

# City of North Tonawanda

DONNA L. BRAUN  
City Clerk-Treasurer  
dbraun@northtonawanda.org

Lori Swartz  
Assistant City Clerk

Denise Proefrock  
Assistant City Treasurer

OFFICE OF THE CITY CLERK - TREASURER  
VITAL STATISTICS  
CITY HALL  
216 PAYNE AVENUE  
NORTH TONAWANDA, N.Y. 14120

Treasurer's Office: (716) 695-8575  
Clerk's Office: (716) 695-8555  
Fax: (716) 695-8557

**March 28, 2024**

**The following meetings have been scheduled for TUESDAY, APRIL 2, 2024**

**6:15 PM Common Council Meeting Discussion**

**6:30 PM Common Council Meeting**

**Respectfully submitted,**



**Donna L. Braun  
City Clerk-Treasurer**

**TO: Honorable Mayor & Common Council  
Alderman Schmigel, DiBernardo, Lavey, Loncar, Marranta**

**FROM: Donna L. Braun, City Clerk-Treasurer**

**RE: Agenda for Regular Session TUESDAY, APRIL 2, 2024 6:30PM**

**AUDIENCE PARTICIPATION – Agenda items only, not to exceed 90 minutes with each speaker limited to a five-minute maximum.**

**PROOF OF PUBLICATION PUBLISHED 03/23/2024**

- 1) Legal Notice – Request for Bids for Water and Wastewater Treatment Chemicals–  
Supt. Water/Wastewater**

**PROOF OF PUBLICATION PUBLISHED 03/26/2024**

- 1) Legal Notice – Request for Bids for the Keller Building Emergency Floor Repair –  
City Engineer**
- 2) Legal Notice – Estoppel Notice for the 2024 Capital Improvements Projects Serial  
Bond – City Clerk-Treasurer**

**COMMUNICATIONS FROM CITY OFFICIALS**

- |                              |          |   |
|------------------------------|----------|---|
| <b>II. Attorney</b>          | <b>-</b> | <b>Re: Approval of Ordinance Revisions -<br/>Chapter 70A – Article II – Consumption of<br/>Alcohol, Tobacco, Marijuana and/or<br/>Illegal Drugs by Minors and Chapter 79A<br/>– Smoke and Air Pollution</b> |
| <b>III.1 Clerk-Treasurer</b> | <b>-</b> | <b>Re: Approval of the Collector’s Warrant for<br/>the Collection of the North Tonawanda<br/>City Taxes</b>   |
| <b>III.2 Clerk-Treasurer</b> | <b>-</b> | <b>Re: Approval of the Increase in Elected<br/>Officials Salary’s</b>   |

- III. 3 Clerk-Treasurer** - **Re: Approval to Amend the North Tonawanda City Code Chapter 62-B Salaries of Elected Officials**
  
- IV.1 Engineer** - **Re Approval of the Keller Building Emergency Floor Repairs, Glynn Agreement Amendment No.1, Services During Construction**
  
- IV.2 Engineer** - **Re: Approval of the Twin City Memorial Highway Improvements Study – Project 2023-07 PIN 5764.81**
  
- IV.3 Engineer** - **Re: Approval of the Farnsworth Extension – Engineering Services Project No. 2024-04**
  
- VII. Accountant** - **Re: Payment of the Abstract of Claims Dated April 2, 2024**
  
- X.1 Police Chief** - **Re: Reappointment of Timothy Bakula as a Commissioner of Deeds for North Tonawanda**
  
- X.2 Police Chief** - **Re: Reappointment of Michelle Day as a Commissioner of Deeds for North Tonawanda**
  
- XVII. Traffic Safety Committee** - **Re: Various Traffic Safety Recommendations from their March meeting**
  
- XXXII. Community Development** - **Re: Approval of the Downtown Revitalization Initiative (DRI) Oliver Street Walkability & Implementation of Smart Growth 2.0**

## COMMUNICATIONS FROM OTHERS

- A.  
In Good Company Productions - Re: Permission to waive the bandshell fee at Raymond Klimek Park for their Rehearsals, July 22-26 and events July 29 to July 31, 2024
- B.  
Platter's Chocolate Factory - Re: Permission to host their Annual Platter's Chocolate Spongefest 5K Race on Saturday, September 21, 2024

Respectfully submitted,



Donna L. Braun  
City Clerk-Treasurer

STATE OF NEW YORK  
NIAGARA COUNTY, } SS, \_\_\_\_\_

APR 02 2024

Jackie Bilogan, of said county, being duly sworn, deposes and says that she is now and during the whole time hereinafter mentioned was the Clerk of

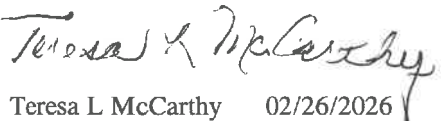
NIAGARA GAZETTE

A newspaper published in the County and State aforesaid,  
and that the annexed printed legal # 330796  
was printed and published in said paper on the following dates:

03/23/2024

  
\_\_\_\_\_  
Principal Clerk

Subscribed and sworn to before me this  
3-25-24

  
Teresa L. McCarthy      02/26/2026

-----  
Notary Public                      Expiration Date

5194 W. E. ...  
RECEIVED  
CITY CLERK'S OFFICE

TERESA L. MCCARTHY  
Notary Public - State of New York  
No. 01MC4962698  
Qualified in Niagara County  
My Comm. Expires Feb. 26, 2026

**LEGAL NOTICE**  
**CITY OF NORTH TONAWANDA, NEW YORK**  
**WATER AND WASTEWATER TREATMENT PLANTS**  
**REQUEST FOR BIDS FOR**  
**WATER AND WASTEWATER TREATMENT CHEMICALS**

SEALED PROPOSALS for the City of North Tonawanda Water and Wastewater Treatment Chemicals, as called for by the Contract, in accordance with specifications thereof, will be received by the City Clerk/Treasurer of the City of North Tonawanda, New York, until 11:00 AM, Prevailing Time, Tuesday, April 2nd, 2024, at which time they will be publicly opened.

Detailed specifications are on file and are available for inspection during the usual business hours at the administrative offices of the Wastewater Treatment Plant, 830 River Road, North Tonawanda, New York 14120.

The specifications and proposals may be obtained on request from the Superintendent of Water/Wastewater at no charge.

Each proposal must be accompanied by cash, a certified check payable to the City of North Tonawanda, or bid bond, having as surety thereon a surety company acceptable to the City Attorney, in an amount not less than five percent (5%) of the amount of the base bid, conditioned that, if his proposal is accepted, he will enter into a contract for the same, and that he will execute any such further security as may be required for the faithful performance of the contract.

All bids shall be submitted to the City Clerk/Treasurer's office in a sealed envelope addressed to the City of North Tonawanda and shall be plainly marked on the outside with the Vendor's name and title of the bid. Bids for contracts shall be designated as, Water and Wastewater Treatment Chemicals.

All bids are subject to delivery and must state when delivery can be made as stated herein. All deliveries will be started by 7AM and completed no later than 3PM unless emergency authorization is approved. Delivery employee must follow all plant safety protocols onsite.

The City of North Tonawanda reserves the right to accept this bid by items, or as a whole, or to reject any or all bids or waive informalities.

Payment for each shipment will be made upon receipt of merchandise that meets above specifications and upon return of bidder's invoice together with properly executed City purchase order/voucher.

The Owner reserves the right to reject any or all bids for failure to comply with the requirements of the Contract Documents but may, at its discretion, waive any informalities or irregularities.

The Owner further reserves the right to reject any or all bids or to award a contract which, in its judgment, is in the best interest of the Owner.

No bidder may withdraw his bid within sixty (60) days after the opening thereof, but may withdraw same at any time prior to the opening thereof. Bidder must sign the statement of non-collusion in accordance with Chapter 751 of the Laws of the State of New York.

Donna L. Braun  
City Clerk/Treasurer  
City of North Tonawanda

N#330796

3/23/2024

STATE OF NEW YORK  
NIAGARA COUNTY, } SS, \_\_\_\_\_


APR 02 2024

Jackie Bilogan, of said county, being duly sworn, deposes and says that she is now and during the whole time hereinafter mentioned was the Clerk of

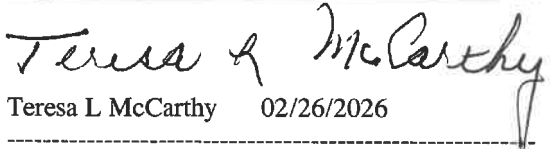
NIAGARA GAZETTE

A newspaper published in the County and State aforesaid,  
and that the annexed printed legal # 330774  
was printed and published in said paper on the following dates:

03/26/2024

  
\_\_\_\_\_  
Principal Clerk

Subscribed and sworn to before me this  
3.26.24

  
Teresa L. McCarthy      02/26/2026  
-----  
Notary Public              Expiration Date

TERESA L MCCARTHY  
Notary Public - State of New York  
No. 01MC4962698  
Qualified in Niagara County  
My Comm. Expires Feb. 26, 2026

2024 APR 27 AM 10:23  
NORTH TONAWANDA NY

RECEIVED  
CITY CLERK'S OFFICE

**LEGAL NOTICE  
CITY OF NORTH TONAWANDA, NEW YORK  
ENGINEERING DEPARTMENT**

**NOTICE TO BIDDERS**

**SEALED PROPOSALS** for the Keller Building Emergency Floor Repair as called for by the Contract, in accordance with plans and specifications thereof, will be received by the City Clerk/Treasurer of the City of North Tonawanda, New York, until 11:00 am, Prevailing Time, Tuesday April 23, 2024 at which time they will be publicly opened.

A copy of the Contract Documents is on file and is available for inspection during the usual business hours at the office of the City Engineer in the City Hall, 216 Payne Avenue, North Tonawanda, New York; and at Construction Exchange of Buffalo and Western New York, 2860 William Street, Cheektowaga, NY 14227.

The project consists of the installation of a shoring plan to support a corroded beam in the crawl space below the Keller Building. This project aims to mitigate risks associated with the corroded beam, offering a reliable and lasting solution.

Copies of the Contract Documents required for review or bidding purposes may be obtained at the City Engineer's office, City Hall, 216 Payne Avenue, North Tonawanda, New York, on or after Tuesday March 26, 2024, upon deposit of \$50.00 (2 - \$25.00 checks made payable to the City Treasurer of North Tonawanda) for each set of documents so obtained. The full amount of the deposit for one set of documents, and one-half of the deposit for any additional sets of documents will be refunded to each bidder who submits a formal proposal to the City, and who also returns the documents in good condition to the office of the City Engineer within thirty (30) days after his bid security has been returned to him. Equipment manufacturers, contractors, subcontractors and others who do not submit formal proposals to the City, will be refunded one-half the amount of the deposit for all sets of complete documents returned in good condition to the office of the City Engineer within thirty (30) days after the opening of bids. No refund will be made for documents received after this thirty (30) day period. Contract Documents must be obtained from the City for bidding on this project. Electronically obtained copies of the bid documents will not be accepted.

An optional pre-bid meeting will be held at 10:00 AM prevailing time on Wednesday April 10, 2024 at 500 Wheatfield Street in the conference room. Attendance at the pre-bid meeting is recommended but is not mandatory.

Each proposal must be accompanied by cash, a certified check payable to the City of North Tonawanda, or bid bond, having as surety thereon a surety company acceptable to the City Attorney, in an amount not less than five percent (5%) of the amount of the base bid, conditioned that, if his proposal is accepted, he will enter into a contract for the same, and that he will execute any such further security as may be required for the faithful performance of the contract.

All bids shall be submitted to the City Clerk/Treasurer's office in a sealed envelope addressed to the City of North Tonawanda and shall be plainly marked on the outside with the Contractor's name and title of the bid. Bids for contracts shall be designated as, 2022-02 Keller Building Emergency Floor Repair.

Attention of bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the contract.

The minimum wage rates to be paid to laborers and mechanics engaged in the construction of this project shall be the latest wage rates established by the State Industrial Commissioner.

The Owner reserves the right to reject any or all bids for failure to comply with the requirements of the Contract Documents but may, at its discretion, waive any informalities or irregularities.

The Owner further reserves the right to reject any or all bids or to award a contract which, in its judgment, is in the best interest of the Owner.

No bidder may withdraw his bid within sixty (60) days after the opening thereof, but may withdraw same at any time prior to the opening thereof. Bidder must sign the statement of non-collusion in accordance with Chapter 751 of the Laws of the State of New York.

