



Town of West Seneca

TINA M. HAWTHORNE
TOWN ATTORNEY
thawthorne@twsny.org

MEMO

To: The Honorable Town Board

From: Tina M. Hawthorne, Town Attorney

Date: November 19, 2020

Subject: Erie County 2018 STOP-DWI Contract

Kindly adopt the attached resolution. You will not the contract is for the year 2018. It is my understanding that this contract was recently provided to the Town. There was not a prior contract for 2018. The Town will need to execute it to receive the 2018 funds.

**TOWN OF WEST SENECA
TOWN BOARD RESOLUTION
2018 STOP-DWI**

WHEREAS, the County of Erie, pursuant to the authority granted to it by Article 31 of the Vehicle and Traffic Law, has established a special traffic options program for driving while intoxicated (STOP-DWI) and has formulated a plan thereunder for the coordination of county, town, city and village efforts to reduce alcohol-related traffic injuries and fatalities; and

WHEREAS, the Town of West Seneca, through its police agency, has made formal application to the Erie County STOP-DWI Coordinator for the funding of certain alcohol traffic safety law enforcement activities in Erie County during the period from January 1, 2018 to December 31, 2018; and

WHEREAS, a Justice Court has been established in and for the Town with jurisdiction to hear and determine cases involving alleged violations of Section 1192, Section 511(2)(a)(ii) and (iii) and Section 511(3)(i) of the New York State Vehicle and Traffic Law; and

WHEREAS, the County of Erie has provided the Town with a proposed contract laying out the terms of the plan and terms of funding of certain alcohol traffic safety law enforcement activities; and

WHEREAS, the Town Board has determined it is in the best interest of the residents of the Town of West Seneca to enter into the proposed contract with Erie County for the 2018 STOP-DWI program; and

NOW THEREFORE, be it resolved that the Town Board of the Town of West Seneca authorizes the Supervisor to execute the attached 2018 STOP-DWI Contract.

**Police & Court Contract
2018 STOP-DWI**

THIS AGREEMENT, made and entered into as of the 1st day of January, 2018, by and between the COUNTY OF ERIE, a municipal Corporation of the State of New York, with offices at 95 Franklin Street, Buffalo, New York, 14202, hereinafter referred to as the COUNTY, party of the first part, and the TOWN OF WEST SENECA a municipal corporation of the State of New York partly in Erie County, with offices 1250 Union Road, West Seneca, New York, 14224 hereinafter referred to as the MUNICIPALITY, party of the second part.

W I T N E S S E T H:

WHEREAS, the COUNTY, pursuant to the authority granted to it by Article 31 of the Vehicle and Traffic Law, has established a special traffic options program for driving while intoxicated (STOP-DWI) and has formulated a plan thereunder for the coordination of county, town, city and village efforts to reduce alcohol-related traffic injuries and fatalities, and

WHEREAS, the MUNICIPALITY, through its police agency, has made formal application to the Erie County STOP-DWI Coordinator for the funding of certain alcohol traffic safety law enforcement activities in Erie County during the period from January 1, 2018 to December 31, 2018, which application is attached hereto and made a part hereof as Appendix "A", and

WHEREAS, a Justice Court has been established in and for the MUNICIPALITY with jurisdiction to hear and determine cases involving alleged violations of Section 1192, Section 511(2)(a)(ii) and (iii) and Section 511(3)(i) of the Vehicle and Traffic Law.

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES:

FIRST: During the term of this Agreement, the MUNICIPALITY, as an independent contractor, agrees to engage in the alcohol traffic safety law enforcement activities set forth in the annexed Appendix "A".

SECOND:

For purposes of this paragraph:

- (i) "DWI case" shall mean a criminal action commenced in any court within Erie County wherein a person is charged with a violation of Section 1192, Section 511(2)(a)(ii) or (iii) or Section 511(3)(i) of the Vehicle and Traffic Law.
- (ii) "net STOP-DWI collections" shall mean the amount of fines, penalties and forfeitures collected by any court, judge, magistrate or other judicial officer within Erie County for violations of Section 1192, Section 511(2)(a)(ii) or (iii) or Section 511(3)(i) of the Vehicle and Traffic Law after deducting therefrom the amount of refunds made by reason of judicial mandate (e.g., appellate reversal of conviction, reduction of fine, etc.) and after deducting therefrom the percentage or amount withheld for deposit to the credit of the state STOP-DWI coordinating fund or for state operating and administrative expenses (i.e., any state assessment against fine revenues otherwise payable to Erie County pursuant to Section 1197(1) of the Vehicle and Traffic Law).

