

**INTER-MUNICIPAL COOPERATION AGREEMENT**  
**PERTAINING TO WATER LINE REPLACEMENT**  
**ON 72<sup>ND</sup> STREET**

THIS AGREEMENT, made this 17 <sup>December</sup> day of November, 2015, by and between the CITY OF NIAGARA FALLS, NEW YORK, a municipal corporation of the State of New York, with offices at 745 Main Street, Niagara Falls, New York (hereinafter referred to as the "City") and the NIAGARA FALLS WATER BOARD, a public authority created under the laws of the State of New York, with offices at 5815 Buffalo Avenue, Niagara Falls, New York (hereinafter referred to as the "NFWB").

WHEREAS, the NFWB owns and operates a water supply and delivery system in the City of Niagara Falls, which includes water lines on 72nd Street; and

WHEREAS, during the extremely cold months of 2014 and 2015, water services to many homes within the City, including 72<sup>nd</sup> Street, were frozen thereby depriving residents of fresh water for various periods of time; and

WHEREAS, many of these frozen water lines occurred on 72<sup>nd</sup> Street between the intersecting streets of Lindbergh Avenue and Niagara Falls Boulevard; and

WHEREAS, the City has engaged an engineering consultant, Clark Patterson Lee ("CPL"), to assist the City in its review of this problem and recommend a course of action to address and remedy the issue; and

WHEREAS, on September 24, 2015, the NFWB adopted the recommendation of GGE that in the long term the NFWB should proceed to reduce the potential for repeated frozen water services by adopting a proactive program including the following efforts:

- a. Make sure the residential valve boxes are fully open.
- b. Promote an alternate street reconstruction design that does not diminish the insulation of the piping.
- c. Alternatively, lower water mains during street reconstruction if clay backfill is removed or lessened significantly.

- d. When work is performed on a service lateral relocate the service connection from the top of the water main to the bottom quadrant, thereby increasing the depth of cover over the service lateral by several inches, and

**WHEREAS**, CPL had occasion to view these open excavations and CPL concluded that the primary cause for these frozen water services is the depth of the water main and services in various areas; and

**WHEREAS**, the City's Engineering Department, assisted by CPL, had originally estimated the cost to replace the affected water line and services on 72<sup>nd</sup> Street to be \$676,400 but increased this estimate to include road reconstruction costs; and

**WHEREAS**, on October 19, 2015, the Niagara Falls City Council awarded a water main replacement contract for approximately \$940,000 inclusive of the cost of the road reconstruction; and

**WHEREAS**, the City has become aware of grant money that may be available for this Project as a result of the enactment of the New York State Water Infrastructure Improvement Act of 2015 which provides the New York State Environmental Facilities Corporation (EFC) authority to provide grants to assist municipalities in funding water quality infrastructure projects; and

**WHEREAS**, the City is interested in applying for any grant money that may be available through the EFC in order to assist in reducing the cost of the Project; and

**WHEREAS**, the City is committed to proceeding with this Project for the benefit of the residents on 72<sup>nd</sup> Street whether grant money is available or not.

**NOW, THEREFORE**, it is hereby agreed as follows:

1. Grant Application. The City and the NFWB agree to cooperate in connection with the submission of a grant application by the City to EFC for the City to obtain any grant funds that may be available by EFC to the City toward the cost of the Project.
2. Project Planning. The parties agree that the City will be responsible for preparing and finalizing bid plans and specifications for the Project and putting the Project out to bid in accord with New York State law, as well as selecting the lowest responsible bidder pursuant to New York State law. The City agrees to submit Project bid plans and specifications and cost estimates to the NFWB for review prior to putting any specifications out to bid.
3. Project Compliance. It is the City's responsibility to assure that all work on the Project complies with all applicable State and/or local laws, including, but not limited to, applicable plumbing and building codes. The NFWB hereby grants the City and the City's contractors permission and temporary access to the NFWB'S infrastructure including but not limited to water mains and curb boxes to make improvements in accordance with plans and specifications submitted to the NFWB and for its approval. . The parties further agree that the City will contact the NFWB to operate street valves for isolation purposes. The NFWB may make periodic inspections of the Project and the subject property during construction of the Project and after its completion to assure compliance with the rules and regulations of the Niagara Falls Water Board and this Agreement. NFWB shall conduct its own inspection of the completed facilities within thirty (30) days of receiving notice of completion.
4. Project Cost and Payment. Subject to any change orders that occur during the course of the work on the Project, the City awarded a watermain replacement contract in the amount of \$940,000.00 The City agrees to pay the entire cost of the Project inclusive of design consulting fees paid by the City to CPL. The estimated cost of the Project will be reduced by

