



**Meeting Agenda – STAMP Committee**  
 Genesee County Economic Development Center  
 Wednesday, June 28, 2023 - 8:00 a.m.  
 Location: 99 MedTech Drive, Innovation Zone

Page #'s	Topic	Discussion Leader	Desired Outcome
	<b>1. Call to Order – Enter Public Session</b>	P. Zeff	
	1a. Executive Session Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: <ol style="list-style-type: none"> <li>1. Discussions regarding proposed, pending or current litigation.</li> <li>2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.</li> <li>3. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.</li> </ol> 1b. Enter Public Session	P. Zeff	
2-4	<b>2. Chairman’s Report &amp; Activities</b>  2a. Agenda Additions / Deletions / Other Business  2b. Minutes: May 31, 2023	P. Zeff	Vote
5	<b>3. Discussions / Official Recommendations to the Board:</b> 3a. Easement Approval	M. Masse	Disc / Vote
6	3b. Sale of Topsoil	M. Masse	Disc / Vote
7-10	3c. Phillips Lytle – 2023 Additional Contract	M. Masse	Disc / Vote
11-15	3d. Keeler Change Order	M. Masse	Disc / Vote
	4. Adjournment	P. Zeff	Vote



GCEDC STAMP Committee Meeting  
Wednesday, May 31, 2023  
Location: 99 MedTech Drive, Innovation Zone  
8:00 a.m.

MINUTES

ATTENDANCE

Committee Members: C. Kemp, M. Clattenburg, C. Yunker, P. Zeliff  
Staff: M. Masse, L. Casey, L. Farrell, S. Hyde, C. Suozzi, P. Kennett, J. Krencik  
Guests: A. Walters (Phillips Lytle/Phone Conference), M. Landers (County Manager), R. Crossen (Town of Alabama Supervisor)  
Absent:

1. Call to Order / Enter Public Session

P. Zeliff called the meeting to order at 8:00 a.m. in the Innovation Zone.

1a. Executive Session

C. Yunker made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:01 a.m., for the following reasons:

- 1. Discussions regarding proposed, pending, or current litigation.
- 2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.
- 3. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.

The motion was seconded by M. Clattenburg and approved by all members present.

1b. Re-Enter Public Session

C. Yunker made a motion to enter back into public session at 8:33 a.m., seconded by M. Clattenburg and approved by all.

2. Chairman's Report & Activities

2a. Agenda Additions / Other Business – Nothing at this time.

2b. Minutes: May 3, 2023

C. Yunker made a motion to approve the May 3, 2023 minutes; the motion was seconded by C. Kemp. Roll call resulted as follows:

P. Zeliff - Yes  
C. Yunker - Yes

2b

M. Clattenburg – Yes  
C. Kemp - Yes

The item was approved as presented.

**3. Discussions / Official Recommendations to the Board:**

**3a. Easement Approval** – In conjunction with the installation of the force main from the STAMP site to the direct discharge point at Oak Orchard Creek, there are several easements needed. We are seeking approval of the following easements:

- 1. Temporary Easement 27 – Installation of water line from curb box to house (include in forcemain contract) Estimated at \$2,500
- 2. Temporary Easement 29 - \$500

**Fund Commitment:** \$3,000 from the \$33 million.

**Board Action Request:** Approval of payment of \$3,000 to the holders of the easement numbers identified above.

**M. Clattenburg made a motion to recommend to the full Board the approval of the ROW easement payments not to exceed \$3,000 as presented; the motion was seconded by C. Kemp. Roll call resulted as follows:**

P. Zeliff - Yes  
C. Yunker - Yes  
M. Clattenburg – Yes  
C. Kemp - Yes

**3b. KTA Preservation Contract** - As part of the STAMP development and the neighboring Tonawanda Seneca Nation, in accordance with Section 106 for the DEC permits, the GCEDC is working with the Tonawanda Seneca Nation on an assessment of the TCP potentials as it relates to the criteria for eligibility of listing on the National Historic Register. KTA Preservation Specialists has prepared a proposal to prepare an assessment of any potential impacts to the Nation from the construction of a proposed development on the STAMP site.

**Fund commitment:** Not to exceed \$1,440 to be paid out of \$5,000 from Plug for the Access Agreement for the additional parking area.

**Committee action request:** Recommend approval of consultant contract with KTA Preservation Specialists for evaluation of TCP issues.

