a laborer in the Orchard Park Highway Department.

NOW, THEREFORE be it

RESOLVED, that based on the recommendation of Andrew Slotman, Orchard Park Highway Superintendent, Colten Little is appointed as a full time laborer in the Orchard Park Highway Department as a Blue Collar Laborer at Step 1 of the Blue Collar Contract at a rate of \$24.57 per hour effective April 28, 2025.

WHEREAS, the Orchard Park, Parks and Grounds Department has vacancies for seasonal employment positions; and

WHEREAS, there are funds in the 2025 budget to fund seasonal employment positions;

NOW, THEREFORE be it

RESOLVED, that based on the recommendation of Andrew Slotman, Orchard Park Highway Superintendent, the following employees: Steven Blidy and Patrick Blidy, with a payrate of \$17.00 per hour and John Pangallo with a payrate of \$21.00 per hour be appointed as seasonal staff to the Parks and Grounds Department effective April 21, 2025 to October 31, 2025.

RESOLVED, that the Town Board does hereby approve the appointment of the following Summer Seasonal staff to the Orchard Park Recreation Department effective April 17, 2025 – August 29, 2025 and Part-time Seasonal Staff effective August 30, 2025 – December 31, 2025:

Benjamin Addesa	\$17.00 Lifeguard 1
Brody Campbell	\$17.00 Lifeguard 1
Anthony Dellasala	\$17.00 Lifeguard 1
Lauren Hrusa	\$17.00 Program Coordinator 2
Ethan Weingarten	\$17.00 Lifeguard 1
William Papanastasiou	\$16.50 Program Coordinator 1

RESOLVED, that the Town Board, the Police Chief, Highway Superintendent and the Town Engineer have reviewed the street layout for the Birdsong Subdivision Part 3B, Phase 2B PIP #2024-03. Upon dedication of the Birdsong Subdivision Part 3B, Phase 2B, the Town Board does hereby authorize the posting of a **STOP SIGN** on Woodthrush at the intersection of Kestrel Court.

WHEREAS, part of NYSDOT Large Culvert Program, the DOT will be replacing an existing culvert on Rt. 277 in the Town of Orchard Park. As part of this project a section of Town owned waterline will be relocated; and

WHEREAS, the State's policy is to replace or make adjustments to any utilities owned by a municipality which are in conflict with highway construction work, at no expense to the municipality. The NYSDOT requires the municipality to sign a utility work agreement, which authorizes such work, The agreement also provides for the State to reimburse the municipality for any costs the municipality incurs associated with such utility modifications.

NOW, THEREFORE be it

RESOLVED, that the Town Board does hereby adopt the following resolution to authorize the Supervisor to sign the HC140 Utility Work Agreement with the New York State Department of Transportation for the Large Culvert Program; North (In-house Design), US 62 & 219 and NY 18, 78, 93, 277, 400 & 429, Erie and Niagara Counties Project (P.I.N. #5214.61) permitting the relocation of the waterline at no expense to the Town of Orchard Park; and be it further

RESOLVED, the State also requires certified copies of a resolution that the Town will maintain the improvements, and the Town Supervisor has authority to sign documents in regards to this project and certified copies will be forwarded to the NYSDOT.

Resolution Granting the State of New York Authority to Preform the Adjustment for the Owner And Agreeing to Maintain Facilities Adjusted Via- State-let Contract:

RESOLUTION
Resolution # _____

WHEREAS, the New York State Department of Transportation processes the capital project of Large Culvert Program; North (in-house Design)
US 62 & 219 and NY 18, 78, 93, 277, 400 & 429,
Erie and Niagara Counties
PIN 5814.61, D265317
In the Town of Orchard Park located in the Erie County, and

WHEREAS, the State will include as part of the of the above mentioned project the relocation of waterline pursuant to Section 10, Subdivision 24, of the State Highway Law, as shown on the contract plans relating to the project and meeting the requirements of the owner, and

WHEREAS, the service life of the adjusted facilities will not be extended, and

WHEREAS, the State will provide for the adjustment of the above mentioned work, as shown on the contract plans relating to the above mentioned project.

NOW, THEREFORE,

BE IT RESOLVED: that the Town of Orchard Park approves of the relocation of waterline as shown on the contract plans.

BE IT RESOLVED: the Town of Orchard Park will maintain or cause to be maintained the adjusted facilities as shown on the contract plans.

BE IT FURTHER RESOLVED: that the appropriate Office has the authority to sign, with the concurrence of the board, any and all documentation that may become necessary as a result of this project as it relates to the name of municipality, and

BE IT FURTHER RESOLVED: that the clerk of the Town of Orchard Park is hereby directed to transmit five (5) certified copies of the foregoing resolution to the New York State Department of Transportation.

**BRIDGE NY RESOLUTION BY MUNICIPALITY
(2023 NY Bridge Project funded with BFP Off-System)
Locally Administered
RESOLUTION NUMBER:**

DRAFT

Authorizing the implementation and funding of the costs of a transportation project, which may be eligible for federal-aid and/or state-aid, or reimbursement from Bridge NY funds.

WHEREAS, a project for the Bridge Replacement, Henning Drive over Branch of Smokes Creek, P.I.N. 5765.45 (the Project") is eligible for funding under Title 23 U.S. Code, as amended, 23CFR as amended and PUB. L. 117-58 also known as the "Bipartisan Infrastructure Law" (BIL); and

WHEREAS, the Town of Orchard Park will design, let, and construct the Project: and

WHEREAS, the Town of Orchard Park desires to advance the Project by making a commitment of 100% of the costs for

NOW, THEREFORE, the Town Board, duly convened does hereby

RESOLVE, that the Town Board hereby approves the above-subject Project; and it is hereby further

RESOLVED, that the Town Board hereby authorizes the Town of Orchard Park to pay 100% of the cost of all work for the Project or portions thereof, with the understanding that qualified costs may be eligible for federal-aid, state-aid, or reimbursement from Bridge NY funds; and it is further

RESOLVED, that the sum of \$309,368.00 is hereby appropriated from Capital Account; **DB016 Henning Drive Bridge Project** [or, appropriated pursuant to n/a] and made available to cover the cost of participation in the above phase(s) of the Project; and it is further

RESOLVED, that the Town BOARD hereby agrees that the Town of Orchard Park shall be responsible for all costs of the Project which exceed the amount of federal-aid, state-aid, or NY Bridge funding awarded to the Town of Orchard Park; and it is further

RESOLVED, that in the event the Project costs not covered by federal-aid, state-aid, or NY Bridge funding exceed the amount appropriated above, the Town of Orchard Park shall convene as soon as possible to appropriate said excess amount immediately upon the notification by the NYSDOT thereof; and it is further

RESOLVED, that the Town Board hereby agrees that construction of the Project shall begin no later than twenty-four (24) months after award and the construction phase of the Project shall be completed within thirty (30) months; and it is further

RESOLVED, that the Supervisor of the Town Board of the Town of Orchard Park be and is hereby authorized to execute on behalf of the Town of Orchard Park all necessary agreements, certifications or reimbursement requests for federal-aid and/or state-aid with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing for the administration of the Project and the Town of Orchard Park's funding of Project costs and permanent funding of the local share of federal-aid and state-aid eligible Project costs and all Project costs within appropriations therefore that are not so eligible; and it is further

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

RESOLVED, this Resolution shall take effect immediately.

