

Agreement

By and between: Power Authority of the State of New York (“NYPA” or the “Authority”); New York State Office of Parks, Recreation, & Historic Preservation (“State Parks”); New York State Department of Transportation (“NYSDOT”); USA Niagara Development Corporation (“USAN”); and the City of Niagara Falls, New York (the “City”)

**Construction and Operation Phase
Niagara Gorge Corridor Project
Parkway Removal – Main Street (NYS Route 104) to Findlay Drive
Niagara Falls, New York**

**AMENDMENT NO. 1
Contract Breakdown of Project and Additional Funding**

Recitals

WHEREAS, NYPA, State Parks, NYSDOT, USAN, and the City (Individually a “Party” or collectively the “Parties”) entered into an Agreement (the “Agreement”) on May 22, 2018, which was fully executed on July 6, 2018, pertaining to the above-referenced Niagara Gorge Corridor Project (the “Project”) to establish funding; provide access to the lands necessary to undertake the Project; and to establish procedures and protocols among the Parties for the management of activities associated with the Project; and

WHEREAS, the Agreement allowed for NYPA to provide \$36.5 million and for State Parks to provide \$2 million to NYSDOT to establish a \$35 million construction budget for the Project and construction administration/construction inspection (“CA/CI”) budget of \$3.5 million; and

WHEREAS, on April 7, 2017, USAN and NYPA entered into a separate agreement for the Authority to provide up to \$3.5 million for Parsons Transportation Group (the “Design Consultant”) to undertake final engineering and construction documents for the Project, as well as to provide design support and monitoring services during the construction phase of the Project; and

WHEREAS, NYSDOT initially bid the Project as a single construction contract that yielded a single bidder with a proposed cost that was more than 50% over the construction budget; and

WHEREAS, NYSDOT determined that to solicit more competitive bids, it was necessary to break the Project into three (3) individual construction contracts and these contract numbers are not yet referenced in the Agreement; and

WHEREAS, after NYSDOT bid and awarded two of the three planned construction contracts for the Project, determined that the engineer's estimate for the third and final contract is approximately \$17.8 million, which is \$4.2 million greater than the remaining budget of ~\$13.6 million; and

WHEREAS, after incurring additional level of effort for subsequent reorganization and re-issuing final design and bid documents for three construction contracts and in consideration that it now will be responsible for independent, third party monitoring of Technologically Enhanced Naturally Occurring Radioactive Material ("TENORM") that may be encountered as part of the Project, the Design Consultant's fee estimate for design support and monitoring services during the construction phase of the Project is \$1,180,000; which is \$530,000 higher than USAN's remaining budget of \$650,000; and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Parties entering into this Amendment No. 1 to the Agreement hereby agree to the following:

1. SECTION I OF THE AGREEMENT ("THE PROJECT") IS HEREBY DELETED AND REPLACED AS FOLLOWS:

i. The Project

The Project and the scope of work (as fully depicted in **Exhibit A**) shall include undertaking all necessary right-of-way, construction, and CA/CI efforts for the implementation of the Project included under three (3) signed and approved contract PS&E packages for ***Removal of Route 957A, Niagara Scenic Parkway (Robert Moses Parkway) and Reconstruction of Whirlpool Street and Other Local Roads, City of Niagara Falls, Niagara County***, which specifically includes the following contracts:

A. Contract 1: PIN 5761.90, Contract No. D263803, Reconstruction of Whirlpool and Third Streets, City of Niagara Falls (Contract Awarded November 2018):

- 1. Full-depth reconstruction of Whirlpool Street and associated work (drainage improvements, sidewalk, utility relocations, new traffic control devices, street lighting, landscaping, etc.) from Cedar Avenue to Findlay Drive as an at-grade, 30-MPH road to accommodate north-south vehicular/bus access; removal of Whirlpool Street from Walnut Avenue to Cedar Avenue; and undertaking a mill and overlay of Whirlpool Street between Walnut Avenue and Main Street, along**

with installation of new curbs/sidewalks and re-storing the name of this segment to its original name of "Second Street";