**M. Clattenburg made a motion to recommend to the full Board the approval of the KTA Preservation Contract not to exceed \$1,440 as presented; the motion was seconded by C. Kemp. Roll call resulted as follows:**

P. Zeliff - Yes  
C. Yunker - Yes  
M. Clattenburg – Yes  
C. Kemp - Yes

**4. Adjournment**

As there was no further business, M. Clattenburg made a motion to adjourn at 8:36 a.m., seconded by C. Kemp and passed unanimously.

### **STAMP Payment for easement**

**Discussion:** In conjunction with the installation of the force main from the STAMP site to the direct discharge point at Oak Orchard Creek, there are a number of easements needed. We are seeking approval of the following easement:

1. Permanent Easement 7 – \$1,000

**Fund Commitment:** \$1,000 from the \$33 million.

**Board Action Request:** Approval of payment of \$1,000 to the holder of the easement number identified above.

**STAMP sale of unscreened topsoil from the laydown area**

**Discussion:** The GCEDC has approximately 8,000 cubic yards of unscreened topsoil stockpiled on the site of the future WWTF. In order to construct the WWTF in the future, this topsoil will need to be moved or sold. Morsch Pipeline would like to purchase 8,000 cubic yards of the topsoil at \$3.00 per cubic yard. This appears to be within the market rate.

**Fund Commitment:** None.

**Board Action Request:** Approval of sale of topsoil to Morsch Pipeline at \$3.00 per cubic yard.

**\$8 million approval:**

**Phillips Lytle 2023 additional contract for STAMP related work**

**Discussion:** Phillips Lytle has prepared a proposal to cover the scope of work for the last six months of 2023 as it relates to Tech Team support for the off site sewer permitting and wetland permitting, the wastewater treatment facility permitting, and force main installation.

**Fund Commitment:** Not to exceed \$350,000 to be included in the \$8 million.

**Board Action Request:** Recommend approval to the full Board of Phillips Lytle contract not to exceed \$350,000.



**Phillips Lytle LLP**

**VIA E-MAIL  
PRIVILEGED & CONFIDENTIAL**

June 20, 2023

Mark A. Masse  
Senior Vice President of Operations  
Genesee County Economic Development Center  
99 MedTech Drive, Suite 106  
Batavia, NY 14020

Re: Proposed Supplement to Engagement Letter for STAMP Project -  
Additional Scope of Work for STAMP Project Support for Balance of Calendar Year 2023

Dear Mark:

Thank you very much for the opportunity to continue to assist the Genesee County Economic Development Center (and Genesee Gateway Local Development Corporation) with the STAMP Project. The purpose of this letter is to supplement our existing engagement letters (collectively, the "Engagement Letter") relating to STAMP. This supplement describes generally additional work for STAMP Project Support for the balance of calendar year 2023. Estimated legal fees for same are set forth on the attached "Updated Scope of Work". Upon receipt of your approval, we will bill you on a monthly basis for such work as fees are incurred, consistent with our existing engagement.

If you are in agreement with the foregoing, please confirm same by signing and returning a copy of this letter to me. Of course, if you have any questions, please let me know. Thanks again.

Sincerely,

Phillips Lytle LLP

By */s/ Douglas W. Dimitroff*

Douglas W. Dimitroff, Esq.

ATTORNEYS AT LAW

DOUGLAS W. DIMITROFF PARTNER DIRECT 716 847 5408 DDIMITROFF@PHILLIPSLYTLE.COM

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Mark A. Masse  
Senior Vice President of Operations  
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June 20, 2023

cc: Adam S. Walters, Esq.  
Matthew J. Fitzgerald, Esq.  
Steve Hyde  
Lezlie Farrell

Genesee County Economic Development Center has reviewed and agreed to the above terms of engagement of Phillips Lytle LLP for the purposes and to the extent described in this letter.

Genesee County Economic Development Center

By \_\_\_\_\_  
Mark A. Masse, Senior Vice President of Operations

Date: \_\_\_\_\_, 2023

**STAMP Project - 06/20/2023 Supplement to Phillips Lytle Engagement Letter  
Additional "Updated Scope of Work"  
STAMP Project Support - Balance of Calendar Year 2023**

1. Additional STAMP Support for Balance of Calendar Year 2023: GCEDC is involved in various review and approval processes for continued development at STAMP including permitting for construction of the: (1) Edwards facility, (ii) Plug Power temporary parking area; (3) the on-site waste water treatment plant and force main; and (4) the new water main from Niagara County. GCEDC is also involved in an application for a Site-Wide STAMP Part 182 Permit and related infrastructure improvements needed at STAMP to support these projects (i.e., reconstruction of Crosby Road) as well as an application for a Site-Wide STAMP Part 182 Permit from the New York State Department of Environmental Conservation. In addition, review/approvals are needed from various other governmental agencies including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Services, and the Niagara County Water District. Additionally, GCEDC is engaged in on-going consultation to the Tonawanda Seneca Nation and must fulfill various obligations pursuant to a settlement agreement with the Nation related to the Plug Power Project. Phillips Lytle will represent and assist GCEDC relative to the foregoing matters on an as needed basis.