STATE OF NEW YORK)
) SS:
COUNTY OF)

I, _____, Clerk of the _____, New York, do hereby certify that I have compared the foregoing copy of this Resolution with the original on file in my office, and that the same is a true and correct transcript of said original Resolution and of the whole thereof, as duly adopted by said _____ at a meeting duly called and held at the _____ on _____ by the required and necessary vote of the members to approve the Resolution.

WITNESS My Hand and the Official Seal of the _____, New York, this _____ day of _____, 20__.

Clerk,

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEH
Initials

DRAFT

Federal aid Local Project Agreement

COMPTROLLER'S CONTRACT NO D041764

This Agreement is by and between:

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

and

the Town of Orchard Park (the "Municipality/Sponsor")
acting by and through the Town Supervisor
with its office at 4295 South Buffalo Street, Orchard Park, NY 14127.

This Agreement identifies the party responsible for administration and establishes the method or provision for funding of applicable phases of a Federal aid project for the improvement of a street or highway, not on the State highway system, as such project and phases are more fully described by Schedule A annexed to this Agreement or one or more Supplemental Schedule(s) A to this Agreement as duly executed and approved by the parties hereto. The phases that are potentially the subject of this Agreement, as further enumerated below, are: Preliminary Engineering ("PE") and Right-of-Way Incidental ("ROW Incidentals") work; Right-of-Way Acquisition; Construction; and/or Construction Supervision and Inspection. The Federal aid project shall be identified for the purposes of this Agreement as Bridge Replacement, Henning Drive over Branch of Smokes Creek (BIN 2213400), Town of Orchard Park, Erie County (as more specifically described in such Schedule A, the "Project").

WITNESSETH:

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

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

WHEREAS, pursuant to Highway Law §10 (34-a) and section 15 of Chapter 329 of the Laws of 1991 as amended by section 9 of Chapter 330 of the Laws of 1991, as further amended by Chapter 57 of the Laws of New York of 2014, and Chapter 794 of the laws of 2022, as further amended by Chapter 3 of the laws of 2023 (effective December 28, 2023), the State has established the "Marchiselli" Program, which provides certain State-aid for Federal aid highway projects not on the State highway system; and

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEH
Initials

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

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

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

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

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

NOW, THEREFORE, the parties agree as follows:

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

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

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

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEH
Initials

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

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

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

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

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

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

MUNICIPALITY/SPONSOR: **Town of Orchard Park**
PROJECT ID NUMBER (PIN): **5765.45** BIN: **2213400**
CFDA NUMBER: **20.205**
PHASE: PER SCHEDULES A
Date Prepared: **3/17/2025** By: **JEH**
Initials

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

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

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

4.2.3 *Marchiselli Extended Records Retention Requirements*.

4.2.3.1 To ensure that NYSDOT meets certain requirements under the Title 49 of the Code of Federal Regulations, Part 26, and to ensure that NYSDOT may authorize the use of funds for this project, notwithstanding any other provision of this Contract to the contrary, the Sponsor must retain the following documents in connection with the Projects:

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

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

4.2.3.3 Failure to maintain such records in a manner that ensures complete access thereto, for the period described above, shall constitute a

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEH
Initials

material breach of the contract and may, at the discretion of NYSDOT, result in loss of funds allocated, or the Sponsor's repayment of funds distributed, to the Sponsor under this agreement.

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

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

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

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

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

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

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

8. *Municipal/Sponsor Liability.*

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

MUNICIPALITY/SPONSOR: Town of Orchard Park

PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

Date Prepared: 3/17/2025 By: JEH

Initials

experience, knowledge, and character necessary to qualify them individually for the particular duties they perform.

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

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

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

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

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

9.1 The Municipality/Sponsor may request such approved disposition from NYSDOT where the

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEH
Initials

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

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

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

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

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

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

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

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEH
Initials

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

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

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

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

17. *Notice Requirements.*

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

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

New York State Department of Transportation (NYSDOT)

Name: Christopher Church

Title: Project Manager

Address: 100 Seneca Street, Buffalo, NY 14203

Telephone Number: 716-847-3246

Facsimile Number: 716-847-3080

E-Mail Address: Christopher.Church@dot.ny.gov

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEH
Initials

[Municipality/Sponsor] Town of Orchard Park

Name: Eugene Majchrzak

Title: Town Supervisor

Address: 4295 South Buffalo Street, Orchard Park, NY 14127

Telephone Number: 716-662-6400

Facsimile Number: 716-662-6479

E-Mail Address: majchrzak@orchardparkny.org

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

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

Instructions and authorization forms are available on the State Comptroller's website at <https://www.osc.ny.gov/state-vendors>. Registration forms and instructions can be found at the NYSDOT [Electronic Payment Guidelines](https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/Electronic%20Payment%20Guidelines) website at: <https://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/locally-administered-federal-aid-projects/Electronic Payment Guidelines>.

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

19. *Compliance with Legal Requirements.* Municipality/Sponsor must comply with all applicable

MUNICIPALITY/SPONSOR: Town of Orchard Park
PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400
CFDA NUMBER: 20.205
PHASE: PER SCHEDULES A
Date Prepared: 3/17/2025 By: JEB
Initials

federal, state, and local laws, rules, and regulations, including but not limited to the following:

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

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

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

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

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

MUNICIPALITY/SPONSOR: Town of Orchard Park

PROJECT ID NUMBER (PIN): 5765.45 BIN: 2213400

CFDA NUMBER: 20.205

PHASE: PER SCHEDULES A

Date Prepared: 3/17/2025 By: JEH
Initials

Comptroller's Contract Number: D040776

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials.

