

**THIRD AMENDMENT TO  
OPERATION AGREEMENT**

This Third Amendment, dated as of \_\_\_\_\_, 2021 ("Third Amendment"), by and between the **CITY OF NIAGARA FALLS ("CITY")**, a municipal corporation of the State of New York, **THE NIAGARA FALLS WATER BOARD ("BOARD")**, a body corporate and politic constituting a corporate municipal instrumentality of the State of New York and the **NIAGARA FALLS PUBLIC WATER AUTHORITY ("AUTHORITY")**, a body corporate and politic constituting a public benefit corporation of the State:

**WITNESSETH**

**WHEREAS**, the City, the Board and the Authority entered into an Operation Agreement, dated as of April 1, 2003 ("Operation Agreement"); and

**WHEREAS**, the City, the Board and the Authority entered into a First Amendment to the Operation Agreement, dated as of January 1, 2006; and

**WHEREAS** the City, the Board and the Authority entered into a Second Amendment to the Operation Agreement, dated as of September 26, 2008; and

**WHEREAS** the City, by letter dated December 30, 2020, provided the Board with a Notice of Discontinuance of Billing Services pursuant to Section 5.4.1 of the Operation Agreement and Notice of Discontinuance of Other City Services pursuant to Section 5.6 of the Operation Agreement; and

**WHEREAS**, the City, the Board and the Authority desire to amend Sections 5.1, 5.4, 5.5 and 5.6 of the Operation Agreement as set forth below;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

1. **Effective Date**. This Amendment shall be effective as of July 1, 2021 (the "Effective Date").

2. **Amendment of Sections 5.1, 5.4, 5.5 and 5.6 of the Operation Agreement and addition of a new Sections 5.7 and 5.8**. As of the July 1, 2021, Sections 5.1, 5.4, 5.5 and 5.6 of the Operation Agreement are hereby amended in their entirety, and Sections 5.7 and 5.8 are added, to read as follows:

**SECTION 5.1 - BILLING AND COLLECTION**.

(A) The City shall no longer provide Billing and Collection Services to the Board, except as provided in Section 5.1 (B) below.

(B) The Board hereby hires, retains and employs the City, and the City hereby agrees, to provide the following Billing and Collection Services:

- 1) The City shall accept, on behalf of the Board, "in person" collections only.  
In the event a mailed payment is received by the City, the City will stamp

the mailed payment with the date of receipt and promptly forward to the Board;

- 2) The City shall provide the Board a detailed listing of properties taken through "in-rem" proceedings with water and sewer account balances and the disposition of the sale. The Board's portion of proceeds from "in-rem" sales shall be transferred to the Board, with a reconciliation provided within a reasonable time of the sale. This reconciliation will provide sufficient data for the Water Board to account for the specific charges that were part of the sale and the amount of those charges recovered, and will include information such as the address of the property and the amount being paid to the Water Board as its share of the recovery for the property;
- 3) The City shall include, with the tax searches issued by the City, a request for status of water and sewer bills, which will be provided by the Board within three (3) days of the request;
- 4) The City shall have inquiry rights into water and sewer accounts, and revenue accounting processing access, on the Board's financial software. (The Board will provide appropriate training to City personnel.) All processing shall be done on the Board's financial system. Cashier reports from the City shall be provided to the Board on a weekly basis.

(C) The Board shall handle all calls and complaints related to water and sewer bills and service. All water and sewer bills and shut off notices will be updated to reflect the removal of the City's telephone number. Within sixty (60) days of the execution of this Agreement, the Board will provide the City with a template or proof of the removal of the City's telephone number from all billing, with the address supplied on the bill specifically for "in person" payment only;

(D) The Board shall administer all repayment agreements and update the respective account within the board's financial software to reflect the related agreement and shall provide the City with proof of the same within seven (7) days.

(E) The City shall deposit all Water Charge collections in the Board's Local Water Fund within two (2) business days of receipt thereof. The City acknowledges that all monies collected as Water Charges are the property of the Water Board.

#### **SECTION 5.4 - PAYMENT FOR SERVICE.**

In exchange for providing the services set forth in Section 5.1(B), 5.2 and 5.3, the Board shall pay twenty percent (20%) of the reasonable personnel costs of the City's Billing and Collection office staff (the City's reasonable personnel costs for 2021 are set forth in Attachment "A"). Personnel costs shall include wages and fringe benefits as required by labor agreement and/or law. The City shall provide the Board with a budget estimate for the personnel costs of its Billing and Collection office staff for any upcoming calendar year on or about October 15 of the preceding year, this figure is an estimate only and final figures will be delivered to the Board

after adoption of the final City budget but no later than the third week of December. The Board shall be responsible to pay for increases in the personnel costs for the City's Billing and Collection office staff. The Board may request additional documents in support of the final City budget figures.