**Est. Additional Legal Fees: \$350,000\***

\* the foregoing scope of work and fees do not include assistance with any formal challenges to or litigation relating to the STAMP Site, and the foregoing fees estimate is in addition to the fees estimated (\$100,000) under our supplemental engagement letter dated 1/27/2023.

**STAMP Change order for the laydown area and hold and haul tank installation**

**Discussion:** In conjunction with the construction of the lay down area to be utilized by National Grid for the power line reroute and the installation of the hold and haul tank, Keeler Construction is seeking a change order to cover the increase in costs of the project that have occurred. This project was originally scheduled to be completed in February of 2022 but had to be postponed due to issues with the NYSDEC. These two bids were issued as one contract. The board previously approved a change order increase of \$13,930 which would have been a \$25,000 reduction. Keeler stated that the payment amount should be \$25,000 resulting in an increase of \$20,000 to the change order. The change order will only be on the net overage of the total contract after combining the two.

**Fund Commitment:** An additional \$6,070 from the agency operating funds.

**Board Action Request:** Approval of increase in change order of \$6,070 to Keeler Construction Inc.

Date of Issuance: June 13, 2023	Effective Date: June 13, 2023
Owner: GCEDC	Owner's Contract No.:
Contractor: Keeler Construction Co., Inc.	Contractor's Project No.:
Engineer: CPL	Engineer's Project No.: 16174.00
Project: STAMP Onsite Water Main & Crosby Road Reconstruction	Contract Name: Base Bids C & D

The Contract is modified as follows upon execution of this Change Order:

Description: This change order includes additional cost incurred by Keeler Construction Co., Inc. related to the delays in permitting. The increase in costs include adjustment in quantities, labor wage rate increase, fuel cost increase, trucking cost increase, and mobilization and demobilization.

Attachments: Keeler Construction Co., Inc. request for increase in project final quantities.

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price:  \$ <u>738,210.00</u>	Original Contract Times: Substantial Completion: <u>February 1, 2022</u> Ready for Final Payment: <u>March 1, 2022</u>
Increase from previously approved Change Orders No. to No. <u>1</u> :  \$ <u>15,000.00</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>   </u> to No. <u>   </u> : Substantial Completion: <u>N/A</u> Ready for Final Payment: <u>N/A</u>
Contract Price prior to this Change Order:  \$ <u>753,210.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>February 1, 2022</u> Ready for Final Payment: <u>March 1, 2022</u>
Increase of this Change Order:  \$ <u>20,000.00</u>	Increase of this Change Order: Substantial Completion: <u>September 9, 2022</u> Ready for Final Payment: <u>October 7, 2022</u>
Contract Price incorporating this Change Order:  \$ <u>773,210.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>September 9, 2022</u> Ready for Final Payment: <u>October 7, 2022</u>

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____ Engineer (if required)	By: _____ Owner (Authorized Signature)	By: _____ Contractor (Authorized Signature)
Title: <u>Project Manager</u>	Title: <u>Sr. VP of Operations</u>	Title: _____
Date: _____	Date: _____	Date: _____

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

# Contractor's Application for Payment No. 5

<b>To</b> (Owner): Genesee County Economic Development Center (GCEDC)	<b>From</b> (Contractor) Keeler Construction Co., Inc.	<b>Application Date</b> 5/31/2023	<b>Application No.</b> 5
<b>Project:</b> STAMP Onsite Water & Crosby Road Reconstruction	<b>Contract:</b> Bid C - Sanitary Sewer, Tank, Pump Station Bid-D - Gravel Staging Area & Access Rd	<b>Via</b> (Engineer) Clark Patterson Lee	
<b>Owner's Contract No.:</b>	<b>Contractor's Project No.:</b>	<b>Engineer's Project No.:</b>	


### Application For Payment Change Order Summary

Approved Change Orders Number	Additions	Deductions
1	\$15,000.00	
2	\$20,000.00	
<b>TOTALS</b>		
<b>NET CHANGE BY CHANGE ORDERS</b>		<b>\$35,000.00</b>

