

## **AN AGREEMENT**

Relative to the extension and improvement of the  
Municipal water system of the City of Saratoga Springs, NY

THIS AGREEMENT is made as of the day and date last signed by a party hereto between THE CITY OF SARATOGA SPRINGS, a municipal corporation with offices at City Hall, 474 Broadway, Saratoga Springs, NY 12866 (hereinafter referred to as "City"), and STEWART' S SHOPS CORP., a New York corporation with principal executive offices at 2907 Route 9, Ballston Spa, NY 12020 (hereinafter referred to as "Stewart's").

### **RECITALS**

Stewart's has proposed that the existing City water lines from a point on Route 9N (Church Street) approximately opposite City Tax Parcel 165.-2-2.1 to Stewart's manufacturing and distribution center on Church Street be upgraded by the replacement of the present pipe from said point to the intersection of Route 9N (Church Street) and Buff Road with a 12 inch pipe, and, from that intersection, the installation of a 12 inch pipe from the existing 12 inch water main on Buff Road to Church Street, and the installation of an 8 inch pipe from that intersection to a meter located in the City of Saratoga Springs and leading to the Stewart's facility in the Town of Greenfield. A summary of the proposal showing all improvements is attached to this Agreement as Attachment "A"

The proposal would benefit Stewart's by bringing improved water pressure and water flow to its facility. It would also provide a substantial public benefit by replacing portions of water lines many years old that have undergone numerous repairs and patching over the years. It would improve overall water quality in the area and establish a complete 12 inch municipal water service from Buff Road to Church Street. A copy of the City Engineer's review letter is attached to this Agreement as Attachment "B".

Stewart's and the City agree that the reasonable cost of the project is estimated at SIX HUNDRED EIGHTY-THREE THOUSAND EIGHT HUNDRED SEVENTY-TWO DOLLARS (\$683,872.00). An estimate of costs, including materials, labor, and related costs, is attached to this Agreement as Attachment "C".

To bring about immediate construction of the project without a large expenditure of municipal funds, Stewart's proposes to construct, at Stewart's expense, the project described in Attachment "A", provided that the City reduce the cost of municipal water through the new line to Stewart's over a period of time sufficient to offset Stewart's contribution. Stewart's estimates that it will use approximately 50,000 gallons of municipal water per day at its facility. Pursuant to the terms of the City's current water rates resolution, Stewart's is required to pay three (3) times the standard rate for city water because its facility is located outside the City of Saratoga Springs (Resolution as amended to 3/4/14, paragraph 7).

NOW, THEREFORE, the parties agree as follows:

1. Stewart's will pay for the costs of all materials, all construction and labor costs, all engineering and professional services, and all other costs and charges reasonably attendant to the construction of the project described in Attachment "A". All specifications and work shall be subject to review and approval by the City Engineer and by all other governmental departments and agencies whose approval is required by law.
2. Stewart's and the City acknowledge that the project shall be undertaken on lands of the City of Saratoga Springs, and shall remain at all times under the supervision and control of the City of Saratoga Springs, its officers, agents, employees, and representatives.
3. The City shall waive all costs and charges for inspections of the project as it may be authorized to charge by law.
4. All materials comprising the project shall at all times be the property of the City.
5. Stewart's and the City shall cooperate in applying for all necessary and required approvals and permits from the New York State Department of Health and the New York State Department of Transportation. Stewart's shall be responsible for paying any fees, costs or charges required for such applications.
6. As consideration for the costs paid by Stewart's pursuant to this agreement, the City shall, upon the commencement of the delivery of city water to Stewart's through the completed water line, forego the charging and collection of three (3) times the rate for water accounts outside the city, and shall charge Stewart's 1.5 times said rate for the term of this agreement. This reduction in rate is based upon Stewart's anticipated use of approximately 50,000 gallons of city water per day over the period of this agreement.
7. The term of this agreement shall be THIRTY (30) YEARS from the date of its signing by both the City and Stewart's. The City and Stewart's agree that said term is a fair and reasonable estimate of the period sufficient to offset Stewart's contribution under this agreement. A calculation showing how this estimate was arrived at is attached to this agreement as Attachment "D". The City and Stewart's acknowledge that the estimate is made in good faith and based upon reasonable criteria.
8. The terms of this agreement shall remain in effect only between the City and Stewart's. No part of the reduction in water rates agreed to herein shall be transferable by Stewart's to any other water user, water account, creditor, beneficiary or successor in interest.