**SECTION 5.4.1 - DISCONTINUANCE OF BILLING SERVICES.**

The Billing and Collection Services provided under this Amendment shall continue to, and including, December 31, 2024. Billing and Collection Services, as set forth in Section 5.1(B), shall, thereafter, continue on a year-to-year basis. For periods after December 31, 2024, either party may terminate the agreement for the Billing and Collection Services, as set forth in Section 5.1(B), by giving at least one (1) year prior written notice of its intention to terminate. Notwithstanding the termination of billing services pursuant to this Section, Sections 5.2 and 5.3 of the Operation Agreement, as amended, shall remain in full force and effect, and in such event the Board shall pay to the City the cost of services provided to the Board pursuant to Section 1230-j of the Act.

**SECTION 5.5 - OTHER CITY SERVICES.**

In addition to the services provided pursuant to Section 5.1 of the Operation Agreement, the City shall also provide the Board with the services set forth in this Section. The costs or budget estimates of services to be rendered under this Amendment are set forth in Attachment "B". The costs and budget estimates may, if necessary, be revised each year.

(A) **Purchasing Services.** Notwithstanding the foregoing, the City shall continue to; (i) provide postage, fuel for Board vehicles and salt, the actual cost of which will be billed to the Board monthly; (ii) prepare competitive bids and requests for quotations as requested by the Board; and (iii) allow the Board to participate in the cooperative purchasing program and give such notifications as are necessary, to ensure that the lowest unit cost is available to the Board, the City and other participants. Cost for the City's continued preparation of competitive bids is set forth in Attachment "A".

(B) **Information Technologies ("IT").** The City shall provide IT assistance to the Board to ensure the respective connections between the billing and collection office for the City and the Board are maintained in order to process payments. It is acknowledged, understood and agreed upon that the City shall invoice the Board for services actually rendered.

(C) **Human Resource Services.** The Board is required to rely on support from the City Human Resource Department for the following services:

- 1) All Civil Service information e.g. classifying, preparing job specifications, exams, eligibility lists, probations, promotions and transfers.

- 2) The Board is responsible for keeping the City Human Resource Department advised of all employee status which affect human resource services.
- 3) Any and all retirement and/or terminations must be communicated to the City within two (2) business days.
- 4) The cost for providing the above Human Resource Department is set forth in Attachment "A".

(D) **Engineering Services.** The City shall continue to provide engineering services to the Board associated with ongoing and new water and sewer projects. It is acknowledged, understood and agreed that the City shall invoice the Board for Engineering Services actually rendered; this will include, but shall not be limited to, wages and fringe benefits as required by labor agreement and/or law. Engineering services include the services listed below, which shall continue to be provided by qualified staff in similar manner as previously delivered.

- 1) A list of projects requiring engineering services consisting of planning, design, bidding and construction and inspection phases for new projects and including ongoing projects in their current and remaining phases respective shall be provided and agreed to by the Board and the City. This list shall include a schedule of costs of engineering services for each phase of the listed project and a percent completion for each phase of ongoing projects. A monthly progress report shall be provided to the Board presenting the percent complete and a narrative describing the progress and activities for each project. An invoice shall be prepared by the City from this report payable by the Board based on discussion and agreement with the Board.
- 2) Survey and statistical field work required for preliminary design, specifications, stamping and sealing.
- 3) Project design and prepared drawings, to be prepared and stamped as necessary.
- 4) Cost estimates for each project for bidding, budgeting and emergency procurement.
- 5) Bidding and construction services that include, without limitation, preparation of bid documents, advertisement, distribution, receiving bids and opening, award recommendations, contract execution, job progress meeting, shop review and approval, addressing contractor questions and issues, processing change orders, processing payments and project close out activities and preparing and delivering as-built drawings.

- 6) Construction inspection services and written reports thereof to be prepared and submitted to the Board.
- 7) Preparation of Health Department Plan Reviews and DEC submissions as necessary.
- 8) Right of Way permitting for water and sewer outside maintenance work.
- 9) Inspection of required restoration work.
- 10) Access to record drawings for review and scanning.
- 11) Expedited support for emergency water and sewer repairs.
- 12) Managing the underground utility locates program.

(E) **Department of Public Works (“DPW”)**. The City shall provide DPW services to the Board associated with the projects involving street repairs. It is acknowledged, understood and agreed upon that the City shall invoice the Board for DPW services actually rendered; this will include, but shall not be limited to, wages and fringe benefits as required by labor agreement and/or law.

(F) **Code Enforcement Services**. The City shall provide to the Board the Code Enforcement services listed below on an ongoing basis. The Board’s share of the cost for postage, printing, and other similar overhead costs associated with these services is set forth in Attachment “B”.