1. ORIGINAL CONTRACT PRICE..... \$ 738,210.00
2. Net change by Change Orders..... \$ 35,000.00
3. Current Contract Price (Line 1 ± 2)..... \$ 773,210.00
4. TOTAL COMPLETED AND STORED TO DATE (Column G on Progress Estimate)..... \$ 773,210.00
5. RETAINAGE:
  - a.  Work Completed..... \$
  - b. 5%  Stored Material..... \$
  - c. Total Retainage (Line 5a + Line 5b)..... \$
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)..... \$ 773,210.00
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ 617,276.75
8. AMOUNT DUE THIS APPLICATION..... \$ 155,933.25
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above)..... \$

**Contractor's Certification**

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment, (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By:  Date: 6/16/23

Keeler Construction Co., Inc.

Payment of: \$155,933.25  
(Line 8 or other - attach explanation of the other amount)

is recommended by: Clark Patterson Lee (Engineer) (Date)

Payment of: \$155,933.25  
(Line 8 or other - attach explanation of the other amount)

is approved by: Genesee County Economic Development Center (GCEDC)(Owner) (Date)

Approved by: Funding Agency (if applicable) (Date)

3d

# Progress Estimate - Unit Price Work - Base Bid C - Sanitary Sewer, Tank, Pump Station

Contractor's Application

For (Contract): Bid C - Sanitary Sewer, Tank, Pump Station Bid.D - Gravel Staging Area & Access Rd  
 Application Period: 6/25/22 thru 8/19/22

Application Number \$ 31,2023

Item		CONTRACT										TOTAL TO DATE	
		A		B		C		D		E		F	
Bid Item No.	Description	Units	Bid Item Quantity	Unit Price	Bid Item Value (\$)	Estimated Quantity Installed	Value of Work Installed	Materials Presently Stored (not in C)	Total Completed and Stored this period (D + E)	Estimated Quantity Installed to Date	Value of Work Installed to Date	% (G/B)	Balance to Finish (H - G)
G-1	Mobilization	LS	1	\$7,000.00	\$7,000.00	0.25	\$1,750.00		\$1,750.00	1.00	\$7,000.00	100.0%	
G-2	Maintenance & Protection of Traffic	LS	1	\$1,300.00	\$1,300.00	0.150	\$195.00		\$195.00	1.000	\$1,300.00	100.0%	
G-3	Erosion Control	LS	1	\$1,800.00	\$1,800.00					1.000	\$1,800.00	100.0%	
G-4	Select Granular Fill	CY	100	\$31.00	\$3,100.00					100	\$3,100.00	100.0%	
S-1	16,000 Gallon Sanitary Sewer Tank & Pump Station Complete	LS	1	\$151,000.00	\$151,000.00	0.15	\$22,650.00		\$22,650.00	1.00	\$151,000.00	100.0%	
S-2	12" SDR-21 Sanitary Sewer Complete	LF	160	\$229.00	\$36,640.00	0.00	\$2,290.00		\$2,290.00	117.00	\$26,793.00	73.1%	\$9,847.00
S-3	5' Precast Manhole Complete	EA	2	\$15,000.00	\$30,000.00					2.00	\$30,000.00	100.0%	
A-1	Field Change Allowance (Suburban Electric)	LS	1	\$5,000.00	\$5,000.00	0.61	\$3,067.71		\$3,067.71	0.61	\$3,067.71	61.4%	\$1,932.29
C-1	Compaction Testing Allowance	LS	1	\$5,000.00	\$5,000.00								\$5,000.00
E-1	Cost Escalation	LS	1										
	Additional Survey	LS	1	\$1,091.05	\$1,091.05	1	\$1,091.05		\$1,091.05	1	\$1,091.05	100.0%	
	Tree Clearing	LS	1	\$883.74	\$883.74	1	\$883.74		\$883.74	1	\$883.74	100.0%	
	Truck Rate Adjustment	LS	1	\$2,796.80	\$2,796.80	1.00	\$2,796.80		\$2,796.80	1.00	\$2,796.80	100.0%	
	Fuel Adjustment	LS	1	\$2,941.49	\$2,941.49	1.00	\$2,941.49		\$2,941.49	1.00	\$2,941.49	100.0%	
E-2	24" Storm Pipe for Driveway	LF	40	\$152.00	\$6,080.00	40	\$6,080.00		\$6,080.00	40	\$6,080.00	100.0%	
<b>Total Base Bid C</b>					<b>\$254,633.08</b>		<b>\$43,745.79</b>		<b>\$43,745.79</b>		<b>\$237,853.79</b>	<b>93.4%</b>	<b>\$16,779.29</b>