9. The City herein requires the following Insurance terms and conditions for this agreement:

Stewarts shall procure and maintain during the term of this contract, at Stewarts's expense, the insurance policies listed with limits equal to or greater than the enumerated limits. Stewarts shall be solely responsible for any self-insured retention or deductible losses under each of the required policies. Every required policy, including any required endorsements and any umbrella or excess policy, shall be primary insurance. Insurance carried by the City, its officers, or its employees, if any, shall be excess and not contributory insurance to that provided by Stewarts. Every required coverage type shall be "occurrence basis" with the exception of Professional Errors and Omissions Coverage which may be "claims made" coverage. Stewarts may utilize umbrella/excess liability coverage to achieve the limits required hereunder; such coverage must be at least as broad as the primary coverage (follow form). The Office of Risk & Safety Management must approve all insurance certificates. The City reserves its right to request certified copies of any policy or endorsement thereto. All insurance shall be provided by insurance carriers licensed & admitted to do business in the State of New York and must be rated "A-:VII" or better by A.M. Best (Current Rate Guide). If Stewarts fails to procure and maintain the required coverage(s) and minimum limits such failure shall constitute a material breach of contract, whereupon the City may exercise any rights it has in law or equity, including but not limited to the following:

- (1) immediate termination of the contract;
- (2) withholding any/all payment(s) due under this contract or any other contract it has with Stewarts (common law set-off); OR
- (3) procuring or renewing any required coverage(s) or any extended reporting period thereto and paying any premiums in connection therewith.

All monies so paid by the City shall be repaid upon demand, or at the City's option, may be offset against any monies due to Stewarts.

The City requires Stewarts name the City as a Certificate Holder for the following coverage for the work covered by this Agreement:

- **Commercial General Liability** Including Completed Products and Operations and Personal Liability Insurance: One Million Dollars per Occurrence with Two Million Dollars Aggregate (*City is also an Additional Insured on a Primary and Non-contributory Basis for this coverage*);
- **Commercial Automobile Insurance:** One Million Dollars Combined Single Limit for Owned, Hired and Non-owned Vehicles
- **Excess Liability Insurance:** Three Million Dollars per Occurrence Aggregate
- **NYS Statutory Workers Compensation, Employer's Liability and Disability Insurance**

It shall be an affirmative obligation of Stewarts to advise City's Office of Risk and Safety via mail to Office of Risk and Safety, City of Saratoga Springs, 474 Broadway, Saratoga Springs, NY 12866, within two days of the cancellation or substantive change of any insurance policy set out herein as it pertains to this Agreement, and failure to do so shall be construed to be a breach of this Agreement. Stewarts acknowledges that failure to obtain such insurance on behalf of the municipality constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to the City. Stewarts is to provide the City with a Certificate of Insurance naming the City as ***Additional Insured on a primary and non-contributory basis*** prior to the commencement of any work or use of City facilities. The failure to object to the contents of the Certificate of Insurance or the absence of same shall not be deemed a waiver of any and all rights held by the municipality. In the event Stewarts utilizes a Contractor or Subcontractor(s) for any portion of the services outlined within the scope of its activities, the Contractor and/or Subcontractor(s) shall provide insurance of the same type or types and to the same extent of coverage as that provided by Stewarts. All insurance required of the Contractor and/or Subcontractor(s) shall name the City of Saratoga Springs as an ***Additional Insured on a primary and non-contributory*** basis for all those activities performed within its contracted activities for the contact as executed.

Stewarts, to the fullest extent provided by law, shall indemnify and save harmless the City, its Agents and Employees (hereinafter referred to as "City"), from and against all claims, damages, losses and expense (including, but not limited to, attorneys' fees), arising out of or resulting from the performance of the work or purchase of the services, sustained by any person or persons, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property caused by the tortious act or negligent act or omission of Contractor or its employees or anyone for whom Stewarts is legally liable or Subcontractors. Without limiting the generality of the preceding paragraphs, the following shall be included in the indemnity hereunder: any and all such claims, etc., relating to personal injury, death, damage to property, or any actual or alleged violation of any applicable statute, ordinance, administrative order, executive order, rule or regulation, or decree of any court of competent jurisdiction in connection with, or arising directly or indirectly from, errors and/or negligent acts by Stewarts, as aforesaid.