MUNICIPALITY/SPONSOR:

MUNICIPALITY/SPONSOR ATTORNEY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

STATE OF NEW YORK)

)ss.:

COUNTY OF *ERIE*)

On this _____ day of _____, 20__ before me personally came Eugene Majchrzak to me known, who, being by me duly sworn did depose and say that he/she resides at 4295 S. Buffalo St., Orchard Park, NY 14127; that he/she is the Supervisor of the Municipal/Sponsor Corporation described in and which executed the above instrument; (except New York City) that it was executed by order of the Town Board of said Municipal/Sponsor Corporation pursuant to a resolution which was duly adopted on _____ and which a certified copy is attached and made a part hereof; and that he/she signed his name thereto by like order.

Notary Public

APPROVED FOR NYSDOT:

By: _____
For Commissioner of Transportation

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

Date: _____

APPROVED AS TO FORM:

STATE OF NEW YORK ATTORNEY GENERAL

By: _____
Assistant Attorney General

COMPTROLLER'S APPROVAL:

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

**SCHEDULE A – Description of Project Phase, Funding and Deposit Requirements
NYSDOT/ State-Local Agreement - Schedule A for PIN 5765.45**

OSC Contract #: <u>D041764</u>	Contract Start Date: <u>1/1/2025</u> (mm/dd/yyyy)	Contract End Date: <u>12/31/2029</u> (mm/dd/yyyy)
<input type="checkbox"/> Check, if date changed from the last Schedule A		
Purpose:	<input checked="" type="checkbox"/> Original Standard Agreement	<input type="checkbox"/> Supplemental Schedule A No.
Agreement Type:	<input checked="" type="checkbox"/> Locally Administered Municipality/Sponsor (Contract Payee): <u>Town of Orchard Park</u>	
	<input type="checkbox"/> State Administered Other Municipality/Sponsor (if applicable): _____	
	<small>List participating Municipality(ies) and the % of cost share for each and indicate by checkbox which Municipality this Schedule A applies.</small>	
	<input type="checkbox"/> Municipality:	% of Cost share
	<input type="checkbox"/> Municipality:	% of Cost share
	<input type="checkbox"/> Municipality:	% of Cost share
Authorized Project Phase(s) to which this Schedule applies:	<input checked="" type="checkbox"/> PE/Design	<input checked="" type="checkbox"/> ROW Incidentals
	<input type="checkbox"/> ROW Acquisition	<input type="checkbox"/> Construction/CI/CS
Work Type: <u>BR REPLACE</u>	County (If different from Municipality): <u>Erie</u>	
<small>(Check, if Project Description has changed from last Schedule A):</small> <input type="checkbox"/>		
Project Description: <u>Bridge Replacement, Henning Drive over Branch of Smokes Creek (BIN 2213400), Town of Orchard Park, Erie County</u>		
Marchiselli Eligible <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

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

PIN Fiscal Share	"Current" or "Old" entry indicator	Funding Source (Percentage)	TOTAL Costs	FEDERAL Funds	STATE Funds	LOCAL Funds	LOCAL DEPOSIT AMOUNT (Required only if State Administered)
5765.45.121	Current	Other (see FN) **	\$270,149.60	\$270,149.60	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
5765.45.NPS	Current	100% Local	\$14,218.40	\$0.00	\$0.00	\$14,218.40	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
5765.45.221	Current	Other (see FN) **	\$23,750.00	\$23,750.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
5765.45.NPS	Current	100% Local	\$1,250.00	\$0.00	\$0.00	\$1,250.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
. .	Current		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Old		\$ 0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL CURRENT COSTS:			\$309,368.00	\$293,899.60	\$ 0.00	\$15,468.40	\$ 0.00

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

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

A1. Preliminary Engineering ("PE") Phase

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

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

A2. Right-of-Way (ROW) Incidentals

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

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

- 6. Determination of exemption from public hearing that is otherwise required by the Eminent Domain Procedure Law, including *de minimis* determination, as may be applicable. **If NYSDOT is responsible for acquiring the right-of-way, this determination may be performed by NYSDOT only if NYSDOT is responsible for the Preliminary Engineering Phase under Phase A1 of this Schedule B.**
- 7. Conduct any public hearings and/or informational meetings as may be required by the Eminent Domain Procedures Law, including the provision of stenographic services, preparation and distribution of transcripts, and response to issues raised at such meetings.

B. Right-of-Way (ROW) Acquisition

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

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

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

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

Phase/Sub-phase/Task

Responsibility: NYSDOT Sponsor

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

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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

TABLE OF CONTENTS

	Page
1. Executory Clause	3
2. Non-Assignment Clause	3
3. Comptroller's Approval	3
4. Workers' Compensation Benefits	3
5. Non-Discrimination Requirements	3
6. Wage and Hours Provisions	3-4
7. Non-Collusive Bidding Certification	4
8. International Boycott Prohibition	4
9. Set-Off Rights	4
10. Records	4
11. Identifying Information and Privacy Notification	4
12. Equal Employment Opportunities For Minorities and Women	5
13. Conflicting Terms	5
14. Governing Law	5
15. Late Payment	5
16. No Arbitration	5
17. Service of Process	5
18. Prohibition on Purchase of Tropical Hardwoods	5-6
19. MacBride Fair Employment Principles	6
20. Omnibus Procurement Act of 1992	6
21. Reciprocity and Sanctions Provisions	6
22. Compliance with Breach Notification and Data Security Laws	6
23. Compliance with Consultant Disclosure Law	6-7
24. Procurement Lobbying	7
25. Certification of Registration to Collect Sales and Compensating Use Tax by Certain State Contractors, Affiliates and Subcontractors	7
26. Iran Divestment Act	7
27. Admissibility of Contract	7

STANDARD CLAUSES FOR NYS CONTRACTS

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

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

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

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller's approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

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

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

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

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

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

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

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

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

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

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

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

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

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

law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

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

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

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

NYS Department of Economic Development
Division for Small Business and Technology Development
625 Broadway
Albany, New York 12245
Telephone: 518-292-5100

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public

Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

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

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

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

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

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

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

employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

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

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

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

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

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

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

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

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

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

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

(To be included in all contracts)

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

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

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

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

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

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

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

NON DISCRIMINATION/EEO/DBE REQUIREMENTS

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

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

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

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

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

FEDERAL SINGLE AUDIT REQUIREMENTS

Non-Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Non-Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non-Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency¹ the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO).

