

AGENDA
PLANNING COMMITTEE & FINANCE COMMITTEE
TUESDAY, OCTOBER 6, 2020
7:00 PM

<https://zoom.us/j/96740855564>

Planning Committee: Steve Uebbing, Chair
Jim Terwilliger
Nick Cutri
Dan Unrath

1. Part-Time City Court Judge

The City Council re-appointed Judge Jack Schuppenhauer to a six-year term beginning January 1, 2020 at its December 2019 meeting to the Acting City Court Judge position. Due to New York States mandatory retirement age for judges, judge Schuppenhauer is not eligible to serve the remainder of his term. As such, City Council needs to appoint someone to complete the remaining five years of the term. A posting for the position is on the City website and City Facebook page. This item was added to the agenda as a public announcement of the position's availability.

2. Ontario County Soil & Water Conservation District Renewal Agreement

Part 132 of Chapter III, of Title 10, of the Public Health Laws of the State of New York established the Canandaigua Lake Watershed Rules and Regulations for the Canandaigua Watershed Commission (members are the water purveyors: City of Canandaigua, Villages of Palmyra, Newark and Rushville) and requires management and control of Canandaigua Lake potable water. For many years the Canandaigua Lake Watershed Commission has contracted with the Ontario County Soil and Water Conservation District to administer the Watershed Inspector program. The most inter-municipal agreement between each member of the Commission and the Ontario County Soil and Water Conservation District expires at the end of this year and requires renewal. City Staff recommends that the proposed successor IMA be authorized to continue to have the Ontario County Soil and Water Conservation District provide the Watershed Inspection program.

3. Policy Discussion

This is an ongoing discussion and will involve the discussion the following policies:

a. Discrimination Policy

The City has an Equal Opportunity Policy. Councilmember Uebbing has suggested modifying the policy to include all City operations and not just employment.

b. Vehicle Use Policy

This policy deals with how municipal vehicles can and should be utilized by employees both on and off the clock.

c. Financial Reporting Policy

The City Manager has drafted a policy for review and discussion around setting guidelines for reporting the City's financial condition (to distribute at the meeting).

Finance Committee: Jim Terwilliger, Chair
Nick Cutri
Steve Uebbing
Erich Dittmar

1. Cell Tower Lease Consultants

The Committee has been discussing and reviewing a proposed lease amendment to extend an existing lease agreement for a cell tower and related facilities located at the Water Resource Recovery Facility (also known as Waste Water Treatment Plant). The Committee requested additional information pertaining to the proposed rent. At the September 1st meeting, the Finance committee reviewed a letter from American Tower with additional information regarding its inability to pay an increased rental rate beyond the current rate and escalator clause. Feeling there was still not enough information to make a decision, Council directed Corporation Counsel to look into companies who manage these types of contracts for municipalities. Corporation Counsel David Hou will be at the meeting to discuss his findings and answer questions for Council.

2. Position at Waste Water Treatment Plant

The 2020 Budget included an additional Waste Water Treatment Operator position per requirements of the New York Department of Environmental Conservation (DEC) specifically 6 CRR-NY 650.4. As part of the 2020 Budget discussion, the City Council decided to only fund the position for half the year which along with the hiring freeze has delayed the creation and hiring of the position. This item is the creation of the Civil Service position which will allow us to begin the hiring process with the goal of having someone start at the beginning of 2021.

3. Executive Session – Personnel History

Next Meeting: TBD

INTER-MUNICIPAL AGREEMENT FOR SERVICES

(Watershed Commission)

THIS AGREEMENT, made this ___ day of _____, 2020 by and between the Ontario County Soil and Water Conservation District, hereinafter called the District, and the City of Canandaigua as one of several participating members of the Canandaigua Lake Watershed Commission, hereinafter called a Member of the Commission.

WITNESSETH THAT:

WHEREAS, under the provisions of Part 132 of Chapter III, of Title 10, of the Public Health Laws of the State of New York, which established the Canandaigua Lake Watershed Rules and Regulations, the Members of the Commission, including the City of Canandaigua, have determined that they want to continue to provide for management and control of the Canandaigua Lake Watershed, through the continuance of a Watershed Inspector program; and

WHEREAS, under provisions of Chapter III, Section 9, Subsection 3, of New York State Conservation District Law, which provide for the District to enter into agreements with any agency in carrying on erosion control, flood prevention and sediment damage prevention operations, and control and abatement of non-point sources of water pollution for effective conservation and utilization of the lands and waters;

NOW THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as hereinafter set forth, the District and the Member of the Commission do hereby agree as follows:

A. The District agrees to:

1. Provide administration and supervision for the Watershed Inspector program to the level necessary to support the duties and efforts of the Watershed Inspector, and to provide the necessary facilities and administrative personnel in support of the Watershed Inspector.
2. Take reasonable and necessary actions to coordinate and support the Watershed Inspector program within all technical and educational resources available to the District.
3. Submit a tentative budget each preceding year to allow Member of the Commission to plan and appropriate for the annual expenses of the succeeding year.
4. Retain records of all work, inspections, activities and reviews, and retain such records for a period of not less than five (5) years. If any audits are conducted on the Inspection Program a copy of such audit will be provided to the City.