Donna L. Braun  
City Clerk/Treasurer  
City of North Tonawanda

N#330774

3/26/2024



STATE OF NEW YORK  
NIAGARA COUNTY, } SS, \_\_\_\_\_

APR 02 2024

Jackie Bilogan, of said county, being duly sworn, deposes and says that she is now and during the whole time hereinafter mentioned was the Clerk of

NIAGARA GAZETTE

A newspaper published in the County and State aforesaid,  
and that the annexed printed legal # 330851  
was printed and published in said paper on the following dates:

03/26/2024

*J. Bilogan*  
\_\_\_\_\_  
Principal Clerk

Subscribed and sworn to before me this  
3. 26. 24

*Teresa L. McCarthy*  
\_\_\_\_\_  
Teresa L. McCarthy      02/26/2026

Notary Public                      Expiration Date

TERESA L MCCARTHY  
Notary Public - State of New York  
No. 01MC4962698  
Qualified in Niagara County  
My Comm. Expires Feb. 26, 2026

RECEIVED  
CITY CLERK'S OFFICE  
2024 MAR 27 AM 10:26  
NORTH TONAWANDA NY

## ESTOPPEL NOTICE

The resolution, a summary of which is published herewith, has been adopted by the Common Council of the City of North Tonawanda on March 19, 2024, and the validity of the obligations authorized by such resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which the City of North Tonawanda, Niagara County, New York is not authorized to expend money or if the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of publication of this notice, or such obligations were authorized in violation of the provisions of the Constitution.

Donna Braun, City Clerk-Treasurer  
City of North Tonawanda

### SUMMARY OF BOND RESOLUTION

Set forth below is a summary of said resolution adopted by the Common Council of the City of North Tonawanda on March 19, 2024.

1. The resolution is entitled "BOND RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF NORTH TONAWANDA, NIAGARA COUNTY, NEW YORK (THE "CITY") AUTHORIZING THE ISSUANCE OF \$11,064,260 IN SERIAL BONDS OF THE CITY TO FINANCE VARIOUS PUBLIC IMPROVEMENTS" and authorized serial bonds of the City for the following respective specific objects or purposes, including all the respective principal amounts, and the respective periods of probable usefulness ("PPU"), as indicated below:

(a) Bonds in the principal amount of \$257,500 to finance the estimated cost of certain improvements to the Live Hose Co. #4 building located at the intersection of Vandervoort Street and Goundry Street consisting of the construction or reconstruction of the floor within the firehouse including support beams and structural columns, and any appurtenant and incidental costs and expenses; PPU of 25 years;

(b) Bonds in the principal amount of \$315,695 to finance the estimated cost of acquiring various pieces of equipment for use at the Deerwood Golf Course, including any appurtenant and incidental costs and expenses; PPU of 15 years;

(c) Bonds in the principal amount of \$285,250 to finance the estimated cost of a capital improvement plan to conduct a city-wide "lead service line replacement inventory" as required by the United States Environmental Protection Agency, including any appurtenant and incidental costs and expenses; PPU of 5 years;

(d) Bonds in the principal amount of \$312,863 to finance the estimated cost of a capital improvement plan to aid in determining future improvements to the City's water distribution system, including preliminary and incidental costs related thereto; PPU of 40 years;

(e) Bonds in the principal amount of \$312,862 to finance the estimated cost of a capital improvement plan to aid in determining future improvements to the City's sanitary and storm sewer infrastructure, including any preliminary and incidental costs related thereto; PPU of 40 years;

(f) Bonds in the principal amount of \$1,030,000 to finance the estimated cost of a capital improvement plan to study the feasibility of future development and/or expansion at the Niagara County Parks and Recreation Department located at 500 Wheatfield Street, including any appurtenant and incidental costs and expenses; PPU of 15 years;

(g) Bonds in the principal amount of \$147,290 to finance the construction of alterations and/or renovations to the City's Police Department located at 216 Payne Avenue, including any appurtenant and incidental costs and expenses; PPU of 25 years; and

(h) Bonds in the principal amount of \$8,404,800 to finance the construction of a replacement municipal swimming pool at Memorial Park, including the construction of a new pool house, related site improvements and any appurtenant and incidental costs and expenses; PPU of 20 years.

2. Aggregate amount of Debt Obligations Authorized: up to \$11,064,260.

The resolution summarized herein shall be available for public inspection during normal business hours at the offices of the City Clerk-Treasurer, City of North Tonawanda, City Hall, 216 Payne Avenue, North Tonawanda, New York 14120

N#330851

3/26/2024

# City of North Tonawanda

EDWARD A. ZEBULSKE, III  
CITY ATTORNEY

NICHOLAS B. ROBINSON  
ASSISTANT CITY ATTORNEY

MATTHEW T. MOSHER  
ASSISTANT CITY ATTORNEY

OFFICE OF THE CITY ATTORNEY  
CITY HALL  
216 PAYNE AVENUE  
NORTH TONAWANDA, N.Y. 14120-5489

TELEPHONE  
(716) 695-8590  
FAX (716) 695-8592

March 13, 2024

~~FILED~~  
11  
MAR 19 2024

APR 02 2024

Hon. Mayor and Common Council  
City Hall, 216 Payne Avenue  
North Tonawanda, New York 14120

RE: Ordinance Revisions – Chapter 70A – Article II – Consumption of Alcohol,  
Tobacco, Marijuana and/or Illegal Drugs by Minors and  
Chapter 79A – Smoke and Air Pollution

Dear Honorable Body:

Attached, for your consideration, are two proposed ordinances suggested by CHANT as well as Reality Check of Erie and Niagara, to promote public health and protect our community's youth:

Chapter 70A – Article II – Consumption of Alcohol, Tobacco, Marijuana and/or Illegal Drugs by Minors; Social Hosting – is an update/enhancement to the existing Article II to include newer forms of tobacco and illegal drugs that are now available to the public.

Chapter 79A – Smoke and Air Pollution – is an update/enhancement of the existing Chapter 79A – Smoking – to account for newer forms of tobacco and illegal substances which are now accessible to the public.

If your Honorable Body concurs, please pass the appropriate resolutions for the City of North Tonawanda to allow these additions to our North Tonawanda City Code, subject to further review by the City Attorney.

Very truly yours,

*Edward A. Zebulskie III*

Edward A. Zebulskie, III  
City Attorney

EAZ/lk  
Att.

RECEIVED  
CITY OF NORTH TONAWANDA  
2024 MAR 13 PM 1:05  
NORTH TONAWANDA NY

## Chapter 70A Promoting General Welfare of Minors

### Article II Consumption of Alcohol, Tobacco, Marijuana and/or Illegal Drugs by Minors; Social Hosting

#### § 70A-9 Definitions.

As used in this article, the following terms shall have the meanings indicated.

#### **ALCOHOL**

Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

#### **ALCOHOLIC BEVERAGE**

Any drink capable of being consumed containing ethanol or ethyl alcohol is an alcoholic beverage.

#### **TOBACCO PRODUCT**

Any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, cigar, hookah, pipe tobacco, chewing tobacco, snuff, snus and electronic smoking devices ("e-cigs," "vapes," "e-hookahs," "vape pens," "JUUL," "Hyde," and "electronic nicotine delivery systems (ENDS)," etc.) and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and liquids used in electronic smoking devices, whether or not they contain nicotine.

#### **MARIJUANA**

Any part of the plant genus Cannabis whether growing or not; the seeds thereof; the resin extracted from any part of the plant, including hashish and hash oil; any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin; and any component or accessory used in the consumption of marijuana products, such as edibles, filters, rolling papers, pipes, and liquids used in electronic smoking devices.

#### **ILLEGAL DRUGS**

Any substance listed in section 3306 of the New York State Public Health Law and not prescribed by a physician.

**GUARDIAN**

A person who, under court order, is the guardian of the person of a minor; or a public or private agency with whom a minor has been placed by a court.

**MINOR**

Any person under 21 years of age

**PARENT**

A natural parent, adoptive parent, stepparent or another person, or other adult person having the lawful care and custody of the minor.

**PARTY, GATHERING, or EVENT**

A group of people who have assembled or are assembling for a social occasion or social activity.

**PUBLIC PLACE**

Any place to which the public or a substantial group of the public has access and includes, but is not limited to, highways, streets, alleys, parks, playgrounds, shops, shopping plazas, transportation facilities, vacant lots, hospitals, and public buildings.

**§ 70A-10 Consumption of alcohol, tobacco, marijuana, and/or other illegal drugs prohibited.**

Consumption of alcohol, alcoholic beverages, tobacco, marijuana or illegal drugs by a minor is prohibited in any public place, place open to public, or place not open to public. Except as permitted by state law, it is unlawful for any minor to:

- A. Consume at any public place or any place open to the public any alcohol, alcoholic beverages, tobacco, marijuana and/or illegal drugs; or
- B. Consume at any place not open to the public any alcohol, alcoholic beverages, tobacco, marijuana and/or illegal drugs.

**§ 70A-11 Party, gathering, or event hosting.**

Allowing a party, gathering, or event where minors consuming alcohol, alcoholic beverages, marijuana, tobacco, and/or illegal drugs is prohibited. Except as permitted by Article I, § 3, of the New York State Constitution, it is unlawful for any person to allow or host a party, gathering, or event at his or her place of residence or other private property, place, or premises under his or her control where three or more minors are present and alcohol, alcoholic beverages, tobacco, marijuana, and/or other illegal drugs are being consumed by any minor. This section does not apply to conduct involving the use of alcoholic beverages, marijuana, or nicotine products (i.e., religious rituals) which occurs exclusively between a minor child and his or her parent or legal guardian.

§ 70A-12 **Penalties for offenses.**

The decision on punishment shall be determined by the court and the presiding judge.

It is recommended:

**First Offense.** Any person, firm or corporation violating any of the provisions of this article shall be guilty of a violation punishable to the fullest extent of the law up to and including a fine of \$500 and/or 15 days in jail and/or serve court-ordered community service hours.

**Second Offense.** Any person who violates any of the provisions of this article shall be guilty of a violation punishable to the fullest extent of the law up to and including a fine of \$1,000 where such violation constitutes the person's second offense and/or 30 days in jail, and/or serve court-ordered community service hours.

## Chapter 79 Smoke and Air Pollution

### Chapter 79 A. Smoking

#### 79A-2. Smoking in City Parks

- A. Smoking a cigarette, pipe cigar, electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vape pen, any cartridge or other component of the device or related product or any other matter of substance which contains tobacco, nicotine, any illegal substance, or any other similar substance shall be prohibited as follows.
- B. Smoking or consuming any part of the plant genus Cannabis whether growing or not; the seeds thereof; the resin extracted from any part of the plant, including hashish and hash oil; any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin; and any component or accessory used in the consumption of a marijuana products, such as edibles, filters, rolling papers, pipes, and liquids used in electronic smoking devices.
- C. Smoking or consuming any illegal Substance listed in section 3306 of the New York State Public Health Law and not prescribed by a physician.
  - (1) At all times on the grounds of North Tonawanda City Parks
  - (2) "No Smoking/Vaping including Cannabis" signage shall be placed on the property entrances at an appropriate location on the park entrances.
  - (3) Smoking/consumption of cannabis, tobacco, nicotine, illegal substances, and/or other similar products shall be unlawful in the areas posted as stated in this chapter.
- D. Penalties for offenses:

The decision on punishment shall be determined by the court and the presiding judge.

It is recommended:

  - (1) A violation of any provision of this section shall be subject to a fine not to exceed \$250 for each offense or imprisonment for not more than 15 days for each offense, or both fine and imprisonment and/or serve court-ordered community service hours.
- E. Severability. The several terms and provisions of this section shall be deemed severable, and if any provision hereof or the application hereof to any person or circumstances is

held invalid, the remainder of the section and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

- F. **When Effective.** This section shall become effective on the day after publication in the official newspaper of the City of North Tonawanda.



# City of North Tonawanda

DONNA L. BRAUN  
City Clerk-Treasurer  
dbraun@northtonawanda.org

Lori Swartz  
Assistant City Clerk

Denise Proefrock  
Assistant City Treasurer

OFFICE OF THE CITY CLERK - TREASURER  
VITAL STATISTICS  
CITY HALL  
216 PAYNE AVENUE  
NORTH TONAWANDA, N.Y. 14120

Treasurer's Office: (716) 695-8575  
Clerk's Office: (716) 695-8555  
Fax: (716) 695-8557

111-1

March 25, 2024

APR 02 2024

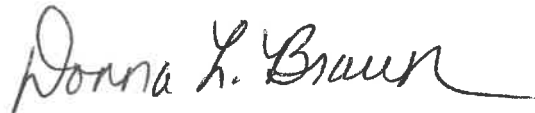
Honorable Mayor and Common Council  
City Hall  
216 Payne Avenue  
North Tonawanda, NY 14120

Re: Collection of 2024 City Taxes

Dear Common Council:

I am requesting that the Council approve the Collector's Warrant for the collection of the 2024 City Taxes. The collection period will begin on April 1, 2024 and conclude on May 10, 2024. Taxes paid after May 10<sup>th</sup> will be subject to interest and fees.

Regards,



Donna L. Braun  
City Clerk-Treasurer

RECEIVED  
CITY CLERK'S OFFICE

2024 MAR 25 AM 10:43  
NORTH TONAWANDA NY

# COLLECTOR'S WARRANT

STATE OF NEW YORK  
COUNTY OF NIAGARA, SS:

A.D. 2024

From: The People of the State of New York  
To: City of North Tonawanda, Receiver and/or Collector of Taxes, in said County of Niagara, Greetings;

YOU ARE HEREBY REQUIRED AND COMMANDED, pursuant to the provisions of Section 904 of the Real Property Tax Law of the State of New York:

To receive and start collection of taxes on or before the first day of April, 2024, from the several persons and corporations named in the assessment roll, which is annexed hereto, the amounts listed opposite their respective names, together with your fees thereon.