The City specifically reserves the right to suspend or terminate all work under this contract whenever Stewarts' Contractor and/or Contractor's employees or subcontractors are proceeding in a manner that threatens the life, health or safety of any of Contractor's employees, subcontractor's employees, City employees or member(s) of the general public on City property. This reservation of rights by the City in no way obligates the City to inspect the safety practices of Stewarts. If the City exercises its rights pursuant to this part, Stewarts shall be given three days to cure the defect, unless the City, in its sole and absolute discretion, determines that the service cannot be suspended for three days due to the City' legal obligation to

continuously provide Contractor's service to the public or the City' immediate need for completion of Stewarts's work. In such case, Contractor shall immediately cure the defect. If Stewarts fails to cure the identified defect(s), the City shall have the right to immediately terminate this contract.

IN WITNESS WHEREOF, the City and Stewart's have signed this agreement on the dates indicated.

Dated:

\_\_\_\_\_  
THE CITY OF SARATOGA SPRINGS  
By: Joanne D. Yepsen, Mayor  
Per Council Approval

Dated:

\_\_\_\_\_  
STEWART'S SHOPS CORP.  
By:

STATE OF NEW YORK

Ss:

COUNTY OF SARATOGA

On this        day of        , 2015, before me, the undersigned, personally appeared JOANNE D. YEPSSEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Comm. Exp.

STATE OF NEW YORK

Ss:

COUNTY OF SARATOGA

On this        day of        , 2015, before me, the undersigned, personally appeared        , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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Notary Public

Comm. Exp.

**ATTACHMENT A**

## ATTACHMENT "A"

The following is a summary of work proposed by Stewart's Shops Corp. under this agreement:

1. Stewart's will, at its expense, create the engineering plans, estimates, schematics and diagrams needed to have the herein described plan of work reviewed and approved by the City Engineer of the City of Saratoga Springs and such other governmental departments and agencies whose permits or approvals are needed to undertake this plan of work.

2. Stewart's will, at its expense, construct and install, by means of directional boring, a 12 inch HDPE potable water line within the north boundary of the City of Saratoga Springs/New York State road known as Route 9N/Church Street, from a point in an existing 12 inch potable water line located within the north boundary of said Route 9N/Church Street, said point being opposite, more or less, from City of Saratoga Springs Tax Parcel 165.-2-2.1. Said line shall be constructed in a generally northwesterly direction to a point opposite, more or less, the intersection of Route 9N/Church Street and Buff Road.

3. Stewart's will, at its expense, construct and install a 12 inch HDPE potable water line in Buff Road, from an existing 12 inch water main in said Buff Road to the intersection of Buff Road and Route 9N/Church Street. Said line shall be constructed in a generally northerly direction, directionally boring under Route 9N/Church Street and connecting to the 12 inch HDPE potable water line described in paragraph "2" above.

4. Stewart's will, at its expense, construct and install an 8 inch HDPE potable water line from the intersection of the two 12 inch HDPE potable water lines described in paragraphs "2" and "3" above, to a water meter to be located within the City limits at Stewart's expense and connected to Stewart's operational plant and business in the Town of Greenfield. Said line shall be constructed by directional boring and shall continue along the north boundary of Route 9N/Church Street in a generally northwesterly direction.

5. Along the route of the said potable water line along the north boundary of Route 9N/Church Street, Stewart's will, at its expense, construct and install fire hydrants at intervals required by applicable laws, codes, rules and regulations, as agreed upon between Stewart's and the City.

6. Upon the construction and installation of the potable water lines along Route 9N/Church Street, all existing residential and commercial users of potable city water on the north and south sides of Route 9N/Church Street shall have their private water laterals reconnected into the new potable water lines at Stewart's