5. The Watershed Inspector will assist the District in preparing and disseminating an annual receivable and accounts payable report and the proposed fee schedule for inspections and any other additional work performed by the Watershed Inspector or other personnel under this Agreement, to the Member of the Commission, and any other such reports as mutually agreed to by both parties to this agreement.
6. Submit an invoice to the City of Canandaigua, by March 1st of each year, a request for advance payment of anticipated costs of the Watershed Inspector Program based on that year's budget. By at least February 1st of each year, the District shall provide an invoice to the City showing actual expenditures and providing any adjustments as may be necessitated relative to the previous year's payment.
7. The District shall ensure, through documentation, reports, and collection, if necessary, that inspections and other work performed by the Inspector under this Agreement, shall be properly charged to and paid by the appropriate responsible party prior to the District providing the requested report(s). Cost of work shall be in accordance with the Fee Schedule established by the Watershed Commission and cover the full cost of work, including administrative costs of the District.
8. The District will maintain the same liability insurance and workers compensation costs on the Watershed Inspector Program employees as it does on all its employees. This insurance will be the primary insurance. Any costs pertaining to the Watershed Inspection Program, not covered by the District's insurance will be indemnified by the Member of the Commission in accordance with paragraph B (2) of this agreement.

B. The Member of the Commission agrees to:

1. The City shall pay the District the invoice as described in paragraph A.6. of this agreement as soon as practical, but not to exceed thirty (30) days after receipt of the request for payment. Such anticipated costs shall not exceed the Member of the Commission's pro-rata financial liability to the Canandaigua Lake Watershed Commission on an annual basis.
2. Indemnify and hold harmless the District, the Watershed Inspector, or third parties under the direction or control of the District or the Commission in their performance under the Watershed Inspection Program, to the fullest extent of the law limited, however, to the City of Canandaigua's pro-rata liability to the Watershed Commission as a whole; and
 - a. Indemnification costs will be paid by each member of the Commission according to its pro-rata share of the financial liability to the Canandaigua Lake Watershed Commission.
 - b. It is understood between the parties that the members of the Commission will maintain the necessary insurance coverage and/or have the financial ability to fulfill the requirements of section B (2) of this Agreement.

C. It is mutually agreed:

1. The District and the Member of the Commission will strive to maintain open communication, foster a cooperative and coordinated relationship, and preserve the quality of Canandaigua Lake.
2. Either party may terminate this agreement in whole or in part if either determines that the other party has failed to comply with any of the conditions of this agreement, and either party is to promptly notify in writing of the determination, reasons for the termination, and the effective date. Defense and indemnification for any claims or causes of action prior to termination shall survive termination.
3. This agreement may be modified in writing at any time upon mutual consent of the parties hereto.
4. **This contract expires on the 31st day of December 2023. If the contract is not renewed prior to its end date, it will expire within 2 months of that end date, if a new contract is not signed.**

IN WITNESS THEREOF, the District and the Member of the Commission have executed this Agreement.

MEMBER OF THE COMMISSION

THE DISTRICT

By: _____

By: _____

Megan Webster

Title: _____

Title: District Manager

Ontario County Soil & Water Conservation
District

WATERSHED INSPECTION PROGRAM
AGREEMENT FOR SERVICES

THIS AGREEMENT, made this _____ day of _____, 20____ by and between the Ontario County Soil and Water Conservation District, hereinafter called the District, and the Canandaigua Lake Watershed Commission, consisting of several participating members of the Canandaigua Lake Watershed Commission, hereinafter called the Commission.

WITNESSETH THAT:

WHEREAS, under the provisions of Part 132 of Chapter III, of Title 10, of the Public Health Laws of the State of New York, which established the Canandaigua Lake Watershed Rules and Regulations, the Members of the Commission, have determined that they want to continue to provide for management and control of Canandaigua Lake potable water, through the continuance of a Watershed Inspection Program; and

WHEREAS, under provisions of Chapter III, Section 9, Subsection 3, of New York State Conservation District Law, which provide for the District to enter into agreements with any agency in carrying on erosion control, flood prevention and sediment damage prevention operations, and control and abatement of non-point sources of water pollution for effective conservation and utilization of the lands and waters;

NOW THEREFORE, in consideration of the premises and of the several promises to be faithfully performed by the parties hereto as hereinafter set forth, the District and the Members of the Commission do hereby agree as follows:

- A. The District agrees to:
 - 1. Employ a Watershed Inspector whose job duties are specified in the civil service position "Duties Statement" dated November 2, 1990, on file with the District, as well as those duties listed in the 2012 Amended and Restated Canandaigua Lake Watershed Commission By-Laws.
 - 2. Provide administration and supervision for the Watershed Inspection Program to the level necessary to support the duties and efforts of the Watershed Inspector, and to provide the

necessary facilities and administrative personnel in support of the Watershed Inspector. This work will be performed for a fee consisting of 10 % of the FULL TIME program expenses, not to include the vehicle fund.

3. Take reasonable and necessary actions to coordinate and support the Watershed Inspection Program with all technical and educational resources available to the District.
4. Submit a tentative budget each preceding year to allow Members of the Commission to plan and appropriate for the annual expenses of the succeeding year.
5. Retain records of all work, inspections, activities and reviews, and retain such records for a period of not less than five (5) years.
6. The Watershed Inspector will assist the District in preparing and disseminating an annual receivable and accounts payable report to the Members of the Commission, and any other such reports as mutually agreed to by both parties to this agreement.
7. Submit to the Members of the Commission, by February of the succeeding year, a request for reimbursement of those expenses, including personnel compensation and benefits, incurred by the Watershed Inspection Program during the preceding year. Such reimbursement shall be limited to and shall not exceed the Members of the Commission's pro-rata financial liability to the Canandaigua Lake Watershed Commission on an annual basis.