Within one hundred twenty (120) days after the close of each calendar year of this Agreement, the County agrees to pay the MUNICIPALITY, subject to the provisions of paragraph THIRD hereof, a sum not to exceed the lesser of either:

- (i) The MUNICIPALITY's actual expenses, as certified by the MUNICIPALITY upon forms acceptable to the COUNTY, in carrying out, during the term of this agreement, the alcohol traffic safety law enforcement activities set forth in Appendix "A"; or

- (ii) sixty-five percent (65%) of the net STOP-DWI collections actually paid over and received by the COUNTY during the prior calendar year during term of this Agreement, provided that such collections have resulted from convictions obtained in DWI cases commenced by the MUNICIPALITY's police agency;

THIRD:

For purposes of this paragraph:

- (i) "DWI case" shall mean a criminal action commenced in any court within Erie County wherein a person is charged with a violation, or multiple violations involving the same person and arising out of the same incident, of Section 1192, Section 511(2)(a)(ii) or (iii) or Section 511(3)(i) of the Vehicle and Traffic Law;
- (ii) "finally disposed of" and "final disposition" shall mean the termination of a DWI case at the trial court level by reason of a dismissal, acquittal or conviction and imposition of sentence by the trial court, but shall not include the removal or transfer of a DWI case to another court.

Within one hundred twenty (120) days after the close of each calendar year of this Agreement, the COUNTY agrees to pay the MUNICIPALITY, for the services of the MUNICIPALITY's Justice Court, the sum of TEN DOLLARS (\$10.00) for each DWI case finally disposed of during the prior calendar year during the term of this agreement which was commenced by either the Erie County Sheriff's Office or the New York State Police. The said case regardless of the final disposition thereof.

The MUNICIPALITY agrees that the COUNTY, on behalf of the MUNICIPALITY, shall allocate and pay out, from the sums payable to the MUNICIPALITY under paragraph THIRD (B) hereof, the sum of TEN DOLLARS (\$10.00) for each DWI case commenced by the

Municipality's police agency which was finally disposed of during the prior term of this agreement. The said sum shall be paid by the COUNTY to the town or village in whose Justice Court the DWI case was finally disposed of and shall be payable regardless of the final disposition thereof.

FOURTH:

The MUNICIPALITY, through its police agency, agrees to compile information and render monthly reports, in a form acceptable to the County, to the Erie County STOP-DWI Coordinator with respect to:

- (i) the MUNICIPALITY's actual expenses in carrying out the alcohol traffic safety law enforcement activities set forth in Appendix "A".
- (ii) all alcohol-related traffic accident investigated by the MUNICIPALITY's police agency (including copies of MV-104A forms prepared in connection therewith.
- (iii) all DWI cases (cases involving alleged violation(s) of Section 1192, Section 511(2)(a)(ii) or (iii) or Section 511(3)(i) of the Vehicle and Traffic Law commenced by the MUNICIPALITY's police agency in any court in Erie County.

B. The MUNICIPALITY, through its Justice Court with jurisdiction to hear and determine DWI cases, agrees to compile information and render monthly reports to the Erie County STOP-DWI Coordinator with respect to all DWI cases finally disposed of {as those terms are defined in paragraph THIRD(a)(i) and (ii), but including cases removed or transferred} in the MUNICIPALITY's Justice Court.

C. The MUNICIPALITY acknowledges that the determination by the COUNTY of the amounts payable to the MUNICIPALITY under paragraphs SECOND and THIRD of this Agreement is dependent upon the timely receipt by the Erie

County STOP-DWI Coordinator of accurate information from the MUNICIPALITY. Accordingly, the MUNICIPALITY agrees that, as a condition precedent to its rights to payment under this Agreement, it shall fully complete and forward to the Erie County STOP-DWI Coordinator each of the monthly reports required under this paragraph within 15 (fifteen) days after the last day of each monthly period to which such reports relate.

FIFTH: The County agrees to reimburse the MUNICIPALITY overtime wages, excluding benefits, for officers authorized to staff extra effort Police Lifesaver Patrols (PLP) DWI Sobriety Checkpoints and Roving Patrols, subject to the provisions of paragraph THIRD hereof, and guidelines of attached Appendix A, in a sum not to exceed the lesser of either: The actual wages paid to the officers, or \$47.00/hour/number of authorized hours.