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

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

THE CATALOG OF FEDERAL DOMESTIC ASSISTANCE

The Catalog of Federal Domestic Assistance (CFDA²), is an on-line database of all Federally-aided programs available to State and local governments (including the District of Columbia); Federally recognized Indian tribal governments; Territories (and possessions) of the United States; domestic public, quasi-public, and private profit and nonprofit organizations and institutions; specialized groups; and individuals.

THE CFDA IDENTIFICATION NUMBER

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

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

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

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

PROMPT PAYMENT MECHANISMS

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

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

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

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

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by

² <http://www.cfda.gov/>

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

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

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

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

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

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

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

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

CARGO PREFERENCE ACT REQUIREMENTS – U.S. FLAG VESSELS

In accordance with 46 CFR 381, the contractor agrees:

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

OLD BUSINESS

The Planning Board at their 4/10/25 meeting recommended the following:

1. **V/L Windward Drive, located on the east side of Windward Drive south of Lake Avenue, zoned I-1 (SBL# 152.14-2-24.11, 152.14-2-24.12)**. Note: A portion of this property fronting on Lake Ave was rezoned for this project. (Ingress/egress is located on Windward Drive). The Planning Board recommends that the Town Board **APPROVE** the presented Site Plan and **AUTHORIZE** a Building Permit, to construct 83-parking spaces based on the Site Plan submitted on 2/25/2025:
 1. All public notices have been filed.
 2. This is an Unlisted Action, based on the Short EAF submitted on 6/25/24 and a Negative Declaration was made on 10/10/2024.
 3. The site lighting is limited to those fixtures and poles indicated on the approved site plan. Light fixtures shall have flat lenses and all lighting is to be directed downward and toward the site.
 4. No outside storage or display is permitted.
 5. Any future dumpsters shall be screened, in accordance with Section 144-25 of the Town Code.
 6. Town Engineering approval was granted on 4/03/2025.
 7. Removal of vegetation shall be limited to the proposed parking expansion area, excepting what may be required by the preexisting easement and safety. This stipulation "runs with the land".



TOWN OF ORCHARD PARK

MEMORANDUM

S.4295 SOUTH BUFFALO STREET
ORCHARD PARK, NEW YORK 14127
(716) 662-6432, ext. 2202

DATE: April 11, 2025

TO: Town Clerk, Remy Orffeo
Jenifer Brady
Building Inspector Tom Minor

FROM: Anna Worang-Zizzi

SUBJECT: Item(s) for April 16, 2025 - TB Agenda

NEW BUSINESS:

Please refer the following to the Planning and Conservation Boards for review & recommendation:

1. 3847 Southwestern Blvd., located on the south side of Southwestern Blvd. west of drive 5, in the Prohibition parking lot, zoned DR-2. Benjamin Bell is seeking permission to park his camper and use as office space for his restaurant. (SBL# 161.00-5-18)
2. 3201-3227 Southwestern Bld., located in the Tops Plaza parking lot, zoned B-2. TNT Fireworks is seeking permission for an "Outside Display" for a tent sale to operate from June 20, 2025 through July 5, 2025, to sell fireworks. (SBL # 152.16-7-1.11)
3. ~~3009 Union Road, located on the southwest corner of Union Road and Michael Road parking lot, zoned B-2.~~ Keystone Novelties is seeking permission for an "Outside Display" for a tent sale to operate from June 23, 2025 through July 5, 2025, to sell fireworks. (SBL# 152.12-2-7)
4. 260 Redtail Road, located in the southwest corner of Windward Road and Redtail Road, zoned I-1. Genesis Developman and Construction LLC is seeking to construct a 7,348 square foot addition to an existing medical building, and a parking expansion of three additional parking spaces. (SBL# 152.18-2-4)

V/L Webster Road, located on the south side of Webster Road, east of Deacon Road, zoned R-3. Brandon Block is proposing a 2-lot, two family home subdivision on 2.7 acres, (SBL# 161.00-3-27.3 and a portion of 161.00-3-27.2)



TOWN OF ORCHARD PARK

ENGINEERING DEPARTMENT

S 4295 South Buffalo Street Orchard Park, New York 14127-2609

Phone: (716) 662-6425
Fax: (716) 662-6488
Email: openg@orchardparkny.org

TOWN ENGINEER
WAYNE L. BIELER, P.E.

April 29, 2025

Honorable Town Board
Town of Orchard Park
4295 S. Buffalo Street
Orchard Park, New York 14127

Re: *Birdsong Subdivision – Part 3B Phase 2B*
P.I.P. #2024-03
Connection of Decorative Light Fixtures – NYSEG Prices

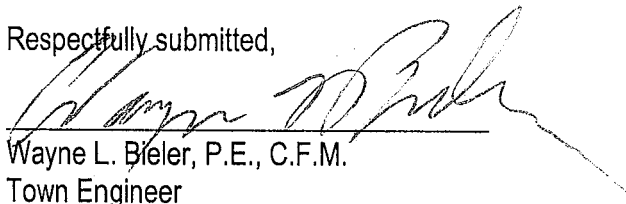
Dear Board Members:

Per the tariff agreement between NYSEG and the Town, NYSEG has requested the Town submit a resolution reflecting the connection of nine (9) decorative standard Spun Aluminum street light fixtures in the new Part 3B Phase 2B of the Birdsong Subdivision. At present, there are thirty two (32) single-family homes currently planned to be constructed in this Subdivision.

The LED luminaires, which are owned by the Town, have been installed under PIP # 2024-03. The Town will maintain the poles, bulbs, and the electric eye of the luminaires and NYSEG will provide the energy only per the SC4 classification. The Town purchases the electricity from the supplier, which is *estimated* to be \$39.43/ea. for an annual estimated cost of \$354.87 for these nine decorative light poles. The attached application will add the new LED lights to our existing SC4 (service classification) account. Charges for energy to the lights may vary due to the electricity pricing trends from summer and winter month rate fluctuation.

I, therefore, recommend that you authorize NYSEG to connect nine (9) LED decorative standard Spun Aluminum light fixtures in the Birdsong Subdivision Part 3B Phase 2B under PIP #2024-03 at an estimated annual increased energy cost of \$354.87 to the Consolidated Light District in accordance with the attached NYSEG proposal.