B. The Members of the Commission agree to:

1. Reimburse the District for the cost of the Watershed Inspector's salary and benefits, as well as those expenses described in paragraph A (7) of this agreement within 30 days of the date the request for reimbursement is received by the Commission.
2. Pay the District an administrative fee equal to 10% of the total FULL TIME program expenses incurred by the Watershed Inspection Program, excluding the vehicle fund.
3. Indemnify the District, the Watershed Inspector, or third parties under the direction or control of the District or the Commission in their performance under the Watershed Inspection Program, to the fullest extent of the law; and
 - a. that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the District, the Commission agrees to indemnify and hold harmless the District, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform by the District, the Watershed Inspector, or third parties under the direction or control of the District, the duties required by the Watershed Inspection Program and this agreement; and
 - b. to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of the acts of commission or omission referred to in paragraph (a) and to bear all other costs and expenses related thereto.
 - c. Indemnification costs will be paid by each member of the Commission according to its pro-rata share of the financial liability to the Canandaigua Lake Watershed Commission.

- d. It is understood between the parties that the members of the Commission will maintain the necessary insurance coverage and/or have the financial ability to fulfill the requirements of section B (3) of this Agreement.

C. It is mutually agreed to by the parties that:

1. The District and the Members of the Commission will strive to maintain open communication, foster a cooperative and coordinated relationship, and preserve the quality of Canandaigua Lake.
2. Either party may terminate this agreement in whole or in part if either determines that the other party has failed to comply with any of the conditions of this agreement, and either party is to promptly notify in writing of the determination, reasons for the termination, and the effective date. Defense and indemnification for any claims or causes of action prior to termination shall survive termination.
3. This agreement may be modified in writing at any time upon mutual consent of the parties hereto.
4. **This contract expires on the 31st day of December 2022. If the contract is not renewed prior to its end date, it will expire within 2 months of that end date, if a new contract is not signed.**

IN WITNESS THEREOF, the District and the Members of the Commission have executed this Agreement.

THE COMMISSION

By: _____
Chairperson

THE DISTRICT

By: _____
Megan Webster
District Manager

General Non-Discrimination Policy

Purpose:

The City of Canandaigua values diversity and welcomes input and participation in City services, events, and programs from all interested parties, regardless of race, gender identity, age, national origin, cultural identity, religion, disability, background or income level. Moreover, the City believes that the best services, events, and programs result from careful consideration of the needs of all of the City's communities and when those communities are involved and participate in the City's services, events, programs, and the public policy and governmental services decision-making process.

Policy Statement:

The City assures that no person shall, on the grounds of race, gender identity, age, national origin, cultural identity, religion, disability, background or income level be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any City services, events, or programs.

Complaint Procedures:

The City has established a discrimination complaint procedure and will take prompt and reasonable action to investigate and eliminate discrimination when found. Any person who believes that discriminatory action has occurred based upon the aforementioned grounds in any of the City's services, events, or programs may file a complaint with the City Manager.

If possible, the complaint should be submitted in writing and contain the identity of the complainant; the basis for the allegations (i.e., race, gender identity, age, national origin, cultural identity, religion, disability, background, income level); and a description of the alleged discrimination with the date of occurrence. The City Manager will respond to the complaint within thirty (30) calendar days and will take reasonable steps to resolve the matter.



Use of City Vehicles

Date Updated: August 16, 2018

Approved by: City Manager

Purpose

This policy outlines the use of vehicles for work used on behalf of the City of Canandaigua.

Policy

Use: The City provides vehicles and equipment for work related purposes only. With the exception of stopping at a convenience store, restaurant or some other location for a break or a meal during the work day, City vehicles should never be used for personal business, including take-home vehicles.

No vehicles shall be taken home, with the exception of the below listed employees or with the written approval of the City Manager. Should employees reside beyond a ten (10) mile radius of their primary place of work, the employee shall be liable to reimburse the City at the current IRS Business Mileage Rate. There shall be no charge for those miles incurred when an employee is called on an emergency basis to work outside of the normal commuting routine or schedule. All IRS rules and regulations applicable to the taxable status of this benefit shall apply.

- Police Chief or Acting Police Chief
- On-Call Sergeant
- Fire Chief or Acting Fire Chief
- Water Supervisor
- Streets Supervisor

Any employee not listed that currently is permitted to take home a vehicle shall be allowed to continue.

Vehicle Safety: Employees operating a City vehicle or equipment shall be responsible for the proper and safe operation of the vehicle or equipment. All operators shall always drive safely, legally and courteously.

- **Seatbelts:** Except as authorized herein, all drivers and passengers are required to utilize seatbelts as mandated by law. Seat belt use is not required in emergency vehicles.
- **Cell Phone, Mobile Communication Device, Computer:** Drivers of City vehicles, or any other vehicle being used for City business, are prohibited from using a mobile communication device, cell phone or computer of any type while the vehicle is in motion. Drivers must be safely parked before using a phone or mobile computer equipment. A mobile communication device is defined as “a text messaging device or a wireless, two-way communication device designed to receive and transmit voice or text communication.” This does not apply to City of Canandaigua work-related two-way radios. Sworn law enforcement officers may use mobile communication devices in specific tactical situations.
- **Impaired Driving:** No one shall operate a vehicle when his/her ability to do so is impaired or influenced by alcohol, illegal drugs, or other illegal substances, prescribed or over-the-counter medication or illness, fatigue or injury. The employee is obligated to report to his/her supervisor any reason that may affect his/her ability to drive safely.



Tobacco-Free Vehicles: Smoking is expressly prohibited in all City vehicles. The use of smokeless tobacco products, such as snuff and chewing tobacco is also prohibited.

Annual Driver's License Check: Each employee that operates a City vehicle is require to have a valid driver's license. Employees who operate City vehicles and equipment shall have their driver's licenses checked via NYSDMV programs that notify the City of any changes.

Should an employee's driver license expire, be revoked or suspended, the employee shall immediately notify his/her supervisor. Failure to notify a supervisor may result in discipline, up to and including termination. At the time of the suspension, the employee's City vehicle-use privileges will be suspended until the employee's driver's license has been fully restored. If suspension or revocation of a driver's license prevents the employee from performing the essential functions of his/her job, this may be grounds for termination.

Traffic Violations: Operators of City vehicles must obey all applicable New York State and municipal motor vehicle traffic laws in the jurisdiction which they are operating in, except when the duties of their position require otherwise, such as law enforcement and other emergency vehicles.

Operators are personally responsible for any violation of State or local traffic laws. If an operator is fined or otherwise penalized for an offense he/she committed while performing official duties, payment is the operator's personal responsibility. All fines and other criminal penalties due to violations of the law by the driver are the personal responsibility of the driver of any City vehicle. These costs are not reimbursable by the City and must be paid promptly by the driver.

Vehicle Maintenance and Repair: Any City vehicle needing repair must be taken to the Central Garage for service. The Central Garage Manager will determine whether repairs can be done in house or if the vehicle must be sent out for service. The City is not responsible for the maintenance or repair of personal vehicles used for official municipal business.

Accident Reporting: Accidents are always a serious matter and must be reported as soon as possible. Vehicle accidents involving a City vehicle or a personal vehicle driving on official City business that results in damage or injury, regardless of how minor, must be reported as follows:

- If the employee is able, immediately determine if anyone is injured and notify the appropriate law enforcement agency and emergency responders by calling 911. State the following information:
 - Location of accident.
 - Number of injured parties.
 - Number of vehicles involved.
 - Indicate if the accident is blocking traffic.
- Standby for confirmation. Once emergency response personnel have been notified, contact your supervisor immediately. If they are not readily available, contact the Department Head or the City Manager.
- The employee shall request that all parties and properties concerned remain at the scene of the accident, if possible, until a law enforcement representative has released them.
- Obtain information or ensure that the investigating police officer obtains from the other driver(s):



- Name, address, and telephone number of driver and owner of the vehicle.
- Driver's license number.
- Description of other vehicle(s) and license plate number(s). Describe damage of vehicle(s).
- Name, address, telephone number and policy number of their insurance company.
- Exchange ONLY the above information with other driver(s). DO NOT answer any other questions and/or give out additional information to other parties, including the media. Give the requested statements ONLY to the investigating police officer.
- Employees shall refrain from making statements regarding the accident to anyone other than the investigating police officer, City management and representatives of the City or an employee's personal insurance provider. Employees shall limit statements to factual observations.
- If possible, obtain the names, address and telephone numbers of any witnesses of the accident.
- Take photographs of the accident scene if you or another employee has access to a camera.
- Follow-up with the written Incident Report of the accident within one (1) working day of the accident and submit to your immediate supervisor.
 - Supervisors are required to submit the Incident Report to the Department Head, Clerk/Treasurer and the City Manager.



MUNICIPAL CELL TOWER LEASE EXPERTS

**EXCLUSIVE REPRESENTATION AGREEMENT
FOR LEASE OF, OR LICENSE TO USE MUNICIPAL PROPERTY**

THIS EXCLUSIVE REPRESENTATION AGREEMENT ("Agreement"), between Bench Strength Partners, Inc., a corporation located at 26 First Street, Pelham, NY 10803 ("**BSP**") and the _____ having _____ its _____ principal _____ office _____ at ("**CLIENT**").

The **CLIENT** hereby designates **BSP** as its sole representative and grants **BSP** the exclusive right to negotiate Contractual Arrangements ("CA") (as hereinafter defined) for the use of space on **CLIENT** property for the placement of cellular antennas and related equipment including the installation of small cell systems based on the terms and conditions contained herein.

1. **TERM:** The term of this Agreement commences on the date of execution based on the date of the last party to execute (the "Effective Date"), and will end on the 5th anniversary of such date. This Agreement may not be terminated unless a party breaches the Agreement or until the second anniversary of the Effective Date. This Agreement may be terminated by **CLIENT** at any time after such second anniversary. In the event of such a termination, **BSP** shall be entitled to a fee, computed and payable in accordance with this Agreement, if the **CLIENT** concludes a new CA or modification to an existing CA for the placement of cellular antennas and related equipment within two (2) years from the date of such termination, provided that **BSP** has, during the period from the Effective Date through the date of termination of this Agreement, either earned a fee as set forth in paragraph 5, or where no fee has been earned but **BSP** has negotiated with a carrier during the period from the Effective Date through the date of termination of this Agreement and has submitted a proposed CA and/or a **CLIENT** approved Term Sheet, Heads Of Terms or a draft CA to the **CLIENT** or carrier prior to such termination of this Agreement.
2. **SCOPE of AGREEMENT:** **CLIENT** appoints **BSP** as its sole and exclusive representative for the negotiation of CAs for the usage of space on **CLIENT** property for the placement of cellular antennas and related equipment including the installation of small cell systems for all location(s) owned or managed by **CLIENT**, unless **CLIENT** excludes in writing any locations owned or managed by **CLIENT**. CAs, as used in this Agreement, means (a) leases, licenses, franchise agreements, master license agreements, lease buyouts or other agreements for the use of space on **CLIENT** property or in the Public Right of Way that falls within the legal boundaries of the **CLIENT**, for the placement of cellular antennas and related equipment including small cell systems, (b) renewals of existing leases or licenses, (c) new leases or licenses for carriers that seek new or additional space on **CLIENT** property, (d) renegotiation of existing leases or licenses should that occur outside the context of a lease or license renewal. **BSP** shall not be responsible for drafting the CA. Instead, **BSP** will work with **CLIENT** counsel and suggest model lease terms for **CLIENT**'s counsel to incorporate into the final CA, or other form of CA.
3. **BSP SERVICES:** **BSP** will provide its best efforts to negotiate CAs acceptable to **CLIENT**. All proposals prepared by **BSP**, and all offers and counter offers received by **BSP** are subject to the **CLIENT** approval. **CLIENT** is not bound to accept CAs negotiated by **BSP**. If **BSP** reasonably determines that it is necessary, in its sole and absolute discretion, to retain other experts as part of the negotiation process, **BSP** will engage such experts at its own cost.
4. **CLIENT REFERRALS:** **CLIENT** shall refer to **BSP** all inquiries and offers received by **CLIENT** regarding the lease or licenses for the usage of space on property owned or managed by **CLIENT**

including property in a Public Right of Way that falls within the legal boundaries of the **CLIENT**, including any offer to buy out the revenue stream from the lease or offer to lease any **CLIENT** property for the placement of cellular antennas and related equipment including small cell systems. All negotiations for CAs will be conducted solely by **BSP** or under **BSP**'s direction, subject to **CLIENT**'s review and final approval.

5. **BSP FEES:** **CLIENT** agrees to compensate **BSP**, and **BSP** agrees to accept compensation for its services, based on the Fee Schedule included as part of this Agreement as Exhibit A. **CLIENT** and **BSP** agree that the Fee Schedule is a success fee structure, and that no fee will be earned by **BSP** unless specific economic results are achieved, all as more particularly defined on Exhibit A.
6. **PROPERTY INFORMATION:** **CLIENT** acknowledges that **BSP** is not responsible to determine whether toxic or hazardous wastes, substances, or levels of radio frequency emissions or undesirable materials or conditions currently exist or that could potentially exist in the future at all locations covered by this Agreement. **CLIENT** acknowledges that it is solely **CLIENT**'s responsibility to conduct investigations to determine the presence of such materials or conditions.
7. **INSURANCE:**
 - a. **Insurance Requirements.** **BSP** shall, at its expense, maintain insurance in full force and effect during the term of this Agreement in such amounts as to meet the minimum limits of liability specified below:
 - i. Comprehensive General Liability with limits no less than \$2,000,000 per occurrence, and \$4,000,000 general aggregate limit, including but not limited to, bodily injury and property damage.
 - ii. Business Automobile Liability with limits no less than \$1,000,000 each occurrence including non-owned and hired automobile liability.
 - iii. Workers' Compensation Coverage in statutory amounts including Employees Liability Insurance in limits of \$1,000,000 per employee.
 - iv. Professional Liability Coverage in the amount of \$2,000,000 each claim and a \$1,000,000 aggregate limit.
 - b. **Requirements for All Insurance.** All insurance required in this paragraph shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of **New York** and with companies or underwriters satisfactory to the **CLIENT**.
 - c. **Additional Insureds.** The **CLIENT** shall be named as additional insured on each of the **BSP**'s policies above except the Workers' Compensation policy, as and if required by written contract.
 - d. **Insurance Primary.** All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by **CLIENT**, as and if required by written contract.
 - e. **Insurance Certificate.** Certificates showing that **BSP** is carrying the above-described insurance in the specified amounts shall be furnished to **CLIENT** prior to the execution of this Agreement, and a certificate showing continued maintenance of such insurance shall be filed with **CLIENT** during the term of this Agreement. Failure of **BSP** to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve **BSP** from any responsibility to carry the required types and amounts of insurance.

- f. Notices of Change or Cancellation are provided per the terms and conditions of the insurance policies in effect at the time of the change or cancellation
- g. Disclaimer. **CLIENT** does not represent or guarantee that these types or limits of coverage are adequate to protect the **BSP's** interests and liabilities. It shall be the obligation and responsibility of **BSP** to insure, as it deems prudent, its own personal property, against damage. The **CLIENT** does not have insurance coverage for **BSP's** property and **CLIENT** expressly disclaim any and all liability for any and all losses, damage and/or claims to personal possessions of **BSP**.

8. **INDEMNITY.** **BSP** shall defend, indemnify and hold **CLIENT** and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims directly resulting from the **BSP's** a) breach of this Agreement or b) its gross negligence or misconduct or that of its experts, agents or contractors in performing the Services hereunder or c) any claims directly arising in connection with **BSP's** employees, agents, experts or contractors, or d) the use of any materials supplied by the **BSP** to the **CLIENT** unless such material was modified by **CLIENT** and such modification is the cause of such claim. This Paragraph shall survive the termination of this Agreement for any reason. **CLIENT** has the discretion and absolute right to choose to enter or not to enter into any new or modified CAs. **BSP** does not guaranty any future lease revenue amounts, as that is specifically conditioned on the terms of any CAs accepted by **CLIENT**. Accordingly, this indemnification shall not be construed to include any loss from the decline of license or lease revenue that may occur in the future.

9. **DATA, RECORDS AND INSPECTION.**

- a. The **CLIENT** agrees that it will make available all pertinent information, data and records under its control for **BSP** to use in the performance of this Agreement, or to assist **BSP** wherever possible to obtain such records, data and information.
- b. Records shall be maintained by **BSP** with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- c. To the extent applicable to the compensation provisions of this Agreement, **BSP** will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- d. **BSP** shall be responsible for furnishing to the **CLIENT**, at their request, any of the records, data and information maintained by **BSP**.
- e. **BSP** shall ensure that at any time during normal business hours and as often as the **CLIENT** may deem necessary, there shall be made available to the **CLIENT** for examination, all of its records with respect to all matters covered by this Agreement **BSP** will also permit the **CLIENT** to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement to the extent applicable to the compensation provisions of this Agreement,
- f. All records provided to **BSP** shall remain property of the **CLIENT** and shall be returned to the **CLIENT** upon the termination of this Agreement or upon request.

10. BSP REPRESENTATION AND WARRANTIES.

BSP represents and warrants that:

- a. **BSP** and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. **BSP** and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the **CLIENT** and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. **BSP** has complied or will comply with all legal requirements applicable to it with respect to this Agreement. **BSP** will observe all applicable laws, regulations, ordinances and orders of the United States, State of **New York** and agencies and political subdivisions thereof.
- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the **BSP** is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the **BSP** contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the **BSP's** knowledge threatened against **BSP** affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the **BSP** to perform its obligations hereunder.
- f. **BSP** will not, without the prior written consent of the **CLIENT**, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.
- g. **BSP** employees are Independent Contractors to **BSP** and are not employees of the **CLIENTs** for purposes of any tax withholding requirements.

11. **OTHER BSP CLIENTS:** **BSP** believes that each location is unique and that no conflicts of interest currently exist or will arise in the future. However, it is possible that **BSP** could be engaged to represent a property owner other than **CLIENT** in the same geographic area of a location owned or managed by **CLIENT**. If that were to occur, **BSP** will notify **CLIENT** of that potential conflict and request the **CLIENT** to consent to **BSP's** representation of such other property owner unless:

- a. the location for the other property owner is greater than 2 miles from a location owned or managed by **CLIENT** where **BSP** is negotiating a CA on such **CLIENT** location; OR
- b. the location for the other property owner is within 2 miles from a location owned or managed by **CLIENT**, but the representation agreement between **BSP** and such other property owner is executed after **CLIENT's** CA for **CLIENT's** location has been executed, and provided further that the CA for such other property owner are not scheduled to expire within 12 months of a future lease expiration on a location owned or managed by **CLIENT**.

BSP and **CLIENT** agree that situations covered by subparagraphs (a) and (b) within this section 11 are deemed not to present a conflict of interest.

BSP also agrees that it will not accept representation of another property owner within 2 miles of any of the locations owned or managed by **CLIENT**, without consent of **CLIENT**, until any negotiation of **CLIENT'S** CAs which are then ongoing for renewal or modification has been concluded as evidenced by a new CA or modification of an existing CA.

12. **AUTHORITY:** **CLIENT** represents to **BSP** that it has the authority to enter and sign this Agreement. The individuals signing this Agreement represent that they are authorized signatories of **CLIENT**.
13. **PROFESSIONAL ADVICE:** **BSP** recommends that **CLIENT** obtain legal, tax, or other professional advice relating to this Agreement and the CAs that may result from services rendered pursuant to this Agreement.
14. **SURVIVAL:** This Agreement is binding upon the parties hereto and their respective successors and assigns.
15. **MISCELLANEOUS:** Unless the context clearly indicates the contrary, words in this Agreement used in this singular number shall include the plural number and words in this Agreement used in the plural number shall indicate the singular number. This Agreement shall be governed by the laws of the State of **New York**, without giving effect to said State's principles of conflicts of law.
16. **ENTIRE AGREEMENT:** This Agreement including Exhibit A constitutes the entire Agreement between **CLIENT** and **BSP** and supersedes all prior discussions. No modification of this Agreement will be effective unless made in writing and signed by both **CLIENT** and **BSP**. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties thereto.
17. **NOTICES:** Notices to **CLIENT** and **BSP** shall be delivered to the addresses noted below.

Bench Strength Partners, Inc.
26 First Street
P. O. Box 8581
Pelham, NY 10803

CLIENT ADDRESS



MUNICIPAL CELL TOWER LEASE EXPERTS

BENCH STRENGTH PARTNERS, INC.

CLIENT

BY: _____

BY: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**EXCLUSIVE REPRESENTATION AGREEMENT
FOR LEASE OF OR LICENSE TO USE MUNICIPAL PROPERTY**

EXHIBIT A – FEE SCHEDULE

This Exhibit A to the Agreement between **CLIENT** and “**BSP** describes the conditions upon which a fee will be earned by **BSP** and the terms concerning the timing of payment of such fee.

1. **FEE SCHEDULE:** **BSP** shall earn a fee for providing the services described in the Agreement, but only if such services result in an executed CA between **CLIENT** and a carrier or other user of **CLIENT** property (“Tenant”). Fees are earned only on the Increased Revenues from said CA to be paid to **CLIENT** by Tenant: (a) over the Term of the new CA or (b) the term of the CA amendment or (c) the remaining term of an existing CA, the financial terms of which have been modified, or (d) on the value or increased value of any provisions, as the case may be. The Term of the new CA or the CA amendment is the initial fixed term as defined in the CA or the CA amendment. Renewal options or extensions of the new CA are discussed in paragraph 2 below. The “Increased Revenue” is defined as the total rent or any fee scheduled to be paid over the Term of the new CA or amended CA plus any additional monetary enhancements discussed in paragraph 6 below, minus the Baseline Rent, defined as the product of (i) the annual rental (or license fee) in effect at the conclusion of the existing CA or the amount of such annual rent scheduled to be paid in the current year in the case of an amendment and (ii) the term, in years, of the new CA, or the remaining years of an amended CA. The Fee Percentages applied to the Increased Revenue shall be those on the schedule below. The Fee Percentages within each range of Increased Revenue shall be applicable only to the Increased Revenue within that range of percentage increases.