Pursuant to Section 920 of the Real Property Tax Law, upon receipt of the tax roll and warrant, the collecting officer shall cause a notice to be published once a week for two successive weeks in the official newspaper of the city, as set forth by such law.

To make no changes or alterations in the tax warrant or the attached tax rolls but the City may recall its warrant and tax roll for correction of errors or omissions in accordance with the provisions of Section 554 of the Real Property Tax Law.

You shall receive taxes without interest that are paid on or before the tenth day of May, 2024, or within thirty days of the date of the receipt of the warrant required by Section 920 of the Real Property Tax Law, whichever is later. On all taxes you receive after this day, there shall be added interest as determined by the Commissioner of Taxation and Finance pursuant to Section 924-a of the Real Property Tax Law for each month or fraction thereof until such taxes are paid.

The warrant is issued pursuant to Sections 910, 912 and 914 of the Real Property Tax Law. It is effective immediately after it is properly signed by the Mayor and City Council Chairman. The warrant shall expire on the last day of the fiscal year, after which a Tax Lien will be issued against any and all unpaid taxes. In case any person personally liable for unpaid taxes listed on the tax roll shall refuse to pay his or her taxes, you are authorized to cause the same to be sold at public auction for the purpose of paying the taxes due and the expense of levy and sale.

TO THE CITY OF NORTH TONAWANDA, the sum of \$21,433,001.93 in witness whereof, The Common Council, in annual meeting assembled, have caused this Warrant to be signed by the City Council Chairman and the Mayor of North Tonawanda. FOR SO DOING THIS SHALL BE YOUR WARRANT.

Given under the hands and seal of the City of North Tonawanda,  
County of Niagara, State of New York, this First day of April 1, 2024.

\_\_\_\_\_  
Mayor of the City of North Tonawanda

\_\_\_\_\_  
Chairman of the North Tonawanda City Council

# City of North Tonawanda

DONNA L. BRAUN  
City Clerk-Treasurer  
dbraun@northtonawanda.org

Lori Swartz  
Assistant City Clerk

Denise Proefrock  
Assistant City Treasurer

MARCH 27, 2024

Honorable Mayor and Common Council  
City Hall/ 216 Payne Avenue  
North Tonawanda NY 14120

OFFICE OF THE CITY CLERK - TREASURER  
VITAL STATISTICS  
CITY HALL  
216 PAYNE AVENUE  
NORTH TONAWANDA, N. Y. 14120

Treasurer's Office: (716) 695-8575  
Clerk's Office: (716) 695-8555  
Fax: (716) 695-8557



APR 02 2024

## Re: Increase in Elected Officials Salary's

Dear Honorable Body,

Please consider this as a formal request to review and increase the salaries of the City Clerk, City Treasurer, Mayor, and Common Council's Salary. As you are aware the Salaries for these elected positions have not been addressed since 2009, for Clerk/Treasurer and 2003 for both the Common Council and The Mayor. .

Should your Honorable Body concur with the increases below, please pass a resolution to amend the North Tonawanda City Code, Chapter 62B as outlined in the letter that follows. Salary increases would take effect January 1, 2025. The amount of increase to the 2025 Budget would be \$41,000.00 for the increases proposed.

**City Clerk:** Salary increases from **\$27,000.00 to \$32,500.00**

**City Treasurer:** Salary increases from **\$27,000.00 to \$32,500.00**

**Mayor:** Salary increases from **\$50,000.00 to \$65,000.00**

**Council Members:** Salary increases from **\$8000.00 to \$11,000.00**

**Council President:** Salary increases from **\$8500.00 to \$11,500.00**

An annual 2% increase will be added to all Elected Officials for the remainder of their term/terms. Starting salaries above will commence with newly Elected Officials, per the Election cycle.

Thank you for your consideration

Sincerely,



Donna L Braun

City Clerk/Treasurer

# City of North Tonawanda

DONNA L. BRAUN  
City Clerk-Treasurer  
dbraun@northtonawanda.org

Lori Swartz  
Assistant City Clerk

Denise Proefrock  
Assistant City Treasurer

OFFICE OF THE CITY CLERK - TREASURER  
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Treasurer's Office: (716) 695-8575  
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Fax: (716) 695-8557

III.3

APR 02 2024

March 27, 2024

Honorable Mayor and Common Council  
City Hall/ 216 Payne Avenue  
North Tonawanda NY 14120

## Re: Amendment to North Tonawanda City Code Chapter 62-B

Dear Honorable Body,

Pursuant to Section 3.025 of the City Charter, the salaries of elected officials of the City are to be established by ordinances. I am requesting that the Common Council pass a resolution to amend Chapter 62-B of the City Code to reflect the following changes.

### Article II: Salaries of Elected Officials

62-B-6: **Starting Salary of Elected Officials** in the City of North Tonawanda shall be as follows, effective January 1, 2025.

An annual 2% increase will be added to all Elected Officials for the remainder of their term/terms. Starting salaries below will commence with newly Elected Officials, per the Election cycle.

Mayor: (FT)	\$65,000.00
Clerk/Treasurer: (FT)	\$65,000.00
City Attorney: (FT)	\$75,000.00
Council President:	\$11,500.00
Council Member:	\$11,000.00

Sincerely,



Donna L Braun  
City Clerk/Treasurer



**City of North Tonawanda  
Department of Engineering**

City Hall, 216 Payne Avenue  
North Tonawanda, NY 14120-5493  
www.northtonawanda.org

**Chelsea L. Spahr, P.E.**  
City Engineer  
Phone: (716) 695-8565  
Fax: (716) 695-8568

March 19, 2024

IV.1

**APR 02 2024**

Honorable Austin J. Tylec, Mayor  
and Common Council Members  
City Hall  
216 Payne Avenue  
North Tonawanda, New York 14120

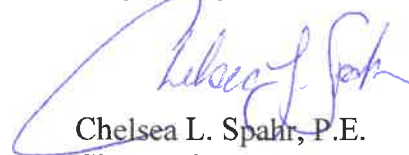
**Re: Keller Building Emergency Floor Repairs  
Glynn Agreement Amendment No. 1  
Services During Construction**

Honorable Body:

The Keller Building Emergency Floor Repairs Project was developed to 100% in 2022. Due to funding considerations the project was placed on hold at that time. We are going out to bid for this work this Spring and additional scope is needed for bid services and services during construction.

I therefore recommend that the Common Council authorize the Mayor to sign the enclosed agreement amendment no. 1 for the additional engineering services with Glynn Group Engineering & Architecture, PLLC, 415 South Transit Street, Lockport, NY 14091; in an amount not to exceed of \$3,700; subject to review by the City Attorney.

Very truly yours,

  
Chelsea L. Spahr, P.E.  
City Engineer

CLS:cls

Cc: file, w/encls  
Edward A. Zebulske III, City Attorney, w/encls  
Adam Abramo, City Building Maintenance  
Jesse Grossman, PE, Glynn Group

RECEIVED  
CITY CLERK'S OFFICE

2024 MAR 20 AM 10:00  
NORTH TONAWANDA NY

March 19, 2024

City of North Tonawanda Department of Engineering  
City Hall  
216 Payne Avenue  
North Tonawanda, New York 14120

Attn: Ms. Chelsea Spahr, P.E.  
City Engineer

Subject: **Norman Keller Building  
500 Wheatfield St.  
First Floor Steel Joist Repair and Corrosion Remediation - Update for 2024 Work  
Engineering Services Proposal  
GGEA 21-1289**

Dear Ms. Spahr,

This letter presents a formal proposal to provide Professional Engineering Services, on behalf of the City of North Tonawanda, to investigate and design a repair for the corroded and deteriorating steel joists under the first floor of the Norman Keller Building. In addition, Glynn Group Engineering and Architecture, PLLC (GGEA) will investigate and design a remediation for the cause of the corrosion in the joists with the intent of slowing any further deterioration. This proposal is modified for 2024 scope of services in regards to the original proposal dated December 6, 2021.

#### **A. OVERVIEW**

The east and northwest areas of the Norman Keller Building sit overtop of a crawl space and the first floor is supported on steel joists that span approximately 30ft – 36ft in the north south direction from a central foundation wall to the exterior foundation walls. Along the east foundation wall, several joists were noted to be exhibiting rusting and some had significantly corroded, resulting in major loss of section in the steel joist members. The worst of the corrosion was found near to the center of the east foundation wall, directly beneath the main entryway to the building. Significant moisture in the form of condensation was noted all along the east ends of the steel joists, mostly occurring within 10ft of the east foundation wall during previous site visits. At the time of our visit the crawl space felt warm and humid and the outside temperature was about 32° F.

#### **B. STEEL JOIST STRUCTURAL REPAIR – UPDATE FOR 2024 WORK**

The proposed engineering services for this portion of the work include an investigation of the damaged steel floor joists in the eastern crawl space of the building and the development of a structural repair or modification detail in order to restore the floor support structure to its original design strength if possible, or if not at least to an adequate allowable capacity considering the usage of the building and the loads applied to it based on current building codes and engineering standards.

Specific items under this proposal include:

1. Modify and update the design package dated August 12, 2022. Modifications include updating outdated information and briefly reviewing the design package. The design documents will be signed and sealed by a NYS Professional Engineer.
2. Correspond with the City of North Tonawanda Engineering department in order to address limited questions, comments or requested revisions to the design scheme as developed by GGEA.
3. Provide limited assistance in answering contractor questions and reviewing any requested submittals or shop drawings. (Services during construction will be a separate scope item).

The proposed Not to Exceed budget for the investigation and repair design services outlined above is **\$1,200**

### **C. SERVICES DURING CONSTRUCTION**

After issuance of the final signed and sealed design documents, it is common for questions, comments or issues to arise just prior to or during the construction phase of the project. In addition, it may be beneficial to the project team for the design engineer to visit the site while construction is ongoing to confirm any assumptions that have been made and address any concerns the City of North Tonawanda or the selected contractor may have while on site. For any effort that is required of GGEA for services such as these, or similar ones, after the issuance of the final design documents, GGEA will invoice our accrued efforts hourly based on the standard rates attached to this proposal. For budgeting purposes, we suggest the below value as a "Not to Exceed" fee. If for reasons beyond the control of GGEA, the efforts required of us in this phase will exceed the below value, GGEA will inform the City of North Tonawanda prior to its exceedance and a new "Services During Construction" budget will need to be developed to accommodate the additional unexpected effort.

The proposed Not to Exceed budget for services during construction as described above is **\$2,500** (considering a maximum of 2 site visits during construction)

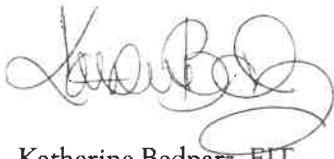
### **D. EXCEPTIONS AND CLARIFICATIONS:**

1. Commercial documents are not included in our scope. Bidding assistance, such as evaluating bids, contractor recommendations, interviewing sub-contractors, and attending bid openings, is not included in our scope. GGEA will answer questions or requests for clarification during the bidding process on a limited basis. The City of North Tonawanda will review and answer questions to the best of their ability prior to requesting assistance from GGEA.

2. If during the site visit review, conditions are found to be worse than was previously noted or if issues are uncovered that were not initially understood GGEA may revise this proposal to accommodate any additional effort that may be required to proceed with the repair and remediation designs.
3. Upon request, GGEA will provide a rough engineers estimate based on the final repair/remediation designs. Cost estimates will be based upon the best available information for time and materials. Since we have no control over market factors involving these efforts, no warranty or guarantee is offered or should be inferred between the cost estimates and the actual bid prices.
4. An engineering report including calculations is not included in the scope or services described above. However, if required GGEA can produce one for an additional fee.
5. Additional services, including but not limited to changes in scope identified herein, unforeseen design changes and/or client directed design changes to be provided in accordance with GGE's 2024 billing rates, copy attached.

Again, thank you for the opportunity to be of service to the City of North Tonawanda. I trust that this proposal sufficiently addresses the City's project goals. Please me directly should you have any questions or comments relative to this proposal.

Sincerely,



Katherine Bednarz, EIT  
Staff Engineer

- encl:
  1. Standard Terms and Conditions
  2. 2024 Standard Hourly Invoicing rates.



***AUTHORIZATION / AGREEMENT:***

**City of North Tonawanda - Norman Keller Building  
First Floor Steel Joist Repair and Remediation of Causes of their Corrosion**

**Steel Joist Structural Repair - 2024 Work Update**

Design Services Fee - Not to Exceed Budget \$1,200.

**Services During Construction**

Consulting Services Fee - Not to Exceed Budget \$2,500.