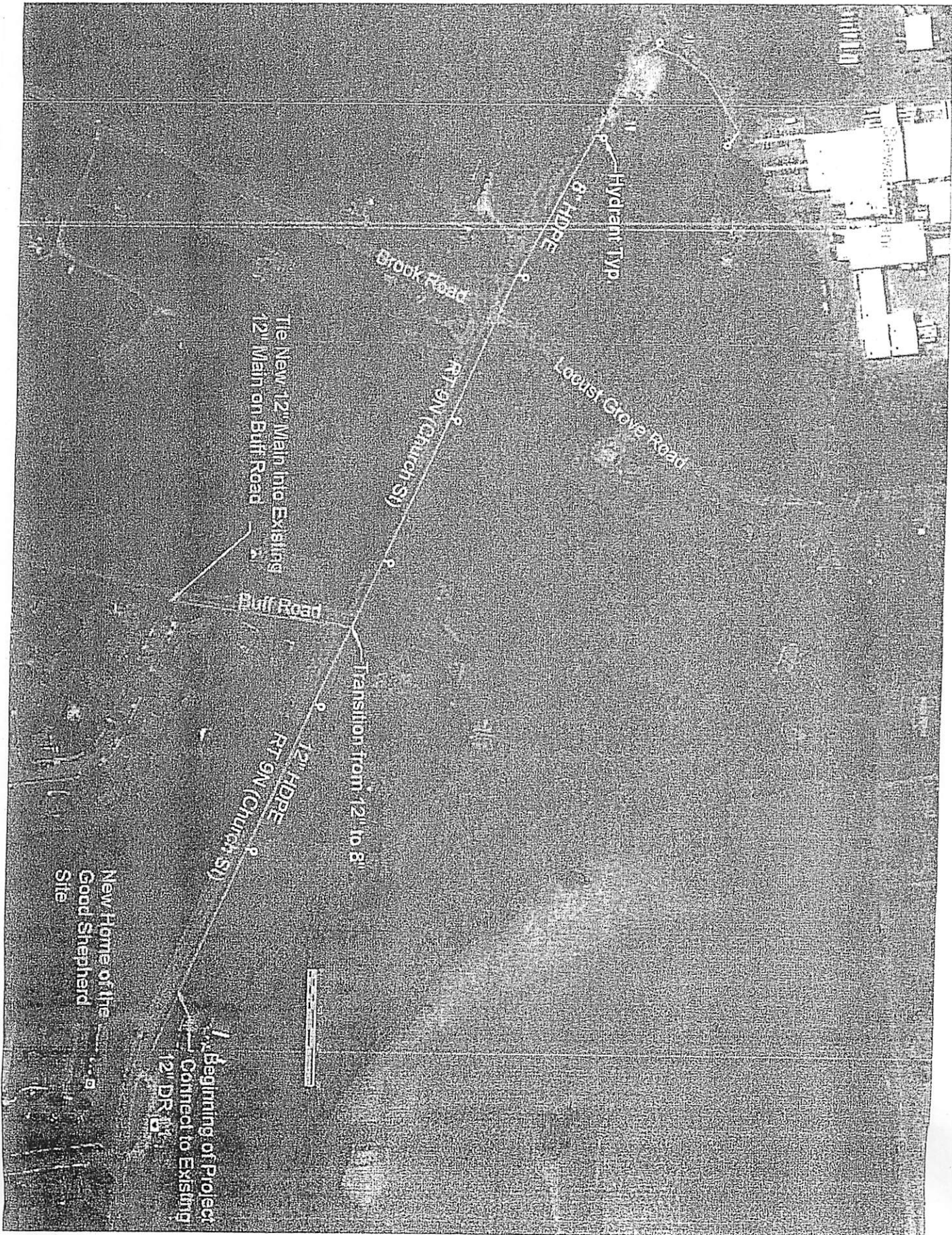


expense. Stewart's shall be responsible to reasonably repair and/or reseed any private property disturbed by the construction of said potable water line.

7. Upon the construction and installation of the potable water lines along Route 9N/Church Street, Stewart's shall, at its expense, repave the northeast quadrant of the intersection of Route 9N/Church Street and Locust Grove Road.

8. All work shall be performed in accordance with applicable municipal codes, rules and regulations of the City of Saratoga Springs and other governmental agencies.

9. A depiction of the project is included as part of this Attachment.



Hydrant Typ.

8" HDPE

Brook Road

Locust Grove Road

RT 9N (Church St)

The New 12" Main Into Existing  
12" Main on Buff Road

Buff Road

Transition from 12" to 8"

12" HDPE

RT 9N (Church St)

New Home of the  
Good Shepherd  
Site

Beginning of Project  
Connect to Existing  
12" DR



# **ATTACHMENT B**



# City of Saratoga Springs

OFFICE OF CITY ENGINEER  
CITY HALL

474 Broadway, Room 10  
Saratoga Springs, New York 12866

Telephone 518-587-3550

Fax 518-580-9480

[www.saratoga-springs.org](http://www.saratoga-springs.org)