any grants received by the City and/or the NFWB during the course of the work on the Project including, but not limited to, the grant application to EFC, as well as any other grants from any source. The parties agree that any financial participation by the NFWB toward the cost of the project shall be limited to the receipt of any grants from EFC to the NFWB and the City for the cost of the project together with any other grants received by the NFWB. The NFWB agrees to use any such grants from the EFC or from any other entity any grant funds received by the NFWB from any entity will be immediately paid over to the City as reimbursement for the cost of the project. The parties further agree that the City will be solely responsible to pay all of the costs of the Project as it progresses upon receipt of invoices from CPL and any contractors working on the Project and the City agrees to indemnify and hold the NFWB harmless from any and all costs associated with the project including mechanics liens and or judgments from any third parties.

5. Term. The term of this Agreement shall commence on or about the 1<sup>st</sup> day of November, 2015 and shall terminate with the issuance of a Certificate of Completion for the Project by the City.

6. Final Report. Upon completion of the Project, the City shall submit to NFWB a final report containing whatever information the NFWB may reasonably request regarding the Project.

7. Books and Records. The NFWB and the City shall keep accurate and separate books and records of all receipts and disbursements of all funds attributed to this Project and shall produce such records for examination at such reasonable time as shall be deemed necessary by the NFWB and the City or the State Comptroller.

8. Indemnification. The City agrees to indemnify, save and hold harmless the NFWB, its agents and employees from any and all claims, demands, actions or causes of action arising out of the performance or nonperformance of the work and services provided for in this Agreement, and further agrees to defend at its own cost and expense any action or proceeding commenced for the purpose of asserting any claim arising out of this Agreement.

9. Nondiscrimination. The City and NFWB shall not limit access or discriminate in the operation of the facilities against any person on the basis of residence, race, creed, color, national origin, sex, age, disability or marital status.

10. Council and NFWB Approval. This Agreement shall not take effect until it is approved by the City Council of the City of Niagara Falls and the Niagara Falls Water Board.

11. Ownership of Water Line. The NFWB agrees that upon completion of the Project and final inspection by the NFWB, the NFWB will assume ownership of and be responsible to repair and maintain the water line installed pursuant to the Project and include it in the water supply and delivery system it owns and operates in the City of Niagara Falls.

12. Binding Effect. The covenants, terms and conditions herein contained shall be binding upon and inure to the benefit of the parties hereto and their successors, assigns, and legal representatives.

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

14. Notices. All notices hereunder shall be in writing, mailed first class, certified, registered or delivered by hand to the address of the other party as set forth on page 1 of this Agreement or to such other address as such party may designate from time to time by such notice and shall take effect when mailed, or when received if delivered by hand.

15. Amendments. This Agreement may only be amended, varied, modified or waived by written agreement executed by authorized signatories of the parties.

16. Sharing information. The parties hereto agree that they shall periodically share such information with each other, hold such meetings and study such potential cooperative services between them as are likely to result in (1) increased efficiencies, (2) better service to the public and (3) cost savings to the taxpayers.

17. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with reference to the subject matter hereof. There are no terms, conditions, or obligations other than those contained herein and there are no written or verbal statements or representations, warranties, or agreements with respect to this Agreement which have not been embodied herein.

**IN WITNESS WHEREOF**, the City and the NFWB have executed this Agreement on the day and year indicated above.

CITY OF NIAGARA FALLS, NEW YORK

NIAGARA FALLS WATER BOARD

By:   
Paul A. Dyster, Mayor

By:   
Theodore W. Janese III