*By executing this document, undersigned agrees and acknowledges the provision of this proposal and the Standard Terms and Conditions for Field and Engineering Services.*

City of North Tonawanda  
City Hall  
216 Payne Avenue  
North Tonawanda, New York 14120

Glynn Group Engineering and  
Architecture, PLLC  
415 South Transit Street  
Lockport, New York 14094

-----  
(Signature)

-----  
(Signature) *Mark W. Glynn*  
*3-19-24*

-----  
(Printed Name)

MARK W. GLYNN  
(Printed Name)

-----  
(Date)

3/19/2024  
-----  
(Date)

## Standard Terms & Conditions for Services

1. **Scope** - Services to be provided by Glynn Geotechnical Engineering (hereinafter "GGE") or Glynn Group Engineering & Architecture, PLLC (hereinafter "GGEA") are expressly limited to the scope as set forth in the written proposal and as recognized by generally accepted industry standards, subject to the terms and conditions of these standards.
2. **Additional Services** - Additional services include making revisions in drawings, specifications, engineering reports, calculations or other documents at the request of the client when such revisions are inconsistent with prior verbal or written instructions of the client or due to other causes not solely within the control of GGE or GGEA. If such of GGE's or GGEA's then current fee schedule. Additional services also include, but are not limited to 1.) resolution of construction related problems resulting from unauthorized changes and/or construction errors, 2.) assistance with lawsuits or construction claims, 3.) review of alternate designs or alternate material submittals, 4.) revisions resulting from changes and / or errors in information supplied by client or client's agent, 5.) postponing or interruption of the project schedule and 6.) incomplete information supplied by the client.
3. **Confidentiality** - Strict confidentiality is maintained in connection with our services to clients. In any instance where information is subpoenaed by law and must be released to a regulatory or legal body, the client shall be promptly notified. Client agrees it will not use GGE's or GGEA's name and/or data in any manner which might cause harm to GGE's or GGEA's reputation and/or business. Under no circumstance is the name of Glynn Geotechnical Engineering or Glynn Group Engineering and Architecture, PLLC to be published, either alone or in association with that of any other party, without prior written approval of GGE or GGEA.
4. **Payment Terms** - Payment in advance is required for all clients except those with established credit arrangements with GGE or GGEA. For clients with established credit, terms are net 30 days. A 1.5% per month service charge will be applied to all unpaid balances. In the event of default in payment for services rendered, the client will be invoiced and will pay reasonable interest, collection and/or legal fees. GGE and GGEA reserve the right to withhold project services in the event of a delinquent account. Client is hereby barred from making a breach of contract claim as a result of GGE or GGEA withholding services. Plans, specifications, reports and all other instruments of professional service remain the sole property of GGE or GGEA until such time as full payment is made. Electronic payments shall be made by means of ACH which is offered as a free service. Bank transfers will bear a charge of \$25 per transaction.
5. **Billing** - All fees will be invoiced directly to the client, in the amount as calculated from hourly rates or the lump sum fee stated in the written proposal, plus any hourly billing for extra services and expenses. Hourly rates for billing purposes will be those Professional Service rates in effect at the time an agreement is entered into and through the end of the year. Hourly rates are updated on an annual basis to reflect the national cost of living adjustment. Unless specifically included, overnight courier costs and all travel expenses - airfare, lodging, parking fees, taxi, rental cars, meals while traveling, and subcontractor will be invoiced as an additional cost plus a 10% administrative fee. Mileage will be invoiced per mile for project travel, portal to portal. The billing of a third party will not be accepted without a statement, signed by the third party, which acknowledges and accepts payment responsibility and agreement with these terms and conditions.
6. **Contractual Limit** - Notwithstanding specific design/build projects, GGE or GGEA will be responsible only to the client and shall not be signatory to the contract for construction between the contractor/construction manager and the owner.
7. **Construction Responsibility** - GGE or GGEA will not be responsible for construction means, methods, techniques, sequences or procedures of construction. GGE or GGEA will not direct any construction forces in the performance of work. GGE or GGEA will not assume any responsibility for safety practices on the project site. Client shall provide safe working conditions for GGE or GGEA employees. GGE or GGEA may refuse to perform services where uncontrolled hazards exist. Party responsible for construction shall be knowledgeable and experienced with the required work effort. It is not the responsibility of GGE or GGEA to educate or provide instructions related to design efforts or construction means, methods, or procedures.

## Standard Terms & Conditions for Services

8. Site Access - The client must provide reasonable site access and repairs to the site, if required. Performance of soil testing activities will likely cause damage to existing surfaces. GGE or OGEA will not be responsible for the replacement or repair of landscaping or the cleaning of paved surfaces.

9. Engineering / Architectural Service - GGE and OGEA are professional design firms. Our instruments of professional service consist of test results, reports, studies, plans, specifications, designs and other similar output. We do not provide consumer products, materials, or construction services. We are not a contractor or subcontractor in the normal context of the word.

10. Disputes - Subject to the provisions regarding indemnification as provided below, in the event of a dispute, controversy or claim by client, or anyone claiming by, through or under client, or third party, arising out of or relating to the performance of project related services to the client by GGE or GGEA, client shall compensate GGE or GGEA for all costs associated with resolution of any dispute or controversy, or the defense of any claim. Compensation will include but not be limited to all reasonable salary costs, overhead, profit, legal fees and disbursements, consultant fees, court fees, and interest. In the event that any form of dispute resolution occurs, the prevailing party shall be entitled to recover all reasonable costs incurred in defense of the claim, including, but not limited to, salary costs, overhead, profit, court costs, attorney fees, expert fees, interest and other claim related costs. If the results of any form of dispute resolution determine shared responsibility for a claim, the client will compensate GGE or GGEA in accordance with their share of responsibility assessed to them. Mediation before a mutually agreeable neutral third party shall be a condition precedent to any legal action arising out of the performance of any service conducted under provisions of these standard conditions. The cost of mediation shall be borne by the parties in accordance with the shared responsibility determined through mediation.

11. Permits - When identified in the proposal and/ or scope of services to be provided, GGE or GGEA will endeavor to assist client in obtaining permits and/or approval from building departments, regulatory agencies and similar authorities to the best of GGE's or GGEA's ability in consideration of the fee charged for the service and the satisfaction of published requirements. GGE or GGEA does not guarantee that approvals will be obtained through the efforts of GGE or GGEA.

12. Sole Agreement - This document and the written proposal constitute the agreement of the parties, except as noted below. All prior negotiations and agreements between the parties hereto relating to the transactions, and services contemplated hereby are superseded by this agreement, and there are no representations, warranties, understandings or agreements with respect to such transactions, or services other than those expressly set forth herein. However, in the event GGE or GGEA subsequently executes a purchase order issued by client, GGE's or GGEA's terms and conditions shall remain in force and shall supersede any conflicting provisions of client's purchase order, regardless of when client's purchase order is executed by GGE.

13. Limit of Liability - To the fullest extent permitted by law, GGE's or GGEA's liability is limited to the amount of GGE's or GGEA's compensation.

14. Intellectual Property - Drawings, specifications, procedures, methods, work plans and other documents, including those in electronic form, prepared by GGE or GGEA and GGE's or GGEA's consultants are instruments of service for use solely with respect to a specific project. GGE or GGEA and GGE's or GGEA's consultants shall be deemed the authors and owners of their respective instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights. Upon execution of an agreement, GGE or GGEA grants to the client a nonexclusive license to reproduce GGE's or GGEA's instruments of service in pdf format only, solely for the purposes of constructing, using and maintaining, expanding, correcting any construction deficiencies, or making any renovations, modifications or repairs to the specific project. Client shall engage a licensed professional to prepare design documents for renovations, modifications or repairs to the specific project. Documents may only be utilized for a specific singular project. Use on subsequent projects is not permitted unless GGE or GGEA is compensated for the service. Client shall assume all risk associated with use and interpretation of electronic documents. Nothing in this agreement obligates GGE or GGEA to provide full digital instruments of service.

## Standard Terms & Conditions for Services

15. Indemnification - GGE or GGEA shall indemnify and hold harmless client from and against all claims, cause of actions, liabilities, damages, judgments and any other costs, including reasonable attorney's fees and court costs, attributed to property damage and/or bodily injury, including death, arising out of or resulting from the negligent acts or omissions by GGE or GGEA. However, in the event liability is shared by GGE or GGEA and the client, the client and GGE or GGEA shall contribute in the amount of their proportionate share for all actions, claims, liability, damages, expenses or judgments. In consideration of the foregoing indemnification by GGE or GGEA, client shall indemnify and hold harmless GGE or GGEA from and against all claims, cause of actions, losses, liabilities, damages, judgments and any other costs, including reasonable attorney's fees and court costs, attributed to property damage and/or bodily injury, including death, arising out of or resulting from the negligent acts or omissions of or intentional misconduct by client

16. Engineer / Architects Responsibility - GGE or GGEA shall perform the scope of services in accordance with professional ethics, published codes and regulations, generally accepted standards of scope and care in the industry relative to the fee charged, the location of the project and the time frame of the service. As required by law or public mandate; submittals, reports and design documents shall bear the seal of a licensed Professional Engineer or Registered Architect.

17. Client's Responsibility - Client shall furnish to GGE or GGEA all available information relative to the project. Electronic drawing files shall be provided in full digital AutoCAD format. All project information required by GGE or GGEA shall be provided at the client's expense and GGE or GGEA shall be entitled to rely on the accuracy and completeness thereof. Client shall pay all fees associated with filing all applications. Client shall provide input to GGE or GGEA on a timely basis, including but not limited to review of the project deliverables. In the event the client becomes aware of any fault or defect in the project, or non-conformance with the documents, prompt written notice shall be given to GGE or GGEA. Client shall review and acknowledge all reports, design documents, and other deliverables; plus assure that the scope and responsibilities of construction are recognized and accepted by Client's Construction Manager, Contractor, Subcontractor, and other project entities. GGE or GGEA will not be responsible for construction and/or design errors, omissions, or faults of any kind resulting from the actions or inactions of others. Client shall designate a single project contact person.

18. Termination - Either party, upon not less than seven days written notice, may terminate the agreement and/or the accepted written proposal. The client is liable for the complete payment of the fee for GGE's or GGEA's services, expenses and termination expenses up to the date the termination or suspension notice is received. Termination and/or suspension expenses including, but not limited to reasonable legal fees are in addition to compensation for basic and additional services, and include those expenses directly related to termination and/or suspension. Failure of the client to make payment to GGE or GGEA, in accordance with this agreement shall be considered non-performance and cause for termination by GGE or GGEA. If the Client fails to pay GGE or GGEA for services and expenses, GGE or GGEA may upon 7 days' notice to the client, suspend performance of services. In the event of a suspension of services, GGE or GGEA shall have no liability to the client for delays or damages including, but not limited to loss of use and profits caused by the suspension of services. Client is hereby barred from making a breach of contract claim as a result of GGE or GGEA terminating an agreement under this clause.

19. Severability - If any of the terms or conditions are found, by a competent jurisdiction, to be unenforceable, invalid, or illegal, the remaining terms and conditions shall remain in force.

20. Choice of Law - These terms and conditions shall be interpreted, construed and enforced in accordance with the laws of the State where the project is located. Professional services will be rendered according to the laws, rules, standards and requirements of the State where the project is located.

## 2024 Fee Schedule of Professional Services

Service Item No.	Description	Hourly Rate
1.1	Principal, P.E.	\$315.00
1.2	Associate Engineer/Architect	\$275.00
1.25	Engineering Specialist, P.E.	\$210.00
1.3	Engineering Manager, P.E.	\$210.00
1.4	Architect / SR Project Manager, RA	\$210.00
1.41	Architect, RA	\$160.00
1.45	Sr. Project Engineer, P.E.	\$170.00
1.5	Project Engineer, P.E.	\$150.00
1.51	Project Designer	\$130.00
1.62	Project Engineer - MS / P.E.	\$135.00
1.65	Senior Geologist, P.G.	\$137.00
1.66	Staff Engineer - BS / EIT	\$115.50
1.67	Staff Geologist, BS	\$95.00
1.71	CAD Designer	\$95.00
1.75	Senior CAD Designer	\$120.00
1.85	Senior Technician	\$95.00
1.9	Draftsman	\$80.00
1.10	Field Technician / Laboratory Technician	\$73.50
1.11	Administrative	\$80.00



**City of North Tonawanda**  
**Department of Engineering**  
City Hall, 216 Payne Avenue  
North Tonawanda, NY 14120-5493  
www.northtonawanda.org

**Chelsea L. Spahr, P.E.**  
*City Engineer*  
Phone: (716) 695-8565  
Fax: (716) 695-8568

March 26, 2024

**APR 02 2024**

Honorable Austin J. Tylec, Mayor  
and Common Council Members  
City Hall  
216 Payne Avenue  
North Tonawanda, New York 14120

**Re: Twin City Memorial Highway Improvements Study  
Project 2023-07 PIN 5764.81**

Dear Honorable Body:

As you are aware, the City of North Tonawanda received funding through a federal appropriation that will be administered by the New York State Department of Transportation (NYSDOT) in the amount of \$500,000 with a local match of \$125,000. The local match will be both NYSDOT (\$93,750) and City (\$31,250) funded.