Respectfully submitted,



Wayne L. Bieler, P.E., C.F.M.
Town Engineer

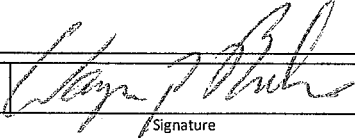
Attachments

Cc: Remy Orfeo, Town Clerk Andy Slotman, Highway Superintendent
File # 1994.008.957 Tricia Jurek, Town Orchard Park Accounting
Visit the Town's website at www.orchardparkny.org

Streetlight Request Form

Service Class 4 - Energy Only

NYSEG

Customer Information						
Municipality Name Town of Orchard Park			NYSEG Account # 1005-1914-975			
Authorized Representative Wayne Bieler PE CFM			Contact Telephone Number 716-662-6425			
NYSEG Connection Point						
<input checked="" type="checkbox"/> Connect	Overhead - Pole #	Underground - Manhole/Handhole # (if known)		Secondary power available at location? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<input type="checkbox"/> Disconnect	Underground					
<input type="checkbox"/> Existing	Description of Location for Connection Point					
<input type="checkbox"/> Reconnect	Adjacent Handhole					
Lamps - (fill out one line for each lamp)						
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Woodthrush Trail	A	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Woodthrush Trail	B	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Woodthrush Trail	C	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Woodthrush Trail	D	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Woodthrush Trail	E	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Kestrel Court	F	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Kestrel Court	G	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Kestrel Court	H	41	LED	N	
<input checked="" type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove	Kestrel Court	I	41	LED	N	
<input type="checkbox"/> Install	Street Name	Pole #	Wattage (incl. ballast)	Lamp Type	Arm attached to NYSEG Pole?	
<input type="checkbox"/> Remove						
Project Notes						
Wayne Bieler, P.E.				04/30/2025	Town Engineer	
Authorized Representative		Signature		Date	Title	

Additional instructions and information is provided on the back of this form.

For NYSEG use only			
Installation:	Received:	SN	ECS Updated:

Accept the agreement approved by the Blue Collar Union.

WHEREAS, the Town of Orchard Park has been negotiating with its Blue Collar Union for a new Collective Bargaining Agreement; and

WHEREAS, the parties to those negotiations have reached a successful accord extending from January 1, 2026 through December 31, 2030; and

WHEREAS, the highlights of terms of that proposed accord include a 4% salary increase for the years 2026, 2027, 2028, 2029 and 2030 and all members of the Blue Collar Unit will be paying 20% of their Health Insurance premium by December 31, 2030; and

WHEREAS, the said accord has been approved by the Blue Collar Union and is acceptable to the Town Board of Orchard Park.

NOW, THEREFORE, be it

RESOLVED, that the Town Board does hereby authorize the Supervisor to execute the proposed Blue Collar Collective Bargaining Agreement as negotiated between the Town Board and the Blue Collar Union, and presently approved by the Blue Collar Union; and be it further

RESOLVED, that a copy of the Blue Collar Collective Bargaining Agreement be kept on file in the Town Clerk's Office.

**Town of Orchard Park
Recreation Department**

4520 California Rd

Orchard Park NY 14127

welchk@orchardparkny.org (716) 662-6450 ext.1

05/07/25

To: Town Board

From: Kristin Welch

Director of Recreation

Item 1: Appt. to the staff of the Town of Orchard Park Recreation Department Summer Seasonal effective 5/8/25-8/29/25, PT Seasonal 8/30/25-12/31/25

Jordyn Malinowski \$17.00 Program coordinator 2

Gavin Mazgaj \$16.50 Program Coordinator 1

Recreation Director: Kristin Welch

Assistant Recreation Director: Adam Houle

Whereas, the Orchard Park Highway Department has a vacant Assistant Crew Chief position;
and

Whereas, there are funds in the 2025 budget to fund an Assistant Crew Chief position; and

Whereas, Andrew Slotman, Orchard Park Highway Superintendent, has determined that Nick Welch is ready and able to serve as an Assistant Crew Chief in the Orchard Park Highway Department.

Now, therefore be it

Resolved, that based on the recommendation of Andrew Slotman, Orchard Park Highway Superintendent, Nick Welch is promoted to an Assistant Crew Chief in the Orchard Park Highway Department at Job Level 4 Step 9 of the Blue Collar Contract at a rate of \$35.38 per hour effective May 5, 2025.

Resolved, that the Town Board does hereby authorize Andrew Slotman Highway Superintendent to declare surplus of equipment for 2025; and be it further

Resolved, that the Town Board does hereby authorize Andrew Slotman Highway Superintendent to auction the 2025 surplus equipment, a list of the 2025 surplus equipment will be on file in the Town Clerk's Office.

List of Equipment:

2010 Wildcat Windrow Turner

Model: TS 616

SN: 1W9825253AF351714



TOWN OF ORCHARD PARK

ENGINEERING DEPARTMENT

S 4295 South Buffalo Street Orchard Park, New York 14127-2609

Phone: (716) 662-6425
Fax: (716) 662-6488
Email: openg@orchardparkny.org

TOWN ENGINEER
WAYNE L. BIELER, P.E.

May 2, 2025

Honorable Town Board
Town of Orchard Park
4295 South Buffalo Street
Orchard Park, New York 14127

**Re: Agreement with National Fuel Gas
Installation of Gas Service for Multi-Use Maintenance Fuel Facility**

Dear Board Members:

As you are aware, construction is underway for the Multi-Use Maintenance Fuel Facility. Since the main maintenance building phase or administration building phase are not moving forward, and the building backup generator is not being installed, a separate backup generator is recommended. Yesterday the generator which will provide emergency power for the Fuel Facility was delivered and installed. Although propane was cheaper initially, natural gas is more cost efficient after 5 years of service. NFG can now install the service and meter which will fuel the generator.

The work will entail the installation of 375 feet of 1" CTS Service line, meter and restoration. The cost of this work is \$4,045.50. There is presently funding allocated in Capital Account, "AB015 Highway Fuel Rehab" \$1,992,500.00 for this project.

I, therefore, recommend the authorization of payment to National Fuel Gas, 365 Mineral Springs Road, Bldg. 3, Buffalo, NY 14210 in the amount not to exceed \$4,045.50, for supplying natural gas to the generators.

Respectfully submitted,

Wayne L. Bieler, P.E., CFM
Town Engineer

Attachment

cc: Remy Orfeo, Town Clerk
Andy Slotman, Highway Superintendent
File #2022.022

Timothy Gallagher, Town Attorney
Nichole Ruf, Drescher & Malecki



National Fuel®

March 21, 2025
NFG #: 636328
THIS IS AN INVOICE

TOWN OF ORCHARD PARK
JORDAN KELLERMAN
4295 S BUFFALO ST
ORCHARD PARK, NY 14127

Re: 4350 S Taylor Rd GENRTR
Orchard Park, NY 14127

Dear JORDAN KELLERMAN:

Thank you for your interest in natural gas for your building's energy needs. The following is our proposal for installation of necessary facilities to meet your needs.