TIMOTHY W WALES, P.E.  
CITY ENGINEER

DEBORAH M LABRECHE, P.E.  
ASSISTANT CITY ENGINEER

SCOTT PALMER  
SURVEY TECHNICIAN

STAN BORDEN  
SR ENGINEERING TECHNICIAN

ALBERT FLICK  
UTILITIES SYSTEMS LOCATION TECHNICIAN

November 14, 2014

Commissioner Skip Scirocco  
Department of Public Works  
City Hall  
474 Broadway  
Saratoga Springs, NY 12866

Re: Proposed Water Main Extension by Stewarts Corporation  
NYS Route 9N

Dear Commissioner Scirocco:

I have reviewed the technical details of the proposal by Stewarts Corporation to fund and construct a City water main upgrade project from the Home of the Good Shepherd (HOGS) Project on NYS Route 9N/Church Street to the Stewarts Facility. This project would entail the extension of the recently installed twelve (12) inch diameter ductile iron water main terminating near the western boundary of the (HOGS) project, out to the intersection of NYS Route 9N and Buff Road, with a connection to the existing twelve inch main on Buff Road. The new pipe would then continue as eight (8) inch diameter ductile iron water main out to the Stewarts Facility. This new pipe would service to replace the existing four (4) inch diameter water main that exists on this route.

This project has several benefits for the City as it will serve to complete the loop of 12 inch water main along NYS Route 9 and Buff Road, thereby improving fire flow, water pressure and water quality. It also serves to replace the existing four inch water main that is old, brittle and often needs repair causing interruption of service, costly repairs to the pipe and restoration of the NYS Highway. Once can observe the numerous highway pavement cuts and repairs existing along this route presently. This is a priority project, however based limited capitol funds that we have to work with each year, it is likely that we would not be able to schedule the upgrade of the existing four inch main ourselves for several years due to other higher priority projects in the inner district of the City. For these reasons it is highly desirable to have this project funded and completed by Stewarts at this time. Please let me know if you have any questions regarding this recommendation.

Sincerely,

Timothy W. Wales, P.E.  
City Engineer

Cc: Tony Izzo, Asst. City Attorney

# ATTACHMENT C

CITY WATER LINE UPGRADE – CHURCH STREET  
ESTIMATED PROJECT COSTS

W. J. Morris Excavating

Directional Drilling	\$ 491,164
Demo, Erosion Control, and Safety	25,474
Site Layout	3,250
Restoration	59,348
Mobilization	936
Paving – (Northeast Quadrant of Church St. & Locust Grove Intersection)	32,500
	<hr/>
Total W.J. Morris Excavating	612,672
Engineering costs (incl survey)	19,000
Funding to M&J Construction Co. (complete Buff Rd line to Church St)	20,000
Inspection Costs (Two inspectors required, city & DOT)	
NYDOT required (\$600 per day @ 30 days)	18,000
City required (\$440 per day @ 30 days)	13,200
	<hr/>
Total Inspection Costa	31,200
NYSDOT Permit	1,000
 TOTAL ESTIMATED PROJECT COSTS	 <hr/> <b>\$ 683,872</b>

# ATTACHMENT D

## ATTACHMENT D

As shown in Attachment "C", the estimated costs for the improvements set out in Attachment "A" is \$683,872.00. These improvements will be a substantial public benefit and are not presently scheduled as projects under the City's Capital Budget.

Stewart's water usage has varied from 25,000 to 50,000 gallons per day over the last five (5) years. The calculations herein are based on usage of 50,000 gallons per day.

Stewart's currently pays three (3) times the rate for water accounts inside the city. The inside account rate is now \$1.80 per 1000 gallons. Stewart's therefore pays \$5.40 per 1000 gallons. If, as proposed herein, Stewart's paid 1.5 times the said rate, it would save \$2.70 per 1000 gallons. At a usage of 50,000 gallons per day, Stewart's would save  $\$2.70 \times 50 = \$135.00$  per day. In one year, Stewart's would save \$49,275.00. Over 30 years, Stewart's would save \$1,478,250.00.

The use of Stewart's \$683,872.00, if borrowed and repaid as municipal debt service at four and one-half percent (4.5%) over 30 years, would generate average annual debt of \$57,673.21 per year. Over 30 years it would cost \$1,730,196.00.

The sum of \$683,782.00 invested at 1% over 30 years would yield \$921,756.13

If invested at 2%, it would yield \$1,238,739.47

If invested at 3%, it would yield \$1,316,755.91

The reduction of \$1,478,250.00 in water cost to Stewart's under this agreement is reasonable in light of the future value of Stewart's present contribution of \$683,872.00 together with the public benefit of the immediate construction of the new water lines.