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# Progress Estimate - Unit Price Work - Base Bid D - Gravel Staging Area & Gravel Access Rd

## Contractor's Application

For (Contract):		Bid C - Sanitary Sewer, Tank, Pump Station Bid-D - Gravel Staging Area & Access Rd		Application Number: 3		Application Date: 5/31/2023							
Application Period:		8/20/22 thru 9/23/22		THIS PERIOD		TOTAL TO DATE							
Bid Item No.	Description	Units	Bid Item Quantity	Unit Price	Bid Item Value (\$)	Estimated Quantity Installed	Value of Work Installed	Materials Presently Stored (not in C)	Total Completed and Stored this period (D + E)	Estimated Quantity Installed to Date	Value of Work Installed to Date	% (G/B)	Balance to Finish (B - G)
G-1	Mobilization	LS	1	\$14,000.00	\$14,000.00					1.00	\$14,000.00	100.0%	
G-2	Maintenance & Protection of Traffic	LS	1	\$1,300.00	\$1,300.00					1.00	\$1,300.00	100.0%	
G-3	Erosion Control	LS	1	\$13,000.00	\$13,000.00					1.00	\$13,000.00	100.0%	
G-4	Select Granular Fill	CY	200	\$31.00	\$6,200.00					1.00	\$6,200.00	100.0%	\$6,200.00
G-6	Restoration & Seeding	LS	1	\$34,000.00	\$34,000.00	0.10	\$3,400.00		\$3,400.00	1.00	\$34,000.00	100.0%	
R-1	Stripping & Stockpiling Topsoil for Roadway	LS	1	\$32,000.00	\$32,000.00					1.00	\$32,000.00	100.0%	
R-2	Roadway Drainage Swale: Earthwork & Grading	LS	1	\$48,000.00	\$48,000.00					1.00	\$48,000.00	100.0%	
R-3	Geotextile Separation Fabric NYSDOT 207.24	SY	27,000	\$1.09	\$29,430.00	2,577.00	\$2,808.93		\$2,808.93	26,877.00	\$29,295.93	99.5%	\$134.07
R-4	Subbase Course - Type 2 Complete	CY	10,500	\$29.40	\$308,700.00	748.00	\$21,991.20		\$21,991.20	10,398.00	\$305,701.20	99.0%	\$3,998.80
ST-1	12" Diameter SICPP Storm Sewer Complete	LF	140	\$41.00	\$5,740.00	20	\$820.00		\$820.00	180	\$7,380.00	128.6%	-\$1,640.00
C-1	Compaction Testing Allowance	LS	1	\$5,000.00	\$5,000.00					1.00	\$5,000.00	100.0%	
CO-1	Change Order #1 Truck/Fuel Adjustment	LS	1	\$15,000.00	\$15,000.00					1.00	\$15,000.00	100.0%	
E-1	Cost Escalations Balance												
E-1	Redesign GPS Model	LS	1	\$787.50	\$787.50	1.00	\$787.50		\$787.50	1.00	\$787.50	100.0%	
E-1	Model/Demob	LS	1	\$9,201.85	\$9,201.85	1.00	\$9,201.85		\$9,201.85	1.00	\$9,201.85	100.0%	
E-1	Track Rate Adjustment	LS	1	\$17,651.44	\$17,651.44	1.00	\$17,651.44		\$17,651.44	1.00	\$17,651.44	100.0%	
E-1	Fuel Adjustment	LS	1	\$11,892.28	\$11,892.28	1.00	\$11,892.28		\$11,892.28	1.00	\$11,892.28	100.0%	
E-1	Wage Rate Adjustment	LS	1	\$1,505.75	\$1,505.75	1.00	\$1,505.75		\$1,505.75	1.00	\$1,505.75	100.0%	
E-1	Less Change Order #1	LS	1	-\$15,000.00	-\$15,000.00	1.00	-\$15,000.00		-\$15,000.00	1.00	-\$15,000.00	100.0%	
E-2	Excavation in 4 Added Stone Areas	CY	259	\$12.11	\$3,144.26	259.00	\$3,144.26		\$3,144.26	259.00	\$3,144.26	100.0%	
E-3	Undercut	CY	203	\$6,496.00	\$6,496.00	203.00	\$6,496.00		\$6,496.00	203.00	\$6,496.00	100.0%	
<b>Total Base Bid D</b>					<b>\$548,049.08</b>		<b>\$79,699.21</b>		<b>\$79,699.21</b>		<b>\$535,356.21</b>	<b>97.68%</b>	<b>\$12,692.87</b>

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