- 1) Provide assistance with the water shut off program, which shall include but not be limited to the following:
  - (a) Prepare and mail out notices to respective properties;
  - (b) Post required signage at respective properties; and
  - (c) Remove signage at respective properties when applicable.
- 2) The Board agrees to certify to the Code Enforcement Department that all properties requiring condemnation have had the water shut off prior to the posting of the respective signage at the respective property.
- 3) The Board further agrees to indemnify the City for any potential damages that may result from the City posting respective signage on a property that has yet to have the water turned off.
- 4) The Board also agrees to provide notification to Code Enforcement when any required signage should be removed from a property due to payment

being accepted. This notification should be made within twenty-four (24) hours of payment being accepted.

**SECTION 5.6 - DISCONTINUANCE OF OTHER CITY SERVICES.**

Services provided under this Amendment shall continue to, and including, December 31, 2024. In the event that either the Board or the City, in their sole discretion, determine that the City discontinue providing any services described in Section 5.5 of this Amendment, the party making such determination shall give written notice of such fact to the other party on or before July 1 for termination effective as of years-end.

**SECTION 5.7 – SERVICES BY WATER BOARD TO CITY.**

(A) **Payment for Miscellaneous Services.** The Board may from time to time provide services or equipment to the City to assist the City with discrete tasks or projects. It is acknowledged, understood and agreed upon that the Board shall invoice the City for such services actually rendered; this will include, but shall not be limited to, wages and fringe benefits as required by labor agreement and/or law or, as applicable, the fair rental value of loaned equipment.

(B) **City of Niagara Falls Fire Hydrants.** Pursuant to 21 NYCRR 1950.15, the Board charges an annual availability fee to be paid by the City Fire Department for each public fire hydrant within the City’s boundaries. The Board agrees to use its best efforts to limit this fee to a sum that corresponds to the Board’s anticipated capital and operations and maintenance costs associated with providing those hydrants. The Board will charge the annual fee to the City in October to be paid within 30 days, and as a condition of payment must certify that to the best of its knowledge the number of fire hydrants included on the annual bill are in proper working order and are available for use by the Fire Department on an as needed basis. As of the date of this Amendment, the Board certifies that to the best of its knowledge it is providing 2,234 hydrants that are in proper working order and available for use by the Fire Department. The Board will provide the City with a budgetary estimate of the hydrant fee by October 15 each year, with the understanding that the City will base its budget on this estimate and that any increase beyond the estimate provided will require the City to make budget amendments that will impact City services. In addition the City may request additional documents in support of the amount stated by the Board.

**SECTION 5.8 – LOAN OF EQUIPMENT**

Subject to mutual agreement, the City or Board may loan each other the use of equipment or vehicles from time to time to promote efficiency and save costs. The party loaning the equipment or vehicle may bill the other party to reimburse the cost of use, not to exceed the fair rental value of the loaned equipment or vehicle. The party using the loaned equipment or vehicle will defend and indemnify, to the fullest extent permitted by law, the party loaning the equipment or vehicle from any liability arising from the use, and will repair any damage

resulting from the operations of the party using the vehicle. To the extent the party using loaned equipment or vehicles is not self-insured for liability and/or damage, it agrees to secure additional-insured status for the party loaning the vehicle or equipment. In the event an insurance claim is made in connection with the use of loaned equipment or vehicles, the party using the loaned equipment or vehicle agrees to pay any applicable deductible.

3. **Other Provisions.** Except as expressly amended herein, all other provisions in the Operation Agreement are hereby ratified and confirmed in all respects and shall continue in full force and effect.

4. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*IN WITNESS WHEREOF*, the parties have duly executed this Amendment as of the date first set forth above.

**CITY OF NIAGARA FALLS, NY**

**NIAGARA FALLS WATER BOARD**

\_\_\_\_\_  
Robert M. Restaino, Mayor

\_\_\_\_\_  
Nicholas Forster, Chairman

\_\_\_\_\_  
Attest: Niagara Falls City Clerk

**NIAGARA FALLS WATER AUTHORITY**

\_\_\_\_\_  
Jason Murgia, Chairman

[No further text on this page. Notarization page to follow.]