2. Full-depth reconstruction and similar associated work on segment of Third Street from Main Street to Cedar Avenue in a manner consistent with that of Whirlpool Street between Cedar Avenue and Findlay Drive;
 3. Construction/reconstruction of selected segments of streets adjoining or connecting to Whirlpool and Third streets to facilitate a complete network, including but not limited to repaving of an unimproved segment of Spring Street adjoining Whirlpool Street and Findlay Drive; and
 4. Selected improvements to existing City-owned parking areas on Whirlpool Street: at Ashland Avenue and near the City-owned Train Station at Ontario Avenue.
- B. Contract 2: PIN 5761.9A, Contract No. D263804, Robert Moses Parkway Viaduct and Structures Demolition/Removal (Contract Awarded January 2019):
1. Demolition/removal of the elevated section of the former Robert Moses Parkway, including demolition of the 1700-foot-long viaduct over the Whirlpool Bridge Customs and Border Patrol facility and the Amtrak rail lines;
 2. Demolition/removal of all landside spans associated with the former Michigan Central Railroad Bridge, including the viaduct passing over Whirlpool Street;
 3. Demolition/removal of the pedestrian bridge over the former Robert Moses Parkway between Niagara Gorge Discovery Center and Whirlpool Street near the Aquarium of Niagara; and
 4. Demolition/removal of all existing/dilapidated service buildings, paved areas, and ball courts within the City-owned DiFranco Park and grading/re-seeding of these demolition areas.
- C. Contract 3: PIN 5761.9B, Contract No. D263805, Removal of former Robert Moses Parkway highway section, reconfiguration of former highway footprint as a park, and

aesthetic improvements (Contract Tentatively Scheduled to be Awarded July 2019):

1. Demolition/removal of the balance of the highway features of the former Robert Moses Parkway (i.e., all vehicular lanes, lanes used for the Robert Moses Parkway Trail and all other Parkway interchange/accessory facilities from Main Street (NYS Route 104) to Findlay Drive;
 2. Restoration of the landscape/habitat on lands reclaimed along the Niagara Gorge rim from the removal of the Parkway to a park setting, by means of landscaping, re-vegetation, and the construction of entrance walls, enhanced lighting, and scenic overlook areas.
 3. Improvements and reconfiguration of access to areas around the Niagara Discovery Center and the trolley-path system connecting this area to the Prospect Point area of Niagara Falls State Park;
 4. Construction of a pedestrian/bicycle trail network along the Gorge rim, connecting to other trail systems and adjoining neighborhoods; and
 5. Incorporation of associated selected amenities and betterments associated with the above improvements to property owned by the Niagara Aquarium Foundation.
- D. Parallel and related work to be done by the Western New York Land Conservancy involving invasive species and feature landscape work on a 3.5-acre NYPA-owned land. Initial invasive species removal efforts are preliminarily scheduled to begin on or about May 2018 and landscape planting be completed by Nov 2021, to be undertaken by the Western New York Land Conservancy (see Exhibit B). The Contract 3 PS&E Package includes components around this area for highway demolition/removal, rough site grading, and installation of path/trail networks.

2. SECTION III OF THE AGREEMENT (“PROJECT BUDGET/SOURCES & USES”) IS HEREBY REVISED AS FOLLOWS (REVISIONS/ADDITIONS ARE UNDERLINED):

III. Project Budget/Sources & Uses

A. The budget for the Project is as follows:

FUNDING SOURCES:	
NYPA	<u>\$ 41,230,000</u>
State Parks (by sub-allocation to NYSDOT in SFY 2019-2020)	\$2,000,000
TOTAL	<u>\$ 43,230,000</u>
FUNDING USES:	
<u>Uses to be Administered by NYSDOT:</u>	
Project Construction Contract	<u>\$39,200,000</u>
Project Construction Administration/Construction Inspection	\$3,500,000
SUBTOTAL	<u>\$42,700,000</u>
<u>Uses to be Administered by USAN:</u>	
<u>Additional Funds for Contract for Design Services & Monitoring During Construction</u>	<u>\$530,000</u>
<u>GRAND TOTAL</u>	<u>\$ 43,230,000</u>

