



Incorporated 1872

## VILLAGE OF CLAYTON

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### RESOLUTION #2021-20

#### A RESOLUTION TO AMENDA THE EXITING ESTIMATED EXPENDITURE FOR THE VILLAGE OF CLAYTON AGREEMENT NO. D014794 WITH THE SATE OF NEW YORK DEPARTMENT OF TRANSPORTATION FOR THE FIXED LUMP SUM MUNICIPAL SNOW AND ICE AGREEMENT NOW TO EXPIRE ON JUNE 30, 2024 DATED NOVEMBER 22, 2021

At a regular board meeting of the Board of Trustees of the Village of Clayton held at the Village Offices,  
425 Mary St., Clayton, NY, on November 22<sup>nd</sup>, 2021 at 5:30 p.m. prevailing time there were

**PRESENT:** Norma J. Zimmer, Mayor  
Nancy Hyde, Deputy Mayor  
Jeremy Kellogg, Trustee  
Joe Chrisman, Trustee  
John Buker, Trustee

The following resolution was offered by Trustee Hyde, who moved its adoption, and  
Trustee Buker, seconded:

**WHEREAS**, Pursuant to Section 12 of the Highway Law, the maintenance of State highways includes the control  
of snow and ice thereon as the COMMISSIONER may deem to be necessary to provide reasonable passage and movement  
of vehicles over such highways, and

**WHEREAS**, the work of such control of snow and ice may be done by any municipality, which for the purposes of  
said Section 12 shall include only a county, city, town or village, pursuant to an agreement entered into between the  
governing board or body of any such municipality and the COMMISSIONER; and

**WHEREAS**, The MUNICIPALITY is willing to perform the work of such control of snow and ice upon STATE  
highways according to the guidelines, policies and procedures deemed by the COMMISSIONER to be for the best interest  
of the public:

**NOW, THEREFORE**, In consideration of the mutual covenants and benefits between the parties hereto.

#### WITNESSETH:

1. The term of this Agreement shall be for five years commencing **July 1, 2019 and ending June 30, 2024**.  
At least one year prior to the expiration each five-year term the MUNICIPALITY shall notify the COMMISSIONER  
either (a) that it requests with the approval of the COMMISSIONER that the term of the Agreement be extended  
five years, or (b) that it intends not to extend the Agreement, in which case the Agreement shall expire at the end  
of the five-year term. The maximum contract life for this Agreement shall not exceed twenty years from the original  
contract date at which point a new contract will need to be executed. If the MUNICIPALITY fails to notify the  
COMMISSIONER as herein provided, it shall be deemed that the municipality intends not to extend the term of this  
Agreement.
2. The MUNICIPALITY and the STATE agree to the method of reimbursement selected above. Detailed descriptions  
of the reimbursement methods are outlined in the *Municipal-State Agreements for Control of Snow and Ice on State  
Highways: Terms, Reimbursement Procedures and Documentation*, as published on the NYSDOT website at the