The study will examine the redesign of the approximately 1.2 mile stretch of the Twin City Memorial Highway (TCMH) in North Tonawanda and the approximately 1.1 mile stretch of the parallel Division Street. The objectives of this study include, but are not limited to, increasing connectivity, addressing geometrics, safety and operational issues, increase mobility, and to create a thriving and resilient community while addressing inequities and barriers to opportunity while maintain the highway's functional and federal eligibility.

To complete the TCMH Improvements Study, the City intends to procure the services of a professional engineering firm. This firm's responsibilities will include data collection and analysis, project scoping, public engagement, environmental, ROW considerations, and estimating and technical assumptions.

A request for supplemental proposals, in accordance with the Local Design Services Agreement (LDSA) - Consultant Selection Procedure furnished by the New York State County Highway Superintendents Association (NYSCHSA), was issued in September 2023 and the City received five proposals from the fifteen eligible professional firms. A review committee was convened with representation from City Engineering, Community Development, Parks and Recreation, and the Department of Public Works, to review the proposals and provide a recommendation to the Council.

Upon review, the committee is recommending the City select C&S Companies to perform the tasks outlined in the attached agreement. C&S Companies is a local firm with experience in transportation engineering design. The review committee felt the team assembled by C&S Companies demonstrated the experience, expertise, and capacity to complete this project for the City.

RECEIVED  
CITY CLERK'S OFFICE  
2024 MAR 26 PM 3:25  
NORTH TONAWANDA NY



**City of North Tonawanda  
Department of Engineering**

City Hall, 216 Payne Avenue  
North Tonawanda, NY 14120-5493  
www.northtonawanda.org

**Chelsea L. Spahr, P.E.**  
*City Engineer*  
Phone: (716) 695-8565  
Fax: (716) 695-8568

I am hereby requesting this honorable body consider selecting C&S Companies to complete the Twin City Memorial Highway Improvements Study and authorize the Mayor to sign a contract with C&S Companies, pending review and approval by the City Attorney, for the proposed fee of \$625,000.00.

Please let me know if you have any further questions or concerns. Thank you for your consideration.

Very truly yours,

Travis J. Sikora, E.I.T.  
Assistant City Engineer

TJS:cls

Cc: file  
Edward A. Zebulski III, City Attorney  
Mark Zellner, Superintendent of Public Works  
Laura Wilson, Dir. Community Development  
Alex Domaradzki, Dir. Parks and Rec  
Dan Borcz, PE, C&S Companies

# Architectural/ Engineering Consultant Agreement

Project No. 5764.81 Municipal Contract No. \_\_\_\_\_

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between

City of North Tonawanda  
(municipal corporation)

having its principal office at 216 Payne Avenue, North Tonawanda, NY 14120 (the "Municipality")

and

C&S Engineers, Inc., with its office at 141 Elm Street, Buffalo, New York 14210  
(the "Consultant")

**WITNESSETH:**

WHEREAS, in connection with a project funded through the New York State Department of State ("NYSDOS"), the Dormitory Authority of the State of New York ("DASNY"), and the New York State Canal Corporation ("NYS Canal Corporation"), identified for the purposes of this agreement as Twin Cities Memorial Highway (NYS Route 425) Improvements Study (as described in detail in Attachment A annexed hereto, the "Project"), the Municipality has sought to engage the services of a Consultant Engineer to perform the scope of services described in Attachment B annexed hereto (the "Basic Services"); and

WHEREAS, in accordance with required consultant selection procedures, including applicable requirements of NYSDOS, DASNY and/or the NYS Canal Corporation, the Municipality has selected the Consultant to perform such Basic Services in accordance with the requirements of this Agreement; and the Municipality's Representative has approved retaining the Consultant to perform such Basic Services; and

WHEREAS, Austin J. Tylec, Mayor, City of Tonawanda, New York, is authorized to enter this Agreement on behalf of the Municipality,

NOW, THEREFORE, the parties hereto agree as follows:

**ARTICLE 1. DOCUMENTS FORMING THIS AGREEMENT**

This Agreement consists of the following and constitutes the entire agreement between the parties with respect to the Project:

- Agreement Form - this document, titled "Architectural/Engineering Consultant Agreement";
- Attachment "A" - Project Description and Funding;
- Attachment "B" - Task List/Scope of Services (as outlined in the RFP);
- Attachment "C" - as applicable, Staffing Rates, Hours, Reimbursables, and Fee.



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

2.1 The Consultant shall render the Basic Services and furnish the materials and equipment necessary to provide the Municipality with plans, estimates, and deliverables for the Project as described in Attachment "B".

2.2 The standard of care for all professional engineering and related services performed or furnished by the Consultant under this Agreement shall be the care and skill ordinarily used by members of the Consultant's profession practicing under similar conditions at the same time and in the same locality. Before beginning to furnish any service hereunder, the Consultant shall ascertain the standard practices of the Municipality, NYSDOS, DASNY, and/or the NYS Canal Corporation if any, for projects of a type similar to this Project. Where the Consultant deems it practicable to do so, the services to be provided or furnished under this Agreement shall be performed in accordance with these standard practices as long as they are consistent with the standard of care. If any of these standard practices are inconsistent with the Consultant's standard of care or are in conflict with one another, or if strict adherence to the same is impossible or undesirable, then the Consultant's services may vary or deviate from such standards.

2.3 The Consultant will commence performance of the Basic Services no later than ten (10) days after receiving written notice to proceed from the Municipality, and shall proceed in accordance with the terms of Attachment "A".

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

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

(Continued next page)

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

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

3.2 Specific Hourly Rate Method			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS
Item I	Specific Hourly rates of pay shown in Attachment C for employees assigned to this PROJECT. The Specific Hourly rates and all components of those rates are not subject to audit. The number of hours charged are subject to audit.	Rates in Attachment C	<ul style="list-style-type: none"> <li>■ The CONSULTANT shall be paid in monthly progress payments based upon the rate schedule in Attachment C and actual allowable Direct Non Salary costs incurred.</li> <li>■ Bills are subject to approval of the Municipality and Municipality's Representative.</li> </ul>
Item II	<ul style="list-style-type: none"> <li>■ Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit.</li> </ul>	<ul style="list-style-type: none"> <li>■ Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative.</li> <li>■ All reimbursement for travel, meals and lodging shall be made at actual cost paid but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor.</li> <li>■ For Reimbursable Direct Non-Salary Costs a multiple of <b>One</b> times shall be applied to the expenses incurred by the Consultant, the consultant's employees, or the subconsultant not to exceed \$_____.</li> </ul>	
ITEM III	<ul style="list-style-type: none"> <li>■ Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality.</li> </ul>	Salvage value	
ITEM IV	Maximum Amount Payable under this Method unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	The Maximum Amount Payable under this Method shall be \$_____.	

<input checked="" type="checkbox"/> 3.3 Lump Sum Cost Plus Reimbursables Method			
ITEM	DESCRIPTION OF ITEMS WITHIN METHOD	APPLICABLE RATE/ AMOUNT OR PERCENTAGE	INTERIM PAYMENTS
ITEM I	A Lump Sum paid to Consultant for the scope of services hereunder, unless this Agreement is formally amended or supplemented by reason of a substantial change in the scope, complexity or character of the work to be performed.	A Lump Sum of <u>\$625,000.00</u> .	<ul style="list-style-type: none"> <li>■ The CONSULTANT shall be paid in monthly progress payments based upon the percentage of work accomplished and Direct Non-Salary Costs incurred during the period. Progress payments are subject to approval by the municipality's representative.</li> </ul>
ITEM II	<ul style="list-style-type: none"> <li>■ Actual Direct Non-Salary Costs incurred in fulfilling the terms of this Agreement; all subject to audit.</li> </ul>	<ul style="list-style-type: none"> <li>■ Actual costs incurred in the performance of this agreement as identified in Attachment C or otherwise approved in writing by the Municipality or its representative.</li> <li>■ All reimbursement for travel, meals and lodging shall be made at actual cost paid, but such reimbursement shall not exceed the per diem rates established by NY State Comptroller. All reimbursement shall not exceed the prevailing wage rates established by the NYS Dept. of Labor.</li> <li>■ For Reimbursable Direct Non-Salary Costs a multiple of <b>One</b> times shall be applied to the expenses incurred by the Consultant, the consultant's employees, or the subconsultant not to exceed <u>N/A</u>.</li> </ul>	
ITEM III	<ul style="list-style-type: none"> <li>■ Items required to be purchased for this Project not otherwise encompassed in Direct Non-salary Project-related Costs, which become the property of the Municipality at the completion of the work or at the option of the Municipality.</li> </ul>	Salvage value	

#### **ARTICLE 4. INSPECTION**

The duly authorized representatives of the Municipality and, on Federally-aided projects, representatives of NYSDOT and the FHWA shall have the right at all times to inspect the services of the Consultant.

#### **ARTICLE 5. AUDITS**

5.1 Payment to the Consultant is subject to the following audit rights of the Municipality:

- A. For Cost Plus Fixed Fee Method - All costs are subject to audit (*i.e.*, labor, direct non-salary, overhead, and fee).
- B. For Specific Hourly Rate Method - Labor hours and direct non-salary costs are subject to audit. If elements subject to audit are less than \$250,000, an audit may be waived by the Municipality.
- C. For Lump Sum Cost Plus Reimbursables Method - Only direct non-salary costs are subject to audit. If elements subject to audit are less than \$250,000, an audit may be waived by the Municipality.

5.2 In order to enable the Municipality to process the final payment properly and expeditiously, the Consultant is advised that all of the following documents and submissions, as the same may be appropriate to this Agreement, are considered to be necessary to enable the commencement of the audit:

- A. Records of Direct Non-Salary Costs;
- B. Copies of any subcontracts relating to this Agreement;
- C. Location where records may be examined; and
- D. Name, address, telephone number of person to contact for production.

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

#### **ARTICLE 6. FINAL PAYMENT**

6.1 The Municipality will make final payment within thirty (30) calendar days after receipt of an invoice which is properly prepared and submitted, and all appropriate documents and records are received.

#### **ARTICLE 7. ADDITIONAL SERVICES**

7.1 Consultant's performance of Basic Services under this Agreement within the compensation provided shall be continuously reviewed by the Consultant. The Consultant shall notify the Municipality of the results of those reviews in writing by submittal of a Cost Control Report. Such Cost Control Report shall be submitted to the Municipality on a monthly basis or at such alternative interval as the Municipality directs in writing.

7.2 If authorized in writing by the Municipality through a Supplemental Agreement, the Consultant shall furnish or obtain from others any service that is beyond the scope of Attachment "B" ("Additional Services"). The scope and time for performance of, and payment from the Municipality to the Consultant for, any Additional Services (which shall be on the basis set forth in Attachment "C") shall be set forth in such Supplemental Agreement.

7.3 In the event of any claims being made or any actions being brought in connection with the Project, the Consultant agrees to render to the Municipality all assistance required by the Municipality. Compensation for services performed and costs incurred in connection with this requirement shall be in accordance with Section 7.2. This requirement shall survive any termination or cancellation of this Agreement.

## ARTICLE 8. CONSULTING LIABILITY

**HOLD HARMLESS:** To the fullest extent permitted by law, the Consultant shall indemnify the Municipality against, and hold it harmless from, any suit, action, actual damage, and cost resulting solely from the negligent performance of services or omission of the Consultant under this Agreement, up to the limits of any available insurance. Negligent performance of services, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based up on the Consultant's failure to meet professional standards and resulting in obvious or patent errors in the services performed hereunder.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Consultant or the Municipality beyond such as may legally exist irrespective of this Article or this Agreement.

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

The obligations set forth in this Article 8 shall survive any termination or cancellation of this Agreement.

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

The Consultant shall procure and maintain the following types and amounts of insurance throughout the duration of the Project:

- a. **Workers' Compensation Insurance** in the amounts required by law to provide protection for employees of the Consultant in the event of job-related injuries.
- b. **Commercial General Liability Insurance, including broad form and contractual liability endorsement**, having limits of \$1 million for personal injury and property damage per occurrence/policy aggregate.
- c. **Automobile Liability Insurance** having a limit of \$ 1 million per occurrence and \$1 million aggregate for bodily injury and property damage.
- d. **Professional Liability or Errors and Omissions Insurance** having limits of \$1 million per claim and \$1 million aggregate liability.

The Municipality shall be named as an additional insured with respect to the coverages set forth in (b) and (c) above, and the certificates furnished by the Consultant shall so reflect. The Consultant shall endeavor to give notice of any cancellation of coverage to the Municipality at least thirty (30) days before the cancellation occurs.

The obligations imposed on the Consultant by this Article 9 shall survive any termination or cancellation of this Agreement.

## ARTICLE 10. INTERCHANGE OF DATA

All technical data in regard to the Project existing in the office of the Municipality or existing in the offices of the Consultant shall be made available to the other party to this Agreement without expense to such other party.