**3. EXHIBIT A OF THE AGREEMENT (“PLANS, SPECIFICATIONS, AND ESTIMATES PACKAGE”) IS
HEREBY REVISED AS FOLLOWS (REVISIONS/ADDITIONS ARE UNDERLINED)**

EXHIBIT A:

Plans, Specifications, and Estimates Packages

**Removal of Route 957A, Niagara Scenic Parkway (Robert Moses Parkway) and Reconstruction of
Whirlpool Street and Other Local Roads, City of Niagara Falls, Niagara County**

PIN 5761.90, Contract No. D263803

PIN 5761.9A, Contract No. D263804

PIN 5761.9B, Contract No. D263805

(by reference)

**4. EXHIBIT D OF THE AGREEMENT (“ANNUAL SCHEDULE OF PAYMENTS TO NYSDOT”) IS
HEREBY REVISED AS FOLLOWS (REVISIONS/ADDITIONS ARE UNDERLINED)**

EXHIBIT D:

Annual Schedule of Payments to NYSDOT & USAN

**Removal of Route 957A, Niagara Scenic Parkway (Robert Moses Parkway) and Reconstruction of
Whirlpool Street and Other Local Roads, City of Niagara Falls, Niagara County**

PIN 5761.90, Contract No. D263803

PIN 5761.9A, Contract No. D263804

PIN 5761.9B, Contract No. D263805

Annual Payments to NYSDOT & USAN

Construction & Construction Administration/Construction Inspection (CA/CI)¹

Removal of Route 957A, Niagara Scenic Parkway (Robert Moses Parkway) and Reconstruction of Whirlpool Street and Other Local Roads, City of Niagara Falls, Niagara County

PIN 5761.90, Contract No. D263803; PIN 5761.9A, Contract No. D263804; & PIN 5761.9B, Contract No. D263805

*(Based on Estimated Cash Flow from Final Advanced Detailed Design Cost Estimate
Last Update: 28 FEB 2018)*

Year ²	2018	2019	2020	2021	TOTAL
NYPA payments to NYSDOT (Hard Construction & CA/CI ³)	\$6,750,000	\$13,600,000	\$12,800,000	<u>\$7,550,000</u>	<u>\$40,700,000</u>
State Parks payments to NYSDOT (Hard Construction only)	\$0	\$2,000,000 ⁴	\$0	\$0	\$2,000,000
<u>NYPA payments to USAN (Design Services & Monitoring during Construction only)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$530,000</u>	<u>\$0</u>	<u>\$530,000</u>
TOTAL	\$6,750,000	\$15,600,000	<u>\$13,330,000</u>	<u>\$7,550,000</u>	<u>\$43,230,000</u>

Notes:

¹ Payment schedule only covers funds to NYSDOT for hard construction and CA/CI. NYPA has separate agreement with USAN to provide up to \$3.5 million in funds to cover consultant costs for final design and design support services during construction.

² 2018 payment to be made upon execution of this Agreement; subsequent annual payments made in January of each year.

³ \$33 million allotted for hard construction and \$3.5 million allotted for NYSDOT CA/CI expenses and consultants.

⁴ State Parks payment to be made by sub-allocation to NYSDOT in SFY 2019-2020.

5. EXCEPT FOR THOSE ITEMS AS STATED ABOVE IN THIS AMENDMENT NO. 1, ALL REMAINING TERMS OF THE AGREEMENT REMAINS IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date set forth above.

POWER AUTHORITY OF THE STATE OF NEW YORK

By: _____

Print Name/Title: _____

Date: _____

Acknowledgement

STATE OF NEW YORK

COUNTY OF _____

On the _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Printed Name: _____

My Commission Expires:

NEW YORK STATE OFFICE OF PARKS, RECREATION, & HISTORIC PRESERVATION

By: _____

Print Name/Title: _____

Date: _____

Acknowledgement

STATE OF NEW YORK

COUNTY OF _____

On the _____ day of _____ in the year _____, before me, the undersigned notary public, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Printed Name: _____

My Commission Expires: