

CITY OF JOHNSTOWN, PENNSYLVANIA

RESOLUTION NO. 10555

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOHNSTOWN, CAMBRIA COUNTY, PENNSYLVANIA, AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH SCAPE LANDSCAPE ARCHITECTURE IN THE AMOUNT OF \$1,612,321.00 FOR DESIGN AND ENGINEERING SERVICES FOR THE MAIN STREET REHABILITATION PROJECT

WHEREAS, the City of Johnstown has budgeted funding from its American Rescue Plan Act (ARPA) Program for design, engineering, and construction of the Main Street Rehabilitation Project; and

WHEREAS, the City of Johnstown released a Request for Proposals to solicit proposals for the design and engineering of this requested work; and

WHEREAS, the City of Johnstown Project Review Team reviewed all proposals and are recommending the proposal submitted by SCAPE Landscape Architecture be approved based on their strong experience and creative approach to the project; and

WHEREAS, the project is budgeted within the 2023 City ARPA spending plan, line item 28.466.28.569.00.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Johnstown, that the City Manager is authorized and directed to sign a contract with SCAPE Landscape Architecture for streetscape design and engineering services for the Main Street Rehabilitation Project in the amount of \$1,612,321.00 per bid on February 10, 2023.

ADOPTED: March 8, 2023

By the following vote:

Yeas: Mr. Britt, Ms. Huchel, Mrs. Mock, Mr. Arnone, Mayor Janakovic, Mr. Capriotti, Rev. King

Nays:


Absent:



Frank J. Janakovic, Mayor
Michael Capriotti, Deputy Mayor

ATTEST:

I do hereby certify that the foregoing is a true and correct copy of Resolution No. **10555** as the same by the City Council of the City of Johnstown, Pennsylvania.



Ethan Imhoff, City Manager

**SCAPE LANDSCAPE ARCHITECTURE D.P.C.
STANDARD FORM CONTRACT
FOR PROFESSIONAL SERVICES**

This Agreement is made as of March 8, 2023, between the City of Johnstown with an office at 401 Main Street, Johnstown, PA 15901, (the “Client”) and SCAPE LANDSCAPE ARCHITECTURE D.P.C., a New York design professional corporation with an office at 277 Broadway, Ninth Floor, New York, NY 10007, (the “Landscape Architect” and collectively with the Client the “Parties” and each a “Party”) for the performance of landscape architectural services for the design and construction of the Main Street Corridor (as more specifically described herein, the “Project”) at Main Street, Johnstown, PA (the “Premises”).

Article 1 – Landscape Architectural Services

1.1 Standard of Care. The Landscape Architect shall perform its services under this Agreement in accordance with the professional standards of skill and care ordinarily exercised by landscape architects performing similar landscape architectural design services, in the same locale as the Project under similar circumstances and conditions and without any express or implied warranties (the “Standard of Care”). Notwithstanding anything to the contrary in this Agreement, to the fullest extent permitted by law, nothing contained in this Agreement or otherwise shall increase or require the Landscape Architect to exceed the Standard of Care or establish a fiduciary relationship between the Parties.

1.2 Basic Services. The Basic Services to be provided by the Landscape Architect under this Agreement are those specifically set forth in Exhibit A – SCAPE Team Scope of Services dated February 10, 2023 (which is annexed to and is hereby made a part of this Agreement as if fully set forth herein) (the “Basic Services”).

1.3 Additional Services. Additional Services are any services not specifically included in the Basic Services (“Additional Services”) and may be provided under this Agreement if the scope of such Additional Services and the time for performance thereof are agreed to in writing between the Client and the Landscape Architect. Examples of Additional Services that may be provided by the Landscape Architect under this Agreement are identified in Exhibit A – SCAPE Team Scope of Services dated February 10, 2023 (which is annexed to and is hereby made a part of this Agreement as if fully set forth herein). The Landscape Architect shall have no obligation to perform any Additional Services unless such Additional Services have been agreed upon in writing between the Client and the Landscape Architect.

1.4 Changes to Approved Services. Without limiting the foregoing, revisions to drawings or other documents shall constitute Additional Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous budget parameters and/or Project requirements, or at any time after completion of Task 5 – Conceptual Design Documents if not due to the Landscape Architect’s failure to conform to the Standard of Care.

1.5 Schedule of Performance. The Client’s written notice to proceed shall be the basis for the Landscape Architect to begin providing services for the Project. If requested by the Client, the Landscape Architect shall provide a written schedule for the performance of the Basic Services, in which case the Landscape Architect will provide the Basic Services in accordance with such schedule, subject to the Standard of Care; provided, however, that such schedule shall be equitably extended on account of any delays beyond the Landscape Architect’s reasonable control or caused by the Client or any third party.

1.6 Budget. The Landscape Architect shall endeavor to propose designs and prepare instruments of service consistent with the Client’s budget parameters. If included in the Landscape Architect’s services

under this Agreement, the Landscape Architect's opinions of probable construction costs are based on the Landscape Architect's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning. However, the Landscape Architect does not have control over the cost of labor, materials, or equipment; any contractor's methods of determining bid prices; competitive bidding, market, or negotiating conditions; or cost increases due to the timing of contractor buy-outs for the Project. Accordingly, such opinions shall not be construed to provide a guarantee or warranty of the actual construction costs at the time construction bids are solicited or construction contracts negotiated. Nothing contained in this Agreement nor the furnishing of opinions of probable construction costs is intended to establish a fixed limit of construction costs as a condition of this Agreement.

Article 2 – Client's Responsibilities

2.1 Authorization. The Client represents that it is the owner of the Project and the Premises.

2.2 Project Information & Program. The Client shall provide site and other information on which the design is to be based as well as Client's program and budget parameters for the Project. The Landscape Architect shall be entitled to rely on the accuracy and completeness of all information provided by the Client.

2.3 Approvals & Client's Representative. The Client's decisions, approvals, reviews, and responses shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architect's services under this Agreement. The Client hereby designates the City's Community and Economic Development Director, John Dubnansky, as its representative with authority to act on the Client's behalf in all matters concerning the Project (the "Client's Representative").

2.4 Project Permit and Review Fees. The Client shall pay all fees required to secure jurisdictional approvals for the Project.

2.5 Survey of Project Site. The Client shall furnish surveys to describe physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and necessary data with respect to existing buildings, other improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

2.6 Client's Consultants. The Client shall furnish services of consultant tasked to obtain any and all National Historic Preservation Act (NHPA) Section 106 and required National Environmental Protection Agency (NEPA) environmental clearances for this Main Street Project and such other engineering and consulting services as are reasonably required for the Project, along with written reports, appropriate recommendations, and surveys from same. (The engineers and consultants providing such services are hereby referred to as the "Client's Consultants.") The Landscape Architect shall be entitled to rely on the accuracy, completeness, and technical sufficiency of all information, reports, recommendations, surveys, services, and opinions provided by the Client's Consultants.

2.7 Notice of Nonconformance. If the Client or any of the Client's Consultant's observe or become aware of any errors, omissions, or inconsistencies in any documents or other information provided by the Landscape Architect, any of the Client's Consultants, or the Client or any fault or defect in the Project, the Client shall promptly give written notice thereof to the Landscape Architect.

2.8 Site Access. The Client shall provide and shall cause its contractors of every tier to provide the Landscape Architect and its consultants with access to the Project site and to the landscape construction work wherever it is in preparation or progress, when and as reasonably required for the Landscape Architect to perform its services under this Agreement, which access shall not be conditioned on the execution of any license, release, or similar instrument by the Landscape Architect or any of its principals, members, managers, officers, employees, or consultants.

Article 3 – Use of Construction Documents

3.1 The Landscape Architect hereby grants to the Client a nonexclusive license to reproduce the Landscape Architect’s final construction documents developed pursuant to this Agreement, solely for the construction and use of the Project, but only if the Landscape Architect has been and continues to be paid in full all amounts when and as they come due under this Agreement, such payment being a continuing condition on such license. No other license or right in Landscape Architect’s instruments of service shall be deemed granted or implied under this Agreement.

3.2 The Client shall not modify any of the Landscape Architect’s instruments of service, use any of the Landscape Architect’s instruments of service on any other project, or use any of the Landscape Architect’s instruments of service for completion of the planning and design this Project without Landscape Architect’s involvement therein.

3.3 To the fullest extent permitted by law, the Client hereby releases the Landscape Architect and its consultants from any and all liability (including without limitation for negligence, whether professional or otherwise) resulting from the Client’s modification or misuse of any of the Landscape Architect’s or its consultants’ instruments of service in violation of this Article 3, whether directly or indirectly, and hereby agrees to defend, indemnify, and hold harmless the Landscape Architect and its principals, members, managers, officers, employees, and consultants (for purposes of this Section, the “Indemnitees”) from and against any and all claims, causes of action, suits, demands, liabilities, losses, penalties, judgments, damages, costs, and expenses (including attorneys’ fees, disbursements, and any other costs of defense and/or to enforce this Section), asserted by any third party or otherwise incurred by any of the Indemnitees, resulting in any way from the Client’s modification or misuse of any of the Landscape Architect’s or its consultants’ instruments of service in violation of this Article 3.

3.4 This Article shall survive the completion of the Project and the expiration or earlier termination of this Agreement.

Article 4 – Landscape Architect Compensation

4.1 The Client shall compensate the Landscape Architect as set forth in Exhibit C – Compensation and Reimbursable Expenses (which is annexed to and is hereby made a part of this Agreement as if fully set forth herein) for the Basic Services and any Additional Services performed under this Agreement, plus any Reimbursable Expenses (as defined in Exhibit C).

4.2 The Client shall make monthly payments to the Landscape Architect based on the Basic Services and any Additional Services completed, plus Reimbursable Expenses incurred.

4.3 Payments are due and payable 30 days from the date of the Landscape Architect’s invoice. Invoiced amounts unpaid 60 days after the invoice date shall be deemed overdue and shall accrue 1% interest per month from the date of the Landscape Architect’s invoice. At the Landscape Architect’s option, overdue payments may be grounds for termination of this Agreement or suspension of services.

4.4 If through no fault of the Landscape Architect the services to be provided under this Agreement have not been completed within 18 months of the initial notice to proceed, the compensation for services rendered after that time period shall be equitably adjusted.

Article 5 – Indemnification

Client and Landscape Architect each hereby agree to indemnify and hold harmless the other Party, and its respective principals, members, managers, officers, and employees, from and against liability to third parties for losses, damages, and expenses (including reasonable attorneys' fees), to the extent such losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions and/or willful misconduct. In the event such losses, damages, or expenses are caused by the joint or concurrent negligence or willful misconduct of Client and Landscape Architect, they shall be borne by each Party in proportion to its negligence and/or willful misconduct. The foregoing shall not include or be interpreted as including any duty to defend the other Party or any third parties from any such loss, damage, or expense. This Article shall survive the completion of the Project and the expiration or earlier termination of this Agreement.

Article 6 – Claims and Dispute Resolution

6.1 If a dispute arises out of or relates to this Agreement, the Parties shall endeavor to resolve their differences first through direct discussions between principals of both the Client and the Landscape Architect.

6.2 If the Parties do not resolve a given dispute through discussions pursuant to Section 6.1 within 14 days of such discussions, the Parties shall submit the dispute to mediation administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, unless otherwise agreed to in writing between the Parties. The mediator's fee shall be shared equally by the Parties. The mediation shall be held in the place where the Project is located, unless otherwise agreed to in writing between the Parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

6.3 If the Parties do not resolve a given dispute through mediation pursuant to Section 6.2 within thirty days of such mediation, to the fullest extent permitted by law, the method of binding dispute resolution shall be litigation in a New York State court of competent jurisdiction, venued in the County, City, and State of New York, unless otherwise agreed to in writing between the Parties, the Parties hereby waiving any claim to the diversity jurisdiction of the federal courts or that the venue is inconvenient or otherwise objectionable.

6.4 Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

6.5 To the fullest extent permitted by law, no principal, member, manager, officer, or employee of either Party shall have any personal liability under this Agreement or for any matter in connection with the services or the Project.

6.6 Neither Party shall be liable to the other for incidental, indirect, special, or consequential damages (including but not limited to lost profits) arising under this Agreement or for any matter in connection with the services or the Project, whether or not the Party was advised or knew of the possibility of such damage, including but not limited to any such damages due to either Party's termination of this Agreement or the Landscape Architects suspension of services in accordance with the terms of this Agreement, except as specifically provide for in Section 7.3 hereof.

6.7 In recognition of the Parties' respective risks and rewards in connection with the Project, to the fullest extent permitted by law, Landscape Architect's total aggregate liability under this Agreement and for any matters in connection with the services or the Project (including without limitation any indemnification or hold-harmless obligations and any liability resulting from the Landscape Architect's negligence, whether professional or otherwise) shall be limited to the available proceeds of the Landscape Architect's professional liability insurance coverage available at the time of any settlement, judgment, or other final disposition of any claims related thereto.

6.8 The Client shall make no claim (directly, in the form of a third-party action or claim, or otherwise) against Landscape Architect or its consultants, unless the Client has first provided Landscape Architect with a written certificate, executed by an independent landscape architect, licensed in the state in which the project is located, specifying and certifying each and every act or omission that the Client contends constitutes a violation of the Standard of Care. Such certification shall be provided to Landscape Architect thirty (30) calendar days prior to the presentation of any claim or the institution of any proceeding by the Client.

6.9 This Article shall survive the completion of the Project and the expiration or earlier termination of this Agreement.

Article 7 – Suspension/Termination

7.1 The Landscape Architect may suspend its services under this Agreement on fifteen days' written notice should the Client fail to make payments to the Landscape Architect when due under this Agreement through no fault of the Landscape Architect, provided that the Client has not cured such nonpayment during such fifteen-day notice period.

7.2 This Agreement may be terminated by either Party on thirty days' written notice should the other Party fail substantially to perform in accordance with its terms through no fault of the Party initiating the termination, provided the defaulting Party has not cured or in good faith diligently commenced to cure the breach during the thirty-day notice period.

7.3 In the event of any suspension or termination by either Party, the Landscape Architect shall be compensated for services performed and Reimbursable Expenses incurred prior to such suspension or termination. In addition, in the event of a suspension or termination not the fault of the Landscape Architect, the Landscape Architect shall also be compensated for all termination expenses directly attributable to suspension or termination for which the Landscape Architect is not otherwise compensated, plus an amount for the Landscape Architect's anticipated profit on the value of the services not performed by the Landscape Architect

7.4 In the event of any termination by either Party, the Client shall return to the Landscape Architect all copies of the instruments of service prepared by the Landscape Architect or its consultants for the Project; provided, however, that the Client shall be permitted to retain a copy of the final construction documents prepared by the Landscape Architect or its consultants for record purposes only.

Article 8 – Other Terms and Conditions

8.1 There are numerous factors that may result in errors and/or discrepancies in digital data, including without limitation translation errors resulting from differences in or misuse of computer software, hardware and/or related equipment; disc malfunctions; and/or user error. The Landscape Architect shall not be required to prepare digital data for transmission to the Client or the Client's consultants or contractors of any tier or any other third parties (including but not limited to PFD or CADD format digital copies of the

Landscape Architect's instruments of service) unless specifically agreed to in writing by the Landscape Architect, along with any additional protocols and procedures for and conditions on the preparation, transfer, and use of such data. Notwithstanding anything to the contrary in such writing, unless specifically superseded in such writing by reference to this Section 8.1 of this Agreement: (i) any digital data transmitted by the Landscape Architect are furnished for the convenience of the Client and do not supersede or replace information contained on the record hard copies of the documents issued by the Landscape Architect; (ii) prior to the Landscape Architect providing any digital data to the Client, the Client's consultants or contractors of any tier, or any other third party, the Client and such recipient shall execute the Landscape Architect's standard digital data transfer agreement, annexed hereto as Exhibit C (which is annexed to and is hereby made a part of this Agreement as if fully set forth herein); (iii) the Client shall not transmit any digital data generated by the Landscape Architect or its consultants to the Client's consultants or contractors of any tier or to any other third party without the Landscape Architect's prior written approval thereof and the delivery to the Landscape Architect of originals of its standard digital data transfer agreement executed by the Owner and the proposed recipients; and (iv) to the fullest extent permitted by law, the Landscape Architect shall have no responsibility or liability for any error, omission, or discrepancy in digital data transmitted by or to the Landscape Architect; and (v) to the fullest extent permitted by law, the Client shall defend, indemnify, and hold the Landscape Architect and its principals, members, managers, officers, employees, and consultants (for purposes of this Section, the "Indemnitees") harmless from any and all claims, causes of action, suits, demands, liabilities, losses, penalties, judgments, damages, costs, and expenses (including attorneys' fees, disbursements, and any other costs of defense or to enforce this Section), asserted by any third party or otherwise incurred by any of the Indemnitees, by reason of any use of digital data for the Project or any violation of this Section 8.1 or Exhibit C. The foregoing limitations and defense, indemnity, and hold-harmless obligations shall survive the completion of the Project and the expiration or earlier termination of this Agreement.

8.2 Construction Means and Methods and Site Safety. The Landscape Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures or for site safety or safety precautions and programs in connection with the construction work, nor shall the presence of the Landscape Architect or its employees at the Project site be deemed an assumption of any such control, charge, or responsibility. The Landscape Architect shall not be responsible for any failure to perform the construction work in accordance with the requirements of the construction documents or the other construction contract documents. The Landscape Architect shall not have control over or charge of, and shall not be responsible for, acts or omissions of any contractor or of any other persons or entities performing portions of the construction work.

8.3 The Client shall include the following provision in each of its construction contracts for the Project and shall cause each of its contractors to include substantially similar provisions in each of their subcontracts with their subcontractors of every tier:

To the fullest extent permitted by law, insert the full legal name of the construction manager, contractor, trade contractor, or subcontractor (for purposes of this Section, the "Contractor") shall defend, indemnify, and hold the Client, the Landscape Architect, and each of their principals, members, managers, officers, employees, and consultants (for purposes of this Section, the "Indemnitees") harmless from and against any and all claims, causes of action, suits, demands, liabilities, losses, penalties, judgments, damages, costs, and expenses (including attorneys' fees, disbursements, and any other costs of defense or to enforce this Section), asserted by any third party or otherwise incurred by any Indemnitee, resulting in any way from any act or omission of the Contractor or its agents, employees, subcontractors, consultants or permittees in connection with this agreement, the project, or the construction work or services performed by the Contractor under this agreement. The foregoing obligations of the Contractor shall survive the expiration or earlier termination of this agreement.

8.4 By means of policy endorsements, the Client shall name and shall cause its contractors of every tier to name the Landscape Architect and its consultants as additional insureds under their respective builder's risk, general, and other liability and umbrella/excess liability insurance policies, to be kept in force through final completion of the Project.

8.5 If the project is to be designed, bid, and constructed according to an accelerated project delivery or "fast-track" schedule, the Client shall provide prompt written notice of such election to the Landscape Architect. Such scheduling precludes overall coordination and completion of each portion of the construction documents at the time of their issuance, may require subsequent revisions to the construction documents to effect the overall coordination and completion thereof, and may require corresponding construction change orders adjusting the contract sum or the time for completion of the Project. The Client, therefore, shall maintain an adequate contingency to fund such change orders and to accelerate the construction work if necessary. Furthermore, in consideration of the benefits to the Client of employing the fast-track process, and in recognition of the inherent risks of fast tracking to the Landscape Architect and its consultants, to the fullest extent permitted by law, the Client hereby releases and shall cause its contractors and consultants of every tier to release the Landscape Architect and its consultants from any and all liability (including without limitation for negligence, whether professional or otherwise) for and the Client shall defend, indemnify, and hold harmless the Landscape Architect and its principals, members, managers, officers, employees, and consultants (for purposes of this Section, the "Indemnitees") from and against any and all claims, causes of action, suits, demands, liabilities, losses, penalties, judgments, damages, costs, and expenses (including attorneys' fees, disbursements, and any other costs of defense or to enforce this Section), asserted by any third party or otherwise incurred by any Indemnitee, resulting in any way from employment of any accelerated project delivery or fast-track schedule for the Project, except to the extent caused by the gross negligence or willful misconduct of any Indemnitee.

8.6 Hazardous Materials. The Landscape Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials or toxic substances in any form (including but not limited to asbestos, PCB's, molds and fungus) (collectively "Hazardous Materials") at the Project site. The Landscape Architect's services do not include services related to detection, reporting, permitting, analysis, or abatement of Hazardous Materials at the Project site and the Landscape Architect shall have no responsibility or liability for the discovery, presence, handling, removal, or disposal of or exposure of any persons to any Hazardous Materials at the Project site. In the event the Landscape Architect or any other party encounters Hazardous Materials at the Project site, or should it become known in any way that Hazardous Materials may be present at the Project site or any adjacent areas that may affect the performance of the Landscape Architect's services, the Landscape Architect may, without liability for any damages whatsoever, suspend performance of services on the Project until the client retains appropriate specialist consultants or contractors to identify, abate and/or remove the Hazardous Materials and to warrant that the Project site complies with applicable laws and regulations. To the fullest extent permitted by law, the Client hereby releases the Landscape Architect and its consultants from any and all liability (including without limitation for negligence, whether professional or otherwise) for and shall defend, indemnify, and hold the Landscape Architect and its principals, members, managers, officers, employees, and consultants (for purposes of this Section, the "Indemnitees") harmless from and against any and all claims, causes of action, suits, demands, liabilities, losses, penalties, judgments, damages, costs, and expenses (including attorneys' fees, disbursements, and any other costs of defense or to enforce this Section), asserted by any third party or otherwise incurred by any of the Indemnitees, arising out of or in connection with Hazardous Materials at or adjacent to the Project site. This Section shall survive the completion of the Project and the expiration or earlier termination of this Agreement.

8.7 The Landscape Architect and its consultants shall have the right to include photographic or artistic representations of the design of the Project among their promotional, professional, marketing, educational,

and outreach materials; shall be given reasonable access to the completed Project to make such representations; and shall be entitled to use the Client's name on their lists of representative clients. However, such materials shall not include the Client's confidential or proprietary information if the Client has previously advised the Landscape Architect in writing of the specific information considered by the Client to be confidential or proprietary. Furthermore, the Client shall provide professional credit to the Landscape Architect and its consultants in the Client's promotional materials for the Project and, if the Client publishes or causes to publish renderings, photographs, or other representations of the services performed by the Landscape Architect or its consultants under this Agreement (the "Publicity"), all such Publicity shall include a reference to the Landscape Architect as the Landscape Architect of Record for the Project. If such Publicity is issued or published by parties other than the Client, but of which the Client has prior knowledge, then the Client shall make reasonable efforts to have such parties include such credit for the Landscape Architect.

8.8 Neither party shall assign any of their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds; provided, however, that the Client may conditionally assign this Agreement as collateral to an institutional lender providing financing for the construction of the Project, but only if (i) the Landscape Architect has been and continues to be paid in full all amounts when and as they come due under this Agreement (including without limitation at the time of the conditional assignment, at the time that the assignment becomes effective, and on an on-going basis thereafter); (ii) such lender assumes in writing prior to the effective date of such assignment, all of the obligations of the Client under this Agreement, including without limitation the Client's payment obligations hereunder; (iii) such assignment does not increase the Landscape Architect's obligations under this Agreement or decrease its rights under this Agreement; and (iv) the Client reimburses all of the Landscape Architect's reasonable and necessary expenses incurred as a result of such assignment, including without limitation its attorneys' fees incurred in reviewing any assignment documents. The foregoing shall not prevent the Landscape Architect from subcontracting any of its services under this Agreement, in its discretion; provided, however, that such election by the Landscape Architect shall not materially alter the Landscape Architect's duties and obligations to the Client under this Agreement.

8.9 Notwithstanding anything to the contrary in this Agreement or otherwise, to the fullest extent permitted by law, (i) this Agreement and the services of the Landscape Architect to be performed hereunder are intended for the sole benefit of the Client and no other party; (ii) this Agreement and the services of the Landscape Architect to be performed hereunder are not intended and shall not be deemed to be for the benefit of or to confer any benefit upon any third party, any such intention being hereby expressly denied; and (iii) nothing contained in this Agreement shall create or be deemed to create a contractual relationship with or a cause of action in favor of any third party against either the Client or the Landscape Architect. Furthermore, to the fullest extent permitted by law, the Client hereby releases the Landscape Architect [and its consultants from any and all liability (including without limitation for negligence, whether professional or otherwise) for and the Client shall defend, indemnify, and hold harmless the Landscape Architect and its principals, members, managers, officers, employees, and consultants (for purposes of this Section, the "Indemnitees") from and against any and all claims, causes of action, suits, demands, liabilities, losses, penalties, judgments, damages, costs, and expenses (including attorneys' fees, disbursements, and any other costs of defense or to enforce this Section), asserted by any third party or otherwise incurred by any Indemnitee, resulting in any way from any act or omission of, the Client, its agents, employees, consultants, or contractors, except to the extent caused by the gross negligence or willful misconduct of any Indemnitee. This Section shall survive completion of the Project and the expiration or earlier termination of this Agreement.

8.10 Written notices required under this Agreement shall be effective (a) five business days after deposit with the US Postal Service for mailing by registered or certified mail, return receipt requested or (b) one business day after deposit with a nationally recognized courier (such as FedEx or UPS) for next-business

day delivery, in each case (i.e., (a) or (b)) addressed to the recipient at the address set forth for the recipient on the first page of this Agreement, to the attention of the City of Johnstown Community and Economic Development Director, John Dubnansky, if the Client is the recipient or Alexis Landes if the Landscape Architect is the recipient or (c) on the date of hand delivery during regular business hours to the recipient at the address set forth for the recipient on the first page of this Agreement.

8.11 The laws of the State of New York, without regard to its choice or conflict of laws principles, shall govern this Agreement.

8.12 The terms and conditions of this Agreement are retroactive to and effective as of the first date the Landscape Architect commenced the performance of any of its services under this Agreement.

8.13 If, at any time, any term or provision of this Agreement shall be found to be invalid or unenforceable, the remaining provisions hereof shall, to the fullest extent permitted by the law, remain in full force and effect.

8.14 The obligations of the Parties hereunder that expressly or by their nature are not expected to be completed during the duration of this Agreement, including without limitation any promise to defend, indemnify, or hold the other Party harmless, shall survive the expiration or earlier termination of this Agreement.

8.15 This Agreement represents the entire understanding between the Client and the Landscape Architect concerning the Project and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended and the provisions of this Agreement may be waived only in a writing signed by both the Client and the Landscape Architect.

SCAPE LANDSCAPE ARCHITECTURE D.P.C.

THE CITY OF JOHNSTOWN

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A
SCAPE TEAM SCOPE OF SERVICES

February 10, 2023

SCOPE OF SERVICES

The SCAPE project team understands the City of Johnstown's aspirational goals to transform Main Street and the associated public spaces to better serve the City well into the future. Based on our collective experience delivering world-class streetscapes and parks, we have proposed revised deliverables and task durations that we feel will meet City expectations and project needs.

We are proposing a 12-month continuous design schedule (Existing Conditions through Construction Bid Documents) inclusive of the following task durations:

PHASE 1: EXISTING CONDITIONS AND CONCEPT DESIGN (3 MONTHS)

- Task 1 - Survey – 12 weeks
- Task 2 - Existing Conditions and Context Analysis – 4 weeks
- Task 3 - Visioning and Programming – 6 weeks
- Task 4 - Concept Ideation – 13 weeks

PHASE 2: CONCEPTUAL DESIGN DOCUMENTS (4 MONTHS):

- Task 5 - Conceptual Design Documents – 17 weeks

PHASE 3: FINAL DESIGN PLANS (5 MONTHS):

- Task 6 - Streetscape Design Guidelines – 8 weeks
- Task 7 - Final Design Plans – 22 weeks
- Task 8 - Construction Bid Documents – 4 weeks
- Task 9 - Public Engagement – 26 weeks
- Task 10 – Cost Estimating
- Task 11 - Agency Review and Permitting

Optional Additional Tasks:

- Bid Support and Construction Administration
- Complete curb and roadway reconstruction

SCAPE LANDSCAPE ARCHITECTURE DPC

- Architectural pavilion, kiosk, restroom, or comfort station design services
- Water feature design services
- Geotechnical engineering
- Stormwater collection and reuse

This scope is inclusive of the outlined areas below:

- **Main Street Sidewalks** between Johns Street and Adams Street (approximately .65 miles)
- **Two (2) Parklets** at Main Street and Market Street (approximately 3,900 SF each)
- **City's Central Park** bound by Main Street (S), Gazebo Park (W), Locust Street (N), and Franklin Street (E) (approximately 67,600 SF including sidewalks)

TASK 1 – SURVEY – 12 WEEKS

The SCAPE Project Team will perform a survey of existing conditions and topography of the project area including:

- Perform a field survey to establish horizontal & vertical control points that are referenced to the State Plane Coordinate System (PA South) NAD 83 horizontal datum. The vertical datum will be NAVD 88 (Geoid 18).
- Submit a PA One Call Preliminary Design notification to request information from participating utility companies on the existing underground utilities within or adjacent to the approximate survey limits.

NOTE: PA One Call utility demarcations generally end at property lines. Consequently, privately owned utilities are not usually marked as part of a PA One Call service request. Therefore, property owners are responsible for marking their privately-owned subsurface utilities.

- Perform a topographic survey of the existing site conditions. The survey will include observed existing improvements, such as buildings footprints (including business identification), curbs, driveways, shoulders, ramps, sidewalks, crosswalks, parking meters, islands,

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pavement, curb inlets, signs, traffic signals, manholes, storm drain inlets, hydrants, valves, vaults, poles, and other visible above ground utility appurtenances. Accessible and observed storm drain and sanitary sewer pipe invert elevations will be measured, and size and material types will be identified. Tree lines will be surveyed. In non-wooded areas, individual trees with trunk diameters above 6" will be surveyed and mapped.

- Perform the necessary research to obtain the record documents containing the metes and bounds description(s) or reference to a subdivision plan of the subject tract(s).
- Compute the geometry of the subject tract(s) and compile a deed mosaic drawing from deed descriptions and plats as available in the public record.
- Perform property line surveys of the tracts with street frontage within the project area.
- Prepare an existing conditions survey drawing showing the features surveyed, floodplain lines (if applicable) and designation as well as information received as a result of the PA One Call notification. The topographic contour interval will be one foot.

Deliverable:

- Signed and Sealed topographic survey in PDF and CAD formats

TASK 2 – EXISTING CONDITIONS AND CONTEXT ANALYSIS – 4 WEEKS

The SCAPE Project Team will kick-off Task 2 with an Existing Conditions and Site Analysis; we will review any available existing/previous master plan and design materials to understand previous efforts. We will look at the unique land conditions and neighborhood context to inform our design proposal – specifically focusing our efforts on studying the topography; stormwater and drainage; vegetation; circulation; materials; geology; hydrology; and urban context to understand the opportunities and constraints of the site. We will also analyze the existing conditions of the roadway pavements, traffic patterns and signal hardware, curbs, sidewalks, and parks. We will prepare a series of summary maps and diagrams outlining our findings to inform the Visioning Workshop and Concept Design efforts.

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SCAPE will coordinate with the soils designer to perform a site investigation to determine the characteristics of the existing soil on site.

Deliverables:

- Summary maps and/or context diagrams
- Soils site investigation
- Photographic documentation of existing conditions

Meetings:

- Combined project Kick-Off and Site Visit (in person)
- Weekly progress calls with City's Project Manager (virtual)
- Bi-weekly 1-hour consultant coordination calls (virtual)

Travel:

- One (1) trip for necessary attendees at the project Kick-Off and Site Visit.

TASK 3 – VISIONING AND PROGRAMMING – 6 WEEKS

Prior to developing site-specific concepts for the Johnstown Main Street Project, we will embark on an exploration phase where we work to develop a vision including project goals, guiding principles and program aspirations. During this phase, SCAPE will facilitate a visioning workshop with key client stakeholders to confirm design direction for Johnstown's Main Street Design Project. We will share our initial site analysis, programming analysis, and program ideas as part of the workshop activities. The goal for this workshop is to set key goals and aspirations for the larger landscape design for the project and walk away with common understanding of these conclusions. Following the visioning workshop, the team will synthesize the findings to be carried forward through Task 4, Concept Ideation.

Deliverables:

- **Visioning workshop including:**
 - Project goals and guiding principles
 - Program concepts for discussion
 - Precedent imagery
 - Scale studies
 - Supporting material developed during Task 2

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Meetings:

- Kick-Off Meeting (virtual)
- Weekly progress calls with City's Project Manager (virtual)
- Visioning Workshop (in-person virtual)
- Bi-weekly 1-hour consultant coordination calls (virtual)

Travel:

- ~~One (1) trip~~ No travel assumed during this phase

TASK 4 – CONCEPT IDEATION – 13 WEEKS

Concept Design: Idea Iteration. Following the Visioning Workshop, SCAPE will work iteratively to produce sketch concept alternatives for the parks and streetscape using 3D modeling tools, hand sketches and diagrams to convey our big ideas for the site. Each alternative will be grounded in both our site analysis and visioning goals. SCAPE will share these sketch options for review and feedback from the Client in a presentation that will be the final deliverable for the Concept Design phase. The Client will select the preferred sketch option to be developed in Task 5: Conceptual Design Documentation. Should a hybrid option that requires additional Client review be selected, we will evaluate if additional design time will be required before advancing to the following task.

The team will work collaboratively to study the feasibility of adding bike facilities along the length of Main Street within the project area. This will include sectional and plan explorations to understand impacts to the current street design and traffic patterns.

The team will evaluate the curbs and determine areas for replacement as part of the base scope. Based on the work performed in Tasks 1-4, the team may propose more extensive curb and roadway reconstruction for consideration by the Client. Should a more extensive reconstruction scope be selected for advancement, the team may require additional fee to realize the vision. See optional services.

Upon concepts being substantially developed, we will prepare a pricing package for each concept with enough detail to prepare order-of-magnitude costing for evaluation. See Task 10.

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Deliverables:

- Three (3) concept alternates for the parklets and Central Park
- Three (3) concept alternates for the streetscape
- Three (3) lane use concept alternatives including bike lane, parking layouts, and pedestrian layouts
- Concepts will include:
 - Lighting, signage, wayfinding, and furnishing concepts
 - Planting concepts
 - Paving and material concepts
 - Central Park Water Feature concepts
 - Preliminary location/quantity options for public art
 - Stormwater, drainage, and Green Infrastructure concepts
 - Irrigation Concepts (including streetscape)
 - Narrative of benefits and challenges.
- Precedent imagery
- Graphic production including:
 - Illustrative sketch plans for each alternate
 - Illustrative sections, diagrams, or elevations as needed to communicate design intent
 - Up to ten (10) sketch perspectives
- Bike facility feasibility memo
- Curb evaluation and identification of areas for replacement
- Pricing package for each concept including narrative summary, rough quantities and area takeoffs, and pricing assumptions.
- Presentation slides for Client meetings listed below. The Final Concept Ideation Presentation is assumed to be the final deliverable and will include enough detail for Client review and concept selection.

Meetings:

- Kick-Off Meeting (virtual)
- Two (2) formal Client presentations (~~up to one (1) in-person~~ virtual)
- Weekly progress calls with City's Project Manager (virtual)
- Bi-weekly 1-hour consultant coordination calls (virtual)

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Travel:

- ~~One (1) trip~~ - No travel assumed during this phase

TASK 5 – CONCEPTUAL DESIGN DOCUMENTS – 17 WEEKS

The selected option will be developed further including advancement of spatial relationships, programming, site systems, stormwater and drainage strategies, and material studies. We will use a range of tools such as larger-scale measured drawings, sections, elevations, sketch perspectives, and 3D digital modeling as necessary to achieve approximately 50% Design resolution. We will produce final illustrative material to capture the final concept design.

At around 75% phase completion, we will provide information for costing. See Task 10.

Deliverables:

- One (1) refined streetscape, parklet, and Central Park landscape concept including:
 - Lighting, signage, wayfinding, and furnishing
 - Planting
 - Paving and material
 - Central Park Water Feature (if applicable, see optional additional services)
 - Location/quantity/preliminary concepts for public art
 - Stormwater, Green Infrastructure, drainage, and grading
 - Irrigation
 - Soils
- Preliminary traffic signal design and pavement markings
- Preliminary electrical and plumbing connections
- Preliminary adjustments for utilities
- Illustrative production including:
 - One (1) illustrative site plan
 - Refined illustrative sections, diagrams, or elevations as needed to communicate intent
 - Up to four (4) renderings

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- Coordination production including:
 - Hand, CAD, or PDF sketches to coordinate technical requirements with other consultants as needed
- Presentation slides for Client meetings listed below
- Pricing information provided to estimator at one (1) time during the task.

Technical Drawing Issuances:

- One (1) drawing set (approximately 50% Design)
- One (1) set of narrative specifications
- We will issue one (1) draft drawing set and one (1) drawing and specification set at the completion of the phase.

Meetings:

- SD Kick-Off Meeting (virtual)
- Up to two (2) formal Client presentations (virtual)
- Weekly progress calls with City's Project Manager (virtual)
- Bi-weekly 1-hour consultant coordination calls (virtual)

Travel:

- No travel assumed during this phase

At the conclusion of this phase, the Landscape Architect shall be notified in writing by the Client that the design direction is accepted. SCAPE recommends the Client confirm the budget expectation or provide a revised rough order of magnitude (ROM) budget expectation at the end of the Conceptual Design Documents phase.

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TASK 6 – STREETSCAPE DESIGN GUIDELINES – 8 WEEKS

SCAPE will develop Streetscape Design Guidelines using the background information, analysis, concepts, and illustrative collateral developed during Tasks 1-5. The document will be organized in a way to help inform and guide future streetscape development and design decisions on key elements like pavements and materials, lighting, signage and wayfinding, furnishings, stormwater and drainage, green infrastructure, and planting.

Deliverables:

- Streetscape Design Guidelines (in PDF format) – max 20 pages

TASK 7 – FINAL DESIGN PLANS – 22 WEEKS

During this phase, SCAPE will work in close collaboration with the Client to refine the approved design and coordinate final scope, relationships, forms, sizes, and appearance of the project. The SCAPE Team will prepare complete and coordinated Final Design Plans that describe the requirements of construction.

At around 75% and 100% phase completion, we will provide information for costing. See Task 10.

Deliverables:

- One (1) fully coordinated streetscape, parklet, and Central Park design including:
 - Lighting, signage, wayfinding, and furnishing
 - Planting
 - Paving and material
 - Central Park Water Feature (if applicable, see optional additional services)
 - Location/quantity/concepts for public art
 - Stormwater, Green Infrastructure, drainage, and grading
 - Irrigation
 - Soils
- Final traffic signal design and pavement markings

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- Final electrical and plumbing connections
- Final utility adjustments, relocation, and connections
- Coordination production including:
 - Hand, CAD, or PDF sketches to coordinate technical requirements with other consultants as needed
- Presentation slides for Client meetings listed below
- Pricing information provided to estimator at two (2) times during the task.

Technical Drawing Issuances:

- One (1) Final Design Plan drawing set
- One (1) set of technical specifications.
- We will issue one (1) interim drawing and specification set and one (1) final set.

Meetings:

- Kick-Off Meeting (virtual)
- Up to two (2) formal Client presentations (virtual)
- Weekly progress calls with City's Project Manager (virtual)
- Bi-weekly 1-hour consultant coordination calls (virtual)

Travel:

- No travel assumed during this phase

TASK 8 – CONSTRUCTION BID DOCUMENTS – 4 WEEKS

The SCAPE Project team will prepare a set of construction bid documents including bid item quantities.

Deliverables:

- One (1) set of bid documents
- Provide list of qualified contractors, if requested.

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TASK 9 – PUBLIC ENGAGEMENT – 26 WEEKS (concurrent to task 1-5)

This task will run parallel to Task 1 through 5 of this proposal. We will assemble and convene a Community Advisory Group (CAG) with the City, stakeholders, and community representatives who will be engaged on a more frequent basis to help inform the design process and provide local knowledge about context, challenges, and opportunities. To reach the greater Johnstown community, the team will lead three (3) public engagement cycles in Johnstown, PA. Facilitating public knowledge and understanding, collecting feedback, and garnering public support and enthusiasm around the Main Street Design Project is the primary goal of all engagement opportunities. We propose structuring and scheduling these engagement cycles based on the following themes and schedule:

- Engagement Cycle I: Program and Visioning
 - One (1) Public Meeting
 - One (1) Pop up event at high-traffic location
 - Conduct electronic surveys
- Engagement Cycle II: 3 Concept Alternatives
 - One (1) Public Meeting
 - One (1) Pop up event at high-traffic location
 - Conduct electronic surveys
- Engagement Cycle III: Final Design Presentation
 - One (1) Public Meeting

We will work with the City to post project information on the City's website and social media accounts at appropriate times coinciding with the engagement opportunities and at other key milestones.

Deliverables:

1. Presentation material for each Engagement Opportunity
2. One (1) to two (2) engagement activities for each Engagement Opportunity
3. Questionnaire for electronic surveys listed above
4. Summary notes from CAG meetings

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Meetings:

- Three (3) Public Meetings (in person)
- Two (2) Pop up events (in person)
- Eight (8) CAG meetings (virtual)

Travel:

- Three (3) trips – one (1) during each Engagement Cycle

TASK 10 – COST ESTIMATING

The SCAPE project team understands the importance of cost estimating to the overall success of the project. We will work collaboratively to provide cost estimates at key times during the design phases for review and consideration by the Client team.

Deliverables:

- Order-of-Magnitude costing for 3 concept alternates – during Task 4
- 30% Design estimate in CSI format – performed during Task 5
- 75% Design estimate in CSI format – performed during Task 7
- 100% Design estimate in CSI format – performed during Task 7

Meetings:

- Pre-estimate meeting for each costing cycle (four (4) total, virtual)
- Estimate debrief meeting for each costing cycle (four (4) total, virtual)

TASK 11 – PERMITTING

Permits anticipated include PennDOT Highway Occupancy Permits for Utilities and Local Roads, PennDOT District 9-0 Traffic Signal Permitting, and general NPDES permit for discharge of construction stormwater which includes Erosion and Sedimentation review by the Cambria County Conservation District. It is expected that the permits can be submitted at about 90% completion and will take around 4 months total.

Due to the highly variable nature of the Permit review process, and the ability of other project parameters to influence the re-submission of these documents, this process will be billed as time & materials (T/M) rate with a not-to-exceed

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(NTE) amount. We reserve the right to revisit this amount depending on the determined pathway for approval.

SCAPE will give proper notice to the City to remit permitting fees in a timely manner. If desired, the City can provide authorization to SCAPE to pay permitting filing fees to be reimbursed. Please note, filing fees are not included in the lump sum base fee.

OPTIONAL ADDITIONAL TASKS:

SCAPE acknowledges that the following tasks and services are not required by the RFP. However, should the SCAPE team be selected for the Main Street Project, we would be interested in discussing these services that may be beneficial to the project or required by the selected concept. We have not included fees for these services at this time, however we can provide an estimated fee allowance if requested.

- Bid Support and Construction Administration
 - The SCAPE Project team, in close collaboration with the City, will invest a significant amount of time and energy designing and coordinating the Main Street Design Project. We would recommend continuing our services through Bid Support and Construction Administration to ensure the vision is realized to its full potential and meets Client expectations.
- Complete curb and roadway reconstruction
 - Based on the aspirational goals to develop a world-class downtown for Johnstown, the SCAPE Project team may recommend a more extensive curb and roadway reconstruction. We will evaluate this option during Task 4, Concept Ideation, and determine the full scope with the Client at the conclusion of the task.
- Architectural pavilion, kiosk, restroom, or comfort station design services
 - If there is an architectural component in the selected concept design, we would recommend soliciting an Architect for concept and final design documentation. We will make a final determination and recommendation at the conclusion of Task 4.

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- Water feature design services
 - If a water feature is part of the selected concept design, we would recommend soliciting water feature design services for concept and final design documentation. We will make a final determination and recommendation at the conclusion of Task 4.
- Geotechnical Engineering
 - If the preferred design option includes elements that require geotechnical engineering services, we will need to solicit proposals for these services. We will make a final determination at the conclusion of Task 4.
- Stormwater Collection and Reuse
 - Given our current understanding of the project, our recommendation (as included in our base scope) is to develop stormwater best practices to promote infiltration and build capacity as part of a comprehensive green infrastructure system. If the City would like to implement a stormwater collection and reuse system, we will work together to define a clear scope and plan extents to be included in the final documentation.

SCOPE ASSUMPTIONS:

1. We expect the SCAPE Project team will be given full and proper credit for landscape architecture, site, and streetscape design.
2. SCAPE's services under this agreement will be within the landscape limit of work boundaries identified on the drawings.
3. SCAPE assumes that there will be one (1) package for all work for each submittal.
4. SCAPE assumes we can leverage common sheet sizes and information between permitting sets and construction documentation sets.
5. All files will be developed in AutoDesk AutoCAD, the Microsoft Suite, and Adobe Suite, as appropriate. Deliverables will be submitted to the Client in PDF format.

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6. SCAPE assumes advancement to the next phase of work means the design submitted at the conclusion of the previous phase has been accepted by the Client.
7. Significant design changes as referenced in the scope above would include any changes that require additional time or manpower to accommodate. This may include, but is not limited to: changes to buildings, curbs, roadways, or driveways; addition, removal, or rebalancing of landscape programs; changes to design geometries, materials, or general design aesthetic; late-phase or delayed input from stakeholders, agencies, community processes, or design assist partners; or absence/delay in budget expectations or any change the landscape budget of more than 10%.
8. SCAPE assumes all feedback will be consolidated and communicated by the Client in a timely and efficient manner.
9. SCAPE assumes artists will be commissioned after the completion of the scope of this contract.
10. The SCAPE team shall prepare an opinion of the probable costs of construction. Consultant has no control, however, over (a) the cost of labor, material, or equipment; (b) the means, methods and procedures of the contractor's work; or (c) the competitive bidding. Consultant's opinion of probable cost shall be based on its experience and qualifications and represent its judgment as a Consultant familiar with the construction industry but shall not be a guarantee that construction costs will not vary from its opinions of probable cost.
11. The client will provide Sci-Tek with any relevant boundary or title information the client is aware of and/or has possession of.
12. The record document information is reasonably accessible via an online records search or in the office of the county recorder of deeds.
13. A sufficient amount of record boundary monument evidence consistent with the record documents exists on the subject tract(s) and is recoverable and useful in retracing the boundary lines on the ground, without having to research and survey additional adjacent tracts of land.

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14. The existing corners of the boundary of the subject tract(s) are marked with monuments and will not need to be marked by Sci-Tek.
15. There are no gaps, overlaps, gores, or disputes in title along the boundary lines. If it is discovered that any of the aforesaid situations exist, Sci-Tek will notify the client and provide an estimated cost to proceed with a resolution of the situation.
16. Permission and access to enter upon and conduct surveying of the property will be coordinated by the client and granted to Sci-Tek.

EXCLUSIONS:

1. LEED (or other sustainability program) administration or reporting.
2. Land Use or Zoning attorney services.
3. Labor and materials for design mock-ups.
4. Community meeting space rental and catering.
5. Honoraria for CAG members that meet need criteria.
6. The following items are not included in this scope of services and may be presented to the client for consideration as an additional service if required by the project in the future:
 - a. Rooftop or building amenity terraces, landscapes on structure, and interior landscapes.
 - b. Vehicular barrier design or engineering
 - c. ~~Streetscape irrigation~~
 - d. Hazardous waste remediation
 - e. ~~Geotechnical engineering~~
 - f. ~~Artist commissions~~
 - g. ~~Agency and Permitting filing fees~~
 - h. Reconciliation of cost estimates or opinions of probable costs with a construction manager, third party estimating firm, or another party at any point in time
 - i. Extension of the project schedule beyond the parameters mentioned above.
 - j. Renderings by an outside or professional rendering company.

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- k. Additional in-house renderings will be charged as \$4,500 per presentation rendering. Rates are valid for the current calendar year and may be increased subsequently without written notice.
- l. Technical mock-up drawings beyond those included in the base drawing set.
- m. ~~Re-formatting, re-scaling, or tailoring drawings for any submission, including permitting or agency sets.~~
- n. Separating the submission package into more than one (1) drawing or specification package
- o. Efforts relating to or resulting from value engineering (VE) after the 100% CD submission.
- p. Review processes by Agencies or other entities not identified in the scope above.
- q. Maintenance Manuals and Maintenance Plans.
- r. Presentation models. Sketch or study models may be used at the discretion of the design team to communicate intent.
- s. Agency design reviews
- t. Additional meetings, site visits, or travel beyond parameters listed above.
- u. Off-site improvements or remediation.
- v. Review of requests for substitutions after execution of the contract for construction.
- w. Record drawings.
- x. Large tree relocation and/or advanced plant procurement procedures.

This Proposal is Valid for 30 days from date of issue by SCAPE / Landscape Architecture DPC. The proposal terms and fees are for a continuous project schedule. Should the project go on hold or stop for a period of time other than mentioned above, a mobilization fee will be requested of the Client team.

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PAYMENT TERMS:

Fixed Fee: Fixed fee phases shall be invoiced monthly based on the percentage of work completed within the billing period.

Hourly-with-a-Budget Fees: Hourly fee phases shall be invoiced on a monthly basis according to current SCAPE scheduled rates effective on the date of this proposal. Please see hourly rates table below. Services rendered within the billing period will be separately described for each hourly task invoiced. Hourly fee budgets will not be increased without Client's prior approval.

Initial Payment: An initial payment of \$30,000 shall be made upon execution of this agreement and is the minimum payment under this Agreement. This initial payment shall be credited from the Client's account upon receipt and applied to final invoice.

Remobilization Fee: This Scope of Services assumes a continuous 13-month design schedule. If the project goes on hold for an extended period (greater than 2-months), SCAPE reserves the right to submit a revised fee to reflect costs associated with the remobilization of project team.

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HOURLY BILLING RATES

Services outlined under the Scope of Services are based on our hourly billing rates. Current rates are:

Founding Principal	\$350/Hour
Principal	\$300/Hour
Director	\$220/Hour
Senior Associate	\$190/Hour
Associate	\$150/Hour
Senior Designer	\$135/Hour
Designer	\$110/Hour

Rates are valid for the current calendar year and may be increased subsequently without written notice. Any Additional Services shall be provided on an hourly basis computed with the rates at the time of the additional service. Services outlined under the Scope of Services shall be provided per the Fees and Terms in the Agreement for Professional Services.