NECESSARY REQUIREMENTS:

0 feet of 3" IPS Main Line
375 feet of 1" CTS (1-1/8") Service Line

METER(S): 400A

Delivery Pressure: 14 inches WC

A current load of 0 CFH plus an additional load of 100 CFH for a total of 100 CFH.

National Fuel will backfill the new service trench with original soil. You will be responsible for surface refinishing, fencing, restoring lawns, shrubbery, interior piping and the house line tie into the meter bar, driveways or walkways and the repair of any damage to unmarked underground facilities on your property, and the disposal of *excess* spoil.

PRIOR TO SERVICE LINE INSTALLATION:

A payment of \$4,045.50 plus 8.75% sales tax is required. This represents the total cost of \$4,399.48 reduced by tariff allowances. To ensure prompt handling, please submit the enclosed remittance form with your payment in the envelope provided to my attention.

Pricing is based on current operating and pricing policies and is valid for no more than 90 days from the date of the original correspondence. However, if special conditions (i.e. rock, select fill, pavement) are found to exist, then National Fuel reserves the right to alter the price quoted.



National Fuel®

A drawing will be enclosed if meter setting required is a SR-2 or SD-2 thru SD-14.

The proposed site of the service and meter will be at the right back of the building (as you face the building from the road).

PRIOR TO METER(S) INSTALLATION:

The house-line must be tied into the meter setting and pass a pressure test before the meter can be turned on.

The end user(s) of gas must contact National Fuel's Customer Response Center (CRC) at (716) 686-6123 or 1-800-365-3234 to apply for a gas account and schedule a date for the meter installation (turn on). The caller must provide their Federal Tax I.D. or Social Security number for a sole proprietorship or DBA.

You may be required to pay a security deposit.

If a security deposit is required, you may mail it or visit your local Consumer Assistance Center (CAC) listed below.

Payment can be made at any of
our Consumer Assistance Centers.

BUFFALO
BUFFALO PLACE
409 MAIN ST
BUFFALO, NY 14203

CHEEKTOWAGA
APPLE TREE BUSINESS PK
2875 UNION RD, SUITE 44
CHEEKTOWAGA, NY 14227

JAMESTOWN
1384 PECK SETTLEMENT
JAMESTOWN, NY 14701

If you need further assistance, please feel free to call me at 716-667-5590. We thank you for this opportunity and look forward to serving you.

Very truly yours,

Mitchell R Shafer
Operations Supervisor II

bif
NFG #: 636328



National Fuel[®] Remittance Form

Name: TOWN OF ORCHARD PARK
Service Address: 4350 S Taylor Rd GENRTR
Orchard Park, NY
NFG Number: 636328
Invoice Date: March 21, 2025

TOTAL SERVICE INSTALLATION AMOUNT DUE: \$4,399.48

The above must be paid in order to get the gas service and meter fabrication installed.

A security deposit is *not* required for service line installation; however a security deposit of \$0.00 may be due upon activation of the meter. A decision regarding the security deposit will be made during the application for a gas account process.

Once this process is complete, the end user(s) of gas must contact National Fuel's Customer Response Center (CRC) at (716) 686-6123 or 1-800-365-3234 to apply for a gas account and schedule a date for the meter installation (turn on). The caller must provide their Federal Tax I.D. or Social Security number for a sole proprietorship or DBA.

Please make check payable to National Fuel.

This form MUST accompany the service installation payment.

If you do not have a return envelope, please send payment to:

National Fuel
c/o New Services Dept.
365 Mineral Springs Road Bldg. 3
Buffalo, N.Y. 14210

Office Use Only

Non-Residential New Service must be notified
of payment if customer elects to pay in person.

New Service Fax Number: 716-827-7322
Service Center: Orchard Park



TOWN OF ORCHARD PARK

ENGINEERING DEPARTMENT

S 4295 South Buffalo Street Orchard Park, New York 14127-2609

Phone: (716) 662-6425
Fax: (716) 662-6488
Email: openg@orchardparkny.org

TOWN ENGINEER
WAYNE L. BIELER, P.E.

May 2, 2025

Honorable Town Board
Town of Orchard Park
4295 South Buffalo Street
Orchard Park, NY 14127

**Re: Treatment of Green Lake
Town Ponds / Lake Management Maintenance Contract**

Dear Board Members:

With concerns of possible planktonic algae in Green Lake this year, the Engineering Department requested a quote/references for treatment from Aqua Tech Environmental Inc. This treatment is in addition to non-pesticide aquatic vegetation control), water quality (microbes and water aeration), weir maintenance, general consultation and fish stocking (possible grass carp stocking) of Green Lake. Microbes have proven not to be efficient on a large body of water. Attached is a quote from A-Tip Control Inc. for \$6,825.00 for applying for permits and treatment. The permit has to be applied for ahead of time due to the processing time for the permit.

In addition, the recommendation is to include Aquatic Biology Laboratory Services for various testing to identify species. The preliminary estimated cost is not to exceed \$2,000.00.

AquaTech Environmental, Inc. has the Town wide contract, \$18,000.00 for general professional consultations, non-pesticide water quality treatments, NYSDEC permitting and fish stocking, but no longer does pesticide treatments but is recommending treatment if needed.

I, therefore, recommend that you authorize the Supervisor to sign the following purchase agreement with:

1. EnviroScience, Inc. 5070 Stow Road, Stow, OH 44224 for aquatic biology laboratory testing for Green Lake and Town Ponds as needed in the amount not to exceed \$2,000.00 to provide aquatic biology services as needed.
2. A-Tip Control Inc. for permits and treatment to help control planktonic algae in Green Lake, in the amount not to exceed \$6,825.00.

Respectfully submitted,

Wayne L. Bieler, P.E., CFM
Town Engineer

Attachment

Cc: Remy Orfeo, Town Clerk
Andy Slotman, Parks and Grounds
Dave Adrian, Aqua Tech Environmental, Inc.