STATE OF NEW YORK        )  
  ) SS.:  
COUNTY OF NIAGARA        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021, before me, the undersigned, personally appeared Robert M. Restaino, 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        )  
  ) SS.:  
COUNTY OF NIAGARA        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021, before me, the undersigned, personally appeared Nicholas Forster, 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        )  
  ) SS.:  
COUNTY OF NIAGARA        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2021, before me, the undersigned, personally appeared Jason Murgia, 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



# Attachment A

## City Services Cost Allocation (Section 5.4 – Billing and Collection Services)

The charges below are calculated pursuant to Section 6.1 (B) (1) of the Operations Agreement between the City of Niagara Falls and the Niagara Falls Water Board and shall apply for services delivered under this Agreement. The City shall provide the Board with a budget estimate for the personnel costs of its office staff responsible for performing the services or the services themselves described in this Amendment for any upcoming calendar year on or before October 15 of the preceding year; accordingly, the Board shall be responsible to pay for any increases in the personnel costs for the City's office staff. The Water Board may request and the City shall upon such request provide documents supporting the City's estimate for personnel costs. Future cost assignments will be made developed and established pursuant to Section 6.1 "Payments by the Board" and Section 6.2 "Method of Payment" of the Operations Agreement.

### BILLING & COLLECTION DEPARTMENT

Billing & Collection Staff Job Titles	2021 Salary	FICA	Health Insurance	Dental Insurance	Life Insurance	Tier	Pension &GTLI	Total Cost	% of time Allocated	TOTAL
Billing Supervisor	\$ 52,632.22	\$ 4,026	\$ 27,323.16	\$1,260.00	\$ 233.21	4	\$ 9,579.06	\$ 95,054	17%	\$ 16,159
Principal Account Clerk	45,013.51	3,444	27,323.16	1,260.00	130.82	4	8,192.46	85,363	17%	14,512
Principal Clerk	47,593.08	3,641	27,323.16	1,260.00	136.51	4	8,661.94	88,616	17%	15,065
Principal Clerk	42,779.46	3,273	8,373.96	428.40	122.29	6	4,577.40	59,554	17%	10,124
Account Clerk	29,645.98	2,268	8,373.85	428.40	85.32	6	3,172.12	43,974	17%	7,476
Billing & Collection Clerk	34,589.22	2,646	1,477.74	428.40	99.54	6	3,701.05	42,942	17%	7,300
Account Clerk	<u>29,645.98</u>	<u>2,268</u>	<u>23,224.64</u>	<u>1,071.00</u>	<u>85.32</u>	6	<u>3,172.12</u>	<u>59,467</u>	17%	<u>10,109</u>
<b>Total Cost of B&amp;C Staff</b>	<b>\$ 281,899.45</b>	<b>\$ 21,565.31</b>	<b>\$ 123,419.67</b>	<b>\$6,136.20</b>	<b>\$ 893.02</b>		<b>\$41,056.15</b>	<b>\$ 474,969.80</b>		<b>\$80,744.87*</b>

These costs are for "Personnel ONLY" and do not include any overhead costs for utilities, phones, and all office supplies and paper used to administer the collection of Water/Sewer Bills

Total divided by 12:  
\$6,728.74 per month

\*Pursuant to Section 5.4, the above figures are subject to change based upon City's budget estimates for the personnel costs for its office staff responsible for performing the services or for the services themselves as described herein; the Board shall be responsible to pay for any increases in the personnel costs for the City's office staff. The Water Board may request and the City shall upon such request provide documents supporting the City's estimate for personnel costs.

## **Attachment B**

### **City Services Cost Allocation (Section 5.5 – Other City Services)**

The charges below are calculated pursuant to Section 6.1 (B) (1) of the Operations Agreement between the City of Niagara Falls and the Niagara Falls Water Board and shall apply for services delivered under this Agreement. The City shall provide the Board with a budget estimate for the personnel costs of its office staff responsible for performing the services or the services themselves described in this Amendment for any upcoming calendar year on or before October 15 of the preceding year; accordingly, the Board shall be responsible to pay for any increases in the personnel costs for the City's office staff. The Water Board may request and the City shall upon such request provide documents supporting the City's increased costs for services. Future cost assignments will be made developed and established pursuant to Section 6.1 "Payments by the Board" and Section 6.2 "Method of Payment" of the Operations Agreement.

<u><b>Service</b></u>	<u><b>Cost</b></u>
Section 5.5(A) - Purchasing Services	\$1,200.00* per Water Board bid, \$600.00* per joint City/Water Board bid.
Section 5.5(C) – Human Resources	\$5,000.00* annually; plus actual cost for staffing Civil Service examination*
Section 5.5(F) – Code Enforcement – Postage, Printing, and Similar Overhead Expenses Associated with this Department's Assistance with the Shut Off Program	\$850.00* per batch of water service shutoffs (Typically six (6) batches per year)

**\*Pursuant to Section 5.5, the above figures are subject to change based upon City's budget estimates for the personnel costs for its office staff responsible for performing the services or for the services themselves as described herein; the Board shall be responsible to pay for any increases in the personnel costs for the City's office staff. The Water Board may request and the City shall upon such request provide documents supporting the City's increased costs.**