The Municipality shall be responsible for, and the Consultant may rely upon, the accuracy and completeness of all reports, data, and other information furnished by the Municipality to the Consultant in connection with the Project. The Consultant may use such reports, data, and information in performing or furnishing services under this Agreement.

## **ARTICLE 11. RECORDS RETENTION**

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

## **ARTICLE 12. FORCE MAJEURE**

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

## **ARTICLE 13. TERMINATION**

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

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

The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

## **ARTICLE 14. DEATH OR DISABILITY OF THE CONSULTANT**

In case of the death or disability of one or more but not all the persons herein referred to as the Consultant, the rights and duties of the Consultant shall descend upon the survivor or survivors of them, who shall be obligated to perform the services required under this Agreement, and the Municipality shall make all payments due to him, her, or them. In case of the death or disability of all the persons herein referred to as the Consultant, all data and records pertaining to the Project shall be delivered within sixty (60) days to the Municipality. In case of the failure of the Consultant's successors or personal representatives to make such delivery on demand, then in that event the representatives of the Consultant shall be liable to the Municipality for any damages it may sustain by reason thereof. Upon the delivery of all such data to the Municipality, the Municipality will pay to the representatives of the Consultant all amounts due the Consultant, including retained percentages to the date of the death of the last survivor.



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

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

## **ARTICLE 16. INDEPENDENT CONTRACTOR**

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

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

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

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

The parties agree that they are prohibited from assigning, transferring, conveying, subletting, or otherwise disposing of the Agreement or of its right, title, or interest therein, or its power to execute such Agreement, to any other person, company, or corporation, without the previous consent in writing of the other party.

If this provision is violated, the affected party may revoke and annul the Agreement and shall be relieved from any and all liability and obligations hereunder to the person, company, or corporation to whom the assigning party shall purport to assign, transfer, convey, sublet, or otherwise dispose of the Agreement without such consent in writing.

## **ARTICLE 19. PROPRIETARY RIGHTS**

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

All Documents, including Drawings and Specifications, prepared or furnished by the Consultant (and by the Consultant's independent professional associates and consultants) pursuant to this Agreement, whether in hard copy or in electronic or digital form, are instruments of service in respect of the Project, and the Consultant shall retain an ownership and property interest therein whether or not the Project is completed. The Consultant shall retain all common law, statutory and other reserved rights to the Consultant's instruments of service, including the copyright thereto. The Municipality may make and retain copies for information and reference in connection with the use and occupancy of the Project by the Municipality and others; however, such documents are not intended or represented to be suitable for reuse by the Municipality or others on extensions of the Project or on any other project. Any reuse without specific written verification or adaptation by the Consultant for the specific purpose intended will be at the user's sole risk and without liability or legal exposure to the Consultant, or to the Consultant's independent professional associates or consultants, and the Municipality shall indemnify and hold harmless the Consultant and the

Consultant's independent professional associates and consultants from all claims, losses, damages of any kind or nature, judgments, and expenses (including, but not limited to, reasonable attorneys' fees and any costs) arising out of or resulting therefrom or from a defect, error, or omission in the electronic files (a) that was not contained in the paper copies thereof, or (b) where use of the paper copies would have prevented the assertion of such claim, judgment, suit, demand, liability, damage, cost, or expense. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Municipality and the Consultant.

The Municipality acknowledges that electronic files prepared by the Consultant will be or are, to the best of the Consultant's knowledge, information, and belief, accurate as of the date of their preparation. Nevertheless, differences may exist between the electronic files delivered to the Municipality and the printed hard copies thereof prepared and maintained by the Consultant. The Municipality further acknowledges that if there is a conflict between the electronic files and the hard copies of documents prepared by the Consultant, the hard copies maintained by the Consultant will govern. The Consultant shall not be obligated to correct errors in or to maintain electronic files.

## ARTICLE 20. SUBCONSULTANTS

All Subconsultants performing services for or work on this Project shall be bound by the same required contract provisions as the Consultant. All agreements between the Consultant and a Subconsultant shall include all standard required Agreement provisions, and such agreements shall be subject to review by the Municipality.

**ARTICLE 20.1 PROMPT PAYMENT.** While federal regulation (49 CFR 26.29<sup>1</sup>) requires payment to subcontractors within 30 days, New York State law is more stringent. NYS General Municipal Law §106-b and NYS Finance Law Article 9, §139-f require prime contractors and prime consultants to pay their vendors within seven (7) calendar days of receipt of payment from the public owner/sponsor, and provides for interest on late payments for all public works contracts. Contract provisions incorporating any other payment schedule will not be allowed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented. When the Sponsor has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

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

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

<sup>1</sup> <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=936406b1c92895795069232a53fb110f&rgn=div8&view=text&node=49:1.0.1.1.20.2.18.5&idno=49>

**ARTICLE 22. CERTIFICATION FOR FEDERAL-AID CONTRACTS**

The Consultant certifies, by signing this Agreement to the best of its knowledge and belief, that:

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

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

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

**ARTICLE 23. RESPONSIBILITY OF THE CONSULTANT**

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

**ARTICLE 24. NON-DISCRIMINATION REQUIREMENTS**

The Consultant agrees to comply with all applicable Federal, State, and Municipal Civil Rights and Human Rights laws with reference to equal employment opportunities and the provision of services. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex,

national origin, age, disability, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration, or repair of any public building or public work for the manufacture, sale, or distribution of materials, equipment or supplies, and to the extent that this Agreement shall be performed within the State of New York, the Consultant agrees that neither it nor its Subconsultants shall, by reason of race, creed, color, disability, sex, or national origin; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. The Consultant is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

#### **ARTICLE 25. CERTIFICATION REQUIRED BY 40 CFR 111506.5(c)**

If the services to be performed by the Consultant for the Project include the preparation of an Environmental Impact Statement (EIS), then the signator to this Agreement, being duly sworn, certifies that its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership) does not have any financial or other interest in the outcome of the Project including:

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

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

#### **ARTICLE 26. BIDDING OF DIRECT NON-SALARY ITEMS** *(unless more restrictive municipal laws apply)*

For all contracts other than personal services in excess of \$5,000, the Consultant shall solicit a number of quotes from qualified subcontractors so that at least three (3) quotes will be received. For all contracts other than personal services in excess of \$20,000, except printing contracts in excess of \$10,000, the Consultant shall solicit a number of sealed bids from qualified subcontractors so that at least three (3) bids will be received. The Consultant shall then enter into a subcontract with the lowest bidder or entity submitting the lowest quotation who is fully responsive to the invitation to submit a quote/bid.

#### **ARTICLE 27. WAGE AND HOURS PROVISIONS**

If this is a public work contract covered by Article 8 of the Labor Law, or a building service contract covered by Article 9 thereof, neither the Consultant's employees nor the employees of its Subconsultants or 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, the Consultant and its Subconsultants must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

#### **ARTICLE 28. INTERNATIONAL BOYCOTT PROHIBITION**

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

**ARTICLE 29. SERVICE OF PROCESS**

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

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

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

**ARTICLE 31. MISCELLANEOUS**

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

31.2 **Notice.** Any notice required to be given by one party to the other hereunder shall be in writing and shall be delivered personally; by overnight courier with proof of delivery; or by certified or registered first-class mail, postage pre-paid and return receipt requested, to the party to be notified at its address set forth below. Notice shall be deemed given upon receipt, and failure or refusal to accept receipt shall be deemed to constitute receipt for purposes of this Agreement. Either party may change its address for notice purposes by giving notice to the other party in accordance with the terms of this Section 31.2.

Municipality's Notice Address:  
City of North Tonawanda  
Attn: Chelsea Spahr, PE, City Engineer  
216 Payne Avenue  
North Tonawanda, NY 14120

Consultant's Notice Address:  
C&S Engineers, Inc.  
Attn: Seth Kaeuper, P.E.  
141 Elm Street  
Buffalo, NY 14210

31.3 **Opinions of Probable Cost.** Opinions of probable construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by the Consultant hereunder will be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified design professional. It is recognized, however, that the Consultant does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed as part of the Project must of necessity be speculative until completion of detailed design. Accordingly, the Consultant cannot and does not guarantee that proposals, bids, or actual Project or construction costs will not vary from opinions, evaluations, or studies submitted by the Consultant to the Municipality hereunder. If the Municipality wishes greater assurance as to probable costs, then it shall employ an independent cost estimator.

31.4 **Dispute Resolution.** The Municipality and the Consultant agree to negotiate in good faith for a period of thirty (30) days from the date of notice of disputes between them as to the execution, meaning of, or performance under the terms of this Agreement prior to exercising their right to mediation. The thirty-day

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

The terms of this Section 31.4 shall survive any termination or cancellation of this Agreement.

31.5 **SEVERABILITY.** Any provision or part of this Agreement held by a court of law to be invalid or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Municipality and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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

Reference: Municipality Contract # \_\_\_\_\_

Municipality by: _____ Austin J. Tylec Mayor, City of North Tonawanda Date:	Consultant by: _____ Seth Kaeuper, P.E. Service Group Manager Date:
--	--

STATE OF NEW YORK

COUNTY OF NIAGARA

SS:

On \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

STATE OF NEW YORK

COUNTY OF MONROE

SS:

On \_\_\_\_\_, 20\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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



**City of North Tonawanda**  
**Department of Engineering**  
City Hall, 216 Payne Avenue  
North Tonawanda, NY 14120-5493  
www.northtonawanda.org

**Chelsea L. Spahr, P.E.**  
*City Engineer*  
Phone: (716) 695-8565  
Fax: (716) 695-8568

March 27, 2024

IV.3

**APR 02 2024**

Honorable Austin J. Tylec, Mayor  
and Common Council Members  
City Hall  
216 Payne Avenue  
North Tonawanda, New York 14120

**Re: Farnsworth Extension – Engineering Services**  
**Project No. 2024-04**

Dear Honorable Body:

This project involves the extension of Farnsworth Avenue and underground utilities from Castlebar Drive to Meadow Drive to allow for future development along the north side of Meadow Drive. To complete this work, the City intends to procure the services of a professional engineering firm.

Three engineering firms were contacted and submitted proposals for this work in March of 2024. Proposals from Nussbaumer and Clarke, Inc., WM Schutt Associates and C&S Companies were reviewed by City Engineering and Public Works to provide a recommendation to the Council.

Upon review we are recommending the City select the proposal submitted by Nussbaumer and Clarke, Inc. Nussbaumer is a local firm with experience in the design of similar projects.

I am hereby requesting this honorable body consider selecting Nussbaumer and Clarke, Inc. to complete the design of the Farnsworth Extension Project and authorize the Mayor to sign a contract with Nussbaumer, pending review and approval by the City Attorney, for the proposed fee of \$29,700.00.

Please let me know if you have any further questions or concerns. Thank you for your consideration.

Very truly yours,

Travis J. Sikora, E.I.T.  
Assistant City Engineer

TJS:tjs

Cc: file  
Edward Zebulske, City Attorney  
Jeffery Zellner, City Accountant  
Mark Zellner, Superintendent of Public Works  
Michael Marino, Nussbaumer and Clarke, Inc.

RECEIVED  
CITY CLERK'S OFFICE

2024 MAR 27 AM 10:57  
NORTH TONAWANDA NY



March 27, 2024

Chelsea L. Spahr, P.E.  
City Engineer  
City of North Tonawanda  
Engineering Department  
216 Payne Avenue  
North Tonawanda, NY 14120



Re: Proposal for Professional Engineering Services  
Farnsworth Avenue Road, Water and Sanitary Sewer Extension  
File 24P1-0045

Dear Ms. Spahr:

Nussbaumer & Clarke, Inc. (Nussbaumer) appreciates the opportunity to submit this proposal to provide engineering services related to the Farnsworth Avenue water, sanitary sewer, and road extension project.

It is our understanding that the City of North Tonawanda (City) would like to extend Farnsworth Avenue within the existing City Right-of-Way (ROW) from Castlebar Drive to Meadow Drive. The proposed road extension will also include the extension of water and sanitary sewer lines from Castlebar Drive to the north side of Meadow Drive to support future development along the north side of Meadow Drive. Nussbaumer met with the City at the proposed project location and understands the following based upon the meeting:

1. The new watermain shall be 8-inch PVC extended from an existing 8-inch DIP on Castlebar Drive to Meadow Drive. This may require the relocation of an existing 8x6-inch reducer to maintain service to the west side on Castlebar Drive. Nussbaumer will coordinate with the City to determine if the termination at Meadow Drive will include a hydrant or blowoff.
2. The sanitary sewer shall be 8-inch PVC and aligned in the middle of the proposed Farnsworth Avenue road extension. There is believed to be a plugged sewer extension at the intersection of Castlebar Drive and Farnsworth Avenue which would allow connection to the sewer flowing to the west. However, the presence of the extension will need to be confirmed during the topographic survey. There are also two (2) other manholes on Castlebar Drive which would allow flow to east on Castlebar Drive. The ultimate connection point will be determined after completion of the topographic survey. The sanitary extension will terminate with a manhole at the intersection of Farnsworth Avenue and Meadow Drive. There are no known sanitary capacity issues on Castlebar Avenue.