Timothy Gallagher, Town Attorney
Kristen Welch, OP Recreation Director
File #2006.017

W:\files\engineering\IPond Treatment\2025\TB Approval AquaTech Purchase Agreement.doc

Visit the Town's website at www.orchardparkny.org

AQUATIC BIOLOGY LABORATORY - 2024 SCHEDULE OF SERVICES

Analysis	Method ¹	Method Description	Standard Turnaround Time (TAT - Business Days) ²	Cost Per Sample
Algal (Phytoplankton & Periphyton) Analyses				
Harmful Algal Bloom (HAB) Analysis	Microscopy	Qualitative - Identification of potentially toxic species.	3	\$150.00
Algae Analysis 1	Microscopy	Qualitative - Identification of all algae encountered.	5	\$225.00
Algae Analysis 2	USGS Protocol P-13-52/USEPA LG401	Quantitative - Identification and enumeration of all algae.	10	\$450.00
Algae Analysis 3	USGS Protocol P-13-52/USEPA LG401	Quantitative - Identification, enumeration, and calculation of biovolume for all algae encountered.	10	\$600.00
Diatom Analysis	USEPA 2018 (Barbour et al. 1999)	Quantitative - Identification and enumeration of all diatoms.	30	\$600.00
Photomicrographs	-	-	-	Call for quote
Short Narrative Report (ES Format)	-	Short, 1-2 page narrative report outlining project and deliverables	-	\$250.00 ³
Analytical Analyses				
Chlorophyll-a	EPA Method 446	Quantitative - Analysis of all chlorophyll-a pigments (photosynthetically active organisms - algae and cyanobacteria).	10	\$125.00
Ash Free Dry Weight (AFDW)	APHA Standard Method	Quantitative - Measure of total organic biomass in a sample.	10	\$125.00
Cyanotoxin Analyses				
Microcystin Rapid Analysis (Test Strip)	QuikLysse Dipstick Test	Qualitative - Rapid immunochromatographic test, designed solely for the use in the qualitative screening of microcystins	3	\$100.00
Microcystin	EPA Method 546	Quantitative - Determination of microcystins using Enzyme Linked Immunosorbent Assay (ELISA)	5	\$150.00
Cylindrospermopsin	ELISA	Quantitative - Determination of cylindrospermopsin using Enzyme Linked Immunosorbent Assay (ELISA)	5	\$200.00
Saxitoxin	ELISA	Quantitative - Determination of saxitoxin using Enzyme Linked Immunosorbent Assay (ELISA)	5	\$200.00
Anatoxin-a	ELISA	Quantitative - Determination of anatoxin-a using Enzyme Linked Immunosorbent Assay (ELISA)	5	\$200.00
qPCR Analysis	qPCR	Quantitative - Tests for the presence of cyanobacteria genes capable of producing algal toxins.	10	\$450.00
Herbicide Analyses				
Glyphosate	ELISA	Quantitative - Determination of glyphosate using Enzyme Linked Immunosorbent Assay (ELISA)	5	\$500.00
Atrazine	ELISA	Quantitative - Determination of atrazine using Enzyme Linked Immunosorbent Assay (ELISA)	5	\$300.00

¹ Method listed if applicable. Methods can be modified to meet clients' data quality objectives.

² EnviroScience will evaluate expedited sample analysis fees on a project-to-project basis, and rush surcharges will be applied accordingly.

³ Short narrative report - cost per sample batch.

Notes:

Data delivered in electronic spreadsheet format unless otherwise specified.

All Algae/Diatom samples will be analyzed to the lowest practical taxonomic unit.

24-hour hold time on all samples (unless preserved).

Waters used for personal and/or agricultural use will be treated as recreational water use designation.

Chl-a and Cyanotoxin samples should be shipped within 24 hours, on ice, with no preservative.

Samples disposed of immediately after deliverables accepted (unless specified otherwise).

Please ship samples to:
 EnviroScience Inc.
 ATTN: Aquatic Biology Lab
 5070 Stow Rd
 Stow, OH 44224

****Confidential: Not to be disclosed outside of intended recipients****



TOWN OF ORCHARD PARK

ENGINEERING DEPARTMENT

S 4295 South Buffalo Street Orchard Park, New York 14127-2609

Phone: (716) 662-6425
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TOWN ENGINEER
WAYNE L. BIELER, P.E.

May 2, 2025

Honorable Town Board
Town of Orchard Park
4295 S. Buffalo St.
Orchard Park, NY 14127

RE: *Memorandum of Understanding (MOU), between the Town of Orchard Park, the Cornell Cooperative Extension of Erie County, and the Scott Bieler Family Foundation, Inc.*

Dear Board Members,

To facilitate public water main installation for Providence Farms and Cornell Cooperative, as well to provide service to two residential properties, the above referenced document is Memorandum of Understanding (MOU) for the proposed waterline extension for the north portion of Burton Road, district OPWD #17-4.

The Town Attorney, Engineering Department, Scott Bieler and Cornell have finalized the MOU and the Cornell Cooperative Board approved and signed the agreement.

Therefore, I recommend that the Town Board adopt the following resolutions:

- 1) Authorize the Supervisor to sign the attached MOU agreement.
- 2) Approve the Cornell Cooperative Extension site plan per the Planning Board recommendation and stipulations.

Respectfully submitted,

Wayne L. Bieler, P.E., CFM
Town Engineer

Attachment

Cc: Remy Orfeo, Town Clerk
Scott Bieler, Cornell Cooperative Ext.

Timothy Gallagher, Town Attorney
File #2024.029

Visit the Town's website at www.orchardparkny.org

S:\Town Projects\2024.029 Burton Road Waterline Ext. OPWD #17-4\TB Letter - MOU.docx

A MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF ORCHARD PARK, CORNELL COOPERATIVE EXTENSION OF ERIE COUNTY, AND SCOTT BIELER FAMILY FOUNDATION

This Memorandum of Understanding, hereinafter "MOU" is made and entered between the Town of Orchard Park, hereinafter "TOWN" and Cornell Cooperative Extension of Erie County, hereinafter "CCE ERIE" and the SCOTT BIELER FAMILY FOUNDATION hereinafter "FOUNDATION" (Individually a "Party" and together the "Parties").

WHEREAS, the parties desire to enter into an MOU to serve a public purpose, the delivery of public water for the benefit of CCE ERIE and the residents of the TOWN by installing a public water main.

NOW THEREFORE, in connection with the mutual covenants and agreements herein contained, the sufficiency of which are acknowledged, and subject to the terms and conditions hereinafter set forth agree as follows:

I. Purpose

The purpose of this MOU is to enable the TOWN and CCE ERIE to work together to allow for a construction project to be completed on TOWN Right of Way located within the Town of Orchard Park.