3. time of contract execution and are incorporated herein by reference. This document is located at: <https://www.dot.ny.gov/divisions/operating/oom/transportation-maintenance/snow-ice>
4. In the event that the COMMISSIONER shall deem the work of control of snow and ice performed by the MUNICIPALITY inadequate or unsatisfactory according to the terms of this Agreement and not being performed in the best interest of the public, the COMMISSIONER may, by official order to be filed in the COMMISSIONER'S office and the Department of State, cancel the Agreement, and any payments herein provided by the STATE shall cease. Any such official order shall become effective at the expiration of five (5) days after the COMMISSIONER shall have mailed a certified copy thereof to the clerk or other official who performs duties of a clerk in such MUNICIPALITY. The COMMISSIONER shall thereupon perform the work in such manner as, in the COMMISSIONER'S judgment, shall be for the best interest of the public.
5. The MUNICIPALITY may enter into a contract with another municipality for the performance of the work of said control of snow and ice as a subcontractor of the MUNICIPALITY, provided that such MUNICIPALITY shall first obtain the consent therefor from the COMMISSIONER. The MUNICIPALITY, as an agent of the State in performing the function herein delegated to it by the State, shall clear such State highways of snow and ice as designated by the COMMISSIONER, to the extent that the COMMISSIONER may deem necessary to provide reasonable passage and movement of vehicles over such highways all in accordance with terms, rules and regulations as may be deemed by the COMMISSIONER to be in the best interest of the public, such terms, guidelines, policies and procedures (a) having been submitted to and examined by the governing body of said MUNICIPALITY, prior to or simultaneously with the execution and delivery of this Agreement are hereby made part hereof, and (b) being subject to change or modification from time to time by the COMMISSIONER after consultation and negotiation with the municipality as the COMMISSIONER deems it necessary for the best interest of the public, it being understood by the parties hereto that notice of any such change or modification shall be mailed by the COMMISSIONER to the MUNICIPALITY and shall, according to the provisions hereof, be deemed to be thereupon accepted by the MUNICIPALITY and made a part hereof, except that in the event the MUNICIPALITY does not concur with the modification, the MUNICIPALITY may submit a letter of dispute to the COMMISSIONER within 10 business days after receipt of the notice, setting forth the reason for the non-concurrence. The COMMISSIONER shall then, within 10 business days, arrange for a meeting between representatives of the COMMISSIONER and the MUNICIPALITY to be held as soon as practicable to resolve the matter. In the event the matter cannot be resolved, the COMMISSIONER may unilaterally impose the modification, and the MUNICIPALITY shall comply. In that event, the MUNICIPALITY may, if it so elects, notify the COMMISSIONER that this Agreement is terminated, effective not less than one year after the date of receipt of the notice by the COMMISSIONER. The COMMISSIONER may, however, shorten this period to not less than 30 days, if the COMMISSIONER deems it in the public interest.
6. In the event that snow fence installation and removal is part of the agreement, the MUNICIPALITY shall obtain necessary permission from the landowners affected and shall erect snow fences at suitable locations on such highways where designated by the COMMISSIONER and shall also remove such snow fences pursuant to said guidelines, policies and procedures.
7. The MUNICIPALITY shall (a) designate and hereby does designate the Superintendent of Highways of the MUNICIPALITY as the representative of the MUNICIPALITY who shall be in responsible charge and shall have supervision of the performance of the work under this Agreement, (b) provide the necessary machinery, tools, materials and equipment to perform the terms of this Agreement, (c) provide the necessary personnel and supplies to operate such machinery, tools and equipment, and (d) furnish abrasives, chemicals or other similar materials at such locations as may be designated by the COMMISSIONER and in such quantities as may be necessary for the performance of this Agreement, to be applied in the manner and in such quantity as may be directed by the COMMISSIONER, provided, however, the COMMISSIONER with the concurrence of the municipality may furnish for use under this Agreement such snow fence, materials, chemicals and abrasives as he may deem desirable and in the best public interest, and he shall notify the MUNICIPALITY on or before August 1 of each year as to the kind and amount of such items as are to be furnished for the following winter season.
8. The COMMISSIONER shall furnish the MUNICIPALITY with a suitable map which shall delineate the State Highways within and in the vicinity of the boundaries of the MUNICIPALITY and shall show distinctively, the State Highways or parts thereof that are affected by this Agreement. For each year of the term of the Agreement, or for any extended term thereof, the maps shall be modified to show the changes, if any, to the State Highways affected by this Agreement. Any such modification to such map shall be agreed upon in writing by the COMMISSIONER and the MUNICIPALITY.
9. Whenever directed by the COMMISSIONER, the MUNICIPALITY shall include in the work delegated to be performed under this Agreement any bridges or highways that cross into an adjacent municipality or municipalities after consultation with the effected municipalities.
10. In consideration of the performance of the MUNICIPALITY, the STATE agrees to pay the MUNICIPALITY each year during the term of this agreement \$24,495.91 for 3.2 lane miles for each average season. This figure shall be