3. City forces have already cleared the ROW. Curb reveal shall match the current extensions of Farnsworth at interconnection points. Pavement cross section shall be per City specifications. Drainage will be collected and routed to the existing storm sewer system based upon information collected during the topographic survey. City forces will expose / mark out existing water and sanitary infrastructure to be collected during the topographic survey.
4. A stormwater pollution prevention plan (SWPPP) will not be required.
5. Nussbaumer to assist the City with regulatory approvals.
6. Nussbaumer to provide topographic survey, detailed design and bidding documents, bidding support and consultation during construction. Inspection services are not required.
7. During the design and cost estimating phase, Nussbaumer will coordinate with the City to identify items which may be bid as alternates or constructed by City forces.
8. It is understood that the City would like to have this project constructed during the 2024 construction season.

## **SCOPE OF SERVICES**

Based upon our understanding of the project, Nussbaumer proposes the following Scope of Services.

### **TASK 1 – DESIGN PHASE**

1. Nussbaumer will meet with the City to discuss the proposed layout, desired features of design, budget, and schedule for the project.
2. Topography Survey – Nussbaumer shall obtain field topographic survey data including key water, sewer, and road features for the preparation of design plans. Survey data is to be according to NAD83 and NAVD88 standards. Survey data will be collected in the Farnsworth Avenue ROW and 100 linear feet each direction at the intersections of Meadow Drive and Castlebar Drive.
3. Prepare detailed design drawings, specifications and contract documents including:
  - a. General Location Map, Index of Drawings and General Notes.
  - b. Civil Plan & Profile:
    - i. Plan and profile for proposed road, 8-inch diameter PVC watermain and sanitary sewer with stationing.
    - ii. Identify location, size, and material type of proposed hydrants, valves, fittings, interconnections, sanitary and storm structures.
    - iii. Identify location of test pits.



- iv. Plan and profile of underground utilities and utility crossings.
    - v. Identify location, size and material type for disinfection, sampling, testing and flushing connections.
    - vi. Identify sanitary sewer testing requirements.
    - vii. Interconnection plan(s).
    - viii. Restoration limits.
  - c. Details sheets shall be included, as required:
    - i. Watermain details.
    - ii. Sanitary sewer details.
    - iii. Storm drainage details.
    - iv. Road details.
    - v. Erosion and sediment control details.
    - vi. Work zone traffic control plan and details (as required).
  - d. Prepare Contract/Bid Documents including front end documentation, proposal tab, New York State Prevailing Wage Rates, technical specifications, and required appendices/attachments.
4. Prepare engineering data and calculations to support the design of the improvements.
5. Prepare itemized quantity take-offs and Engineer's Estimate of Probable Construction Cost.
6. Nussbaumer will advance Plans, Specifications, Construction Estimates to 80% and provide the following to the City:
  - a. Three (3) paper copies and an electronic copy of the 80% Design Documents and Draft Specifications for the City's review and comment.
  - b. Submit a review copy of the revised 80% Design Documents to the Niagara County Department of Health (NCDOH) for review and comment.
7. Progress Meetings:
  - a. Nussbaumer will attend meetings with City staff, as requested, during the design phase of the project.
8. Nussbaumer will advance the Plans, Specifications, Construction Estimate, and Construction Schedule to 100% by incorporating final details and specifications, agency (e.g., NCDOH) comments, and any final comments from the City.



9. Nussbaumer will provide the following 100% deliverables to the City:
  - a. Drawings
    - i. Three (3) sets of hard copy stamped originals.
    - ii. Electronic CAD files (AutoCAD and pdf).
  - b. Specifications
    - i. Three (3) sets of hard copy originals.
    - ii. Electronic form (pdf).
  - c. Cost Estimate.
    - i. One (1) hard copy original.
    - ii. Electronic form (original format and pdf).
10. Provide Record Drawings prepared based upon information collected by the City and Nussbaumer as requested during construction.

## **TASK 2 - BIDDING SERVICES**

1. Nussbaumer will assist the City with bidding and awarding the construction contract by providing the following services:
  - a. Assist with the preparation of the advertisement to bid.
  - b. Final preparation of bidding documents and coordination with an approved document services company. It is anticipated that The Copy Store will be utilized.
  - c. Conduct pre-bid meeting and site walk through.
  - d. Review and respond to requests for information (RFIs) from bidders.
  - e. Prepare and issue addenda, as necessary.
  - f. Aid the City in securing bids.
  - g. Conduct review of bids submitted and prepare bid tabulation.
  - h. Provide a written recommendation as to the lowest responsible bid submission and contract award.

## **TASK 3 - CONSTRUCTION SUPPORT PHASE**

As requested, Nussbaumer has included an allowance to provide consultation during construction. The City will be invoiced based upon effort spent according to Nussbaumer's 2024 Hourly Rate Table (attached).

### **Out of Scope Services**

The City may require Nussbaumer to provide, or arrange for, assistance in obtaining one or more of the following special services not specifically set forth in this proposal ("Out of Scope Services"). Because it is not possible to determine in advance the need for or the cost of such services, these are included as separate elements of cost which shall be separately negotiated. If Nussbaumer is required to perform services for this project, such Out of Scope Services shall be billed in accordance with the attached 2024 Hourly Rate Table or at an agreed upon fee, only upon authorization from the City.



These services include, but are not limited to:

- a. Submittal processing.
- b. Contractor payment application reviews.
- c. Construction inspection.
- d. Observation / certification of water / sewer infrastructure testing.
- e. Soils investigations include test borings, pavement cores, and the related analysis.
- f. Land surveys, maps, plates, descriptions, and title investigations which may be required to acquire lands, easements, and rights-of-way for the proposed facilities.
- g. Air, water, and/or soil sampling, testing, and/or analysis.
- h. Hazardous material testing and assessment.
- i. Wetlands investigations, delineation, and mitigation.
- j. Technical assistance with preparing the necessary documents required by the New York State Environmental Quality Review Act (SEQRA) for Type I or unlisted actions.

### FEE ESTIMATE

Our proposed fee for the presented Scope of Work is **\$29,700.00** and is broken down as follows:

TASK	ASSIGNMENT	FEE
<b>Task 1</b>	Design Phase (Lump Sum)	\$22,500.00
<b>Task 2</b>	Bidding Services (Lump Sum)	\$3,200.00
<b>Task 3</b>	Construction Support Phase (Not-to-Exceed)	\$4,000.00
<b>Total:</b>		<b>\$29,700.00</b>

Costs shall be billed monthly based on the time expended, as determined by Nussbaumer. Hourly Rates are listed on the attached 2024 Hourly Rate Table. Amounts billed are due and payable upon receipt of the invoice. Costs and conditions included in this proposal are valid for a period of thirty (30) days from the date of this quotation. After execution of this contract, should the work be halted for reasons beyond the control of the Engineer, Nussbaumer shall be paid for all work accomplished up to the date of our receipt of a written order to suspend work. Refer to attached copy of Schedule A for standard terms and conditions.



**INITIATION OF CONTRACT**

Nussbaumer appreciates the opportunity to submit this proposal and to continue to support the City. We are available at your convenience should you desire to discuss any aspect of this proposal.

Upon acceptance of our proposal, please sign where so indicated and return a copy to Nussbaumer. The original is for your file. The signed copy will serve as our Agreement and Notice to Proceed.

Sincerely,

NUSSBAUMER & CLARKE, INC.

Michael T. Marino, P.E.  
Chief Executive Officer

Attachment – 2024 Hourly Rate Table with Schedule A

Accepted by: **CITY OF NORTH TONAWANDA**

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

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_



**CORPORATE OFFICE**  
 3556 Lake Shore Road  
 Suite 500  
 Buffalo, NY 14219-1494  
 Phone: (716) 827-8000  
 Fax: (716) 826-7958

**BRANCH OFFICES**  
 Lockport  
 North Tonawanda  
 East Aurora

## 2024 HOURLY RATE SCHEDULE

<u>Job Title</u>	<u>Hourly Rate</u>
Principal Engineer / Principal Surveyor	\$250.00
Sr. Associate	\$200.00
Associate	\$170.00
Project Manager	\$155.00
Sr. Project Engineer	\$150.00
Project Engineer / Project Architect	\$135.00
Engineer 2	\$115.00
Engineer 1	\$100.00
Sr. CADD Designer	\$142.00
CADD Designer	\$118.00
CADD Technician	\$104.00
Engineering Technician	\$90.00
Municipal Infrastructure Specialist	\$110.00
Renewable Energy Manager	\$165.00
Water Distribution Specialist 2	\$100.00
Water Distribution Specialist 1	\$72.00
Project Surveyor	\$137.00
Survey Technician 3	\$110.00
Survey Technician 2	\$95.00
Survey Technician 1	\$84.00
1 Person Survey Crew	\$165.00
1 Person Survey Crew (Prevailing Wage)	\$210.00
2 Person Survey Crew	\$195.00
2 Person Survey Crew (Prevailing Wage)	\$275.00
Construction Services Manager	\$155.00
Construction Administrator	\$110.00
Transportation Manager	\$155.00
Construction Observer 3	\$121.00
Construction Observer 2	\$116.00
Construction Observer 1	\$100.00
Grant Writer	\$90.00
Administrative Assistant	\$80.00
Testimony/Court Attendance (above rate for Job Classification - 4 Hour Minimum Charge)	

### **Fixed Costs**

Mileage	at Current Federal Rate
Expenses such as Tolls, Copies, Printing	at Cost
Subconsultant or Third Party Expense	at Cost plus 10%

*Rates are subject to increase January 1st of each calendar year.*

## SCHEDULE "A"

By accepting this proposal, the Client ("Client") agrees to the following terms and conditions incorporated into the resulting agreement ("Agreement") between the Client and Nussbaumer & Clarke, Inc. ("Nussbaumer") for the work covered in the proposal ("Work").

### **BASIS OF SERVICES**

If required, the Client shall arrange or establish Nussbaumer's right to enter the property. If the Client does not own the site, Nussbaumer shall require reasonable verification that permission to enter the site has been granted.

Quantities and cost estimates are subject to change due to, but not limited to, actual field conditions encountered, additions or changes to the Work, and changes in conditions on which estimates were based. The Client acknowledges and agrees that Nussbaumer was entitled to and did in fact rely on the information provided by the Client in performing estimates concerning the Work as embodied in this proposal.

### **DELIVERABLES**

Electronic files, drawings, calculations, records, and all other work products generated in connection with the Work are the property of Nussbaumer and may not be used without written permission. Drawings may be filed with the County or Municipality if the drawings were produced for that purpose. Electronic files and/or reproducible documents will be furnished at cost for preparing same and will be noted as a copy. Except for original submittals, any plans ordered or used in connection with the Work will be billed at cost.

### **FEES AND EXTRA WORK**

All fees quoted are for the Work as outlined. Any work not ordered will not be billed. Any work not included in the Agreement or any additional items which may be necessary to comply with applicable laws, codes, rules, regulations, or standards made effective after this proposal will be charged as extras on a time and expense basis or at a mutually agreed upon fixed fee. No extra work will be performed by Nussbaumer unless written approval is received from the Client, and a fee is negotiated.

It is understood that the fees quoted herein for the Work are subject to change upon written notice to the Client should unforeseen complications and/or problems develop during the Work. Any revisions to the Work caused by Client, Municipality, County, Governmental, or Governing Agencies, jurisdictional authorities, permitting agencies, approval agencies, funding agencies, utility companies, other stakeholders, and involved parties; to the extent they increase Nussbaumer's costs of performance under the Agreement, shall be billed in accordance with the attached hourly billing rates, included after Schedule A.

### **INVOICING AND PAYMENT**

Nussbaumer shall render invoices to Client monthly as set forth in this proposal. Client shall promptly review invoices and notify Nussbaumer of any objection thereof; absent such objection in writing within fifteen (15) days of the date of the invoice, the invoice shall be deemed proper and acceptable. Invoices shall be due and payable in full by the Client to Nussbaumer within 30 days of billing. If payment is not received within 60 days of billing, Client shall be considered in breach of contract and Nussbaumer reserves the right to stop Work under this Agreement, or work under any other agreement with the Client, until such time that all Work is paid in full, including interest at 1.5% per month commencing at the 60<sup>th</sup> day from billing. If applicable, all outstanding unpaid invoices must be paid in full prior to filing of the Map Cover with the county Clerk's Office.

No documents will be released unless all fees have been paid for Work completed. The Client agrees that Nussbaumer will not be responsible for providing copies of records generated for this project in case of loss of records by fire, theft, or other causes. Copies of the finished product will be furnished upon payment of the cost of reproductions.