Increased Revenue	BSP Fee
From Up To	<u>Percentage</u>
0% 20%	0%
20.01% 30%	15%
30.01% 40%	20%
40.01% 50%	25%
50.01% or above	30%

For example, if a new CA was executed and the Increased Revenue was 20% more than the Baseline Rent, no fee would be earned. If the Increased Revenue were 35% more than the Baseline Rent, the fee earned by **BSP** would be the sum of (i) the **BSP Fee Percentage** (20%) applied to the Increased Revenue between 30% and 40%, plus (ii) the **BSP Fee Percentage** (15%) applied to the Increased Revenue between 20% and 30%.

2. **RENEWAL OPTIONS:** If the new CA contains options to renew for additional terms, **BSP** shall earn a fee for such renewal terms and such fee will be computed in accordance with paragraph 1 above, as if the renewal term was a part of the original fixed term. However, such fee shall only be earned upon exercise of such renewal, and will be payable to **BSP**

according to the payment provisions in paragraph 8. **CLIENT** agrees to notify **BSP** of any decision by a Tenant to exercise a renewal option.

3. **REPLACEMENT TENANTS:** In the event that **BSP** negotiates a CA with a new Tenant and such Tenant replaces the space leased by an existing Tenant that elects not to renew their CA, **BSP** shall earn a fee on the CA with the Replacement Tenant on the same terms as described in paragraph 1 above, and in such event the Baseline Revenue shall be based on the revenue of the Tenant that is being replaced by the new Tenant.
4. **ADDITIONAL TENANTS:** (a) In the event that **BSP** negotiates an CA with a Tenant not currently leasing space on a particular **CLIENT** property or is on the **CLIENT** property but not currently paying any revenues and such Tenant is in addition to and not in replacement of an existing Tenant, **BSP** shall earn a fee for negotiating such CA based on the same terms as described in paragraph 1, and in such event the Baseline Revenue shall be based on the average of the annual revenues (“Average Annual Revenue”) then in effect for all other similar CAs at the subject location for the year immediately preceding the commencement of the CA for the new tenant. Similar CAs being defined as either small cell site installations or macro locations which would include a base equipment station. Any CAs then in effect that have been amended, or entered into as a result of the services provided by **BSP** pursuant to this Agreement, shall be ignored and the annual revenues of CAs in effect at the specific location prior to CAs resulting from services provided by **BSP** shall be used in calculating such Average Annual Revenue. (b) In the event **BSP** is asked by **CLIENT** to negotiate a new CA with a Tenant at a location now owned or managed by **CLIENT** as of the Effective Date, **BSP** shall earn a fee for negotiating such CA based on the same terms as described in paragraph 1, and in such event the Baseline Revenue shall be based on the average of the annual revenues (“Average Annual Revenue”) then in effect for all other similar CAs, which are producing revenues at the locations owned or managed by **CLIENT** as of the Effective Date for the year immediately preceding calendar year prior to the commencement of the CA for the new tenant except that any CAs then in effect that have been amended, or entered into as a result of the services provided by **BSP** pursuant to this Agreement shall be ignored and the annual revenue of CAs in effect at the specific location prior to CAs resulting from services provided by **BSP** shall be used in calculating such Average Annual Revenue. (c) In the event **CLIENT** does not currently have any similar CAs nor has **CLIENT** had any CAs in the previous 3 years then the Baseline Revenue shall be based upon the average of CAs in the **BSP** database within a 5 mile radius of the site of the new CA. The radius of the new site will be increased in 5 mile radius increments until at least a total of 6 CAs are obtained. Any CAs then in effect that have been amended or entered into as a result of the services provided by **BSP** shall be excluded from this average computation. If the **BSP** database contains no CA as the radius is expanded up to 25 miles then **BSP** will proceed to obtain such CAs from municipalities with in such area and upon obtaining a total of 6 CAs, **BSP** will use those CAs average as the Baseline Revenue.
5. **CANCELLATION CLAUSES:** In the event that **CLIENT** has the right to cancel a CA at a time subsequent to the execution of the CA, **BSP** shall be paid a fee for the entire CA term (excluding renewal options) as though such right to cancel did not exist.