The TOWN through its Engineering Department has identified 1,625 Linear Feet of public water main to be installed on TOWN Right of Way to provide public water service to CCE ERIE and other town residents in Water District Extension No. 17 - 4.

In order to complete the project, the FOUNDATION, through a private donation, will provide \$75,000.00 to CCE ERIE designated for use to partially fund the installation of the water main above referenced.

CCE ERIE agrees to install the 1,625 Linear Feet of water main pursuant to the approved Map Plan and Report Plans after CCE ERIE receives a building permit from the TOWN to construct a building at the northwest corner of Burton and Powers Roads, the construction project commences, AND after receipt of the \$75,000.00 donation from the FOUNDATION.

In return the TOWN agrees to maintain the water main once it is constructed, waive the PIP fees, including SWPPP inspection fees, for the Public Water Main construction, and eliminate the ECWA tap fee from the ECWA service application.

II. Representations and Warranties

All Parties represent that they are fully authorized to enter into this MOU. The performance and obligations of any Party will not violate or infringe upon the rights of any third-party or violate any other agreements between the Parties, individually, and any other person, organization, or business or any law or governmental regulation.

III. Indemnity

The Parties each agree to indemnify and hold harmless the other Parties, their respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from the negligence of or breach of this MOU by the indemnifying party, its respective successors and assigns that occurs in connection with this MOU. This section remains in full force and effect even after termination of the MOU by its natural termination or the early termination by either party.

IV. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL ANY PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM ANY PART OF THIS MOU SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFIT OR LOST BUSINESS, COSTS OF DELAY OR FAILURE OF DELIVERY, WHICH ARE NOT RELATED TO OR THE DIRECT RESULT OF A PARTY'S NEGLIGENCE OR BREACH.

V. Cost Escalation

The cost of this project will be calculated based on market prices at the time the water main is constructed. The estimate for the cost of the project as of the date of this Agreement is \$150,000.00. CCE ERIE agrees to be responsible for the first \$150,000.00 of cost to construct (this includes the \$75,000.00 donation from the FOUNDATION). CCE ERIE and the TOWN will equally share in cost increases over \$150,000.00, with the TOWN total share of the increase not to exceed \$20,000.00. Any additional cost increase will be the sole responsibility of CCE ERIE.

VI. Waiver

The failure by any Party to exercise any right, power, or privilege under the terms of this MOU will not be construed as a waiver of any subsequent or future exercise of that right, power, or privilege or the exercise of any other right, power, or privilege.

VII. Legal and Binding MOU

This MOU is a legal and binding agreement between the Parties as stated above. The parties represent that they have the authority to enter into this MOU.

VIII. Governing Law and Jurisdiction

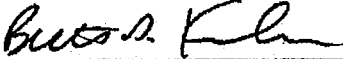
The Parties agree that this MOU shall be governed by the laws of the State of New York.

IX. Entire Agreement

The Parties acknowledge and agree that this MOU represents the entire agreement between the Parties. In the event that the Parties desire to change, add, or otherwise modify any terms, they shall do so in writing to be signed by both parties.

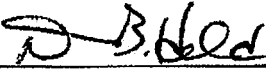
IN WITNESS THEREOF, Each of the PARTIES has caused this MOU to be executed by their respective, duly authorized officers.

Authorized Signatures:



BRETT KREHER, *President, Board of Directors*
Cornell Cooperative Extension of Erie County

Date: 5/2/25



DIANE HELD, *Executive Director*
Cornell Cooperative Extension of Erie County

Date: 5/2/25

EUGENE MAJCHRZAK, *Supervisor*
Town of Orchard Park

Date: _____

SCOTT BIELER, *President*
Scott Bieler Family Foundation

Date: _____

TOWN OF ORCHARD PARK

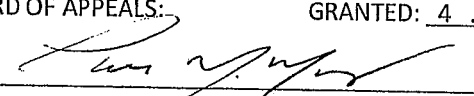
BUILDING INSPECTOR MONTHLY REPORT

MONTH OF MARCH 2025

BUILDING PERMITS	# OF	VALUE	BUILDING PERMITS	# OF	VALUE
NEW CONSTRUCTION:			ABOVE GROUND POOLS		
SINGLE DWELLING	8	2,642,625	INGROUND POOLS	2	174,501
DOUBLE DWELLING	0	0	DECKS	3	73,556
APT/MULTI-FAMILY	0	0	ELECTRICAL	14	91,181
COMMERCIAL	0	0	FENCES	11	112,036
ADDITIONS:			GARAGE / BARN / POLE BARN	4	138,870
RESIDENTIAL	1	80,000	GENERATORS	1	9,575
COMMERCIAL			MISC. (OPERATING/ DEMO)	0	0
ALTER/REPAIR:			PORCH/PATIO		
RESIDENTIAL	5	96,000	SHEDS	5	74,065
COMMERCIAL / TENANT BO	2	154,500	SIGNS	2	7,000
COMMERCIAL MISC.	3	1,517,100	RESIDENTIAL MISC.	12	451,999
SOLAR PV SYSTEM	2	45,219	TOTAL:	75	5,668,227

INSPECTIONS TYPE:	NUMBER OF INSPECTIONS PER ZONE				TOTAL
	1	2	3	4	
NEW CONSTRUCTION:					
RESIDENTIAL	11	12	12	12	47
COMMERCIAL				2	2
ADDITIONS:					
RESIDENTIAL				1	1
COMMERCIAL				1	1
ALTER/REPAIR:					
RESIDENTIAL	8	5	5	3	21
COMMERCIAL / TENANT BO		1		3	4
ABOVE GROUND POOLS					
INGROUND POOLS					
DECKS	1	1	3	9	14
ELECTRICAL					
FENCES	1	9	5	17	32
GARAGE/BARN/POLE BARN		2	2		4
GENERATORS	5	1	3	1	10
MISC.	1	2	4	7	14
PROPERTY MAINTENANCE	1	1		6	8
SHEDS		12		6	18
SIGNS				1	1
SOLAR PV SYSTEM	1	2	5	32	40
FIRE INSPECTIONS					
CLOSEOUT INSPECTIONS					
TOTAL INSPECTIONS:	29	48	39	101	217

Meetings Attended	Town Board	Planning Board	Z B A	Court
Tom Minor	2			
John Wittmann			1	
Paul Tatko				1
Natalie Nawrocki				

ZONING BOARD OF APPEALS: GRANTED: 4 DENIED: 1 TABLED: _____
 REMARKS: _____
 SIGNATURE:  DATE: 4/3/2025