Exhibit B
COMPENSATION

**SCAPE LANDSCAPE ARCHITECTURE DPC
277 BROADWAY NINTH FLOOR NEW YORK NY 10007
T 212 462 2628 SCAPESTUDIO.COM**

**Fee Proposal
February 10, 2023**

TASK	SCAPE		Partners in Public Design		Sam Schwartz		Sherwood		Manuel Miranda		LAM		Public Art Johnstown		Trophy Point		Sci-Tek		Northern Designs		Pine & Swallow	
	Landscapist Architect	Civil Engineer	Public Engagement	Transportation Engineer	Stormwater Engineers	Signage and Wayfinding	Lighting Designer	Public Art Consultant	Cost Estimating	Survey	Irrigation Designer	Soil Science										
TASK 1: Survey	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 2: Existing Conditions/Context Analysis	\$ 30,000.00	\$ -	\$ 10,000.00	\$ 10,000.00	\$ 4,500.00	\$ 2,550.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,000.00
TASK 3: Visioning / Programming	\$ 40,000.00	\$ -	\$ 12,000.00	\$ -	\$ 2,500.00	\$ 1,300.00	\$ 2,000.00	\$ 1,400.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 4: Concept Ideation (3 Alts)	\$ 120,000.00	\$ 20,000.00	\$ 12,000.00	\$ 25,800.00	\$ 20,000.00	\$ 12,550.00	\$ 10,000.00	\$ 1,100.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,800.00
TASK 5: Conceptual Design Documents (50% Design)	\$ 200,000.00	\$ 100,000.00	\$ -	\$ 30,100.00	\$ 15,000.00	\$ 12,750.00	\$ 19,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,500.00
TASK 6: Streetscape Design Guidelines	\$ 20,000.00	\$ -	\$ 1,000.00	\$ -	\$ 5,000.00	\$ 1,850.00	\$ 2,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 7: Final Design Documents (100% Design)	\$ 280,000.00	\$ 105,000.00	\$ -	\$ 30,100.00	\$ 10,000.00	\$ 8,000.00	\$ 10,000.00	\$ 1,100.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,000.00
TASK 8: Construction Bid Documents	\$ 20,000.00	\$ 10,000.00	\$ -	\$ -	\$ -	\$ 4,850.00	\$ 5,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,500.00
TASK 9: Public Engagement	\$ 42,000.00	\$ -	\$ 125,000.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 10: Cost Estimating	\$ -	\$ -	\$ -	\$ 6,700.00	\$ -	\$ -	\$ -	\$ 500.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TASK 11: Permitting (Time and Material + NTE)	\$ 20,000.00	\$ 25,000.00	\$ -	\$ 17,200.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000.00
Total	\$ 772,000.00	\$ 260,000.00	\$ 160,000.00	\$ 119,900.00	\$ 57,000.00	\$ 43,850.00	\$ 48,000.00	\$ 5,500.00	\$ 27,415.88	\$ 60,755.00	\$ 39,100.00	\$ 18,800.00	\$ 1,612,320.88									

Exhibit C
DIGITAL DATA AGREEMENT

ELECTRONIC DOCUMENT TRANSFER AGREEMENT

PROJECT: City of Johnstown Main Street Design and Streetscape Engineering Project

1. The undersigned ("Recipient") requests that the electronic copies of certain documents for the above-referenced Project ("Electronic Media") be transmitted for use of the Recipient. The requested Project Documents may include but not be limited to drawing(s), specifications and/or file(s) have been prepared by **SCAPE Landscape Architecture D.P.C.** ("SCAPE") and are being provided solely as a convenience to the Recipient.
2. SCAPE makes no representation regarding the suitability of the Electronic Media for the intended use of the Recipient. SCAPE makes no representation regarding fitness for any particular purpose, or compatibility for use with any software or hardware. It is the Recipient's obligation to understand the design intent and to use this digital data appropriately and in accordance with the terms hereof and any other applicable agreement relating to the Project between the Recipient and SCAPE.
3. In accepting and utilizing the Electronic Media on any form of electronic media generated and provided by SCAPE, the Recipient covenants and agrees that all such Electronic Media are instruments of service of SCAPE who shall be deemed the author of the drawings and data and SCAPE shall retain all common law, statutory law, and other rights in and to the Electronic Media, including copyrights. The Electronic Media provided by SCAPE shall not be used by the Recipient for any purpose other than as a convenience in the preparation of documents related to the Project. The Recipient agrees not to use the Electronic Media, in whole or in part, for any purpose or project other than the Project which is the subject of this agreement.
4. Due to the alterable nature of electronic documents, SCAPE does not make any expressed or implied warranty for the accuracy or completeness of this information. There are numerous factors that may result in errors and/or discrepancies in digital data, including but not limited to translation errors resulting from differences in or misuse of computer software, hardware, and/or related equipment; disc malfunctions; and/or user error. Any electronic copies of Project Documents delivered in any electronic format are provided "as is" and solely for convenience; are not construction documents and shall not be used for bidding or construction of the Project; and shall not be relied upon by the Recipient in any way. Accordingly, SCAPE has no responsibility for and shall have no liability on account of any such error or discrepancy once such Electronic Media in any electronic format are located on or transmitted to equipment outside the offices of SCAPE. It is further agreed that SCAPE shall have no liability for Electronic Media which may be released to Recipient prior to completion. To the fullest extent permitted by law, Recipient hereby releases SCAPE and its sub-consultants from any liability resulting from any use of such electronic copies of the Electronic Media. In the event of any conflict or inconsistency between any hardcopy Project Documents and any electronic copies, the hardcopy shall control.
5. The information, design, and ideas contained in the Electronic Media are proprietary and shall not be copied or used for any purpose that is not authorized, in writing, by SCAPE. The Recipient recognizes that changes or modifications to SCAPE's and its sub-consultants' Electronic Media introduced by anyone other than SCAPE and its sub-consultants may result in adverse consequences which SCAPE and its sub-consultants can neither predict nor control.

6. Recipient shall not transfer or provide access to any Electronic Media to any third party without the prior written consent of SCAPE in its sole discretion and, then, unless and until SCAPE has received an original electronic document transfer agreement in a form acceptable to SCAPE, duly executed by the proposed Recipient.
7. This Agreement shall govern any and all future transfers to Recipient of any of the Project's Electronic Media.
8. SCAPE and its sub-consultants retain all proprietary rights, including copyrights, in the Electronic Media.
9. To the fullest extent permitted by law, Recipient hereby agrees to indemnify, defend, and hold SCAPE and its sub-consultants harmless from and against any and all claims, actions, disputes, liabilities, suits, demands, losses, damages, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all legal expenses and fees incurred through appeal thereof) caused by or resulting in any way from any use of any electronic copies of Electronic Media in violation of this Agreement or any other breach of this Agreement by Recipient, anyone for whom Recipient is legally responsible for in connection with the Project, or anyone who receives any such electronic copies from or through Recipient, whether directly or indirectly, including without limitation any damages or losses to property or persons, personal injuries, death, or economic losses.
10. Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of Recipient against SCAPE or its sub-consultants.
11. This Agreement shall be governed by the laws of the State of New York without regard to its choice or conflict of law doctrines.

Agreed and accepted by Recipient

Firm Name

Signature

Print Name and Title

Date