6. **ENHANCED REVENUE:** In calculating the fees pursuant to paragraph 1 above, the Increased Revenue shall include all incremental revenue and expense reimbursements to which **CLIENT** is entitled that either stems from CA provisions that were not present in the existing CA, or relate to Increased Revenue and expense reimbursements terms for CA provisions that were present in the existing CA. Increased Revenue shall also include the value of any assets, the title to which is transferred to **CLIENT** as a result of the terms negotiated by **BSP**. The value of such assets shall be based on replacement cost for such asset at the time of the transfer, less depreciation based on the age of such asset using a straight line method of depreciation and a 40 year useful life. (“Replacement Cost New, Less Depreciation” method or “RCNLD”).
7. **LEASE AUDIT FEE:** In the case that **BSP**’s review of the CA terms and the payment history under such CA terms determines that there are unpaid or underpaid rents or fees due to the **CLIENT**, which have not been paid in the previous 3 months **BSP** shall be entitled to 25% of all such unpaid or underpaid rents, including any interest due thereon, which **BSP** collects on behalf of the **CLIENT**. The payment for such collections will not be considered as Increased Revenue, as defined in section 1 of this agreement and the 25% fee will be paid within 30 days of the receipt of the past due payments to the **CLIENT**.
8. **TIME OF PAYMENT:** Fees earned by **BSP** pursuant to this Agreement shall be earned upon execution of the CA or CA amendment, or upon exercise of any renewal options. In the case of a new CA, CA amendment or CA renewal, **CLIENT** shall pay **BSP** its fee by allocating seventy five percent (75%) of the Increased Revenues scheduled to be received by **CLIENT** under the CA until the fee computed pursuant to paragraph 1 has been fully paid. The first such payment shall be made within 30 days of the receipt of the amounts paid pursuant to the terms of the new CA or CA amendment. Additional payments shall be made to **BSP** within 30 days of receipt of any of the Increased Revenues until the total fee earned by **BSP** has been paid. In the case of a renewal option, such fee shall be paid in the same manner as a new CA or CA renewal described above. Any payment made past the due date will bear interest from the date due to the date of actual payment at the lesser of eighteen percent (18%) per annum or the highest lawful rate permitted by state or federal law.
9. **ACCELERATION:** In the event that **CLIENT** enters into a transaction to assign the CA or the cash flows stemming from the CA to a third party, any remaining fee then due to **BSP** shall be accelerated and paid in full as of the effective date of any such assignment. If such payments include renewal periods, which have not yet been exercised, but which are included in the transaction for the sale of such rights, then the **BSP** fee due for such renewal will also be due as of the effective date of any such assignment.

ONTARIO COUNTY DEPARTMENT OF HUMAN RESOURCES

PERSONNEL OFFICER CLASSIFICATION CERTIFICATION NO. 39-2020

CLASSIFICATION OF POSITION – CITY OF CANANDAIGUA
[ASSISTANT WASTEWATER TREATMENT PLANT SUPERVISOR]

Mr. John Goodwin, City Manager, City of Canandaigua, has filed Form MSD 222 (New Position Duties Statement) with me (in accordance with the Civil Service Law) advising that one position should be classified for the City of Canandaigua.

I have made a complete analysis of said duties, responsibilities and minimum qualifications for the position.

I hereby certify that in accordance with the provisions of Civil Service Law, Section 22, the appropriate Civil Service title for the position described is "ASSISTANT WASTEWATER TREATMENT PLANT SUPERVISOR", and that said position is to be placed in the COMPETITIVE jurisdictional classification of Civil Service.



Michele O. Smith
Director of Human Resources

9/22/2020
Date

c: Mr. John Goodwin, City Manager, City of Canandaigua

ASSISTANT WASTEWATER TREATMENT PLANT SUPERVISOR

DISTINGUISHING FEATURES OF THE CLASS: This is a supervisory and technical position involving responsibility for the safe and efficient operation and maintenance of a wastewater treatment plant with facilities for the activated sludge process (including all modifications). General direction is received from the Chief Wastewater Treatment Plant Operator with wide leeway allowed for planning work methods and dealing with emergency conditions. Supervision is exercised over the work of operators, trainees, laboratory personnel and mechanical and maintenance assistants. The incumbent does related work as required.

TYPICAL WORK ACTIVITIES:

Assists in the supervision of the operation of the plant to assure the most efficient and economical use of equipment, supplies and manpower;
Assists in the daily inspection of plants and plant machinery;
Makes or supervises necessary tests for control of plant operation;
Supervises the treatment and disposal of sludge and/or compost process;
Supervises the maintenance and repair of machinery;
Assigns plant personnel to shifts;
Instructs and supervises operators, trainees and other subordinate employees;
Maintains inventory of supplies, chemicals and equipment;
Requisitions materials to insure continuous plant operation;
Maintains records and prepares periodic reports on the operation of the plant.

FULL PERFORMANCE KNOWLEDGE, SKILLS, ABILITIES AND PERSONAL CHARACTERISTICS: Thorough knowledge of the practices used and equipment required in the operation and maintenance of a wastewater treatment plant with facilities for the activated sludge process (including all modifications); good knowledge of the operation of a modern wastewater treatment plant; good knowledge of the principles and applications of physics, chemistry and bacteriology as applied to wastewater treatment and disposal; ability to supervise the operation and repair of pumps, valves and related mechanical and electrical equipment; ability to make routine laboratory and field tests for control of plant operation; ability to plan and supervise the work of subordinates; mechanical aptitude.

ASSISTANT WASTEWATER TREATMENT PLANT SUPERVISOR

MINIMUM QUALIFICATIONS: Possession of a Grade 3A Operator certificate issued by the New York State Department of Environmental Conservation, AND:

1. Graduation from a regionally accredited or New York State registered college or university with a Bachelor's Degree and 30 credit hours of math and/or science; OR
2. Graduation from a regionally accredited or New York State registered college or university with an Associate's Degree in a NYSDEC approved curriculum plus 18 months of operating experience at a wastewater treatment plant; OR
3. Graduation from a regionally accredited or New York State registered college or university with an Associate's Degree plus three years of operating experience at a wastewater treatment plant; OR
4. Graduation from high school or possession of a high school equivalency diploma and six (6) years of operating experience at a wastewater treatment plant, AND
 - a) Completion of an appropriate approved course by the Commissioner, Department of Environmental Conservation; and
 - b) Twenty-four months operating experience at an activated sludge wastewater treatment plant with a point score of 76 or greater, and the ability to perform necessary tests.

NOTE: Possession of a Grade 4A Operator certificate issued by New York State Department of Environmental Conservation may be substituted for the educational and experience requirements.

APPROVED: 5/19/2016

CIVIL SERVICE CLASSIFICATION: COMPETITIVE