known as the estimated expenditure. This estimated expenditure may be adjusted annually by the COMMISSIONER under this Agreement based upon demonstrated increases or decreases in the cost of performing the work or due to increases or decreases in lane miles on which work is performed. Such adjustments will require an Amendment to this Agreement. The total contract value for the term of this agreement is \$122,479.00. The COMMISSIONER, however, reserves the right to reduce the amount of the estimated expenditure set forth herein if the monies available to the Department for control of snow and ice are not sufficient to meet the anticipated expenditures for this program. In the event of such an occurrence, the COMMISSIONER shall notify the MUNICIPALITY, on or before November 1st of any year during the term of this Agreement for which such changed estimated expenditure is to apply. Upon receipt of such notice, the MUNICIPALITY shall, in cooperation with the STATE, review and reorganize its operations to the fullest extent practicable to prevent over commitment of allocated funds. The COMMISSIONER may in his or her discretion restore in part or in whole the amount of the estimated expenditure taking into consideration the weather conditions experienced in the MUNICIPALITY and the amount of monies available for control of snow and ice.

11. This section applies only to Fixed Lump Sum and Indexed Lump Sum Contracts: The estimated expenditure may be updated under this contract based upon demonstrated increases or decreases in the cost of performing the work. The cost of the work is comprised of the following portions that have been agreed to by the STATE and MUNICIPALITY: Labor 20.86%, Materials 10.87% and Equipment 68.27%. The approved modified increase or decrease in the estimated expenditure shall become effective upon written notification by the COMMISSIONER to the MUNICIPALITY and shall thereby be substituted in place of the above estimated expenditure and made part of this Agreement without further action. If the mileage of which work is performed by the MUNICIPALITY increases or decreases or the MUNICIPALITY or the state incurs other changes that impact the cost of performing the work, the amount of the estimated expenditure set forth herein may be adjusted by the COMMISSIONER after consultation/negotiation with the MUNICIPALITY in writing, on or before November 1, of any year during the term of this Agreement for which such changed estimated expenditure is to apply. Upon receipt of such notice, the MUNICIPALITY shall, in cooperation with the STATE, review and reorganize its operations to the fullest extent practicable to accommodate the change.
12. The STATE shall indemnify and hold harmless the MUNICIPALITY for work performed hereunder to the extent permitted under Highway Law Section 12 (2-a).
13. The MUNICIPALITY specifically agrees that this Agreement shall be deemed executory only to the extent of the monies available, and no liability shall be incurred by the STATE beyond the monies available for the purpose.
14. This Agreement and the attached Appendix A, Standard Clauses for all New York State Contracts, and Appendix A-1, Supplemental Title VI Provisions (Civil Rights Act) shall bind the parties, their successors and assigns.
15. Below is a listing of all documents forming this agreement:
  - a. Agreement Form - this document titled "Municipal Snow and Ice Agreement"
  - b. Contract Adjustment Worksheet - shows the breakdown of the Estimated Expenditure
  - c. Appendix "A" - New York State Standard Clauses for New York State Contracts
  - d. Appendix "A-1" - Supplemental Title VI Provisions (Civil Rights Act)
  - e. Municipal Resolution - duly adopted Municipal resolution authorizing the appropriate Municipal official to execute this Agreement on behalf of the Municipality and appropriating the funding required therefore
  - f. Attachment Map - defining the municipality's work limits that satisfies the requirements in Section 7 of this Agreement

**NOW, THEREFORE, BE IT RESOLVED**, that the Village of Clayton Board authorizes the Mayor to sign the Extended Fixed Lump Sum Municipal Snow and Ice Agreement that will expire on June 30, 2024.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Norma Zimmer, Mayor	yes
Nancy Hyde, Deputy Mayor	yes
Jeremy Kellogg, Trustee	yes
Joe Chrisman, Trustee	yes
John Buker, Trustee	yes

The resolution was thereupon declared duly adopted

CERTIFICATION

STATE OF NEW YORK    )  
  )  
COUNTY OF JEFFERSON )

ss:

I, Joanne Lenhard-Boye, the undersigned Clerk of the Village of Clayton, Jefferson County, New York,  
DO HEREBY CERTIFY:

That I have compared the foregoing extract of the minutes of a meeting of the Village Board of said Village, including the resolution contained therein, held on the 22<sup>nd</sup> day of November 2021, with the original thereof on file in my office, and that the same is a true and correct transcript there from and of the whole of said original so far as the same relates to the subject matters therein referred to.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Village this 22<sup>nd</sup> day of November, 2021.

  
Joanne Lenhard-Boye, Village Clerk

seal