SIXTH: The County agrees to pay the MUNICIPALITY full overtime wages, excluding benefits, for officers of the Erie County Drug Recognition Expert (DRE) Corps called out in mutual aid to another police agency, or called in on overtime to their own department, or at training to maintain DRE Certification, subject to the provisions of paragraph THIRD hereof, and guidelines of attached Appendix A. DRE Officers on regular duty, in service to their own agency, shall not be eligible for reimbursement.

SEVENTH: The County agrees to pay the MUNICIPALITY full overtime wages, excluding benefits, for officers of the Erie County Crash Response Team (CRT) called out in mutual aid to another police agency, or called in on overtime to their own department, or at training to maintain CRT Certification, subject to the provisions of paragraph THIRD hereof, and regulations of attached Appendix A. CRT Officers on regular duty, in service to their own agency, shall not be eligible for reimbursement.

EIGHTH: This Agreement is executory only to the extent of monies available to the COUNTY for the performance hereof and appropriated therefor, being monies in a separate account entitled "Special Traffic Options Program for Driving While Intoxicated" established

and funded pursuant to Sections 1197 and 1803 of the Vehicle and Traffic Law, and the COUNTY shall incur no liability on account of this Agreement beyond such monies.

NINTH: In the event the Erie County STOP-DWI Program, as approved by the Commissioner of the New York State Department of Motor Vehicles, is terminated before the COUNTY has paid to the MUNICIPALITY all of the sums otherwise payable under the terms of this Agreement, the provisions of Section 1197(9) of the Vehicle and Traffic Law with respect to program cessation shall govern for purposes of determining the availability of such sums for payment to the MUNICIPALITY.

TENTH: The MUNICIPALITY shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement or of any rights, title or interest herein, nor of the power to execute the same or any extension hereof to any other person or corporation without the previous consent in writing of the COUNTY.

ELEVENTH: The MUNICIPALITY agrees to comply with all applicable laws of the State of New York, the United States and the County of Erie, including laws against discrimination, and with all rules and regulations of pertinent authorities having jurisdiction.

TWELVETH: The MUNICIPALITY shall be fully accountable for its performance under this Agreement and agrees for itself and its officers to answer under oath all questions relevant to the performance thereof and to any transactions, act or omission in connection therewith if called before any Judicial, County, State or Federal agency empowered to investigate the Agreement or its performance.

THIRTEENTH: The MUNICIPALITY agrees to furnish verified accounts of its disbursements hereunder, with certified or verified invoices thereto attached at such times and in such form and detail as may be required by the Erie County Comptroller, who may at her option audit the pertinent books and records of the MUNICIPALITY, and a final account within thirty (30) days after the termination of this Agreement.

FOURTEENTH: The MUNICIPALITY agrees to defend, hold harmless and indemnify the COUNTY against any and all liability, claims, demands, suits and judgments arising out of the performance of the MUNICIPALITY’s obligations under this Agreement. The MUNICIPALITY further agrees to maintain insurance coverage(s) during the term of this Agreement and to submit certificates of insurance in accordance with Vendor Classification C - “Professional Services” appearing on Appendix “B” annexed hereto. For purposes of this Agreement, the County must be included as an additional named insured on the Municipality’s insurance policies. For purposes of this Agreement, the MUNICIPALITY need not provide proof of professional liability insurance coverage. At the request of the MUNICIPALITY and with the consent of the Erie County Attorney, the Erie County STOP-DWI Coordinator may waive the excess and/or umbrella liability insurance coverage(s), or reduce the amount(s) thereof, otherwise required under this paragraph. In lieu of proof of insurance coverage, the MUNICIPALITY may furnish evidence of a self-insurance plan acceptable to the Erie County Attorney.

FIFTEENTH: Consistent with the MUNICIPALITY’s status as an independent contractor, the COUNTY shall not be responsible for Worker’s Compensation benefits, Social Security coverage or unemployment insurance benefits with respect to the MUNICIPALITY.

SIXTEENTH: This Agreement, or any renewal thereof, may be terminated by either party upon at least thirty (30) days prior notice. Such notice shall be provided in writing to the chief executive officer of the other party at the address appearing on the first page of this Agreement.

SEVENTEENTH: Provided that the MUNICIPALITY shall have made formal application for the continued funding of its alcohol traffic safety law enforcement activities, this Agreement may be renewed for such additional twelve (12) month terms as may be mutually agreed upon by the parties through their respective legislative bodies.