It is also agreed and understood that if Nussbaumer finds it necessary to take legal action for collection of any outstanding amounts due under this Agreement, the Client herein agrees to pay all costs of litigation, including legal fees, court costs, filing and/or recording fees as well as costs involving time spent in preparation for litigation and/or legal proceedings. Should legal proceedings be initiated, it is understood that all proceedings would take place in Erie County, New York. This Agreement, the Work, and any disputes relating to either the Agreement or the Work shall be governed by the laws of the State of New York, without regard to conflicts of law rules.



## **STANDARD OF CARE**

The standard of care for all professional services performed or furnished by Nussbaumer under this Agreement will be the care and skill ordinarily used by members of the surveying and/or engineering profession(s) practicing under similar circumstances at the same time and in the same locality. Nussbaumer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by the company.

Any opinions of probable project cost or probable construction cost provided by Nussbaumer are made based on information available to Nussbaumer and Nussbaumer's experience and qualifications; represents its judgment as an experienced and qualified professional engineer. However, since Nussbaumer has no control over the cost of labor, materials, equipment, services furnished by others, contractors methods of determining prices, competitive bidding, or market conditions. Nussbaumer does not guarantee that proposals, bids, actual project, or construction cost will not vary from opinions of probable cost Nussbaumer prepares.

Construction cost does not include Nussbaumer's compensation or expenses, the cost of land, rights of way, or compensation for properties. Construction cost also does not include Clients legal, accounting, or insurance services; or interest and financing charges incurred in connection with construction, or the cost of services provided by others.

## **INDEMNIFICATION**

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Nussbaumer and its officers, directors, members, partners, agents, employees, and consultants, to Client and/or owner and anyone claiming by, through, or under Client and/or owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Work from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Nussbaumer or its officers, directors, members, partners, agents, employees, or consultants shall not exceed the total compensation received by Nussbaumer for the Work. Nussbaumer shall not be liable to the Client under any circumstances for indirect, special, incidental, or consequential damages, nor shall Nussbaumer be liable to the Client for lost revenue or profits of any nature or character.

To the fullest extent permitted by law, the Client agrees to indemnify and hold Nussbaumer, along with its current and future owners, officers, directors, members, shareholders, parent corporations, subsidiaries, related entities, affiliates, agents, and employees (collectively "Indemnitees") harmless from, against and for all claims by third parties ("Third-Party Claims"), which are caused by the negligence or willful misconduct of the Client or its employees, agents, consultants, or anyone acting by, through, on behalf of, or under the Client. Notwithstanding the foregoing or anything else in the Agreement, the Client's indemnification obligations do not apply to any Indemnitee for any portion of any Third-Party Claims caused by the negligence of such Indemnitee.

## **CLAIMS AND DISPUTES**

All claims or disputes of any kind arising out of the relationship between Client and Nussbaumer shall be submitted to mediation prior to filing suit. All mediation shall be conducted under the Commercial Rules of the American Arbitration Association, with the mediation costs equally borne between the two parties. The language to be used in mediation shall be English. Any action filed between the parties shall be filed in the state or federal courts in and for Erie County, New York. The prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees. If any part of this Agreement is found to conflict with applicable laws, such part shall be null and void, but the remainder of this Agreement shall be in full force and effect.

## **TERMINATION**

The parties agree and acknowledge that there are no verbal representations, promises, understandings or agreements concerning or relating to the Work other than as contained in the Agreement. All previous negotiations and agreements between the parties concerning or relating to the Work are merged into the Agreement. Modifications of the Agreement must be in writing, except to the extent that the invoice may include, and Client shall be obligated to pay, fees or expenses that were orally authorized to proceed promptly with the Work.

This Agreement, unless previously terminated by written notice, shall be terminated by completion of the Work. Termination before completion shall be accompanied by payment for Work completed to that date at per diem rates set forth in the attached hourly billing rates.

## **PROPOSAL PERIOD**

This proposal shall be valid for a period of 30 days, after which Nussbaumer shall have the right to revise any portion thereof. It is also understood that fees quoted herein shall be subject to a 10% increase for those phases of Work not yet completed after a period of one year from date of authorization to proceed.

JEFFREY ZELLNER  
CITY ACCOUNTANT

JENNIFER CRESS  
PAYROLL PERSONNEL SPECIALIST

SHERI GAMPP  
JUNIOR ACCOUNTANT

# City of North Tonawanda

DEPARTMENT OF ACCOUNTING  
CITY HALL  
216 PAYNE AVENUE NORTH  
TONAWANDA, N.Y. 14120

TELEPHONE: (716) 695-8545

FAX: (716) 695-8573

VII

APR 02 2024

March 26, 2024

Honorable Austin J. Tylec, Mayor  
And Common Council Members  
City Hall  
216 Payne Avenue  
North Tonawanda, NY 14120

Dear Honorable Body:

In accordance with Article V, Division 1, Section 5.002 and 5.003 of the City Charter, an Abstract Sheet, comprised of a Warrant of Claims, has been submitted by this office for your review and approval.

Accordingly, please authorize for payment the current Warrant of Claims for Common Council audit, dated April 2nd, 2024, and further authorize the Mayor and City Clerk-Treasurer to respectively sign and countersign said Warrant.

Warm Regards,

  
JEFFREY ZELLNER  
CITY ACCOUNTANT

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2024 MAR 27 AM 8:13  
NORTH TONAWANDA NY



Department of Police

CITY OF NORTH TONAWANDA  
216 Payne Avenue  
North Tonawanda, N.Y. 14120-5491

TELEPHONE  
(716) 692-4111  
FACSIMILE  
(716) 692-4321  
EMERGENCY NO.  
9-1-1

X.1

APR 02 2024

March 25, 2024

Honorable Austin J. Tylec, Mayor  
And Common Council  
City Hall  
North Tonawanda, NY 14120

Dear Honorable Body:

Would you please reappoint Timothy P. Bakula as Commissioner of Deeds for the City of North Tonawanda, effective from April 22, 2024 and ending on April 21, 2026.

Respectfully,

Keith T. Glass

Chief of Police

2024 MAR 25 PM 10:59  
NORTH TONAWANDA NY

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Department of Police

CITY OF NORTH TONAWANDA  
216 Payne Avenue  
North Tonawanda, N.Y. 14120-5491

TELEPHONE  
(716) 692-4111  
FACSIMILE  
(716) 692-4321  
EMERGENCY NO.  
9-1-1

X.2

APR 02 2024

March 25, 2024

Honorable Austin J. Tylec, Mayor  
And Common Council  
City Hall  
North Tonawanda, NY 14120

Dear Honorable Body:

Would you please reappoint Michelle A. Day as Commissioner of Deeds for the City of North Tonawanda, effective from May 4, 2024 and ending on May 3, 2026.

Respectfully,

Keith T. Glass

Chief of Police

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2024 APR 22 11:37 AM  
CITY OF NORTH TONAWANDA

XVII

APR 02 2024

March 20, 2024

Donna Braun

216 Payne Avenue North Tonawanda, NY 14120

Traffic Safety Minutes:

The March meeting of the North Tonawanda Traffic Safety Committee was called to order at 1800 hours. Roll call showed the following members present: M. Meisenburg, R. Frank, J. Sikora, M. Lemke, N. Ferguson, N. Phelps and B. Brennan. The minutes from the previous meeting were read and accepted, the following new concerns/requests were discussed, and recommendations made.

- ① Daniel Suitor called to request that a "No Parking Loading Zone" signs be placed on the Miller Street side of 465 Oliver for a non-profit, Moxie Helping Paws, that will be in that building. The committee all agreed.
2. Michael Carr from 415 Linwood Ave requested "No Parking Anytime" signs on one side of Linwood from Payne Ave all the way to the dead end (2,000ft) total. The committee denied the request stating that there is sufficient amount of space on the street with a large turnaround at the end.

The next Traffic Safety Meeting will be held on April 15<sup>th</sup>, 2024.

Travel safely!

Matthew R. Meisenburg

2024 MAR 25 AM 8:22  
NORTH TONAWANDA NY

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# City of North Tonawanda

Department of Community Development  
500 Wheatfield Street  
North Tonawanda, New York 14120

Telephone: (716) 695-8580

XXXII.  
APR 02 2024

March 27th, 2024

Honorable Austin J. Tylec, Mayor  
and Common Council Members  
City Hall  
216 Payne Avenue  
North Tonawanda, New York 14120

**Re: Downtown Revitalization Initiative (DRI) Oliver Street Walkability & Implementation of Smart Growth 2.0**

Dear Honorable Body:

The City was awarded grant funding through the NYSDOS DRI for total of \$2,500,000 to improve walkability along Oliver Street and implement additional Smart Growth amenities to our downtown.

To complete this work, the City intends to procure the services of a professional engineering firm. This firm's responsibilities will include design of the identified improvements, and implementation assistance through the construction and installation stages.

A request for proposals was issued in February 2024 and the City received three (3) proposals from professional firms. A review committee was convened with representation from City Engineering, Community Development, Department of Public Works, Accounting, and the Mayor's Office to review the proposals and provide a recommendation to the Council.

Upon review, the committee is recommending the City select LaBella to perform the design services and assistance through the construction and installation stages. LaBella is a local firm with experience in streetscape engineering design. The review committee felt the team assembled by LaBella demonstrated the experience, expertise, and capacity to complete this project for the City.

I am hereby requesting this honorable body consider selecting LaBella to complete the Oliver Street Walkability & Implementation of Smart Growth 2.0 and authorize the Mayor to sign a contract with LaBella, pending review and approval by the City Attorney, for the proposed design fee of \$224,900.

2024 MAR 25 AM 8:45  
NORTH TONAWANDA NY

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CITY CLERK

Please let me know if you have any further questions or concerns. Thank you for your consideration.

Very truly yours,



Laura Wilson  
Director of Community Development

LW:cls

Cc: file  
Chelsea L. Spahr, PE, City Engineer  
Edward A. Zebulski III, City Attorney  
Mark Zellner, Superintendent of Public Works  
Jeffery Zellner, City Accountant  
Douglas C. McCord, RLA, LaBella

CFO. A.

In Good Company Productions  
P.O. Box 25  
Tonawanda, NY 14150  
716-408-7678

APR 02 2024

To: Alex Domaradzki and North Tonawanda City Council

From: In Good Company Productions

Hello,

We are writing to you to request use of the Raymond Klimek Veterans Park Bandshell for our 2024 Summer Shows again this year.

In Good Company Productions is a free children's community theater group. We charge nothing to participants, families, or audience members. We are a 501C Non-profit organization. In Good Company is an all- inclusive theater group. We never turn away any children. We are proud to accept participants of all ages and abilities.

We are requesting use of the Park and Stage from 9am-3pm Monday July 22- Friday July 26, 2024 for rehearsals. Followed by 3 performances on the Bandshell Stage at 7pm on Monday July 29, Tuesday July 30, and Wednesday July 31. We would need power from 6pm-9pm for show nights only.

We operate on an All Volunteer basis and keep our theater group going by fundraising as needed. We are asking for any fees that would normally be charged can be waived for our project this summer.

If approved, we will be happy to send you a certificate of liability listing the City of North Tonawanda as additional insured.

We kindly ask that you would consider waiving the bandshell rental fee for this program as you have the previous years.

Thank you for your consideration and we look forward to hearing from you. If you need any additional information please contact Melissa Durfey at 716-408-7678 or [ingoodcompanyproductions@yahoo.com](mailto:ingoodcompanyproductions@yahoo.com)

Melissa Durfey  
President  
In Good Company Productions

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2024 MAR 25 AM 10:21  
NORTH TONAWANDA NY



CFA.B



APR 02 2024

March 14, 2024

Mayor Tylec and Common Council Members  
City Hall – Main Floor  
216 Payne Ave  
North Tonawanda, NY 14120

Dear Mayor Tylec and North Tonawanda Common Council,

We are requesting approval for Platter's Chocolate Factory to hold our annual Sponge Candy 5K Race on September 21<sup>st</sup>, 2024. We are thrilled to host again this year as it will be the 7<sup>th</sup> race, we are able to bring to North Tonawanda. We are hoping the sanctioned course route can be the same as in years prior, additionally the race start time of 3:00pm.

The Sponge Candy 5K has become a tradition for our community, allowing for residents, volunteers and race participants to enjoy a fun filled day while giving back to non-profits. Over the last six races, Platter's Chocolate Factory and the community have raised over \$50,000! Together we have donated to the Samaritan's Purse Disaster Relief fund, Olivia's Bears, Joyful Rescues and to Special Olympics New York. This year our plan to partner with and donate to Niagara Hospice, an organization chosen by team members of Platter's Chocolate Factory.

Previously, at the Council's request, we started early and put signs throughout the neighborhood along with door flyers. This worked out very well and upon approval we will start immediately to post on social media, place signage at Platter's Chocolate Factory, and two to three weeks before the race, canvas the neighborhood with signage.

I am seeking approval for the race, so we begin planning. Please contact me with any questions. Thank you for your consideration and support.

Sincerely,

A handwritten signature in black ink that reads "Heidi Urban".

Heidi Urban  
Vice President  
Platter's Chocolate Factory

2024 MAR 18 4:09:26  
NORTH TONAWANDA NY

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CITY CLERK'S OFFICE