ACKNOWLEDGEMENTS

STATE OF NEW YORK)
 COUNTY OF ERIE) SS:

On the _____ day of _____, in the year 2018, before me, the undersigned, personally appeared _____, Erie County Executive/ _____, Deputy County Executive, 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/he executed the same in her/his capacity, and that by her/his signature on the instrument, the entity or individual upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK:

COUNTY OF ERIE:

On this 12th day of November, 2018, before me personally came Gary Dickson to me personally known, who, being by me duly sworn, did depose and say that resides in TOWN OF WEST SENECA, County of Erie and State of New York; that is the SUPERVISOR of the TOWN OF WEST SENECA, the corporation described in, and which executed the within instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal and was so affixed by order of the governing body thereof and that signed name thereto by like order.

Margaret A. Martin

Notary Public

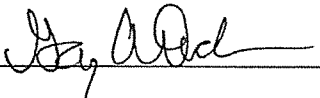
MARGARET A. MARTIN
Lic. # 01MA6318702
Notary Public, State of New York
Qualified in Erie County
Commission Expires February 2, 2023

This agreement is executed by the COUNTY pursuant to a resolution adopted by the Legislature of the County of Erie at its meeting held on _____ and by the MUNICIPALITY pursuant to a resolution of its governing body adopted at a meeting of said

governing body held on _____, a certified copy of the MUNICIPALITY'S resolution being annexed hereto as Appendix "C".

TOWN OF WEST SENECA

County of Erie

By: 

By: _____

Gary Dickson, SUPERVISOR

Mark C. Poloncarz/Maria Whyte
Erie County Executive/Deputy

APPROVED AS TO CONTENT:

By: _____ Signed Electronically _____
James Jancewicz, Commissioner
Erie County Central Police Services

John F. Sullivan
STOP-DWI Coördinator

APPROVED AS TO FORM:

By: _____ Signed Electronically _____
Greg Kammer
Assistant County Attorney

Document No. _____

Date: _____

APPENDIX A

Erie County Police DWI Program Outline 2018

PROBLEM IDENTIFICATION

Approximately 2400 drivers are arrested for DWI in Erie County each year. The typical arrested drunken driver is a male between the ages of 24 and 35, driving on a weekend night between the hours of 2200 and 0600 with an average BAC of .16%.

Alcohol is a factor in 30% of all fatal traffic crashes in Erie County. In the year 2016, 9 persons were killed and hundreds injured in DWI related traffic crashes in Erie County. Roughly 1,000 suspects charged with DWI had prior arrests for DWI, and thirty percent of suspects refused the chemical test.

Progress has been made since 1982 when 72 persons were killed by drunken drivers in Erie County. Fewer drunken drivers are using our roads, and those arrested have a lower average BAC than in the past.

Participation in the Erie County STOP-DWI Project

In order to address this threat to our citizens, ongoing, regular enforcement of DWI laws must be a departmental priority. Within the practical boundaries of our department's resources, and in addition to normal patrol activities, the department will assign officers to dedicated DWI patrols at times and dates that maximize the enforcement impact.

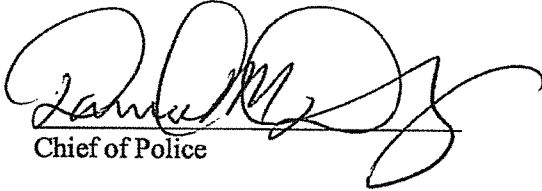
Additionally, officers from this department will participate in the DWI Sobriety Checkpoints and Roving Patrols sponsored by the STOP-DWI Office, support and utilize the DWI Crash Response Team, and the Drug Recognition Expert Corps.

Using funds derived by this agreement, the department will maintain an instrument to administer chemical tests to DWI suspects and provide appropriate training and certification of personnel to operate it. These funds shall also be used to offset overtime costs for court and additional patrol time.

In addition to providing for evidentiary chemical tests, the department will provide for the calibration and maintenance of additional enforcement tools used in the detection of drunken drivers. These tools may include tint meters, speed radar, Alco-Sensors, and others deemed necessary by the Chief of Police.

Officers will work in conjunction with vehicle collision investigators, radar speed enforcement, and routine traffic enforcement details in order to enforce DWI statutes and, when necessary, testify in all phases of prosecution in DWI cases.

Compliance with this plan qualifies this police department for participation in Erie County's STOP-DWI Project.



Chief of Police

Town of West Seneca Police Dept.
Town, Village, or City

Date: 11-12-2020